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This unusual view was shot from inside the handsome new State Legislative Building in Raleigh. Shown through the glass exterior is the State Capitol one block south. The dark line dividing the picture actually is a part of the building, for this is a split-level shot, showing activity on two floors of the building.

by Clyde L. Ball
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THE NORTH CAROLINA GENERAL ASSEMBLY OF 1963

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

The 1963 General Assembly convened on February 6 and adjourned *sine die* at 4:32 p.m. on June 26. The Senate convened initially at 11:30 a.m., and the House at 12:00 noon in order to permit Secretary of State Thad Eure to convene both houses; this step was made necessary by the death of Lieutenant Governor Philpott.

The 1963 Senate was composed of 48 Democrats and 2 Republicans—the same number of each as in 1961. The 1963 House consisted of 99 Democrats and 21 Republicans—a gain of six seats by the minority party. Five women, all Democrats, held seats in the House; the 1961 House also contained five women, but two were Republican.

During the session 2101 bills and resolutions were introduced—an increase of 225 over the 1961 session. Of the bills introduced, 1147 were public and 954 were local. Four hundred fifty-five public bills, 709 local bills, and 84 resolutions were ratified. Two hundred forty-five local bills failed of ratification—as contrasted with 92 in the 1961 session. This figure—about three times the average for the preceding five sessions—reflects an increasing impact of partisanship in local bills. Roughly 57% of the public bills failed in 1963; the comparable figure in 1961 was 47%.

The State Legislative Building

The 1963 General Assembly, the first to occupy the new State Legislative Building, found that the building, like any other new home, took some getting used to. Veteran legislators, accustomed to the compactness of the old chambers in the Capitol, and unaccustomed to virtually any other facilities, found it harder sometimes to find each other and to communicate easily on the floor. There was a resistance on the part of some seasoned orators to using the loud-speaker facilities. New members missed the quick orientation which came from the very closeness of the physical facilities in the old quarters. The press had more difficulty in locating members whom they wished to interview. The clerks' offices felt a little more out of things as they were no longer located in the corner of the chambers. As the session progressed, however, it became apparent that North Carolina has a place where its legislators and legislative service agencies can work comfortably, effectively and efficiently.

The new building was dubbed the "State House" before it was occupied. To avoid confusion between the building and the Capitol, and to emphasize the point that this is a building for the legislature, and not the seat of the State Government, the General Assembly enacted Chapter 8 (SB 2) fixing the name of the building officially as the "State Legislative Building" and requiring its official name to be used in all references to the building in publications of the State and its departments, agencies and institutions.

Again to emphasize that the new building is for legislative use, the General Assembly enacted Chapter 1 (SB 3) creating a Legislative Building Governing Commission to determine policy governing use of the building and to be responsible for its maintenance and care. The Commission may delegate the maintenance and care function to the General Services Division of the Department of Administration, but that Department has no authority over the building except as delegated by the Building Commission. The Commission consists of the presiding officer and two members of each house appointed by him.

Legislative Council

Potentially one of the most important acts of the 1963 Session is Chapter 721 (HB 663). This act creates a Legislative Council consisting of the President pro tempore of the Senate and five Senators appointed by him and the Speaker of the House and five Representatives appointed by him. If, as is true at present, the President of the Senate is a member of the Senate (the Lieutenant Governor's office being vacant), the President of the Senate rather than the President pro tempore serves and makes the appointments from the Senate. The Council takes office as of the end of each regular session and serves until the convening of the next regular session. It is designed to serve as a sort of interim legislative committee,

The Council idea has found acceptance in some 39 states, and has been abandoned in only one of these. There was resistance in the North Carolina General Assembly to the idea, primarily because of the existing research and service facilities. It may require some time for the nature of the Council and its impact on other agencies and institutions to be clearly defined.

Enrolled Acts

A problem of long standing in North Carolina is the difficulty of readily obtaining copies of enrolled acts of the General Assembly as soon as they have been ratified. The making studies and recommendations on topics assigned by Enrolling Office, a function of the office of the Secretary of State, has the official record copy, and copies go to the various offices connected with indexing and codifying the new laws. As State agencies and officials and others require copies, it is necessary for the Secretary of State to have special copies made up. This need occurs at the time that the Enrolling Of- of the Council meant the end of the regularly recurring Commission on Reorganization of State Government.

either or both houses of the General Assembly. The creation fice is literally swamped by the demands of the legislative process. The Institute of Government makes up its own enrolled copies, but this too is a time-consuming and expensive process, and is always subject to the possibility that the unofficial enrollment will differ from the official enrollment which is, of course, the correct text.

Chapter 213 (HB 323) added a new subsection (b) to GS 120-22 authorizing the Assembly to provide for the duplication and limited distribution of copies of ratified acts. Distribution would be restricted to officers and members of the General Assembly, Secretary of State, Enrolling Office, Attorney General, Institute of Government, and such other State departments, agencies and officers as rules and regulations promulgated jointly by the two presiding officers might provide. The act provided that the cost of making the copies should be paid from the legislative budget. That budget was somewhat strained during the 1963 Session by the unusual and unforeseen expenses incident to occupancy of the new building, so that the enrolled act distribution was not attempted during the session. If the act is implemented in the 1965 Session, the problem of prompt availability of enrolled acts will be solved.

Senate Redistricting

The 1963 General Assembly failed to redistrict the State Senate according to the Constitutional mandate, but the failure was not caused by lack of effort. Some nine different bills on the subject were introduced. SB 6, by Senator Currie, embodied a plan which was, on the basis of the 1961 experience, thought by its sponsor to be the nearest approach to the Constitutional standard that was likely to garner enough votes to pass. SB 7, by Senator Humber, provided for a Constitutional amendment increasing the size of the Senate by 10, allocating the extra seats to the more populous districts, and modifying the basis of Senate districts. The Senate coupled the two bills into one package—the so-called "piggy-back" measure. The House insisted upon dealing with the bills separately. The disagreement went to a conference committee, and the conferees recommended that the combination measure be enacted. The Senate accepted the conference report but the House rejected it. The conferees were instructed to reconvene and seek a solution acceptable to both houses. On the last day the conferees reported that they were unable to agree, but that they had united to introduce a new bill embodying a plan for a variable-number Senate, with the number of additional seats to be calculated according to a population formula, and to be assigned to the more populous districts. This plan, proposed by Senator Hanes, was not actually introduced as it became apparent that the House was not receptive to action on a relatively involved new proposal at the last minute.

With the threat of court action ever present, it appears that Senate redistricting will be the topic of the first special session to be held in the new Legislative Building.

SPECIAL SESSION OF THE GENERAL ASSEMBLY

When it became evident during the waning days of the 1963 regular session that the question of Senate redistricting might not be resolved by that session, Governor Sanford indicated that he would, if necessary, call a special session of the General Assembly to deal with the problem. Governor Sanford has now announced that he will call the General Assembly into special session on October 14 to consider two measures: (1) a bill to redistrict the State Senate according to present constitutional provisions; and (2) a bill proposing a constitutional amendment which would provide a more workable plan of redistricting to operate automatically in the future.

Article II, Section 4, the present constitutional provision governing Senate districts, reads as follows: "The Senate districts shall be so altered by the General Assembly, at the first session after the return of every enumeration by order of Congress, that each Senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate district, unless such county shall be equitably entitled to two or more senators."

Any change in the constitutional basis for Senate representation will have to satisfy the requirements of the United States Constitution, Amendment XIV, Clause 1: . . . nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws." The precise meaning of the Equal Protection Clause in the context of state legislative representation is still evolving.

The 1961 General Assembly proposed and the people of the state ratified an "automatic" procedure for reapportioning House seats. The constitutional formula is to be applied by the Speaker of the House at the first regular session following each federal census; the result shall be entered on the journal by the 60th day of the session and shall then have the effect of law. The automatic procedure is simple in the House because the application of the apportionment formula is a matter of simple arithmetic. The units of representation—counties—have fixed boundaries, and there is no room for individual judgment in determining the number of seats which a particular county should have under the constitution.

Redistricting of the Senate poses a more difficult problem. The number of possible different groupings of counties into districts is quite large, and the determination as to which particular counties should constitute a particular district involves individual judgment and discretion. Thus, redistricting cannot be reduced to a purely mechanical exercise in arithmetic, so long as the district boundaries are subject to variation. Any "automatic" redistricting plan must of necessity involve the transfer of discretionary authority now vested in the legislature to some other agency, group, or person.

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THE COUNTIES AND THE 1963 GENERAL ASSEMBLY

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

EDITOR'S NOTE: [*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 affecting county commissioners, legislation relating to the general financing of county government, and legislation granting new powers and authority to counties. Legislation primarily of concern in the administration or financing of particular county activities is discussed elsewhere. Local acts are discussed, for the most part, only when they are indicative of trends or new developments and in most instances citations to them are omitted.*]

Introduction

Legislation enacted by the 1963 General Assembly affecting county government generally follows the pattern of the last few sessions of the legislature. The trend towards vesting counties with so-called urban type powers, traditionally reserved for cities, continued. Counties were given power to levy special assessments in connection with water and sewerage improvements, a few more counties brought themselves under the subdivision and zoning and building regulation laws, and broad general regulatory powers were vested in counties.

More counties came under some type of "home rule" law authorizing the county commissioners to fix fees of county officials and the number and compensation of county employees. However, reliance upon the legislature in these areas continued to be great and produced the usual large volume of local legislation. The power of eminent domain, largely unavailable to counties in the past, is appearing in local acts and in general enabling legislation more frequently.

The twenty-cents constitutional tax rate limitation resulted in the usual hodge-podge of "special purpose" tax legislation, legislation authorizing transfer of delinquent tax collections to the general fund, and, of more recent vintage, legislation authorizing transfer of intangibles tax allocations to the general fund. Counties still tend to seek local legislation as authority to carry out functions classed as nonnecessary expenses rather than to proceed under general enabling laws.

The continued use of the commission or authority device is evident and, in most cases, the relationship between the county and these commissions remains vague and undefined. This is particularly true in relation to budgeting and fiscal control procedures. This deficiency coupled with the over-all complicating effect of an increase in the number of independent and semi-independent agencies upon the organizational structure of the county makes this trend a little disturbing.

County Organization

Changes in Terms of Office, Number of Members, and Method of Selection of County Commissioners. G.S. 153-4 provides that the board of county commissioners in each county shall consist of three commissioners elected by the voters of the county at large for straight two-year terms. Over the years substantial modification of this section has been made by local acts so that a majority of the counties have been excepted from its provisions in one way or another. Four general trends in these modifications are apparent: (1) increase in the number of commissioners; (2) increase in the terms of office; (3) staggered terms of office; and (4) district nomination and election of commissioners.

These trends were continued by legislation enacted by the 1963 General Assembly. In thirteen counties five-member boards of commissioners were established, or continued: Brunswick, Carteret, Chowan, Dare, Davie, Forsyth, Greene, Hertford, Hoke, Perquimans, Person, Rutherford, and Union. Some of these counties had adopted five-member boards at an earlier time and the 1963 legislation continued the membership of the boards at that number. The terms of office of commissioners in five counties were changed from two-year straight terms to four-year staggered terms: Camden, Dare, Forsyth, Greene, and Hoke. In three counties the terms of office were changed from four-year straight terms to four-year staggered terms: Davie, Hertford, and Perquimans.

District nomination and election of commissioners was initially adopted or modified in eight counties. Candidates for the office of county commissioners are to be nominated and elected from districts by the voters of the entire county in Brunswick, Chowan, Dare, Hertford, and Perquimans. In Carteret and Rutherford, candidates are to be nominated and elected by districts; however, nomination is to be by district voters only and election is to be by the voters of the whole county. Nomination of candidates in Harnett County is to be by district voters only rather than by political party appointment as in the past. Nomination and election of candidates on a district basis was discontinued in Person County.

Compensation of County Commissioners. Increases in the compensation of the members of boards of county commissioners were common in this session of the legislature. In four counties the boards of commissioners were authorized to fix the compensation of the members of the boards within designated limits: Edgecombe, Iredell, Nash, and Richmond. In addition the compensation of commissioners in fourteen other counties was increased by local legislation.

Boards of Education. Two statewide bills were introduced attempting to obtain more uniformity in the method of selection, terms of office and number of members of boards of education. Senate Bill 35 provided for the election of five-member city and county boards of education for staggered four-year terms in nonpartisan elections. Senate Bill 177 provided alternative methods of selection, by election or appointment, of boards of education consisting of a minimum of five members for staggered six-year terms. Neither bill gained much support either within the legislature or outside and both failed to pass.

Nevertheless, movement towards election of county boards of education was pronounced in this session. Provision for election of county boards of education was made by local acts in fifteen counties. Legislation providing for election of the board of education in eight other counties failed to pass. A referendum on the question of election of the board of education was authorized in one county.

Enabling legislation setting up machinery and providing for an election on the question of consolidation of school administrative units in several counties was passed. (See "Education" for fuller discussions.)

County Powers

Assessment of Costs of Local Improvements. Chapter 985 (SB 217) adds a new article to Chapter 153 of the General Statutes to be designated Article 24A. It authorizes counties, in constructing, reconstructing, and extending water and sewerage systems, to assess part or all the costs of such improvements against property served or subject to being served by and benefiting from the improvement. Property lying within municipal boundaries may be assessed only upon approval of the municipal governing body by resolution.

Assessments may be made on the basis of (1) front footage abutting on the improvement, (2) acreage of land, (3) valuation of land, without improvements, as shown on the county's tax records, (4) number of lots (for residential or commercial subdivision), or (5) any combination of the above. If either acreage or valuation is used as a basis for assessment, the county commissioners may create benefit zones, based upon the distance of benefited property from the improvement, and provide different rates of assessment between zones.

The new article does not apply to the following counties: Ashe, Avery, Bertie, Bladen, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Catawba, Chatham, Cherokee, Chowan, Clay, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Harnett, Haywood, Henderson, Hertford, Hoke, Jackson, Jones, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Mitchell, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Polk, Rowan, Scotland, Stokes, Swain, Warren, Watauga, Wayne, Wilson, and Yancey. (See "Water Resources" for a fuller discussion.)

Regulation. Chapter 1060 (HB 606) adds subsection 55 to G.S. 153-9. This new subsection grants broad regulatory powers to counties. It authorizes boards of county commissioners, in the portion of the county or a township lying outside the boundaries or jurisdiction of incorporated cities and towns, to prevent and abate nuisances, to supervise, regulate, suppress or prohibit, in the interests of public morals, public recreations, amusements, and entertainment; to define, prohibit, abate, or suppress all things detrimental to the health, morals, comfort, safety, convenience and welfare of the people, including, but not limited to, regulation or prohibition of sale of goods, etc., on Sunday; and to make and enforce any other types of local police, sanitary, and other regulations.

Regulations adopted by county commissioners becomes effective within municipal limits only upon agreement of the municipal governing body by resolution. The act expressly provides that none of its provisions shall affect the authority of local boards of health to adopt rules and regulations for the protection and promotion of public health.

The act does not apply to Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Burke, Cabarrus, Caldwell, Carteret, Catawba, Chatham, Cherokee, Clay, Craven, Dare, Duplin, Gaston, Graham, Halifax, Harnett, Hoke, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Onslow, Pamlico, Pasquotank, Pender, Pitt, Polk, Randolph, Richmond, Rowan, Rutherford, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wilkes, Wilson and Yancey Counties.

Chapter 1129 (SB 494) authorizes counties to acquire (other than by condemnation) interests in real property within their zoning jurisdiction upon finding that such acquisition is necessary to preserve open spaces for public use and enjoyment. Surplus or nontax funds and tax funds, when approved by the voters, may be used for these purposes. (See "Planning" for a fuller discussion.)

Chapter 488 (SB 141) rewrites G.S. 14-346.2 (blue law) to prohibit sale or offer for sale of certain enumerated articles on Sunday. The authority of county commissioners to exempt unincorporated areas of the county from application of the law is removed and certain counties and lesser areas are exempted by the act from its provisions on the basis of classification as tourist areas.

Commissioners' Authority Over Salaries and Fees. Forsyth, Halifax, Jackson, Person and Sampson Counties were added to the list of counties to which G.S. 153-9(12a) applies. This subsection authorizes boards of county commissioners to fix fees and commissions to be charged by registers of deeds, clerks of superior court, clerks of county domestic relations courts, clerks of general county courts, sheriffs, jailers and coroners. Fees may not be increased or decreased more than 20% during any one fiscal year. As has been traditional in the past, fees of various county officials in a great number of counties were fixed by local acts.

Ashe, Greene, Jackson, Moore, Pasquotank, Person (salary of judge of county court excluded) and Wilkes Counties were added to the list of counties to which Article 6A of Chapter 153 applies. This article authorizes county commissioners to fix the number and compensation of county employees. The compensation of any employee cannot be increased or decreased more than 20% in any fiscal year nor more than 20% over the preceding fiscal year's compensation. Several other boards of county commissioners received authority to fix the compensation of designated county officials and a large number of local acts were passed fixing the compensation of officials in other counties.

Watershed Programs. Article 3 of Chapter 139 of the General Statutes authorizes counties to undertake watershed improvement programs and upon approval of the voters in the county to levy a special tax not to exceed 25 cents for this purpose. Four counties—Forsyth, Mitchell, Polk and Stokes—received authority to exercise the powers granted by this article and to levy a limited special tax without holding an election as provided in the article. Forsyth, Rowan, Stokes, Transylvania and Yadkin Counties were given the power of eminent domain in connection with watershed improvement programs when they levy taxes for such programs.

Miscellaneous. Article 20A of Chapter 153, authorizing counties to regulate subdivisions in areas of the county not under municipal jurisdiction for this purpose, was made applicable to Halifax and Harnett Counties. Article 20B of Chapter 153 (zoning and building regulation) was made applicable to Caswell, New Hanover, and Vance Counties. The Commissioners of Transylvania County were given the power of eminent domain set forth in Chapter 40 of the General Statutes for the purpose of exercising the powers contained in G.S. 153-273 (garbage collection).

Taxes and Appropriations

Industrial Development. Article 3 of Chapter 158 grants counties authority to carry out industrial development activities, sets up machinery for this purpose, and authorizes the levy of a tax, subject to voter approval, not in excess of five cents. Initially enacted as Chapter 212 of the 1959 Session Laws, it applied to only five counties. It was made applicable to seven other counties in 1961. Five additional counties came under this article in 1963: Haywood, Mitchell, Onslow, Perquimans, and Warren. In Mitchell County the special tax levy may be up to ten cents.

Chapter 1229 (HB 1151) amends G.S. 158-2 to authorize counties to appropriate nontax funds for industrial development purposes without an election or petition as formerly required. Of course, tax funds can still be appropriated only after approval of the voters. Brunswick, Forsyth, Guilford, Lenoir, New Hanover, and Pender Counties are excepted from this Act.

Ambulance Service. In the past few years private operators of ambulance service have ceased or threatened to cease operation. Some county commissioners, faced with the problem of obtaining adequate service in their counties, have sought ways to continue provision of ambulance services. Assistance in the financing of the service has apparently been adopted as a possible solution. Four counties obtained authority to render financial assistance for this purpose in 1963. Chapter 509 (HB 594) authorizes the Commissioners of Henderson County to levy a special tax not to exceed five cents for financing ambulance service in the county. Cabarrus and Stanly Counties were given authority (Ch. 667 [HB 667]) to defray a portion of the cost of providing ambulance services to inhabitants of the counties. The amount of assistance is not to exceed $400 nor be less than $200 per month. These amounts are to be in addition to amounts paid for services rendered to indigent persons certified for services by the welfare board. Payments are to be made under rules and regulations prescribed by the commissioners and operators receiving financial assistance must submit to the commissioners, upon request, financial statements and audits. The Commissioners of Union County (Ch. 593 [HB 750]) may take such action as they determine necessary to insure the provision of adequate ambulance services to the inhabitants of the county. The county may contract with private individuals and firms, governmental and quasi-governmental agencies, or municipalities to establish and maintain adequate service. Revenues from the general fund and other available sources may be used for this purpose and a special tax not to exceed five cents may be levied. The county may prescribe a schedule of minimum and maximum fees to be charged by private operators and require compliance with the schedule as a prerequisite to receipt of county funds.

Water and Soil Conservation. G.S. 153-9(35½) authorizes designated counties to appropriate nontax funds to promote water and soil conservation. Jackson and McDowell were added to the list of counties to which this subsection applies. Chapter 933 (HB 713) and Chapter 1930 (HB 1275) add subsection 35¾ to G.S. 153-9. This new subsection authorizes counties to cooperate with the national soil conservation service and state soil and water conservation agencies and districts to promote soil and water conservation work and to appropriate tax revenues for this purpose. Special approval of the General Assembly is given for such expenditures and the authority granted is expressly declared to be in addition to that given by subsection 35½, which authorizes appropriation of nontax funds for this purpose. The new subsection applies only to the following counties: Anson, Bladen, Brunswick, Columbus, Davie, Duplin, Hoke, Jones, Lee, Martin, Onslow, Pender, Perquimans, and Sampson.

Other Revenues

Intangibles Taxes. G.S. 105-213 provides that intangibles taxes allocated to counties shall be distributed to the various funds of the county in proportion to the property tax levies for these funds. Several local acts provided for distribution of all intangibles tax allocations to the county to the general fund to be used in the discretion of the commissioners or for designated purposes, particularly nonnecessary expense purposes.

This type of legislation raises a fairly serious constitutional question. Article VII, section 6 (formerly section 7) of the North Carolina Constitution prohibits the use of locally levied and collected taxes for nonnecessary expenses except upon approval of the voters. It is generally agreed that state levied and collected taxes which are shared with counties are not subject to this limitation. Strictly speaking, the intangibles tax is levied and collected by the state and it would not seem unreasonable to say they are not subject to the necessary expense limitation. Accepting this position, however, creates some problem in that Article V, section 6 of the Constitution provides that the state tax on property shall not exceed five cents on the one hundred dollars value of property. Under the present intangibles tax schedule this rate is exceeded for every class of intangibles property taxed.

Coupling this fact with the language of the statutes classifying intangibles property for tax purposes and providing for levy and collection of such tax by the state raises a question as to the validity of the determination of the nature (whether local or state) of the tax solely on the basis of the level at which machinery for levy and collection is set up. At any rate, insistence upon a strictly literal interpretation of the language of Article VII, section 6 may well operate to disadvantage of the county, rather than to its advantage, because of the limitation in Article V, section 6.

G.S. 105-198 provides: "The intangible personal properties enumerated and defined in this article or schedule are hereby classified under authority of section 3, Article V of the Constitution, and the taxes levied thereon are for the benefit of the state and the political subdivisions of the state as hereinafter provided and said taxes so levied for the benefit of the political subdivisions of the state are levied for and on behalf of said political subdivisions of the state to the same extent and manner as if said levies were made by the governing authorities of the said subdivisions for distribution therein as hereinafter provided." The allocation formulas set out in G.S. 105-213 also lend some support to this position. The primary basis for allocation to counties is the amount of taxes paid from that county except in case of money on deposit and funds on deposit with insurance companies. In both of these situations situs within a particular county would be difficult to determine without the requirement of detailed reports, and the convenient basis of population has been adopted for allocation. Amounts allocated to counties initially are divided between the county and municipalities located in the county on the basis of total tax levy for each. Finally, distribution of county's final allocation is to the various funds of the county in proportion to the tax levy for each.

ABC Profits. Under general law alcoholic beverage control stores are operated by counties and municipalities have no authority to operate such stores. Municipalities operate stores or share in the profits of county operated stores only pursuant to local acts. In this session of the legislature two bills were introduced that would have permitted cities to operate alcoholic beverage control stores. HB 245 authorized a statewide liquor referendum and provided that in the event of a favorable vote in such referendum, counties would be authorized to establish and operate liquor stores by resolution of the board of county commissioners and municipalities would be authorized to establish and operate stores upon agreement by the board of county commissioners and the governing body of the municipality. HB 398 authorized any municipality incorporated for ten or more years, holding regular municipal elections during the past ten years, having police protection, and located in a county not operating ABC

stores, to hold an election on the question of establishing such stores upon motion of the governing body or petition of fifteen per cent of the registered voters. Both acts failed to pass.

However, a large number of municipalities did obtain authority through local acts to hold elections on the question of establishing and operating alcoholic beverage control stores. Most of these acts prescribed in detail the disposition to be made of profits derived from operation of the ABC stores and generally counties share in such profits.

Tax Refunds. It has been traditional in the past for a number of cities and counties to fail to file gas tax refund claims in the time prescribed by statute and to obtain local legislation directing payment of such refunds. The 1963 session proved no exception to this but the General Assembly failed to pass any bill directing such refund payment. Four cities and one county were unsuccessful in obtaining passage of such legislation. Apparently, no city or county failed to file its sales and use tax refund claim on time; however, a number of nonprofit hospitals and other charitable organizations sought legislation directing payment of sales and use tax refunds, the claims for which were filed late. None of these passed. Cities and counties would do well to take heed of this action of the General Assembly.

Unsuccessful attempts were also made to add city and county boards of education, airport authorities, and sanitary districts to the list of political subdivisions entitled to sales and use tax refunds. Hospital authorities were added to this list. [Ch. 1134 (SB 557)].

Court Costs. At least sixteen counties obtained passage of legislation to increase court costs and to provide for use of the funds provided by such increases for support of activities not related directly to the operation of the courts. The increasing tendency of counties to rely upon court costs as a source of revenue for financing activities other than operation of the courts is questionable. Such a practice increases the "price tag" on the availability of the courts to the public, has little justification on the basis of fairness, and is of doubtful legal validity.

Bonds

Chapter 1172 (SB 554) amends G.S. 153-111 to permit counties to contract with any bank or trust company for destruction of paid and cancelled bonds and interest coupons (formerly, counties could contract with paying agency only) and to permit destruction of paid and cancelled bonds paid prior to maturities one year after payment (formerly, one year after maturity).

Chapter 693 (SB 519) provides that county bonds for construction of water storage projects undertaken pursuant to the Federal Water Supply Act of 1958 may be issued at any time within ten years after adoption of the bond resolution authorizing their issuance.

Four counties removed themselves from the 5% net debt limitation for school purposes fixed by G.S. 153-8. In Davidson [Ch. 862 (HB 1090)] and Person [Ch. 192 (SB 219)] Counties the limitation was increased to 8%. Cabarrus County Commissioners may authorize issuance of school bonds in a maximum amount of $6,000,000 without regard to the 5% limitation [Ch. 602 (SB 436)]. In Harnett County issuance of bonds in the maximum principal amount of $4,500,000 may be authorized notwithstanding the 5% limitation.

Chapter 1247 (HB 839) adds subsection (d) to G.S. 130-134 to authorize sanitary districts to issue bonds for district buildings including a fire station and office and other district facilities. G.S. 130-138 is amended to prescribe a maximum maturity of 30 years for such bonds.

Developments at the State Level

School Bonds. Four separate bills were introduced to provide for issuance of bonds by the state to provide grants in aid to school administrative units for acquisition of school plant facilities. (SB 262, HB 489, HB 904, HB 320). The first three of these provided for an election on the issuance of $100,000,000 of bonds and the fourth called for an election on the issuance of $50,000,000 of bonds. An amended committee substitute for Senate Bill 262 was enacted into law (Ch. 1079).

Under it bond proceeds, in the event of approval of their issuance by the voters, will be allocated to city and county administrative units on the basis of average daily membership for such units in 1961-62. The funds allocated may be used by administrative units "for construction, reconstruction, enlargement, improvement, and renovation of public school plant facilities and purchase of equipment essential to efficient operation of such facilities." Upon determination by the State Board of Education that any funds allocated to a unit are not needed for the above purposes, these funds "may be used for the retirement of school bonds heretofore issued by the county or municipality in which the administrative unit is located." Express provision is made for use of any allocated funds to match federal, state, or other county funds available for school plant facilities and essential equipment. Counties are authorized to accept federal funds and to agree to any terms and conditions under which such funds are available.

Allocations will be made to administrative units on the basis of plans of expenditures submitted by them and approved by the State Board of Education. In approving such plans the State Board is to give priority "to basic facilities and equipment essential to an adequate school program including a diversified industrial education program."

Two hundred and fifty thousand dollars of the bond proceeds are allocated to the State Board of Education "for educational surveys and technical assistance necessary to the construction of improved school plant facilities, for evaluating the program of school construction made possible through this act, and for conducting such research in school house planning as would be productive in the future design and construction of school facilities." The results of such surveys, evaluation and research and technical assistance is to be made available to counties.

The election may be held in 1963 or 1964 on a date fixed by the Governor. The state is required to reimburse counties for all necessary election expenses, unless the election is held at the time of the state primary or general election in 1964.

Study Commissions. Resolution 73 (SR 155) provides for the appointment of a court commission to prepare and draft legislation necessary for implementation of the new Article 4 of the North Carolina Constitution. The commission is to make its initial recommendations to the 1965 session of the General Assembly. Resolution 83 (SR 510) creates the North Carolina Aquatics Recreation Study Commission to study all matters relating to the recreation use of streams and all other bodies of water in or bordering North Carolina.

Resolution 80 (SR 93) creates the North Carolina Commission of Intergovernmental Relations. Three members of the nine-member commission are to be county commissioners appointed by the chairman of the N. C. Association of County Commissioners. The Commission is directed to study the full range of intergovernmental cooperation in the financing and administration of governmental activities. Particular attention is to be given to existing federal grants partially supporting activities carried on by the state and county, weighing the advantages of these grants against problems arising out of the nature of intergovernmental cooperation and administration. Consideration is to be given to alternative methods of financing and administering these activities, including the possibility of requesting the federal government to return to the states the full range of welfare, health, and educational programs in which the federal government now participates, so as to allow each state and its local governments to develop their own programs to meet the needs of the state, and to reduce federal taxation to the extent of the

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THE CITIES AND THE 1963 GENERAL ASSEMBLY

Note: Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB are the numbers of bills introduced in the House and in the Senate.

In commenting on the 1963 General Assembly from the point of view of all municipalities, the General Counsel of the North Carolina League of Municipalities stated that the session "must be looked upon simultaneously as 'good' and 'very bad'."

The session was "good" in his opinion because legislation was passed which will permit municipalities to perform ther functions in "a sounder and more economical manner." On the other hand, it was "bad" because of "the proliferation of adverse bills and proposals" which caused the League to fight another long, defensive battle rather than positively advance its own program, and because of the failure of several useful pieces of proposed legislation.

Legislation threatening the existing powers and revenue structure of cities was deplored in particular because most of these bills were drafted and introduced without consultation with either League staff or municipal officials.

Apart from the political implications of this analysis, two trends stand out in any review of this session of the General Assembly as it affects municipalities.

The first is that the increasing complexity of an industrial and urban society stimulates legislation in many related fields in which municipalities have an indirect if not a direct interest. As a result the task of representing the municipal point of view is less and less confined to the particular powers and functions of municipalities and more and more related to the role of defending the interests of urban residents.

The second trend is related to the first. Although not as interrelated as county government with state and federal financing and administration, general legislation concerning municipal government in North Carolina is increasingly concerned with the role of the municipality in a complicated structure of state-county-city relations. Issues are not presented and decided on the basis of what is good or bad for municipal governments, but on the basis of what is the proper role of municipalities in the administration of broad policies related to the general welfare of the people of the state.

Viewed from this vantage point, the efforts to impose sales taxes on municipalities in 1961 and the legislation which would have brought municipal utility systems under Utilities Commission regulation in 1963 may be seen not as occasional threats to municipal governments but parts of a continuing pattern of state-wide determination which will continue to challenge those rights of local self government granted municipalities in a less complicated era.

So much for general comment, however complex the policy position of municipalities will become. What did the 1963 General Assembly enact in the way of legislation affecting cities and towns?

All legislation affecting cities and towns cannot be easily noted in the scope of this article. More than sixty new general laws can be said to be of interest to municipal officials. In addition there were more than 300 local acts affecting municipalities, and some of them are of general interest.

Table 1 lists those general laws which seem to be of particular interest to municipal officials and notes other articles in this issue of *Popular Government* where particular laws are discussed or analyzed. Other laws of interest may be found by referring to specific articles covering subject matter fields.

Table 2 continues the analysis of local legislation which has become a biennial feature of this article. It should be noted that the volume of local legislation, while up slightly over 1961, has still not returned to its 1957 level. There was a large increase in the number of local bills introduced and not passed, however. Whereas only 16 local bills affecting cities and towns were not passed in 1961, there were 41 such bills in 1963.

Organization and Structure of Municipal Government

Despite the growing volume of discretionary authority delegated to municipalities through the general laws, special legislative acts continue to be important with respect to such subjects as municipal boundaries, form of government, powers and composition of the governing board, municipal election procedures, and miscellaneous regulatory powers and administrative procedures.

There were no general laws passed by the 1963 General Assembly affecting this general area of municipal government. Some of the special legislation bears some comment, but these comments are not intended to be comprehensive.

Incorporation

The easiest way to incorporate a town is by a new legislative act. Four new towns were directly incorporated in 1963—Sunset Beach in Brunswick County, Top Sail Beach in Pender County, Spencer Mountain in Gaston County and Tar Heel in Bladen County. In addition Ranlo in Gaston County was incorporated pending a favorable vote of a majority of the voters in the proposed boundaries and the Dare County Board of Commissioners was authorized to incorporate southern shores upon receipt of a petition signed by a specified number of residents or property owners. The Municipal Board of Control was also authorized to incorporate areas in Lincoln County meeting the special qualifications set forth in Chapter 959 (SB 610).

TABLE No. 1

LEGISLATION AFFECTING CITIES AND TOWNS

This table lists all general legislation specifically affecting the powers and responsibilities of cities and towns in North Carolina. The right-hand column refers to other articles in this issue of *Popular Government* in which the named act is discussed. All municipal officials should also refer to the articles on LOCAL PROPERTY TAXATION and CRIMINAL LAW for comments on other legislation indirectly affecting municipalities.

Annexation		
Chapter 403 (381)	Annexation and Boundary Maps	This Article
Chapter 917 (HB 841)	School Bus Transportation in Annexed Areas	"Education"
Building Regulation		
Ch. 397 (HB 291)	Swimming Pool Standards	"Public Health"
Ch. 790 (SB 326)	Adoption of Codes by Reference	This Article
Ch. 811 (HB 510)	Enforcement of Plumbing Code	This Article
Beer and Wine		
Ch. 265 (HB 243)	Petitions for Beer and Wine Elections	This Article
Ch. 426 (HB 583)	Hours of Sale	This Article
Ch. 1092 (SB 659)	Resort Town Elections	This Article
Ch. 1188 (HB 1261)	Corporate License Requirements	This Article
Municipal Finance and Taxation		
Ch. 693 (SB 519)	Water Supply Bonds	"Water Resources"
Ch. 854 (HB 285)	Powell Bill Eligibility	This Article
Ch. 1000 (HB 613)	Assessment of State Property	This Article
Ch. 1119 (SB 414)	State ABC Tax	This Article
Ch. 1172 (SB 554)	Destruction of Bonds and Coupons	This Article
Ch. 1229 (HB 1151)	Expenditures for Industrial Development	This Article
Ch. 1231 (HB 1298)	Amusement License Tax	This Article
Planning, Zoning and Urban Redevelopment		
Ch. 194 (HB 199)	Validation of Redevelopment Actions	"Planning"
Ch. 158 (HB 542)	Zoning Law Amendments	"Planning"
Ch. 1129 (SB 494)	Open Space Acquisition	"Planning"
Ch. 1212 (SB 577)	Sale of Redeveloped Property to Non-Profit Corporations	"Planning"
Public Libraries		
Ch. 945 (SB 375)	Revision of Library Laws	This Article
Purchasing		
Ch. 172 (HB 260)	Purchases without Bids	This Article
Ch. 289 (HB 370)	Minimum Three-Bid Requirement	This Article
Ch. 406 (HB 654)	Value Required for Separate Specifications	This Article
Regulation of Business		
Ch. 488 (SB 141)	Sunday Blue Law	This Article
Ch. 789 (SB 325)	Regulation of Peddlers	This Article
Streets		
Ch. 356 (SB 254)	Garbage Collection Trailers	"Motor Vehicles and Highway Safety"
Ch. 559 (HB 771)	Traffic Control Devices	"Motor Vehicles and Highway Safety"
Ch. 949 (SB 518)	Municipal Speed Limits	"Motor Vehicles and Highway Safety"
Miscellaneous		
Ch. 471 (HB 609)	Metropolitan Sewerage District Board	"Water Resources"
Ch. 512 (HB 615)	Dissolution of Sanitary Districts in Municipalities	"Water Resources," "Public Health" "Public Health"
Ch. 536 (SB 146)	Air Pollution Control	This Article
Ch. 915 (HB 836)	Grave Removal by Municipalities	"Water Resources"
Ch. 985 (SB 217)	County Assessment Power	"County Government"
Ch. 986 (SB 313)	Loading Platforms in Alleys	This Article
Ch. 990 (SB 534)	School Bus Policy	"Education"
Ch. 1060 (HB 606)	County Regulatory Power	"County Government"
Ch. 1261 (HB 1367)	Issuance of Warrants by Desk Officers	This Article

Chapter 929 (SB 611) consolidates towns of Bayshore Park and Cape Carteret in Carteret County. Because there is no easy way under the general law to repeal town charters, special acts still must be used for this purpose and Chapter 628 (HB 983) repeals the charter of Townsville in Vance County.

Forms of Municipal Government

Only three of the thirty-five cities with a population of more than 10,000 do not have a city manager. They are Roanoke Rapids, Concord, and Henderson. Chapter 675 (HB 966) provides for an election on the city manager form of government in Henderson. In addition, two smaller cities, Maiden and Kernersville, were authorized to hire town managers under charter amendments.

Composition of Government Boards

Reshuffling of the number, term and method of election of municipal governing board members is a common feature of North Carolina special legislation. About 10% of all cities and towns make some change each session of the General Assembly, and 1963 was no exception. It has not been possible to make a completely accurate analysis of every change, but trends are of interest. The most notable trend in 1963, as for a number of years, is toward the adoption of staggered terms of officer for governing board members. Asheville and Dunn took a different direction, however, by securing adoption of legislation providing for election of their councilmen for straight four-year terms.

Municipal Election Procedures

Changes in charter provisions governing the election of mayors and councilmen continues to constitute the largest single category of special legislative acts affecting municipalities. Most of these changes are relatively simple procedural changes. It is interesting that several more cities arranged for their municipal elections to be administered by the county board of elections For example, in 1963 Monroe, Albemarle, Lexington, and Thomasville all secured legislation vesting responsibility for municipal elections in the county board of elections. Another feature of the local laws regarding municipal election procedures was the large number of bills prohibiting single shot voting in municipal elections.

Pay of Governing Board Members

Every session a number of special acts are enacted to raise the salaries of councilmen, aldermen, commissioners and mayors. There was no significant change in the number of such acts this year.

Retirement and Personnel Provisions

For analysis of local legislation governing the appointment and qualification of municipal officials and retirement systems, see the article in this issue of *Popular Government* entitled "Public Personnel."

Sale of Property

Even though 1959 general legislation eased the restrictions on the sale of municipal property, each section continues to be a number of special acts specifically authorizing cities and towns to sell or transfer property. In most cases, these transfers are to take place under conditions not specifically provided for in the general law.

Municipal Finance and Taxation

As rapid urban growth continues to pile up demands for municipal services and capital facilities, mayors, councilmen, managers and taxpayers continue to be pre-occupied with money. Every session there is an effort to ease the municipal revenue picture, but no dramatic results came from the 1963 General Assembly. Legislative representatives of cities and towns were able, however, to ward off attempts to bring municipal utilities, and particularly the profitable electrical

Table No. 2

LOCAL LEGISLATION AFFECTING CITIES AND TOWNS

Subject	No. of New Laws 1957	1959	1961	Passed 1963	Bills Introduced but not Passed—1963
Structure and Organization					
Incorporation and Organization	11	13	10	9	1
Forms of City Government					
a) City Manager	4	6	5	2	0
b) No. and Term of Governing Board	21	22	25	25	3
Municipal Election Procedures	41	44	34	35	3
Pay of Governing Board Members	29	15	11	12	1
Appointment and Qualification	8	6	4	11	0
Retirement and Civil Service	10	17	11	22	4
Charter Revisions	16	13	28	17	0
Sale of Property	40	18	19	23	1
	180	154	147	156	13
Municipal Finance and Fiscal Control					
Taxation and Revenue	21	14	14	9	5
Expenditures	9	6	9	15	0
Property Tax Collection	10	12	8	13	0
Special Assessment	15	7	6	12	0
	55	39	37	49	5
Planning, Zoning and Extension of Limits					
Planning and Zoning	22	19	21	24	4
Annexation	28	35	15	14	1
	50	54	36	38	5
Miscellaneous					
Streets, Traffic and Parking	4	4	1	4	0
Regulatory Powers, Other	20	8	5	3	1
Police Jurisdiction	15	9	14	6	2
Local Courts	27	25	12	25	4
Sale of Wine, Beer and Liquor	7	6	14	19	8
Other Municipal Functions	17	13	18	14	3
Miscellaneous	3	2	1	3	0
	93	67	65	74	18
	378	314	287	317	41

utilities, under control of the Utilities Commission. An effort to exempt manufacturers' inventories from property taxation was defeated. And ultimately successful defense was deemed more important than an uncertain offensive, so that plans to such an increase in municipalities' share of the utilities franchise tax and to initiate a legislatve revision of the privilege license tax were abandoned.

The net result, as in 1961, was that the revenue picture was not seriously affected.

Taxation and Revenue

There were few pieces of state-wide legislation which affect in any substantial way the revenues of municipalities.

Chapter 1119 (SB 414) may result in increased revenues to cities and towns owning or receiving profits from alcoholic beverage control stores. The act amends G.S. 18-39 and 18-45 to further define the authority of the State Board of Alcoholic Control to establish the price of alcoholic beverages and to compute the state tax on such beverages. New per-

missive authority to change the present method of computing the 12% State tax may benefit local governmental units having ABC stores.

During the summers of 1961 and 1962 there was much publicity concerning shares of the State gasoline tax being allocated to newly-incorporated resort towns on the basis of street mileage within such towns, since the formula for distribution required allocation partially on the basis of municipal street mileage without significant regard to the population of the town or past governmental activity in the town. Chapter 854 (BH 285) rewrites G.S. 134-41.2 (redesignates the section as G.S. 136-41.1) to spell out further requirements for distribution of gasoline tax funds to municipalities incorporated since January 1, 1945.

No town incorporated since 1945 will be eligible to receive gasoline tax allocations unless it has (1) held the most recent election required under its charter or the general law (unless there are no candidates filing for an announced election); (2) levied for the current fiscal year an ad valorem tax of at least 5c per $100 valuation; (3) collected at least 50% of its ad valorem tax levy for the preceding fiscal year; (4) adopted a budget ordinance in substantial compliance with the Municipal Fiscal Control Act; and (5) appropriated, in such ordinance, funds for at least two of the following municipal services: water distribution, sewage collection or disposal; fire protection; police protection; street maintenance, construction or right-of-way acquisition, or street lighting. The act is effective January 1, 1964, except that the tax collection requirement does not apply to the 1964 allocations or to initial applications from any new or reactivated town.

Chapter 1231 (HB 1298) affects the license tax authority of cities in that that amends G.S. 105-37.1 to provide that "dances and other amusements actually promoted and managed by civic and private and public secondary schools shall not be subject to the license tax imposed by this Section. . ." Since municipalities now may levy taxes on such amusements only in an amount not exceeding one half the State tax, removal of the State tax has the effect of placing the municipal tax on such amusements completely within the discretion of municipal governing boards under authority of G.S. 160-56).

Counties and municipalities heretofore could contract with banks or trust companies acting as their agents for the payment of bonds and coupons for the destruction of paid bonds and coupons. Chapter 1172 (SB 554) amends G.S. 160-398 to permit contracts with any banks or trust companies for the destruction of such paid bonds and coupon.

A complete revision of the public library laws is contained in Chapter 945 (SB 375). Most of the new provisions are discussed elsewhere in this article, but it is important to note here that the maximum ad valorem tax rate which can be levied for public library purposes, with approval of the voters, has been increased from 10c to 15c.

Because legislative policy has for many years discouraged granting additional taxing powers to cities and towns through special legislation, special acts in the tax field tend to be confined to modifications of the power to levy property taxes. Three small towns had their property tax rate limit increased from $1.50 to $2.00, and this small stream may turn into a river during the next decade. Raleigh secured authority to limit the penalty for unpaid privilege license taxes at a minimum of $10 and a maximum of 50% of the tax. At the present time, if a tax collector discovers a taxpayer who has not paid license taxes for a period of several years, the accrued tax and penalty can be substantial and often the violator is a small businessman whose good faith is not in question.

One further tax note. Legislation was introduced to ratify the late application of four cities for a gasoline tax refund. The General Assembly failed to pass any of these acts, giving due notice that negligence in filing such applications will not be condoned.

Expenditures

Article 1 of G.S. Chapter 158 has for many years authorized expenditure of property tax funds for certain types of industrial development activities, provided such expenditures have been approved by a vote of the people. On the grounds that authority to spend tax funds defines these activities a "public purpose," attorneys have long approved appropriation of non-tax funds for these same purposes without a vote of the people, even without specific legislation authority. Chapter 1229 (HB 1151) supplies the missing specific legislative authority to expend non-tax funds for industrial development purposes.

Chapter 1129 (SB 494) provides authority for municipalities and counties to acquire land to preserve open spaces and areas for public use and enjoyment. For a full analysis, see the article on PLANNING.

Special legislation in this particular area consisted, as usual, of charter amendments to supply specific authority to spend public money for such purposes as advertisement of the community and support of recreation.

Property Tax Collection

For a complete analysis of all general and special legislation concerning property tax collection, see the article on PROPERTY TAXATION.

Special Assessments

The 1961 General Assembly established a special Commission to Study the Impact of State Sovereignty upon Financing of Local Governmental Services and Functions. Although the General Assembly did not act on the recommendation of the Commission that the General Assembly should make appropriations to cities and counties to help share in defraying local governmental costs which State property helps to create, it did approve one other recommendation of the Commission. Chapter 1000 (HB 613) adds G.S. 160-82.1 to provide for State participation in the costs of local street and utility improvements which are of benefit to State-owned property.

The act covers three situations. First, it authorizes the State, when in the opinion of the Governor and Council of State, any State-owned property would be benefitted, immediately or in the foreseeable future, by a local street, water or sewage improvement, to petition the city to make such improvement and to pay for the cost from either the Contingency and Emergency Fund or specific appropriations for such improvements. Second, it authorizes any State agency owning or occupying State property to make such a petition and to pay its share of the cost from agency funds, again with the consent of the Governor and Council of State. And finally, and perhaps most significantly, the act authorizes a municipality which is planning to make a street or utility improvement and to assess part or all of the cost against locally-benefitted property to request the Governor and Council of State to sign a petition on behalf of any State-owned property which will be benefitted by the improvement, either immediately or in the foreseeable future, and to authorize payment for such improvements. The Director of Administration is authorized to approve or disapprove all such requests, but in the case of disapproval, the statute permits an appeal to the Governor and Council of State.

Special legislation on special assessments consists largely of procedural amendments to charter provisions, but Raleigh took an interesting experimental step by securing authority to compute and charge an average per front foot charge for water and sewer improvements financed by assessment, rather than computing a precise charge for each individual project. Chapter 315 (HB 338). Average costs are to be computed semi-annually.

Purchasing

For the most part, new general legislation affecting purchasing procedures were of limited scope and only made minor improvements or changes in existing statutes.

Chapter 172 (HB 260) changed the minimum size of contracts requiring the securing of informal bids from $200 to $500 by amending G.S. 143-131 to that effect. While the statute does not define an "informal" bid, informal bids are commonly considered to be written or telephone quotations and catalog prices where there is evidence that the prices may be relied upon. This change will permit the placement of orders without securing informal bids when the cost is less than $500. It should be noted that only the statutory requirements has been changed. Local officials are still free to secure bids on small purchases when to do so would be good purchasing practice.

G.S. 143-132 was amended by Chapter 289 (HB 370) to change from $15,000 to $20,000 the minimum size of construction and repair contracts which require receipt of at least three bids on the initial advertisement, before the contract may be awarded. The provision requiring a second advertisement, after which the contract may be awarded even if only one bid is received, was not changed. G.S. 143-132 applies only to construction and repair contracts — not to purchases of apparatus, supplies, materials and equipment.

The minimum size of building contracts which require separate specifications was increased and the statutes applying to cities and counties and to the State were consolidated by Chapter 406 (HB 654). This act repealed G.S. 160-280 which had required cities and counties, when letting contracts for construction, alteration and repair of buildings at a cost of more than $10,000, to prepare separate specifications and award separate contracts for (a) heating, (b) plumbing, (c) electrical and (d) air conditioning work.

The second section of the Act, however, amended G.S. 143-128 to make that statute apply to counties and municipalities as well as the State. And the requirements of G.S. 143-128 essentially duplicate those in the repealed statute. There are, however, two important changes in G.S. 143-128 which were made in Chapter 406.

In the first place the minimum size of a contract which requires separate specifications was increased to $20,000 (G.S. 143-128 had previously stated $15,000) as that the new limit now applies to all governmental units, State and local alike. Second, the statute was amended to provide that specifications for heating and air conditioning may be combined when the two are to be construed to use the same conductive facilities or duct work.

Planning, Development and Problems of Urban Growth

The last few years have seen a sizable volume of legislation, general and special, directed at the task of helping local governmental units cope with the problems or rapid urban growth. Further significant steps were taken in 1963 with the passage of such legislation as Chapter 1129 (SB 494), authorizing acquisition of open space areas, Chapter 985 (SB 217), authorizing counties to install water and sewer lines and to assess the cost against benefitted property owners, and Chapter 1060 (HB 606), which for the first time gives counties some general regulatory powers.

No attempt is made in this section to review all the legislation concerning growth and development. Table No. 1 specifically refers to the articles on PLANNING and on COUNTY GOVERNMENT for some of the important new legislation. In this section, an attempt is made to bring together information on related legislation not otherwise covered.

Annexation

There were two new acts relating to the problem of annexation. Chapter 403 (HB 381) simply provides that the provisions of G.S. 47-30, establishing regulations for the registry of land maps, shall not apply to maps to annexed areas or of municipal boundaries, whether or not they are required to be recorded. Chapter 17 (HB 841) deals with the vexing problem of school bus transportation to annexed areas and amends G.S. 115-190.1 to provide that such transportation shall continue to be provided to children in annexed area to the same extent as if the area had not been annexed. For a discussion of this act and of Chapter 990 (SB 534) which establishes a new policy effective July 1, 1965, concerning the transportation of pupils living within municipalities, see the article on EDUCATION.

Despite efforts to amend the 1959 annexation law, no change was made in that law except that Person County was brought under the provisions of the procedure applying to municipalities with a population of 5,000 or more. Part 3 of Article 36, G.S. Chapter 160.

The influence of the 1959 legislation on special acts concerning annexation continues to be strong. Despite a total of 13 bills concerning corporate boundaries, none of them provided for major annexations to a major city and most of them were concerned with minor boundary adjustments difficult if not impossible to make under the general law.

Building Regulation

Chapter 790 (SB 326) adds G.S. 160-200(41) to authorize muncipalities to adopt by reference ordinances contained in any published technical code or any standards or regulations promulgated by a public agency, subject only to the provisions of G.S. 143-138(e) concerning approval by the Building Code Council of municipal building codes, provided of course that all such codes, ordinances or regulations are available for public inspection.

Chapter 811 (HB 510) rewrites G.S. 143-139 to give the Commissioner of Insurance authority to enforce the plumbing regulations in the State Building Code and to cooperate with counties and municipalities in the enforcement of local plumbing codes.

Miscellaneous Legislation

Table No. 1 demonstrates the variety of general legislation affecting cities and towns. Municipal officials are encouraged to read in particular the following articles which discuss legislation affecting municipal government: CRIMINAL LAW AND PROCEDURE; MOTOR VEHICLES AND HIGHWAY SAFETY; WATER RESOURCES; and PUBLIC HEALTH. Ch. 949(SB 518) dealing with the fixing of speed limits in municipalities and Ch. 559(HB 771), dealing with traffic control devices in municipalities are of especial importance to many officials. Ch. 1261(HB 1367) is of vital importance to police departments in authorizing issuance of warrants by "desk officers."

There are a number of acts which are not covered elsewhere in this issue of *Popular Government* and they will be summarized here.

Regulatory Powers

In addition to the changes in municipal powers over speed limits, there were a number of minor changes in municipal regulatory powers.

Chapter 986(SB 313) amends G.S. 160-200(11) to authorize municipalities by ordinance to permit property owners to erect loading or unloading platforms in public alleys not located in areas zoned for residential purposes, if such structure does not unduly obstruct public use of the alley. Governing boards are authorized to revoke such permits, and, upon revocation, owners must remove such structures.

Chapter 789(SB 325) adds G.S. 160-200(42) to authorize municipalities to prohibit or regulate itinerant merchants, peddlers, hawkers and solicitors. Such regulations may include, but are not limited to, requirements for submission of an

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by Clyde L. Ball
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THE PROPOSED REVISION OF THE COURTS OF NORTH CAROLINA

High hopes for early reorganization of our inferior court system, generated by passage of the judicial amendment to the Constitution last November, were dashed on the rocks of apathy, disinterest, and hostility by the 1963 General Assembly.

Encouraged by the results of the November election, Judge Bell's Bar Association Court Study Committee, which had been holding planning sessions throughout the biennium, stepped up its activity in November, and began drafting specific proposals for early implementation of the new judicial amendment. In December this committee joined forces with a special committee appointed by Governor Sanford to make recommendations for implementation of the judicial amendment to the 1963 General Assembly. This latter special committee, headed by Judge Fountain, included in addition to members of the Bell committee, members of the Bar, the Judicial Council, the superior court bench, and the legislature. A drafting subcommittee, chaired by Professor Dickson Phillips, met weekly in January and February, and labored steadily over preliminary drafts of district court organization, jurisdiction, and procedure statutes. It became obvious to this group, however, that the task of preparing detailed statutes setting up a complete new district court system was much too large to be accomplished in the time available. In February the group decided to concentrate on drafts of legislative proposals which could be put into effect at once, independent of a District Court Division. Accordingly, the special committee recommended action on a two-part program to implement the judicial amendment, and the Bar Association presented these proposals to the General Assembly in March.

The two-part program consisted of 1) an Administrative Office of the Courts Bill and 2) a Joint Resolution establishing a Courts Commission.

The former bill would have established an Administrative Office of the Courts under a Director appointed by the Chief Justice. Subject to the supervision of the Chief Justice, the Director would have operated as a non-judicial housekeeper for the entire Judicial Department, collecting financial and case load data, recommending assignments of judges, consulting with clerks of courts and other court officials concerning ways and means of expediting and improving the administration of justice, procuring books and supplies for the courts, and preparing the budget for the Judicial Department. His position would have been similar to that occupied by the court administrator in about 30 of the states.

The joint resolution (SR 155) establishing a Court Commission provided for a 16-member Commission to consist of the Administrator of the Courts and 15 other members appointed by the Governor. Eight appointees would be members or former members of the General Assembly. It would be the duty of the Commission, over a period ending 31 December 1970, to prepare legislation completely implementing the Constitutional Amendment.

The Senate Courts and Judicial Districts Committee held a public hearing on both proposals on 15 April. The several witnesses who appeared were about equally divided on the Administrative Office bill. Of those opposed, one or two opposed on principle; others, on the ground that the office was being established prematurely. A subcommittee was appointed to study both bills. No further hearings were held.

The Administrative Office bill was reported unfavorably in the Senate. In the House, an identical bill died in committee.

The joint resolution to appoint a Courts Commission fared somewhat better. There was widespread feeling, both in the Committee and in the General Assembly, that the power to appoint the Commission should not be lodged solely in the Governor. Various proposals added two to eight additional members, all legislators, to the appointing body. The final version calls for a Courts Commission of 15 members (no Administrative Officer) eight of them legislators or former legislators, to be appointed jointly by the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the four Judiciary Committees (Senators Yow and Garriss; Representatives Taylor and Dolley). The Commission is to elect its own chairman, fill its own vacancies, and hire its own executive secretary. $40,000 per year is appropriated for the use of the Commission. It must make its initial legislative proposals upon the convening of the 1965 General Assembly.

On August 9, 1963, the Governor announced membership of the Courts Commission as follows: J. Dickson Phillips, Chapel Hill; Lindsey C. Warren, Jr., Goldsboro; David M. Britt, Fairmont; James W. McMillan, Charlotte; A. A. Zollicoffer, Henderson; A. D. Folger, Jr., Mt. Airy; Wilbur Jolly, Louisburg; Staton P. Williams, Albemarle; Karl W. McGhee, Wilmington; John A. McMahon, Chapel Hill; J. E. Snyder, Lexington; L. W. Lloyd, Robbinsville; J. J. Harrington, Lewiston; H. Pat Taylor, Wadesboro; and Steven B. Dolley, Jr., Gastonia. It need hardly be emphasized that the caliber and energy of this Commission will be of primary importance in determining what progress, if any, is made toward reorganization of North Carolina's inferior court system by the 1965—and later—General Assemblies.

Meanwhile, adoption of the judicial amendment to the Constitution has not been without its impact. The amendment eliminated the JP's exemption from double office holding. (See *Popular Government*, April-May, 1963). One consequence of this was a last-minute flurry of local bills in the legislature empowering certain police "desk officers" to issue

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COURTS, CLERKS AND RELATED MATTERS

Chapter numbers given refer to the 1963 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. G.S. 1-38, the seven years possession under color of title statute, was amended to provide specifically that commissioner's deeds in judicial sales and trustee's deeds under foreclosure shall also constitute color of title. G.S. 1-50, which limits the bringing of certain actions to a period of six years, was enlarged to include actions for wrongful death or injury against persons who design, plan, supervise or construct improvements on real property.

Service of Process. The statute (G.S. 1-105) authorizing service of process on the Commissioner of Motor Vehicles in certain cases involving nonresident defendants was amended to add a provision that service shall be deemed completed when the registered letter is not delivered to the defendant because it is "unclaimed." The procedures for service of process upon nonresident operators of watercraft (G.S. 1-107.2) were extended to nonresident operators of aircraft by a new section, G.S. 1-107.3.

Upset Bids. An amendment to G.S. 1-339.25 clarifies the procedure for deposit of funds to support upset bids on judicial sales. As rewritten, the law provides that the deposit must be made before the expiration of the 10th day, and if the 10th day falls on a Sunday or holiday, or other day in which the clerk's office is not regularly open, then the deposit may be made on the next following regular business day. This change becomes effective 1 January 1964. An amendment to G.S. 45-21.27 permits the clerk to accept a certified or cashier's check, in the amount of the raised bid, in lieu of cash.

Restraining Orders and Injunctions. G.S. 1-494 was expanded to provide that restraining orders and injunctions granted by any superior court judge are returnable before *special* judges residing in the district.

Judgments. Parallel amendments to G.S. 1-212 and G.S. 1-213, concerning judgments by default and inquiry and by default for defendant, provide that no jury is required when the subject matter is a small claim under Article 43A of Chapter I. A corresponding change is made in G.S. 1-539.5.

Clerk of Superior Court

Only one change was made in the laws concerning operations of the office of clerk of superior court. G.S. 2-13 was rewritten to set forth specifically the powers of deputy clerks. It is now provided that deputy clerks are as fully authorized as the clerk to certify the existence and correctness of records in the clerk's office, and to perform any other *ministerial* acts which the clerk may do, in their own names and without reciting the names of their principals.

Costs

A new section, G.S. 6-17.1, provides that in cases of litigation in federal courts arising out of litigation in State courts, or originally instituted in any federal court, the expenses for State court costs, court records, transcripts, and other necessary expenses in representing the State or its agents, shall be paid from the Contingency and Emergency Fund. G.S. 6-21.1 was amended to raise from $500 to $1000 the judgment limitation, in personal injury or property damage suits, in which the judge may allow reasonable attorney's fees to the successful attorney as part of the costs.

Costs of court were raised in several inferior courts by a number of local bills.

Courts

Few proposals of major importance concerning our system of courts were either considered or enacted by the 1963 General Assembly. Part of this inactivity was undoubtedly due to passage of the Judicial Amendment to the Constitution in November, 1962, and the resultant feeling that changes in the present system of courts could await the extensive reorganization required by the Amendment. Implementation of this by detailed legislation, however, was not attempted. Only two measures dealing with the subject were introduced. One of these, purporting to establish an Administrative Office of the Courts, pursuant to the new Article IV, Section 13, failed in committee. A joint resolution establishing a long-range Courts Commission, to draft implementing legislation for consideration by subsequent legislatures, was successful. This is discussed in more detail in a separate article in this issue. (See page —.)

Salaries. Justices of the Supreme Court received a salary increase from $19,000 to $21,500, with the Chief Justice being raised from $20,000 to $22,500; superior court judges benefitted from a raise of like amount, from $14,500 to $17,000; and solicitors were jumped from $9,000 to $11,500. Responsibility for payment of compensation of emergency judges for holding special terms was switched from the county to the State.

Retirement of Justices. G.S. 7-51 formerly authorized the retirement of justices who, while serving on the Supreme Court, had attained the age of eighty. This was lowered to 75 years, and coupled with a requirement for 8 years' consecutive service as a justice. A second—and unrelated—amendment to this same section, apparently authorizes retirement pay for emergency justices and judges regardless of the time when the oath as emergency justice or emergency judge is taken, and further specifies that these oaths shall be taken within 90 days following resignation or retirement, or as soon thereafter as said justice or judge may be physically and mentally capable of serving in an emergency capacity.

Special Judges. G.S. 7-54, concerning the appointment of special superior court judges by the Governor, was amended to provide that all eight judges currently authorized might be appointed for four year terms expiring 30 June 1967. While the Judicial Council sought longer terms for special judges, members of the General Assembly felt that establishment of a system of district courts, pursuant to the Judicial Amendment to the Constitution, would, within four years, affect the case load of the superior courts and hence its need for special judges, and that the question of numbers and terms of such judges should be reconsidered within that time.

JP Jurisdiction. Jurisdiction of Justices of the Peace in claim and delivery cases involving the vendor-vendee relationship was raised from $50 to $200. The constitutionality of this measure was discussed in the June, 1963 issue of *Popular Government.*

Counterclaim Transfers. An amendment to G.S. 7-247 provides for transfer from inferior court to superior court of any contract or tort action when a counterclaim or cross action is filed for an amount in excess of the jurisdiction of the inferior court in which the original action was filed. Both the original action and the counterclaim may be so transferred, on motion of either party, and within the discretion of the judge. If the judge, on motion, fails to transfer the case, the defendant may take a nonsuit as to his counterclaim, and thereafter determination in the inferior court of the plaintiff's claim shall not constitute *res judicata* as to the defendant's counterclaim instituted in the superior court. The defendant may elect to pursue his counterclaim in the inferior court, but in such case, his recovery is limited to the jurisdictional limits of the court. The need for legislation of this type had been pointed out previously by the Supreme Court and the Judicial Council.

Court Reporters. An official court reporter, or reporters, was authorized for the 30th Judicial District, embracing Cherokee, Clay, Graham, Haywood, Jackson, Macon and Swain counties. Recommendations of the Judicial Council, and of the Bar Association through its Administrative Office of the Courts Bill, that a system of reporters be established under state control, received little support.

Jurors

"Accredited Christian Science Practitioners and Readers" were added to the long list of persons exempted from jury duty by G.S. 9-19.

Administration of Estates

Four changes were made in Chapter 28, *Administration.* The first of these, G.S. 28-2.3, is a new section declaring that the domiciliary, or original, administration of the estates of decedents domiciled in North Carolina at the time of death shall be under the jurisdiction of this state and of the proper clerk of the superior court, and the original probate of wills of such persons shall be in this state. The probate of wills and administration of estates outside of North Carolina of such decedents shall be ancillary only. All assets, except real estate, but including the proceeds from the sale of real estate, subject to ancillary administration outside of the state shall, to the extent not required for ancillary administration, be delivered by the ancillary administrator to the personal representative in North Carolina for administration and distribution. The receipt of the domiciliary representative shall fully acquit the ancillary administrator to the extent of the property so transferred. The domiciliary representative has the exclusive right and duty to pay all federal and state taxes owed by the estate, and to make proper distribution of assets, including those received from the ancillary administrator. This statute is applicable to all persons dying after 30 May 1963.

In Article 9, Notice to Creditors, a new section, G.S. 28-47.1, has been added to the effect that upon satisfaction of all the requirements set out in G.S. 28-47 (Advertisement for Claims) and at the end of the six months period referred to therein, a personal representative may, if all claims filed for outstanding debts and obligations of the decedent have been met and satisfied in case of a solvent estate (or satisfied pro rata in case of an insolvent estate), file his final account with the clerk of superior court, and the account is to be audited and recorded by the clerk. This new section does not limit the right of surviving spouses and children to file within one year for an allowance under the provisions of G.S. 30-15 and G.S. 30-17, respectively.

Under Article 14, Sales of Real Property, two additions were made. G.S. 28-81 has a new paragraph providing that when it is alleged and shown that the decedent's real property consists in whole or in part of an undivided interest, and sale of that interest is necessary to make sufficient assets to pay debts, including charges of administration, the personal representative may, when he petitions to sell real property to make assets, also petition for partition of land in which decedent held an undivided interest. In such case, the personal representative is a proper party petitioner, the same as if he were a joint tenant or tenant in common.

G.S. 28-83 now contains a new second paragraph providing an exception to the general rule that conveyances of lands by heirs within two years are voidable. It is now provided that, in the absence of fraud participated in by the grantee, conveyances of real property by warranty deed executed by the heirs at law or devisees of resident or nonresident decedents, with the joinder of the personal representative, if made within two years after death of the decedent, and at least six months after first publication of notice as provided by G.S. 28-47, shall not be voidable as to creditors of decedent if all of the following conditions are met:

(1) the personal representative gives increased bond in an amount equal to the net proceeds realized from the sale of the property;
(2) all proceeds from the sale are paid directly to the personal representative;
(3) all proceeds from the sale are placed by the personal representative in a separate escrow account or, under proper court order, are invested in appropriate securities pending final closing of the estate;
(4) the instrument of conveyance carries a certificate of the personal representative to the effect that he has received from the grantee the full purchase price from the sale; and
(5) the sale is approved by order of the clerk of the superior court of the county in which administration of the estate is pending, pursuant to a determination by the clerk, supported by affidavits by at least two freeholders of the county in which the real property is located, that the sales price represents fair market value of the property.

Funds or other assets held by the personal representative under this law, after payment of debts and charges of administration, shall be distributed simultaneously with filing and approval of the final account. The personal representative shall be allowed a commission on only so much of the proceeds of the sale, coming into his hands, as may be necessary to discharge claims of creditors.

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CRIMINAL LAW AND PROCEDURE

Chapter numbers refer to the 1963 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate. When an act is effective upon ratification, the ratification date is included in parentheses following the citation of the act; when there is a different effective date, this is denoted by the use of the abbreviation "eff." All dates are in 1963 unless otherwise noted.

Last March 18, after the General Assembly was already in session, the Supreme Court of the United States announced its decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963), which required the states to furnish counsel for indigent criminal defendants at least in all felony cases—and probably in the more serious misdemeanor cases also. In responding to the challenge posed by this new judicial requirement, several legislators called for the adoption of a public-defender system. Others protested that the problem was too suddenly thrust upon the Assembly for any public-defender bills to be given the necessary care and study. The resulting legislation took the more narrow approach of providing compensation for court-appointed counsel. The several acts of this session relating to indigent criminal defendants nevertheless rank clearly among the most important legislation of the 1963 General Assembly.

Other important criminal law and procedure measures included a new version of the Sunday sales law which was held unconstitutional in *G I Surplus Store, Inc. v. Hunter*, 257 N.C. 206, 125 S.E. 2d 764 (1962), and provision for issuance of warrants and setting bail by municipal police desk officers in towns over 4,000 population.

Changes in the speed-limit law and discussion of the legal requirements for taking a chemical breath test of suspected drunken drivers are in the article entitled "Motor Vehicles and Highway Safety." New acts relating to suspension of sentence and probation are treated in "Penal-Correctional Administration."

Bills That Failed

Bills and resolutions looking toward the abolition of capital punishment again came to complete defeat this session. In order of introduction the proposals were as follows: HB 35 (substituting life imprisonment for the death penalty for all four capital crimes); SB 27 (substituting life imprisonment for the death penalty for all four capital crimes, and making persons convicted of murder in the first degree ineligible for parole); SR 173 (calling for referendum on question of abolishing capital punishment); and SR 445 (creating a study commission on capital punishment). Neither HB 35 nor SB 27, incidentally, took into account the little-noticed death penalty provision in G.S. 14-278 for malicious train sabotage causing death. (Under N.C. Const. art. XI, § 2, though, this statute would be unconstitutional unless held to specify a certain type of murder rather than a separate crime.)

A few of the other more important or interesting bills which failed, and which are not otherwise mentioned in the discussions below, are:

SB 77 (HB 152): excluding names of rape victims from newspapers.

SB 64: making it unlawful to have two or more illegitimate children.

HB 506: abolishing pistol permit law.

HB 1213: making unlawful for parent of child under twelve to allow child to possess spring guns, air rifles, and sharp pointed arrows as well as pistols and other dangerous firearms, and making it unlawful for child under seventeen to possess any of the above weapons while on city streets or in parks, playgrounds, or vacant lots.

HB 1219: placing Orange County under the provisions of a Durham County local law requiring the registration of pistols and other hand weapons.

SB 351: operating a motor vehicle under the influence of any drug, or under the influence of a combination of any drug and intoxicating liquor.

HB 729: making it unlawful to import either strikebreakers or union pickets from outside North Carolina.

HB 1322: amending, in several respects, the procedure relating to restoration of citizenship to felons.

HB 1086: authorizing chiefs of rural fire departments instead of sheriffs to investigate for arson and for other causes of rural fires in counties where there is a rural fire department.

HB 963: making it unlawful to sell food processed or produced by prison labor to public schools.

HB 1238: preventing employers of twenty or more persons from discouraging political activity of employees, or from attempting to influence employees as to political activities or affiliation.

Indigent Criminal Defendants

Appointment and Compensation of Counsel

Chapter 1080 (SB 335) (June 21) amended G.S. 15-4.1 and -5, which formerly dealt with appointment of counsel for indigent defendants in capital cases. The new act provides for the appointment of counsel by superior court judges in all felony cases, and permits appointment in the discretion of the judge in misdemeanor cases. Defendants may waive appointment of counsel, except in capital cases. A defendant without counsel pleading guilty must be informed of the nature of the charge and the possible consequences of his plea. As a condition of accepting the plea of guilty from an unrepresented defendant, the judge must determine that the

plea was freely, understandably, and voluntarily made, without undue influence, compulsion or duress, and without promise of leniency. In case of appeal to the Supreme Court of North Carolina, the judge is to appoint counsel for the appeal or continue the services of counsel already appointed.

Fees for services of counsel are to be fixed by the court, in accordance with the time consumed, the nature of the case, and the amount of fees usually charged for such cases in the county or locality. These fees are to be paid by the State of North Carolina, but the amount allowed is to be entered as a judgment against the defendant so as to constitute a lien as provided in the general law pertaining to judgments. Funds collected under such judgments are to be deposited in the State Treasury. The act appropriates $500,000 for each fiscal year of the biennium 1963-65 to pay the costs of administering the act. In partial compensation, though, the act taxes against criminal defendants in the superior courts an additional five dollars in court costs. Four dollars goes to the State Treasury, and one dollar goes to the general fund of the county. Although the act is not explicit, the extra costs are clearly to be taxed only where the individual defendant is charged with payment of costs and not in the event the county pays half costs.

Responsibility of the Counties

In the past when appointed counsel were only compensated in capital cases, the county paid the attorneys' fees as well as other costs. The scheme now settled upon places the cost of administering the act and of paying counsel fees on the State; the counties, however, continue to bear certain expenses. The act stipulates that the regular and ordinary court costs are to be paid by the county as now provided by law. In addition, the county is charged under the act with making available the trial transcript and records required for an adequate and effective appellate review in case an appeal is taken by an indigent defendant.

The meaning of this last provision is amplified by consideration of Chapter 954 (SB 552) (June 18), which added a new paragraph in G.S. 15-181. That section provides that where a criminal defendant is wholly unable to give security for costs to appeal to the Supreme Court of North Carolina, the judge may allow appeal as a pauper. It further provides in cases begun on a capital indictment for payment by the county, on order of the judge, of the cost of obtaining a transcript of the proceedings and of preparing the requisite copies of the record and briefs required to be filed in the Supreme Court. The new act adds a similar provision for such payment by the county in appeal cases either (1) of felony conviction or (2) begun upon indictment charging a noncapital felony (with conviction of lesser offense). The order of the judge is, in terms, discretionary upon his finding that the defendant is indigent where there is not a capital charge, but cases decided by the Supreme Court of the United States make it clear that there is no such discretion if indigency is in fact found. See *Douglas v. California*, 372 U.S. 353 (1963); *Lane v. Brown*, 372 U.S. 477 (1963); *Draper v. State of Washington*, 372 U.S. 487 (1963).

Regulations of Council of the State Bar

Chapter 1080 added G.S. 15-5.1 to provide that the Council of the North Carolina State Bar has authority to make rules and regulations:

> relating to the manner and method of assigning counsel, the practice of the courts with respect to determination of indigency, the waiver of counsel and related matters, the adoption and approval of plans by any district bar regarding the method of assignment of counsel among the licensed attorneys of said district and such other matters as shall provide for the protection of the constitutional rights of all indigent persons charged with crime and the reasonable allocation of responsibility for the defense of indigent defendants among the licensed attorneys of this State: Provided, however, that no such rules and regulations shall become effective until certified to and approved by the Supreme Court of North Carolina.

On July 19, 1963, the Supreme Court certified a set of regulations and approved forms that had been drafted by the Council. The regulations and forms may be found in the Appendix to Volume 259 of the *North Carolina Reports*.

Under the regulations, any district bar may adopt a plan for naming and designating the attorneys to serve as assigned counsel. Such plan may be applicable to the entire district, or separate plans may be adopted for use in each separate county within the district. The plan of the bar is to be certified to the clerk of the superior court of each county in which it is applicable. Judges are to appoint counsel in accordance with the plan unless they deem it proper in the furtherance of justice to appoint "some lawyer or lawyers residing and practicing in the judicial district, who is or are not on the plan or list . . . ." The regulations next provide:

> No attorney shall be appointed as counsel for an indigent defendant in a court of any district except the district in which he resides or maintains an office *except by consent of counsel so appointed.* [Emphasis added.]

The regulations apparently contemplate that in some districts not all lawyers will appear on the list to be appointed, since they provide for appointments of others off the list. They do not provide specifically for appointment by the judge of someone on the list out of turn, but it seems quite certain that the judge has this power where special circumstances and considerations of justice require it. And, as noted, he may even appoint a lawyer from outside the district with that lawyer's consent.

Chapter 1080 states that "the judge shall appoint counsel as soon as possible and practicable to the end that counsel so appointed may have adequate notice and sufficient time to prepare for defense." The regulations of the State Bar do not flesh out any procedure designed to secure early appointment of counsel. The selection methods stipulated in the plans of the district bars can probably incorporate early screening methods to a limited extent, but there are certain restrictions in the regulations. They require that the defendant complete and sign under oath an affidavit of indigency prior to appointment of counsel. The judge is required—prior to the call of the case—to make a reasonable inquiry of the defendant *personally* under oath as to the statements in the affidavit. Then, the judge may appoint counsel.

The regulations as they are now written raise several problems. In at least one place they specify the *trial* judge in treating an aspect of the power to appoint counsel. They do not prohibit the resident judge (when he is not the trial judge) from making appointments, but the general scheme of the regulations implies a single trial judge in control of the appointment process. There is, of course, good reason for such centralization; otherwise, some lawyers might be called upon by different judges with an unfair frequency. Nevertheless, in counties with short and infrequent terms of court, a defendant might be forced to suffer a great deal of hardship.

If arrested several months before the term of court, he would have to wait till the term to get a lawyer appointed. Then he would be faced with the choice of immediate trial, perhaps before the lawyer has a chance to prepare adequately, or of seeking a continuance till the next term of court—several more months. Since it is likely that an indigent defendant would not be able to post a bond in any sizeable amount, the defendant could well spend the entire time in jail. The Supreme Court of the United States probably would hold such a lengthy period of pre-trial incarceration (which

a defendant with money would be able to avoid) to be a denial of constitutional rights under the Fourteenth Amendment to the Constitution of the United States.

False Affidavit of Indigency

Chapter 1080 adds G.S. 15-5.3 to stipulate that "any defendant making a false affirmation in regard to the question of indigence under" the act shall be guilty of perjury and punished as provided in G.S. 14-209. Under that section, perjury is punished as a felony: fine not exceeding $1,000, and imprisonment from four months to ten years. The false affirmation might be made by the defendant either in the written affidavit required or when examined personally by the judge under oath.

Appointment of Counsel in Other Proceedings

The constitutional command of *Gideon v. Wainwright* undoubtedly applies not only as to trial and appeal but to other legal proceedings in which a criminal defendant or prisoner with money would have a right to representation by counsel. In recognition of this, Chapter 1180 (SB 675) (June 25) amended G.S. 15-219 of the Post-Conviction Hearing Act to provide that "the court shall fix the compensation to be paid [appointed] counsel in accordance with the provisions of G.S. 15-5, which compensation shall be paid by the State as provided in said section." Formerly, the counsel appointed to represent prisoners seeking a review of the constitutionality of their trials were to be paid by the counties.

There is still no statute relating to appointment of counsel where the proper method for testing the legality of a commitment (either before or after conviction) would be by writ of habeas corpus rather than under the statutory procedure. The same is also true of coram nobis hearings—to the extent that use of this writ has not been surplanted by the Post-Conviction Hearing Act. In these and any other criminal proceedings, counsel would have to be appointed by the judge even though there is no statutory provision for compensation. This has long been done in federal court, and it is settled that lawyers as officers of the court have a duty to serve when appointed whether or not they will be paid. See Annot., 130 A.L.R. 1439 (1941).

Franklin County Local Act Repeal

Chapter 162 (HB 219) (April 5) repealed a 1941 local act for *Franklin* County which had limited compensation of appointed counsel in capital cases to one hundred dollars.

Public-Defender Study

Senate Resolution 660 (adopted June 18) directed the Legislative Council to make or cause to be made a study with respect to the advisability of establishing a public-defender system in North Carolina, and to report to the 1965 General Assembly. Persons who view the various possible ways of securing lawyers for defendants who cannot hire their own from the standpoint of the defendant and the orderly administration of justice usually favor the use of the public defender over all competing methods. Where there is a substantial volume of cases, the public defender gives the best representation for the least money. There is some evidence, though, that the public-defender system works best in the more populous areas, and several states have permissive legislation as to appointment of a public defender on a county- or district-option basis.

Another system in recent favor has provided for subsidization of private legal aid societies with public funds. The argument is made that private lawyers will have less tendency to pull their punches in appearing for defendants than state-paid public defenders would. Experience elsewhere has not usually borne out this claim; judges, it should be remembered, are impartial even though paid by the same governmental unit that pays the prosecuting attorneys.

The main reasons why public defenders and private defenders from legal aid societies (whether aided by public money or not) are usually favored over the system of having the judge appoint counsel (whether compensated or not) are as follows:

(1) counsel can usually be assigned to a case at a much earlier stage;

(2) where there is any volume, the defender system is cheaper per case;

(3) effective investigative staffs can be built up and used without great cost in any individual case where numerous cases all come to the same office; and

(4) public (or private) defenders, being specialists in criminal defense matters, give better representation than the average appointed lawyer would.

Members of the bar often oppose the defender systems because they concentrate a large area of practice in the hands of a few specialist attorneys. And, where a particular defender is not a very good lawyer, large numbers of indigent defendants would inevitably be the victims of a system that would not permit them to secure better representation. On the other hand, judges appointing counsel could assess the nature and difficulty of particular cases and assign counsel accordingly.

Right to Counsel in Inferior Courts

The case in the Supreme Court of the United States which required appointment of counsel for indigent defendants was a felony case. It is not absolutely certain that the rule will apply in misdemeanor cases, but the language used in the opinion of the Court is broad enough to cover them. Chapter 1080, it was mentioned, permits superior court judges to appoint counsel in misdemeanor cases, and the statute is thus flexible enough to allow appointment and compensation of counsel in all superior court cases if the law is interpreted to require it.

But neither the acts of this session nor the rules of the Council of the State Bar deal with the problem of appointment of counsel for misdemeanants in inferior courts. Sentences in inferior courts will many times be for prison terms up to two years, which is probably serious enough to require representation by counsel. The one possibility that may save North Carolina's procedure is that there is an absolute right of appeal and trial *de novo* from inferior courts to the superior court, and counsel can be assigned there. Mistakes made below because of lack of counsel should not prejudice the result of the new trial since it begins completely afresh. (To the extent that mistakes made below because of lack of counsel could be used against the defendant, there would seem to be a denial of constitutional rights.) The main basis of attack against the North Carolina system of providing for counsel only in superior court might well be the denial of bail. As stated above, indigent defendants will usually not be able to secure release on bond. To the extent an indigent defendant might have to wait in jail to secure rights that the defendant with money would be granted right away, there may be a denial of rights.

Issuance of Warrants by Police Desk Officers

In November 1962 the voters of North Carolina approved the court-reform amendments to our Constitution. One of the provisions little noticed at the time has since stirred up a great deal of trouble. Since justices of the peace were to be replaced by magistrates under the administrative control of the statewide court system, the Constitution was amended in several places to delete mention of justices of the peace. (Also, coroners and constables were taken out of the Constitution.) One of the places that formerly mentioned justices of the peace was N.C. Const. art XIV, § 7 which had exempted justices of the peace from the ban against double-office holding.

Effective November 30, 1962, however, the date on which

the constitutional amendments were officially certified as passed by the Secretary of State, it became unconstitutional for a justice of the peace to hold more than one office. A ruling from the Attorney General's office eased matters somewhat: any justice of the peace who also held some other public office as of last November 30 could continue to hold both offices until one of them has expired. At the time that a new oath would be required, there must be a choice made. Taking a new oath for one office after November 30 would result in an automatic resignation from the other office.

Although this change affected a certain number of mayors, city councilmen, county commissioners, and other local officers who also held appointments as justices of the peace, the most numerous group affected was in law enforcement. It had been a customary practice in many localities to have municipal police officers or deputy sheriffs appointed justices of the peace so they could sit as desk officers and issue criminal warrants.

For some reason, the news spread slowly among law enforcement officers. The Institute of Government did not put out an immediate warning bulletin because of the belief that general legislation was being drafted to take care of the problem and that there should be no unnecessary alarm raised. Yet by May 29, 1963, the only action had been the passage of two local acts granting certain law enforcement officers the power to issue warrants in several municipalities in two counties. (In addition, a revised charter had more or less routinely included a desk officer provision.) About this time, though, the April-May 1963 issue of *Popular Government* appeared with an article on the subject. By the middle of June, several other local bills had been introduced to empower desk officers to issue warrants. The parade of local bills that began their way through both houses under suspension of the rules in the latter part of June finally alerted the entire membership of the General Assembly to the problem. A last-minute general bill was introduced on June 20, 1963. All the local bills introduced were enacted into law—as was the general measure. The general law was ratified later than any of the local acts; sveral local acts were ratified the same day (the last day of the session), but they have lower chapter numbers. This indicates they were signed into law before the general legislation. Since the general bill had the standard section reading "all the laws and clauses of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict," it is necessary to decide whether the general law reepaled any of the local laws. The following quotations from a standard legal textbook are instructive in this connection:

1 SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 2013 (3rd ed. by Horack, 1943):

> An express general repealing clause to the effect that all inconsistent enactments are repealed, is in legal contemplation a nullity. Repeals must either be expressed or result by implication. A general repealing clause cannot be deemed an express repeal because it fails to identify or designate any act to be repealed. It cannot be determinative of any implied repeal for it does not declare any inconsistency but conversely, merely predicates a repeal upon the condition that a substantial conflict is found under application of the rules of implied repeals. If its inclusion is more than mechanical verbiage, it is more often a detriment than an aid to the establishment of a repeal, for such a clause is construed as an express limitation of the repeal to inconsistent acts.

1 SUTHERLAND, *op. cit. supra*, § 2021:

> The enactment of a general law broad enough in its scope and application to cover the field of operation of a special or local statute will generally not repeal a statute which limits its operation to a particular locality within the jurisdictional scope of the general statute. An implied repeal of prior statutes will be restricted to statutes of the same general nature, since the legislature is presumed to have known of the existence of prior special or particular legislation, and to have contemplated only a general treatment of the subject matter by the general enactment. Therefore, where the latter general statute does not propose an irreconcilable conflict, the prior special statue will be construed as remaining in effect as a qualification of or exception to the general law.
>
> However, since there is no rule of law to prevent the repeal of a special by a later general statute, prior special or local statutes may be repealed by implication from the enactment of a later general statute where the legislative intent to effectuate a repeal is unequivocally expressed. A repeal will also result by implication when a comprehensive revision of a particular subject is promulgated, or upon the predication of a state-wide system of administration to replace previous regulation by localities.

In determining whether the general law was intended to replace all local legislation, it is perhaps important to note that *Washington* County was exempted. Also, several of the local acts applied to situations that the general law did not reach. It seems likely that the courts will thus hold that the local acts and the general act must be construed together, but where they are in conflict the local acts will prevail.

Chapter 1261 (HB 1367) (June 26) added a new G.S. 160-20.1 in the chapter of the General Statutes dealing with municipal corporations:

> Officers of the police department of any municipality, who are or may be designated as "desk officers" by the chief of police, are hereby authorized to issue warrants in criminal matters in the same manner, to the same extent, and under the same rules of law as are applicable to the issuance of such warrants by justices of the peace on June 30, 1963; provided, that no warrant so issued may be served by the issuing officer. Providing the provisions of this Act shall not apply to any municipality having a population of less than four thousand (4,000) based upon the most recent federal decennial census.

The provisions of the local acts dealing with issuance of warrants are set out in Tables I - III. The language of the general law and of most of the local acts is broad enough to cover all types of warrants—both search and arrest. Several of the local acts affecting municipalities, however, apply only to issuance of arrest warrants. See Table II. It is possible that a court would hold that officers of a city empowered by local law merely to issue arrest warrants also could be appointed under the general law to issue search warrants. Such a result is unlikely, though. It does seem clear, however, that municipalities of more than 4,000 in a county will come under the general law even if some other municipality in the county has been singled out for a local act.

TABLE I.

Local Bills Authorizing Designated Individuals in *Counties* to Issue Warrants:

County	*Act of 1963 Session Laws*	*Individuals Authorized to Issue Warrants*	*Effective Date (1963)*
Cumberland	Chapter 1252 (HB 1376)	Desk Officers Designated by Sheriff	June 26
Mecklenburg	Chapter 937 (HB 1335)	Officers of Mecklenburg County Police Dept. Who are Designated as Desk Officers by Chief	June 14
New Hanover	Chapter 1218 (SB 691)	Deputy Sheriffs Designated by Sheriff as Desk Officers	June 26
Scotland	Chapter 1236 (HB 1373)	Desk Officers Designated by Sheriff	June 25

Note: All acts specify that issuing officer cannot serve the warrant. Since the acts do not limit the types of warrants that may be issued, presumably they apply to both arrest *and* search warrants.

TABLE II.

Local Bills Authorizing Designated Individuals in *Municipalities* to Issue *Arrest* Warrants:

County	*Act of 1963 Session Laws*	*Applies To*	*Individuals Authorized to Issue Warrants*	*Effective Date (1963)*
Beaufort	Chapter 163 (HB 326) (Charter Revision)	Washington	City Council Authorized to Designate as "Warrant Officers" Two Police Officers Assigned to Inactive Police Duty	April 5
Davidson	Chapter 836 (HB 1196)	Denton Lexington Thomasville	Chief of Police, the Assistant Chief of Police, the Police Captains, the Lieutenants in Charge of Each Work Shift and Desk Sergeants, When on Duty	June 11
Durham	Chapter 1200 (HB 1357)	City of Durham	Police Officers Designated by City Council	June 25
Halifax	Chapter 133 (SB 190)	Roanoke Rapids	Lieutenants in Charge of Each Work Shift of City Police Department in Addition to Chief and Assistant Chief	April 2
Richmond	Chapter 1206 (HB 1080) (Charter Revision)	Rockingham	City Council Authorized to Designate as Warrant Officers Two Police Officers Assigned to Inactive Duty	June 25
Rockingham	Chapter 884 (HB 1224)	Spray	Such Radio Operators of Spray Fire or Police Departments as Designated by Board of Commissioners	June 12
Vance	Chapter 627 (HB 982)	Henderson	Desk Sergeants in Police Department	May 29

Note: All acts specify that issuing officer cannot serve the warrant. Municipalities of more than 4,000 in any of the above counties which are not covered by a local act will be able to use the authority in new G.S. 160-20.1.
So far as the City of Rockingham is concerned, the charter provision included here will prevail over the act for Richmond County listed in Table III.

One caution should be observed. Some "desk officers" now serving derive their powers not from appointment as justices of the peace but from local acts similar to the ones passed this session. See S.L. 1945, Ch. 82, *State v. St. Clair*, 246 N.C. 183, 97 S.E.2d 840 (1957). Where this is the case, the officers still will be governed by the local act. No attempt has been made to collect all of the pre-1963 local legislation.

Constitutionality

The general rule as to double-office holding is that you cannot give one person two offices either directly or indirectly. But it is nevertheless possible to grant to one officer at least some of the *duties* that are normally associated with another office. See *Freeman v. Commissioners of Madison County*, 217 N.C. 209, 7 S.E.2d 354 (1940); *State v. Holmes*, 207 N.C. 293, 176 S.E. 746 (1934). In the case of the 1963 acts, there was simply the granting of the statutory authority to issue warrants. This power is not exclusively associated with the *office* of justices of the peace. Clerks of recorders' courts have long been issuing them, *e.g.*, G.S. 7-202, as have miscellaneous other officials under local acts (including police officers). *State v. Furmage*, 250 N.C. 616, 109 S.E.2d 563 (1959); see *State v. St. Clair, supra.*

On the basis of the reasoning above, the North Carolina courts would probably hold the 1963 acts valid, and the Attorney General's office has recently so ruled as to a comparable act. (Letter to W. H. Beckerdite, dated July 11, 1963.) The difficulty is likely to lie with the Supreme Court of the United States. In *State v. Furmage* the North Carolina

TABLE III.

Local Bills Authorizing Designated Individuals in *Municipalities* to Issue Warrants:

County	*Act of 1963 Session Laws*	*Applies To*	*Individuals Authorized to Issue Warrants*	*Effective Date (1963)*
Alamance	Chapter 1140 (SB 682)	Burlington	Desk Officers Designated by Chief of Police	June 24
Caldwell	Chapter 1256 (HB 1388)	The Incorporated Cities and Towns	Desk Officers Designated by Chief of Police	June 26
Catawba	Chapter 1242 (HB 1391)	Hickory	Desk Officers Designated by Chief of Police	June 26
Cleveland	Chapter 1164 (HB 1362)	Shelby	Desk Officers Designated by Chief of Police	June 24
Columbus	Chapter 1222 (SB 701)	The Cities	Desk Officers Designated by Chief of Police	June 26
Cumberland	Chapter 1253 (HB 1377)	The Incorporated Cities and Towns	Desk Officers Designated by Chief of Police	June 26
Dare	Chapter 1256 (HB 1388)	The Incorporated Cities and Towns	Desk Officers Designated by Chief of Police	June 26
Gaston	Chapter 1244 (HB 1394)	The Incorporated Cities and Towns	Desk Officers Designated by Chief of Police	June 26
Granville	Chapter 971 (HB 1245) (Charter Revision)	Oxford	Chief of Police, Assistant Chief of Police, and Such Other Police Officers Designated as Desk Officers by Board of Commissioners	July 1
Johnston	Chapter 1256 (HB 1388)	The Incorporated Cities and Towns	Desk Officers Designated by Chief of Police	June 26
Mecklenburg	Chapter 937 (HB 1335)	Charlotte	Officers of Police Department Who Are Designated as Desk Officers by Chief	June 14
New Hanover	Chapter 1139 (SB 680)	Wilmington	Desk Officers Designated by Chief of Police	June 24
	Chapter 1219 (SB 692)	Carolina Beach	Desk Officers Designated by Chief of Police	June 26
	Chapter 1220 (SB 693)	Wrightsville Beach	Desk Officers Designated by Chief of Police	June 26
Orange	Chapter 1256 (HB 1388)	The Incorporated Cities and Towns	Desk Officers Designated by Chief of Police	June 26
Pitt	Chapter 1245 (HB 1396)	The Incorporated Cities and Towns	Desk Officers Designated by Chief of Police	June 26
Richmond	Chapter 1241 (HB 1390)	Ellerbe	Desk Officers Designated by Chief of Police	June 26
Robeson	Chapter 1256 (HB 1388)	The Incorporated Cities and Towns	Desk Officers Designated by Chief of Police	June 26
Scotland	Chapter 1204 (HB 1372)	Laurinburg	Desk Officers Designated by Chief of Police	June 25
Surry	Chapter 1256 (HB 1388)	The Incorporated Cities and Towns	Desk Officers Designated by Chief of Police	June 26
Wake	Chapter 1093 (SB 664)	Raleigh	Desk Officers of Raleigh Police Department	June 21

Note: All acts specify that issuing officer cannot serve the warrant. Municipalities of more than 4,000 in any of the above counties which are not covered by a local act will be able to use the authority in new G.S. 160-20.1.
Since the acts do not limit the types of warrants that may be issued, presumably they apply to both arrest *and* search warrants.

court cited an older federal case upholding issuance of an arrest warrant by a solicitor despite the argument that issuing a warrant was a *judicial* function. A statement in a more recent case, however, may indicate something of a shift:

> The arrest warrant procedure serves to insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause. . . . [*Wong Sun v. United States*, 83 Sup. Ct. 407, 414 (1963).]

It is true, of course, that the federal courts sometimes hold federal officers to a higher standard than state officers under the Fourteenth Amendment, and the case cited above concerned federal officers.

In the opinion of the author, so many arrests are made under state law without a warrant that restricting the power to issue arrest warrants (and set bail) to *judges* would probably deprive more citizens of rights than it would protect. Arresting officers would be somewhat cautious about awakening a judge in the middle of the night to have the charge formally fixed through the issuance of a warrant and to have bail set. Police desk officers on duty during the night hours offer a convenient solution. Perhaps a more logical solution from the standpoint of legal structure would be to create night clerks of court to issue warrants and fix bail. A practical problem here, though, lies in the fact that few of the police officers who have gained valuable experience as desk officers would be willing to change jobs and thereby be deprived of membership in law enforcement retirement funds in which membership depends upon having the power to arrest.

As to search warrants, none of the practical reasons just given really apply. The courts in truth have always been more searching and strict when it comes to the issuance of search warrants. It seems there is a fair probability that the 1963 acts can be successfully challenged in court to the extent that they are construed to authorize the issuance of search warrants by police officers.

Bail

Power to Set Bail

Chapter 1099 (HB 1105) (June 21) amends G.S. 15-102 and -103 relating to the power of officers to set bail. It rewrites the sections to specify that the officers in question have the power both to fix and take bail; formerly it just said "take." A more important change, applying to all but capital crimes, was one providing in both sections that "any person authorized to issue warrants of arrest" has the power to fix and take bail.

This act was introduced and well on its way to passage before most of the legislation relating to issuance of warrants by desk officers came into prominence. Nevertheless, its main effect will be as a companion act to the desk-officer acts, granting the power to fix and take bail to such warrant-issuing officers.

Licensing of Bail Bondsmen in Twenty Counties

Chapter 1225 (HB 537) (eff. January 1, 1964) started out as a public bill. In the course of its travel through the Legislature, it was restricted to apply to only twenty counties. It is a very comprehensive (and badly drafted) measure requiring professional bail bondsmen and their runners to be licensed and regulated under the Commissioner of Insurance.

The act, which is codified as G.S. 85A-1 through -34, applies in the following counties: *Beaufort, Buncombe, Caldwell, Cleveland, Columbus, Currituck, Greene, Guilford, Hyde, Iredell, Jackson, Lenoir, Madison, McDowell, Person, Richmond, Rutherford, Transylvania, Yadkin*, and *Yancey*.

Employees of Justices of the Peace Not to Become Bail

G.S. 15-107.1 makes it a misdemeanor for justices of the peace or their spouses to become bail for any prisoner for money or property, or to become bail or agents for any bonding company or professional bondsmen.

Chapter 118 (HB 252) (March 29) amends this section by adding any secretary, stenographer, or employee of a justice of the peace to the list.

Selling Goods on Sunday

In 1961 the General Assembly adopted an act to prohibit the sale of certain items of merchandise on Sunday. The act was a close copy of a Pennsylvania statute that had been held valid by the Supreme Court of the United States. The North Carolina General Assembly, however, had made a few changes—and one of those changes was prominently cited by the Supreme Court of North Carolina in holding the 1961 act unconstitutional and void for vagueness.

The 1963 General Assembly has decided to try again with Chapter 488 (SB 141) (eff. July 1). It rewrites G.S. 14-346.2 to delete the exemption for "novelties, toys, souvenirs, and articles necessary for making repairs and performing services . . . ." It also inserts a provision making violation of the act a "misdemeanor." (The somewhat frivolous point had been raised in the case that omission of either "misdemeanor" or "unlawful" resulted in failure of the act to state a criminal offense. *Cf. State v. Bloodworth*, 94 N.C. 918, 920 (1886) (dictum).)

The rewritten section makes it a misdemeanor to engage on Sunday in the business of selling, or to sell or to offer to sell on such day:

> clothing and wearing apparel, clothing accessories, furniture, 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 or recordings . . . .

Each separate sale or offer to sell is made a separate offense.

One of the more controversial portions of the 1961 act was the power granted to localities to exempt themselves from coverage under the act. The 1963 act takes a different approach. It lists a number of counties and portions of counties as exempt from the act and characterizes them as "resort or tourist areas . . . recognizing that different considerations apply to such areas." In addition, the act declares that in the event the exemption of areas of less than county size is held unconstitutional, such exemption provisions are to be considered void and severable from the other provisions of the act. The following counties are exempted: *Avery, Brunswick, Camden, Carteret, Cherokee, Clay, Currituck, Dare, Graham, Haywood, Henderson, Hyde, Jackson, Macon, Madison, Mitchell, New Hanover, Pamlico, Pender, Polk, Swain, Transylvania, Watauga, Wilkes*, and *Yancey*. The portions of counties exempted (with duplication in the case of Watauga County) are as follows: Colly Township of *Bladen* County; Edneyville Township of *Henderson* County; Chimney Rock Township of *Rutherford* County; Blowing Rock Township of Watauga County; and facilities within the right-of-way of the Blue Ridge Parkway in *Ashe, Alleghany*, and *Watauga* counties, as shown on recorded plats.

Other Statewide Criminal Law Changes

Increased Punishment for Trespass

While the General Assembly was in session, there was a rash of demonstrations on behalf of equal rights and opportunities for Negroes. Some of the demonstrations resulted in trespass charges, especially in places of public accommodation. Fairly late in the session a pair of bills was introduced which was obviously designed to discourage civil disobedience as a feature of demonstrations. HB 1310, which would have raised the maximum punishment for contempt of court up to a fine of $1,000, imprisonment for one year, or both, in the discretion of the court, failed to pass.

Chapter 1106 (HB 1311) (June 21), however, was enacted. It increases the punishment for trespass forbidden under G.S. 14-134 from the fifty dollar-thirty day level to that of a misdemeanor punishable in the discretion of the court. Under North Carolina precedent, this change would authorize imprisonment at least up to two years.

Another act that may have originated as the result of demonstrations was Chapter 716 (SB 551) (June 6). It has been codified as part of G.S. 129-17.3, and makes it a misdemeanor punishable by fine or imprisonment or both, in the discretion of the court, to violate, or aid others in violating, the rules and regulations of the Legislative Building Governing Commission respecting use of the State Legislative Building.

Academic Fraud

Chapter 781 (SB 252) (June 11) makes it unlawful for any person, firm, or corporation to assist any student in obtaining or attempting to obtain, by fraudulent means, any academic credit or any diploma or other degree in any course of study in any university, college, academy, or other educational institution. It also prohibits advertising, offering, or attempting to assist any student in such a fraudulent manner. The act specifically mentions preparing a term paper, thesis, or dissertation for another and impersonating another in taking an examination, but states that its application is not limited to these offenses. The act, however, is primarily aimed at outsiders who are in the business of helping students cheat; it does not apply when one student assists another—if the assisting student is duly registered in an educational institution and is subject to its disciplinary authority. The act has been codified as G.S. 14-118.2.

Two fraud bills of a different sort which failed to pass should be noted at this point: HB 267 (obtaining for-hire transportation by fraud; failure to notify of inability or refusal to pay at beginning of trip would have been made prima facie evidence of fraud) and HB 268 (similar fraud at service stations).

Throwing Acid

The statutory maiming offenses in G.S. 14-28 through -30 are based primarily on common-law maim (or mayhem), and contain the requirement that a member of the body be disabled or cut off. It is thus not clear that injury caused another by throwing acid would always be covered under the statutes—unless, of course, an eye were put out. Two bills were introduced this session to cover the throwing of acid. SB 62, which failed, would have punished the offense, when done knowingly and wilfully with intent to murder, maim, disfigure, disable, or render impotent, with imprisonment from five to sixty years.

The act which passed—Chapter 354 (SB 179) (May 6)—provides a lesser punishment: imprisonment for four months to ten years. Specifically, it makes it a felony knowingly and wilfully of malice aforethought to throw or cause to be thrown corrosive acid or alkali upon another person with intent to murder, maim, or disfigure and thus inflict serious injury not resulting in death.

False Report of Vehicle Theft

Although the subject is treated in the article on motor vehicles, it is appropriate to note here Chapter 1083 (SB 388) (June 21) which added G.S. 20-102.1 making it a misdemeanor knowingly to make a false report of vehicle theft, to a peace officer or to the Department of Motor Vehicles.

Vending Machine Breaking

Chapter 814 (HB 725) (June 11) adds two new sections to the General Statutes to punish crimes in connection with coin-operated vending machines, coin-activated machines or devices, and coin-operated telephones or telephone coin receptacles. G.S. 14-56.1 now makes it a misdemeanor punishable in the discretion of the court forcibly to break into any of the coin devices or by the unauthorized use of a key or other instrument to open any such device with intent to steal property or money therein. G.S. 14-56.2 punishes in the same manner for wilfully and maliciously damaging or destroying any such coin devices.

Nonsupport Felony

A pair of bills dealing with nonsupport was introduced in the House on May 9. HB 865, which did not pass, stated that it would be lawful for a judge of the superior court or any court inferior thereto to pronounce sentence of imprisonment upon any defendant convicted of wilful failure to support his children (legitimate or illegitimate) and suspend the sentence upon any reasonable conditions for a period not exceeding five years. It is not clear what the object of this bill was, since under G.S. 15-200 judges already have the power granted to suspend sentences, or place on probation, for periods up to five years.

Chapter 1227 (HB 866) (June 26) was finally ratified after amendment in the course of passage. As introduced, the bill would have applied to nonsupport of wife as well as of child. In its final form the act creates a new offense codified in G.S. 14-322.1 which will be exceedingly difficult to prove: a felony punishable in the discretion of the court if any man or woman shall, without just cause or provocation, wilfully abandon his or her child or children for six months and wilfully fail or refuse to provide adequate means of support for the child or children during this period, and attempt to conceal his or her whereabouts from such child or children with the intent of escaping the lawful obligation of support.

Horse Show Bribes

Chapter 1100 (HB 1108) (June 21), codified as G.S. 14-380.1 through 380.4, requires the judge or other official of any horse show to report to the resident superior court solicitor any attempt to bribe him with respect to decisions in any horse show. It makes it a misdemeanor for the judge to fail to report the bribe attempt. In addition, it is a misdemeanor to bribe or offer to bribe any judge or other official in any horse show, with intent to influence his decision or judgment concerning the show. The provisions of the new act must be printed on all schedules for any horse show held prior to January 1, 1965.

Payments to Labor Organizations

Chapter 244 (SB 130) (April 19) added several sections to the General Statutes that have been codified as G.S. 95-101 through -104 to make it unlawful for any carrier or shipper to pay or agree to pay any charge for the benefit of a labor organization "by reason of the placing upon, delivery to, or movement by rail, or by a railroad car, of a motor vehicle, trailer, or container which is also capable of being moved or propelled upon the highways . . . ." It is also unlawful for a labor organization to accept any such payment. Penalty for violation is a fine from one hundred dollars to $1,000 for each offense. Each act of violence, and each day during which an agreement as to payment remains in effect, will constitute a separate offense.

Intruding in Toilets

In the light of court decisions forbidding state action tending to support the system of racial segregation, Chapter 1114 (SB 364) (June 24) rewrote G.S. 95-48 and -49 as to toilets in places that employ both males and females. The misdemeanor of wilful intrusion into the improper toilet now only applies if it is not one intended for one's own sex.

Ornamental Plant or Tree Trespass

Chapter 603 (HB 455) (May 29) adds a peculiar statute as G.S. 14-128.1, applicable to thirty-seven counties. It prohibits a number of different acts relating to taking ornamental plants or trees from the lands of another as misdemeanors punishable in the discretion of the court. It is un-

lawful to take them without having in possession a bill of sale or written permit of the owner; to transport more than two ornamental plants or trees on the public highways without either bill of sale or permit; to fail to carry a bill of sale or permit; and to fail to exhibit the bill of sale or permit upon request of a law enforcement officer.

After setting out such broad-gauge prohibitions, the act then states that no person may be convicted if he produces at trial a bill of sale or written permit, whether secured before or subsequent to the time of the alleged offense. The transportation provisions of the act do not apply to common carriers.

The counties under the act are *Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Craven, Dare, Davidson, Forsyth, Franklin, Gaston, Graham, Guilford, Haywood, Henderson, Hoke, Jackson, Lenoir, Macon, Madison, McDowell, Mecklenburg, Mitchell, Pitt, Polk, Randolph, Stokes, Swain, Transylvania, Wake, Watauga, Wayne, Wilkes,* and *Yancey.*

The effect of the act is to give landowners the privilege of using a threat of criminal prosecution to enforce payment for ornamental plants and trees taken. A question might be raised whether this is not an unconstitutional granting of exclusive privileges and emoluments to a limited group of persons.

Forest Law Changes

Chapter 312 (HB 115) (May 1) makes a number of changes in Article 4 of Chapter 113 of the General Statutes so far as protection of forests by the Department of Conservation and Development is concerned. Most of the changes are technical ones stating that the Department has jurisdiction to perform various programs not only to prevent fires but also to protect forests from pest and diseases and to develop and improve them for the maximum production of forest products. The portion of the act of interest in the area of criminal law and procedure amended G.S. 113-55 relating to the arrest jurisdiction of forest rangers. The section formerly granted jurisdiction to arrest without warrant "any person . . . taken by him [forest ranger] in the act of violating any of the laws for the protection of forests and woodlands"; it now authorizes a ranger to arrest without warrant "any person . . . committing a crime in his presence . . . ." The General Assembly deleted from the bill a phrase which would have permitted arrest on reasonable grounds to believe a crime was being committed in the ranger's presence. It is somewhat difficult to understand why, since this is part of the standard arrest language in G.S. 15-41 applicable to peace officers generally.

In a local modication to the burning permit provisions of G.S. 14-139, Chapter 617 (HB 843) (May 29) provides a lengthy separate burning permit law for *Dare, Hyde, Tyrrell,* and *Washington* counties.

In another local act, Chapter 640 (HB 1039) (May 30) authorizes the *Cumberland* County Board of Commissioners to provide for the regulation, control, abatement, destruction, condemnation, or removal of inflammable brush, weeds, grass, trash, and any other nuisance which constitutes a fire hazard.

Regulation of Intoxicating Liquors

The General Assembly made a tremendous number of changes in the laws relating to intoxicating liquors this session, but most of them are administrative and regulatory rather than ones of concern to the criminal courts and enforcement officers. Some of the bills that failed to pass were of more general interest than those that passed. The defeated legislation included the following:

SB 172: requiring sellers of malt beverages and unfortified wines to demand identification of persons appearing to be minors, and prohibiting sales to persons who refuse to show identification.

SB 665: repealing all Alcoholic Beverage Control legislation applicable to Guilford County.

HB 245: providing for a statewide liquor referendum.

HB 398: establishing general law governing holding of municipal ABC store elections.

HB 1015: revising law on confiscation of stills.

HB 1119: permitting sale of beer and wine to members of Armed Forces of United States even though under eighteen.

Draft Beer Prima Facie Evidence

Of the successful legislation, perhaps the most interesting is Chapter 932 (HB 244) (June 14). It increases the limit of *draft* beer one may possess without running into the presumption that it is possessed for sale from five gallons to fifteen and one-half gallons. The five-gallon limit still applies to other than draft beer, and also still applies even to draft beer in territory in which the sale of beer is unlawful. The purpose of the act, which amended G.S. 18-32, paragraph 4, is to exempt persons with one keg of beer from the embarrassment of satisfying enforcement officers that the beer is for personal use and not for sale.

State ABC Peace Officer Jurisdiction

Chapter 426 (HB 583) (May 15) makes many administrative changes affecting the State Board of Alcoholic Control and the granting of beer and wine licenses. Of general enforcement interest, it should be noted that the chapter amended G.S. 18-39.2 to grant statewide jurisdiction to the Board's special peace officers. In addition, the act amended G.S. 18-39.1 to specify that the Chairman of the State Board of Alcoholic Control may be commissioned as a special ABC peace officer.

Beer and Wine Licensing

As noted above, Chapter 426 makes many administrative changes in Chapter 18. These changes relate to beer and wine licensing. One of the major ones is to make a license applicant eligible if he has not been convicted of a felony or other crime involving moral turpitude within the past three years. In the past, the licensing provisions required that the applicant never have been convicted of such a crime. In addition, residence requirements are relaxed somewhat where the licensee is a corporation.

Various sections in Article 7 of Chapter 18 are amended to make the hours of sale for beer and wine uniform: 7:30 a.m. to 11:45 p.m., with consumption on the licensed premises prohibited after midnight.

G.S. 18-78.1 is amended to make the restrictions as to conduct on the licensed premises apply to holders of off-premises licenses and to sellers of fortified wine as well as to those selling beer and unfortified wine on the premises.

Article 12 is rewritten to make its provisions apply to wine as well as beer.

ABC Store Prices

Chapter 1119 (SB 414) (June 24) amends G.S. 18-39(c) and -45(1) to make it clear that local ABC stores must sell their alcoholic beverages at the price set by the State Board of Alcoholic Control.

Much more importantly, the amendment of G.S. 18-39(c) specifies that the tax levied by G.S. 18-85 is to be on the base retail price *before* addition of the tax to get the total retail price. This will amount to a net increase in profits for the local stores.

Organization of State Board

Chapter 916 (HB 840) (June 13) amends G.S. 18-38 and -39 to increase the term of the Chairman of the State Board of Alcoholic Control from three to six years, and to place the administrative and executive powers of the Board in the Chairman to be exercised under rules and regulations approved by the Board.

Beer and Wine Elections

Chapter 265 (HB 243) (eff. July 1) relates to local beer and wine elections. The petitions referred to in G.S. 18-124, -127, and -127.1 must now be signed by twenty-five percent of the voters instead of fifteen percent. Also, the county beer and wine election of G.S. 18-124 may, with separate ballot, be held on the same day as a county or municipal ABC store referendum.

Chapter 1092 (SB 659) (June 21) adds G.S. 18-127.2 to provide that, in counties which have rejected sale of beer and wine, municipalities with an average "seasonal" population of 1,000 or more for a period of six weeks of the year may hold municipal elections as to the sale of beer and wine. The act does not apply in the following counties: *Ashe, Avery, Bladen, Burke, Cherokee, Clay, Columbus, Dare, Davie, Macon, Northampton, Robeson, Rutherford, Scotland, Stanly, Union,* and *Watauga.*

Several local provisions as to beer and wine elections are treated below in the sections on local ABC elections.

Fortified Wine Warehousing

Chapter 460 (SB 300) (May 21) amends G.S. 18-99 and -109(1) to permit wholesale wine distributors to possess, transport, warehouse, and sell (as wholesalers) fortified wines in any county in North Carolina. The State Board of Alcoholic Control must approve and authorize the licensing of distributors, and sales must be to those complying with the licensing provisions of Chapter 18 of the General Statutes. The act makes a precautionary change in G.S. 18-81(t) to specify that the tax rebate specified there is to go only to counties and municipalities in which beer and (unfortified) wine may be licensed for sale *at retail.*

Ocean-Going Beer Tax Exemption

Chapter 992 (SB 553) (eff. July 1) amends G.S. 18-81(k) and adds G.S. 18-88.2 to exempt beer and other brewed and fermented beverages from taxes if sold and delivered for use on ocean-going vessels plying the high seas in interstate or foreign commerce in the commercial transport of freight or passengers.

Municipal ABC Elections

As usual, a number of local acts provided for municipal elections on the question of ABC stores. Special or unusual features not found in the average municipal-election act are noted in several instances.

Anson: Wadesboro. Chapter 750 (SB 591) (June 7). Provides for a four-year delay before there may be a subsequent election—regardless of outcome.

Burke: Morganton. Chapter 413 (SB 333) (May 10). If ABC stores carry, sale of beer and wine under license—for off-premises consumption only—becomes permissible.

Burke: Valdese. Chapter 642 (SB 458) (May 31).

Caldwell: Lenoir. Chapter 398 (HB 584) (May 8).

Caldwell: Granite Falls. Chapter 546 (HB 780) (May 23).

Franklin: Bunn. Chapter 395 (SB 210) (May 8). No ABC store may be located within 450 feet of a school or church.

Harnett: Lillington. Chapter 798 (SB 512) (June 11). Provides for slightly higher than customary percentage of profits (ten percent) to be spent on alcohol education programs. Authorizes local ABC board to pay, upon its prior agreement in each case, amount of charges against county resulting from commitment of inebriates under G.S. 35-2.

Madison: Hot Springs. Chapter 673 (HB 917) (June 4). Provides for election within sixty days after ratification of act on petition of twenty-five percent of voters or on motion of Board of Commissioners. The same percentage of voters is required as to subsequent petitions; no subsequent election is authorized until after three years have passed. The provisions of G.S. 18-45(o) relating to appointment of local ABC peace officers are not to apply, but five percent of the profits must go to the town for additional law enforcement.

Richmond: Hamlet. Chapter 982 (SB 533) (June 18).

Sampson: Roseboro. Chapter 48 (HB 7) (March 13).

Surry: Mount Airy. Chapter 285 (SB 188) (April 25).

Union: Monroe. Chapter 541 (HB 610) (May 23).

Yancey: Burnsville. Chapter 930 (SB 637) (June 14), as amended by Chapter 1240 (HB 1385) (June 26). Provides that town Board of Commissioners must *order* the election. The provisions of G.S. 18-45(o) relating to appointment of local ABC peace officers are not to apply.

Other Local Elections

Chapter 62 (SB 19) (March 19) required the City of Lumberton in *Robeson* County to submit the question of off-premises sale of beer and wine to the voters during the April 1963 primary election—provided that by April 1 there was filed with the governing body of the city a petition signed by fifteen percent of the registered voters at the last municipal election.

Chapter 50 (HB 128) (March 13), as amended by Chapter 778 (HB 1270) (June 7), directs a countywide ABC election in *Pender* County on receipt of the County Board of Elections of a petition signed by fifteen percent of the registered voters voting for Governor in the last election. If ABC stores carry in the election, the sale of wine and beer is made permissible in the county. In such event, the governing board of the county and of each municipality, as the case may be, shall issue licenses for *off-premises* sale of beer and wine (fortified and unfortified). Licenses for *on-premises* sales of beer and wine—in Grade "A" restaurants, hotels, and motels—shall be issued pursuant to Chapter 18 of the General Statutes.

Allocation of ABC Profits—Local Changes

Alamance: Burlington-Graham. Chapter 323 (HB 545) (May 1) raises the amount spent on law enforcement and on education as to the effects of alcohol from ten to fifteen percent.

Cumberland. Chapter 231 (HB 346) (April 16) increases the appropriation authorized from ABC profits for education as to the dangers of alcoholic beverages and other emotional disorders from $15,000 to $25,000.

Granville. Chapter 364 (HB 559) (May 6) sets out a percentage division of ABC profits as between the county and named municipalities within the county.

Guilford: Greensboro Charter Amendment. Chapter 769 (HB 1071) (June 7) provides for expenditure of between five and ten percent of profits for law enforcement. An additional discretionary five percent expenditure is authorized for education as to the effects of the use of alcohol and for the rehabilitation of alcoholics. Funds for education previously came out of the ten percent maximum amount allocated to law enforcement.

Onslow. Chapter 371 (HB 587) (May 6) amends a 1949 profits-allocation act to specify that it applies not only to stores then in operation but those located and operated at a later time.

Wayne-Goldsboro Alcoholic Rehabilitation Program

Chapter 807 (SB 612) (June 11) authorizes a joint Goldsboro-*Wayne* County alcoholic rehabilitation program, with emphasis on education as to the use of alcohol and rehabilitation of alcoholics. Nontax funds may be appropriated by the governing bodies, and they are authorized to cooperate with other agencies in this program—and receive donations.

Police and Police Jurisdiction

Company Police

As a part of the overhaul of utilities legislation, the old Article 10 of Chapter 60 of the General Statutes entitled "Railroad and Other Company Police" has been transferred to a new Chapter 74A of the General Statutes entitled "Com-

pany Police." It is to be expected that two other acts which purport to amend old Article 10 will be codified as amending the appropriate section of Chapter 74A. The transfer to the new chapter is effected by Chapter 1165 (SB 116) (eff. January 1, 1964). The act broadens coverage to include all public utilities plus construction and manufacturing companies as previously listed.

Chapter 1254 (HB 1378) (June 26) adds auction companies to the list of agencies or companies which may apply to the Governor to have designated persons commissioned as company police.

Chapter 988 (SB 450) (June 19) makes a drastic expansion of the categories in which the Governor may designate company police. Now covered are educational institutions, whether State or private; any other State institution; and incorporated security patrols or corporations engaged in providing security or protective services for persons and property.

At the local level, Chapter 920 (HB 1182) (June 13) authorizes the Governor, upon the recommendation of the resident manager of Government Services, Inc., to appoint special security officers for Fontana Village in *Graham* County.

Auxiliary Police

There is no statewide law authorizing municipalities to appoint auxiliary police officers. It is always possible, of course, to appoint and swear in unpaid volunteers as regular officers—and this is probably the legal basis upon which many auxiliary police groups in the state are founded. There are drawbacks to this approach, however. On the basis of old cases involving citizens deputized in emergencies, it seems clear that unpaid police officers who are injured in the line of duty are entitled to Workmen's Compensation. But the statutes are not specific as to what rate of compensation applies. Also, even though G.S. 160-20 provides that the town board may regulate the policemen appointed, it has not been settled whether a town can take away the power of arrest once an officer has been sworn in. Because of this, a number of cities have recently been adding provisions in their charter as to the appointment of auxiliary policemen and firemen. Even though the statutes do not say so straight out, it is usually thought that a person with an auxiliary appointment would not have the power of arrest unless called to duty.

This session, Chapter 332 (SB 255) (May 1) authorized Winston-Salem in *Forsyth* County to appoint auxiliary policemen and firemen. The act sets the applicable base on which Workmen's Compensation is to be granted.

Chapter 919 (HB 1156) (June 13) authorizes the Sheriff of *Rutherford* County to appoint not more than forty special deputies, but these deputies are entitled neither to pay nor Workmen's Compensation benefits. If the sheriff secures the express written approval of the Board of County Commissioners, though, the special deputies appointed will be paid and be entitled to Workmen's Compensation.

Chapter 938 (HB 1058) (eff. June 1) revised the charter of Rocky Mount, which lies in *Edgecombe* and *Nash* counties. The charter contains auxiliary policemen and firemen provisions.

Local Police Jurisdiction

As usual, a great many local acts made changes in police jurisdiction. The acts included the following: Chapter 304 (HB 502) (eff. May 1) preventing township constables in *Avery* County from exercising powers outside the township in which he was elected (except that he may transport prisoners in the entire county); Chapter 588 (SB 429) (May 28) granting Southport police officers jurisdiction in *Brunswick* County one mile outside city; Chapter 760 (HB 985) (June 7) extending police jurisdiction one mile outside Havelock in *Craven* County and to all town-owned and town-leased property, except as to speeding violations on U.S. Highway 70 and N.C. Highway 101; Chapter 876 (HB 1204) (June 12) extending police jurisdiction one and one-half miles outside Wallace in *Duplin County* and to town airport property, except that territory in Pender County and the Town of Teacheys is excluded; Chapter 45 (HB 141) (March 12) extending police jurisdiction two miles outside of Harrellsville in *Hertford* County; Chapter 233 (HB 355) (April 16) extending police jurisdiction one mile outside Spruce Pine in *Mitchell* County; Chapter 729 (HB 987) (June 6) extending police jurisdiction of Spray in *Rockingham* County for one mile, except that territory within the corporate limits of any other municipality is excluded; and Chapter 197 (HB 339) (April 11) extending police jurisdiction of Garner in *Wake* County for three miles, except that territory within the corporate limits of any other municipality is excluded.

In addition to the above separate acts, several revised charters contained similar provisions: Chapter 938 (HB 1058) (eff. June 1) extending police jurisdiction one mile beyond the limits of Rocky Mount in *Edgecombe* and *Nash* counties, to city-owned property, and, when process is being served, to the whole of the two counties in question; Chapter 163 (HB 326) (April 5) extending police jurisdiction one mile beyond Washington in *Beaufort* County and to city-owned property; Chapter 1206 (HB 1080) (June 25) extending police jurisdiction two miles outside Rockingham in *Richmond* County and to all city-owned property; Chapter 635 (HB 879) (May 30) extending police jurisdiction of Madison in *Rockingham* County for one mile beyond the town limits, and to town-owned property; Chapter 609 (HB 759) (May 29) extending police jurisdiction one mile outside Ahoskie in *Hertford* County; Chapter 690 (SB 464) (June 5) extending police jurisdiction one mile outside Bunn in *Franklin* County; and Chapter 971 (HB 1245) (eff. July 1) which grants officers of Oxford the power of hot pursuit anywhere within *Granville* County for crimes committed in the officers' presence in the city.

One somewhat different act, Chapter 773 (HB 1137) (June 7), authorizes the governing board of the Town of Broadway in *Lee* County to enter into a contract with the county commissioners for a law enforcement officer for the town.

Police Officer Residence

Another group of bills similar to ones seen in past sessions purported to change the residence requirements for chiefs of police and permit them to live outside the corporate limits of their municipalities. Though these acts are of doubtful constitutionality, they continue to be passed. (Unless otherwise indicated, an act applies only to the chief of police.) Chapter 18 (HB 26) (March 7), Elon College, *Alamance* County; Chapter 270 (HB 429) (April 23), Aulander, *Bertie* County; Chapter 347 (HB 590) (May 3), Snow Hill, *Greene* County [chief and other police officers of the town]; Chapter 864 (HB 1103) (June 12), Bakersville, *Mitchell* County [all members of police department]; Chapter 69 (HB 188) (March 19), Spring Hope, *Nash* County; Chapter 419 (SB 314) (May 15), any city or town in *Polk* County [chief of police or any policeman]; and Chapter 166 (SB 193) (April 9), Hamlet, *Richmond* County. One act that differed slightly from the others was Chapter 467 (SB 466) (May 21) which authorized the Town Council of Louisburg in *Franklin* County to allow members of the town police force to reside up to one mile outside the town limits, except that the policeman assigned to Louisburg College may reside outside the one-mile limit.

In somewhat the same vein, Chapter 776 (HB 1174) (June 7), providing for an election on the question of incorporating the Town of Ranlo in *Gaston* County, specifies that residence within the corporate limits by town employees

(if the town is created) shall not be necessary unless so ordered by the Board of Commissioners.

Other Local Legislation

Chapter 304 (HB 502) (eff. May 1) restricts constables in *Avery* County to serving within the townships in which they were eelcted, except that the act provides that it shall not prevent transportation of prisoners anywhere within the county.

Chapter 1074 (HB 1312) (June 20) authorizes the constable of Asheville Township in *Buncombe* County to appoint one or more deputy constables to serve at his pleasure and under his direction. The deputy constables are to have all the powers and be subject to all the provisions relating to constables in the General Statutes.

Chapter 1213 (SB 679) (June 26) allows *Harnett* County to recover part of the money it spends on law enforcement. When special police protection is needed by corporations, unincorporated villages, or educational institutions through the appointment of special deputy sheriffs by the sheriff, the Board of County Commissioners is authorized to receive contributions to defray in whole or in part the cost of compensation of any such deputy sheriff.

Regulation of Business

Debt Adjusting

Chapter 394 (SB 109) (May 8) adds a new article 56 to Chapter 14 of the General Statutes (G.S. 14-423 through -426) to prohibit the business of debt adjusting. A debt adjuster is one who helps another to organize his business affairs and pay his bills. The act is aimed at persons and associations doing this as a primary *business*.

Sale of Checks Act

Chapter 1251 (HB 1369) (eff. July 31) adds G.S. 53-192 through -208 requiring anyone other than a bank, telegraph company, or savings and loan association issuing or selling checks, money orders, etc., for a fee to obtain a $500 annual license from the Commissioner of Banks. Violation of the provisions of the act is a misdemeanor punishable in the discretion of the court.

Private Detectives

Chapter 1154 (HB 1093) (June 24) amends the law relating to the licensing of private detectives in several respects. G.S. 66-49.2(2), paragraph f, excluded persons engaged in the business of obtaining and furnishing information as to financial ratings from detective licensing. The paragraph is now amended to exempt only those checking credit ratings. The license applicant under G.S. 66-49.3(b)(5) must give as one of his three references either a judge or solicitor of a court of record or a municipal police chief or sheriff; such an official now must be an officer in the county of the applicant's last known county of residence.

G.S. 66-49.4 has been amended to authorize the Director of the State Bureau of Investigation to issue one-year trainee permits. G.S. 66-49(c) has been added to specify procedure upon revocation of license.

Municipal Regulation of Peddlers

Chapter 789 (SB 325) (June 11) adds G.S. 160-200, paragraph 42, authorizing municipalities to prohibit or regulate itinerant merchants, peddlers, hawkers, and solicitors. Regulation authorized by the statute may include an investigation and licensing procedure, restriction as to time and area of activities, proof of financial stability, and postng of bond adequate to protect the public from fraud.

Two identical bills which failed in the course of their passage (SB 448 and HB 930) would have authorized municipalities to classify, regulate, or prohibit peddlers. The caption referred to those peddling from vehicles on public streets, but the body contained no such narrowing of scope.

Failure to Secure Payment of Workmen's Compensation

Chapter 499 (HB 447) (eff. July 1) added G.S. 97-94(c) to make it a misdemeanor punishable in the discretion of the court for an employer to neglect or refuse to secure payment of Workmen's Compensation when required by law to do so. The criminal penalty is in addition to the fine which the section imposes for assessment by the Industrial Commission.

Local Ambulance Regulation

Funeral homes—which in a number of communities provide the only available ambulance service—often find providing ambulance service an unprofitable operation. Chapter 543 (HB 667) (May 23) authorizes the county commissioners in *Cabarrus* and *Stanly* to pay up to $400 per month in defraying a portion of the costs of ambulance service. Chapter 593 (HB 750) (May 28) authorizes the Board of Commissioners of *Union* County to enter into contracts with individuals, firms, or agencies to insure adequate ambulance protection in the county. The board may appropriate as necessary, and may levy a special tax on real property not to exceed five cents per one hundred dollars' valuation. HB 1214 (Alamance County) was reported unfavorably. It would have licensed ambulance service in addition to authorizing the county to defray a portion of the cost of providing ambulance service to indigent persons.

Another local act of interest, Chapter 825 (HB 1095) (June 11), prohibits public or private ambulances from operating with sirens or from operating in excess of the speed limit in *New Hanover* County.

Other Local Acts

Chapter 1191 (HB 1299) (June 25) authorizes *Forsyth* County to license junk yards where motor vehicles are dismantled and stored. Standards which a junk yard must meet before being eligible for a license are set out in the act.

Chapter 903 (SB 558) (June 13) grants the City of Charlotte in *Mecklenburg* County the power to regulate by ordinance public solicitations for any charitable, benevolent, health, educational, religious, patriotic, or other similar cause. The act does not apply, though, to solicitations within the membership of schools, churches, or organizations. The ordinance may provide for a separate board to administer the ordinance; regulation of time, place, and manner of soliciting; registration and permits (with reasonable fees to defray the costs); and other requirements as may reasonably protect the public from fraudulent solicitations.

Chapter 883 (HB 1220) (June 12) amends a 1947 local act prohibiting carnivals from operating longer than one day at a time in Orange and Transylvania counties. The amendment—as to *Orange* County only—permits operation for a longer period if the carnival is engaged to operate in conjunction with a legitimate agricultural or industrial fair sponsored by a civic or charitable organization within Orange County.

G.S. 66-76 through -84 providing for the regulation and licensing of closing-out sales has been amended to add two additional counties under the provisions: *Davidson* (Chapter 205 [HB 410] [April 11]) and *Sampson* (Chapter 738 [HB 1069] [June 6]).

Delegation of Power to Make Ordinances

County Police Power in Fifty-Two Counties

Chapter 1060 (HB 606) (June 20) adds G.S. 153-9, paragraph 55, applicable to fifty-two counties. It authorizes county commissioners in areas of the county outside the jurisdiction of incorporated municipalities:

> to prevent and abate nuisances, whether on public or private property; to supervise, regulate, or suppress or prohibit in the interest of public morals, public recreations, amusements, and entertainments; to define, prohibit, abate, or suppress all things detrimental to the health,

morals, comfort, safety, convenience and welfare of the people including but not limited to the regulation and prohibition of the sale of goods, wares and merchandise on Sunday; and to make and enforce any other types of local police, sanitary, and other regulations . . . .

It is not clear, though, how counties should enforce their regulations. There is still no general legislation comparable to G.S. 14-4 setting out any criminal penalties for violations of county ordinances, and the new act specifies no penalty.

The counties affected by the act are: *Beaufort*, *Bertie*, *Bladen*, *Brunswick*, *Buncombe*, *Burke*, *Camden*, *Caswell*, *Chowan*, *Cleveland*, *Columbus*, *Cumberland*, *Currituck*, *Davidson*, *Davie*, *Durham*, *Edgecombe*, *Forsyth*, *Franklin*, *Gates*, *Granville*, *Greene*, *Guilford*, *Haywood*, *Henderson*, *Hertford*, *Hyde*, *Iredell*, *Lincoln*, *Martin*, *McDowell*, *Mecklenburg*, *Mitchell*, *Montgomery*, *Moore*, *Nash*, *New Hanover*, *Northampton*, *Orange*, *Perquimans*, *Person*, *Robeson*, *Rockingham*, *Sampson*, *Stanly*, *Tyrrell*, *Union*, *Vance*, *Wake*, *Washington*, *Wayne*, and *Yadkin*.

Technical Codes and Standard Ordinances

Chapter 790 (SB 326) (June 11) adds G.S. 160-200, paragraph 41, authorizing cities to adopt by reference in their ordinances any published technical code or any standards or regulations promulgated by any public agency. Any municipality adopting any such code must maintain an official copy conveniently accessible for public inspection.

Local Authority to Make Ordinances

Chapter 927 (SB 605) (June 14) authorizes the governing bodies of the City of Goldsboro and the County of *Wayne* to appoint a Goldsboro-Wayne Airport Authority. The authority is given the power to adopt regulations, and the act punishes violations of the regulations with a fine not to exceed fifty dollars or imprisonment not to exceed thirty days.

Chapter 382 (SB 321) (May 7) grants the unincorporated village of Pinehurst in *Moore* County some of the powers granted local authorities in Chapter 20 of the General Statutes. It provides that any constable appointed for Pinehurst has the power to affect right-of-way at intersections by erecting stop signs, stop lights, and yield-right-of-way signs. Violation of any sign or signal is a misdemeanor punishable by a fine up to ten dollars or by imprisonment up to ten days.

Local Modifications and Other Local Criminal Acts

Worthless Checks

Three more counties were added to the list of those in which the insufficient-funds worthless-check offense under G.S. 14-107 is within the jurisdiction of a justice of the peace (up to fifty dollars' fine or up to thirty days' imprisonment) if the amount due on the check is not over fifty dollars. The new counties are: *McDowell* (Chapter 547 [HB 863] [May 23]), *Person* (Chapter 870 [HB 1192] [June 12]), and *Wilson* (Chapter 73 [SB 129] [March 21]).

Chapter 199 (HB 352) (April 11) modifies the standard provisions somewhat for *Craven* County. The worthless check offense is punishable by not more than fifty dollars or thirty days if the amount due on the check is not over twenty-five dollars.

Highway Profanity

Two counties have been deleted from the list of those exempt from the highway profanity offense contained in G.S. 14-197. It is now unlawful to use indecent or profane language in a loud and boisterous manner on any public road or highway in the hearing of two or more persons in *Martin* (Chapter 123 [HB 303] [March 29] and *Pasquotank* (Chapter 39 [SB 60] [March 12]) counties.

Pistol Permits and Confiscation of Weapons

Chapter 537 (SB 431) (May 23) switched the duties of issuing pistol permits and confiscating concealed weapons from the clerk of superior court to the sheriff. As it stands now, the sheriff has the duty in sixty counties; the clerk retains the duty in forty counties. The sections of the General Statutes involved are G.S. 2-42, paragraph 35, 14-269(b), and 14-402.

Public Drunkenness

Six new counties were added under G.S. 14-335 to bring the total number of counties in which public drunkenness is punished by local act to eighty-nine, (plus King High School District in Stokes County).

Paragraph 1 of G.S. 14-335 setting out a straight fifty dollar-thirty day punishment now contains the following additional counties: *Columbus* (Chapter 341 [SB 304] [May 2]), *Jones* (Chapter 410 [HB 724] [May 9]), *Martin* (Chapter 724 [HB 958] [June 6]), and *Transylvania* (Chapter 331 [SB 248] [May 1]).

Paragraph 7, relating to Transylvania County, has been repealed by Chapter 331 placing the county in paragraph 1.

Paragraph 10 setting out varying punishments for first, second, and subsequent offenses now contains the following additional counties: *Iredell* (Chapter 626 [HB 965] [May 29]) and *Pasquotank* (Chapter 38 [SB 59] [March 12]).

Paragraph 20 has been added by Chapter 282 (HB 499) (April 23) to punish public drunkenness in *Chowan* County as follows: first offense, maximum of fifty dollars' fine or imprisonment for thirty days; second offense within twelve months, maximum of one hundred dollars' fine or imprisonment for sixty days; third or subsequent conviction within twelve months, misdemeanor punishable in the discretion of the court.

For a listing of all the counties and which, if any, of the paragraphs of G.S. 14-335 apply, see Table IV.

Sale of Bay Rum

Chapter 260 (SB 272) (April 23) adds *Northampton* to the list of counties exempt from the ban on the sale of bay rum contained in G.S. 14-346.1.

Pyrotechnics

Chapter 745 (HB 1140) (June 6) modifies G.S. 14-410 to require persons in *Durham* County planning to give a fireworks demonstration to get written permission from the appropriate governing body of the municipality rather than from the county commissioners if the exhibition is to be within a municipalty.

Chapter 629 (SB 428) (May 30) modifies G.S. 14-414 to make the proviso permitting the sale of cap pistol caps not larger than .25 grain applicable to *Iredell* County.

Durham Rewards

Chapter 107 (HB 278) (March 28; effective January 1, 1963) authorizes the governing body of the City of Durham in *Durham* County to offer to pay and to pay rewards from any available public funds in certain instances. Rewards may be paid to persons furnishing information leading to the arrest and conviction of any person turning in a false fire alarm, wilfully injuring or damaging city property, or committing any criminal act within the city.

Law Enforcement Officer Abuse in Forsyth County

In a local act that apparently goes somewhat beyond the provisions of G.S. 14-223 (resisting, delaying, or obstructing an officer in discharge of his duties), Chapter 717 (SB 63) (eff. July 1) makes it unlawful wilfully to curse or abuse or in any other way interfere with any law enforcement officer while in the discharge of his duties in *Forsyth* County. The act does not apply to federal officers. Punishment—up to fifty dollars' fine, thirty days' imprisonment, or both—is above the jurisdiction of a justice of the peace. To the extent that this act does go beyond the ordinary resisting arrest-obstructing justice statute and punish mere verbal abuse of the officer, it may be questioned as to its constitutionality.

TABLE IV

Table of Counties Affected Under G.S. 14-335:

[Numbers following the name of a county indicate which paragraph of G.S. 14-335 lists the county in question; where there are two numbers, this means the county is listed under more than one paragraph. The word "None" indicates there is no public drunkenness law codified under G.S. 14-335 for the county. Where a paragraph affects only a portion of the county, this is set out.]

Alamance—1
Alexander—None
Alleghany—None
Anson—1, 10
Ashe—1
Avery—15
Beaufort—18
(1, at Pungo)
Bertie—None
Bladen—None
Brunswick—1
Buncombe—4, -19
Burke—1
Cabarrus—11
(6, Kannapolis, etc.)
Caldwell—10
Camden—1
Carteret—12
Caswell—1
Catawba—10
Chatham—10
Cherokee—1, 2
Chowan—20
Clay—1, 2
Cleveland—1, 10
Columbus—1
Craven—12
Cumberland—1, 10
Currituck—14
Dare—1
Davidson—10
Davie—1
Duplin—10
Durham—12
Edgecombe—12
Forsyth—11
Franklin—1
Gaston—1
Gates—1
Graham—1
Granville—1
Greene—1
Guilford—11
Halifax—1
Harnett—1
Haywood—1
Henderson—1
Hertford—1
Hoke—1
Hyde—1
Iredell—10
Jackson—2, 13*
Johnston—1, 12
Jones—1
Lee—10
Lenoir—12
Lincoln—12
Macon—13a
Madison—1
Martin—1
McDowell—1
Mecklenburg—10
Mitchell—1
Montgomery—10
Moore—1
Nash—10
New Hanover—1
Northampton—1, 11
Onslow—None
Orange—10
Pamlico—1
Pasquotank—10
Pender—10
Perquimans—1
Person—1
Pitt—1
Polk—None
Randolph—10
Richmond—1, 10
Robeson—None
Rockingham—17
Rowan—10
Rutherford—1
Sampson—None
Scotland—16
Stanly—1
Stokes—None
(8, for King High School Dist.)
Surry—11
Swain—9
Transylvania—1
Tyrrell—None
Union—1, 10
Vance—1
Wake—5, 10
Warren—1
Washington—1
Watauga—None
Wayne—1
Wilkes—1, 11
Wilson—10
Yadkin—1
Yancey—3

* In the event the county commissioners abolish the Recorder's Court of Jackson County, paragraph 13 will be of no effect.

Christian Science Criminal Procedure Changes

Chapter 200 (HB 365) (April 11) amends G.S. 8-53.1 to add accredited Christian Science practitioners to the list of persons covered in that section. Thus, no clergyman, ordained minister, priest, rabbi, or accredited Christian Science practitioner of an established church or religious organization shall be required to testify any information which may have been confidentially communicated to him in his professional capacity under such circumstances that to disclose the information would violate a sacred or moral trust. The testimony is kept out on the objection of the communicant, but the presiding judge may compel disclosure if in his opinion it is necessary to a proper administration of justice.

Chapter 201 (HB 366) (April 11) adds accredited Christian Science practitioners and readers to the list of persons exempt from jury service under G.S. 9-19.

by Allan W. Markham
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EDUCATION

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

"Education Beyond the High School"

Although the 1961 General Assembly may be associated frequently with "quality education" legislation, a very strong argument can be made that the 1963 General Assembly considered and enacted more legislation having a greater effect on expanded and improved education in North Carolina than any other legislature in recent eyars. Of paramount significance is Ch. 448 (SB 72), which is based upon recommendations made by the Governor's Commission on Education Beyond the High School following a year's study of the state's educational resources and needs. This act alone has been almost unanimously hailed by educational and political leaders as one of the most far-reaching developments of this century in North Carolina education. The heart of the act is the creation of a legal framework for the establishment and operation of a state system of comprehensive community colleges. The educational institutions of this system will offer instruction ranging from that required for the training of technicians and technical specialist for industry to the academic curriculum of the first two years of a liberal arts college. Briefly stated, the effect of this part of the act is to bring together the vital but relatively limited offerings of the industrial education centers on the one hand and the purely academic curricula of the public junior colleges on the other, while broadening the total educational program to fill in the gaps between. The system will consist of three grades or levels of institutions: industrial education centers, technical institutes, and community colleges, so designated according to the potential scope of the educational program offered. The type of institution established in a particular area will be governed by the educational needs and genuine local interest in the area; the act by its terms does not establish any institutions but leaves to local needs and initiative and to the State Board of Education control of the orderly establishment and growth of individual institutions. The act does provide, however, that the existing industrial education centers, heretofore operated as part of the public school system, and several public community colleges shall be transferred to the system as soon as practicable. These centers and colleges will form the nucleus of the new system.

Community Colleges, Technical Institutes and Industrial Education Centers

The provisions of Ch. 448 which create the community college system are codified in a new chapter of the General Statutes, Chapter 115A. This chapter is divided into five articles dealing respectively with state administration of the system, local administration of the institutions, financial support, budgeting and fiscal control, and special provisions. The first article, besides a statement of the general purpose of the chapter (outlined above), sets forth the guidelines of state administration. The State Board of Education is directed to establish a department to provide state-level administration under the direction of the Board, which administration is intended primarily to create and maintain standards of quality and educational needs to govern the establishment and operation of individual institutions of the system. Recently, the State Board of Education appointed Dr. I. E. Ready, Director of the State Board's Department of Curriculum Study and Research as the director of the newly formed department. The State Board is also directed by Article 1 to appoint a seven-member advisory council to assist the Board in matters pertaining to curricula and personnel in the community college system. It is in this article that provision is made for the transferal of existing industrial education centers and community colleges to operation under the provisions of the act.

Article 2 of Chapter 115A provides for local administration of the individual colleges, technical institutes, and industrial education centers, providing for twelve-member boards of trustees for the first two named types of institutions and eight-member boards for the centers. The majority of the members of the boards (in the case of industrial education centers, all) will be appointed by local county commissioners and boards of education, will serve eight-year staggered terms, and will be vested with the local administrative and fiscal control of their respective institutions. This article also provides that the employees of the institutions shall be eligible for benefits under the State Teachers and State Employees Retirement System in much the same manner as public school employees.

Article 3 establishes the responsibility for financial support of the institutions of the system. While some of the provisions are of necessity rather detailed and complex, the general scheme of support provides that the state shall bear the cost of the overall instructional and administrative programs: teachers' and administrators' salaries, instructional supplies, equipment, and furniture, and employer contributions to retirement and other employee benefits. In addition the state may, on an equal matching basis, provide up to $500,000 per institution for capital outlay, i.e., the acquisition, construction, and remodeling of buildings which the State Board of Education determines are necessary for administrative or instructional purposes. Local financial support, in the form of non-tax revenues, special tax levies, and bonds, to be derived in the county or counties operating an institution, will provide funds for capital outlay, maintenance of plant, operation of plant (janitorial, utility expenses, etc.), and fixed charges such as land, building, and equipment rental.

The trustees of each institution may also use local funds to supplement those budgetary items financed from state funds (i.e., teacher salaries) much in the same manner as is done in the public schools. The article also sets out detailed provisions for the holding of local elections on the question of establishing and increasing local financial support (including bonds), which elections, beside meeting basic legal requirements, serve as indications of the interest and willingness of the local population to establish and maintain an institution. The level of local interest was considered an essential element in the report of the Governor's Commission. Local interest can be demonstrated relative to the question of upgrading an existing institution from industrial education center status to technical institute status or from the latter to community college status by a vote on the question of increasing the rate of local support in order to make the conversion. The result is that no establishment or change in the status of an institution which requires substantially different financial obligations can be effected without an expression by the local voters of a willingness to bear the expense.

The budgeting, accounting and fiscal management procedures of Article 4 are in many respects similar to those of the state public school system. The trustees of each institution prepare and submit budgets annually to the local tax levying authority, the county commissioners of the county or counties operating the institution. After final action by that body the budgets are submitted by the trustees to the State Board of Education for final approval, particularly as to those items which involve state funds or which directly affect those standards of the institutions which are regulated by the State Board.

The provisions of Article 5 are intended to cover specific situations, particularly with respect to financial matters, as a result of previously established institutions being converted administratively to operation under the terms of this chapter.

Senior Colleges and Universities

The community college provisions in Chapter 115A of the General Statutes, while constituting the major portion of Ch. 448 (SB 72) from the standpoint of length and perhaps local impact, is by no means the only significant aspect of this comprehensive act. Some very important legislation affecting higher education, the senior colleges and universities, is also included. Of the entire act the provisions which probably attracted the most publicity, and controversy, were those which upgraded, for the first time since consolidation in the early 30's, the Raleigh (North Carolina State) and Greensboro (Woman's College) branches of the University of North Carolina from colleges within the University framework to campuses of the University with equal educational status with the University in Chapel Hill. Inherent in this new concept is the changing of the names of the campuses to reflect the change in status. The proposal originally advanced was that all three campuses would be designated the University of North Carolina to be distinguished only by the addition of the individual place name of the respective campuses, e.g., the University of North Carolina at Greensboro, at Chapel Hill, and at Raleigh. It was this proposal, particularly with respect to changing the name of State College, that precipitated the only real controversy regarding the entire bill in the General Assembly. As a result of the compromise reached by that body the Chapel Hill and Greensboro campuses are renamed according to the original proposal while the Raleigh campus is designated "North Carolina State of the University of North Carolina at Raleigh." The act also provides that the University as a whole shall be the only public educational institution in the state authorized to award the doctorate.

Three public two-year colleges, located in populous areas which did not have convenient access to public senior colleges were elevated to four-year status by the act. These were Wilmington, Charlotte, and Asheville-Biltmore Colleges. This action, too, was in response to recommendations of the Governor's Commission on Education Beyond the High School that public post-high school educational facilities be made more accessible to the people of the state through decentralization. Commuting or non-residence colleges located in or near population centers, it is felt, will not only enable more people to avail themselves of higher education but will prove in the long run to cost less to the state and the student than will more and larger, centralized residential institutions. These three colleges and the other public senior colleges of the state now have the same legal status and for the most part substantially similar educational purposes.

Appropriations

Two appropriations for state support of the community college system were passed by the 1963 General Assembly. One million dollars for operating expenses was appropriated in the state general appropriation bill (Ch. 683) for the 1963-65 biennium. This is in addition to funds appropriated for previously established industrial education centers and community colleges which will be transferred to the new system during the biennium. Another two-and-a-half million dollars is appropriated by Ch. 1044 (SB 541) from the General Fund surplus, to be used by the State Board of Education to purchase equipment and to provide state matching funds for capital outlay for new community colleges. This latter appropriation is contingent upon the availability of surplus funds in the General Fund as of June 30, 1964, which may be made available to the State Board in the discretion of the Director of the Budget and the Advisory Budget Commission. This latter act was passed in lieu of at least nine separate appropriation bills seeking state matching funds for eight prospective community colleges. The counties represented by these bills were Burke, Caldwell, Columbus, Davidson, Moore, Richmond, Rockingham, Rutherford, and Surry.

Public Schools

Changes in the public school laws, codified in Chapter 115 of the General Statutes, are perhaps overshadowed somewhat by the education-beyond-high-school bill (Ch. 448), although the latter made relatively few substantive changes in that chapter. There are, however, several public acts amending parts of Chapter 115 and some trends evident from the usual avalanche of local legislation which merit mention.

Compulsory School Attendance

Chapter 1223 (HB 74) was amended several times in the House and had a close brush with death in the Senate but was finally passed in the closing days of the session. This act is intended to strengthen and implement the enforcement of the state's compulsory attendance laws through the greater use of attendance counselors. As originally written, the bill would have required every school administrative unit to employ such counselors, the number, salaries, qualifications, and duties to be prescribed by the State Board of Education. As finally enacted, these provisions were modified to make the employing of counselors permissive and to provide that all attendance counselors (or officers) employed at the time of enactment be deemed qualified under the terms of the act, subject to the approval of the employing school board. Amendments further provided that local school boards might continue to employ counselors not qualified under State Board standards until qualified ones were available. The act deletes from the attendance laws the authority to the State Board and local boards to temporarily shorten the length of the school day or suspend the operation of schools in certain areas to meet the needs of agriculture or any other local conditions. Left unchanged, however, in the final version of the bill is the provision authorizing the excusing of non-attendance on an individual pupil basis due to immediate needs of farm or home. Deletion of this provision also was originally proposed.

Diversified Industrial Education

Chapter 841 (SB 328) directs the State Board of Education to develop a diversified and comprehensive instructional program for the public schools in "the basic work skills, applied economics, and industrial education." The program, to be introduced initially on an experimental basis, may include in-service training of teachers in co-operation with institutions of higher education. An additional one-and-a-half million dollars is appropriated to the State Board for the 1963-1965 biennium to aid in the establishment of this program.

School Transportation

The passage of Ch. 990 (SB 534) may mark the beginning of the end of a tradition in the allocation of state funds for school transportation which many lay and education leaders have felt has been inequitable to pupils residing within and attending schools within the boundaries of the same municipality. This act, to become effective July 1, 1965, specifically provides that no distinction shall be made, either in allocation of state and local funds or in the routing of school buses, between those pupils who live within the same municipality as the school of attendance and those who do not. Local city boards of education are authorized (but not required) to contract with local franchised public carriers for the transportation of pupils to and from school. It should be emphasized that this bill does not require any administrative unit to provide transportation. The full effect of this act will not be realized until and unless additional state funds are appropriated for school transportation by the 1965 General Assembly.

Chapter 917 (HB 841) amends GS 115-190.1 to clarify an interpretation problem which has proved to be vexing in some areas of the state. This section, as amended, now provides that when an area being served by school transportation is annexed to a municipality after February 6, 1957, such transportation shall not be discontinued as to pupils residing within the annexed area *or to school located within the area* solely due to the annexation. The result is that if prior to the above date pupils living inside a municipality were being transported to a school located outside, subsequent annexation of the school shall not result in termination of school transportation for the pupils receiving it prior to annexation. This act, as amended, will automatically be repealed under the provisions of Ch. 990 when the latter becomes effective in 1965.

Pupils, Teachers, and Employees

What may well prove to be one of the most important changes in the public school laws made during the recent session is Ch. 688 (SB 415). In this act the State Board of Education is authorized to consider other pertinent data in addition to the preceding year's average daily attendance figures in allotting teachers to individual administrative units. At a recent meeting of the State Board, following passage of this bill, a new allotment formula was approved based upon average daily attendance, population changes, number of pupils graduated during the immediately preceding year, and expected first grade enrollment for the next year. This formula will provide some 2,300 additional teachers for the coming school year, with no unit losing teachers as a result of the new formula—at least for the first year.

Chapter 582 (SB 331) permits local boards of education and their respective employees to enter into contracts on a year-to-year basis to deduct part of the contracting employee's salary for the purchase of a nonforfeitable annuity for the benefit of the employee. The State Board of Education is directed to regulate such contracts and to provide contract forms. These agreements will have no effect on employees' salaries for the purpose of computing contributions to social security and retirement.

Mandatory regulation of fees, solicitations, and sales to and by students and school employees is provided by Ch. 425 (HB 456). Local boards of education are directed to establish regulations governing all collections of fees and charges from students and school personnel within their respective units and none may be made without board approval recorded in the minutes. Each board shall report the schedule of approved fees, etc., to the State Superintendent of Public Instruction. The act does not apply to the State Board of Education's textbook fees.

School Property

Chapter 253 (SB 9) authorizes local boards of education to permit school property, including lunchrooms and cafeterias, to be used for nonschool purposes if such use is deemed consistent with proper care of the property. The act also provides that school boards and their members shall not be liable for personal injury which may result from such use of the property. This legislation will permit the use of school facilities by civic groups and other organizations in small communities and in rural areas where no other adequate facilities are available.

State Superintendent of Public Instruction

Chapter 1178 (SB 666) increases the annual salaries of the State Superintendent and the other members of the Council of State to $18,000. Salary increases during the terms of office of Council members is now possible due to the approval last fall of a constitutional amendment. Previously, salaries could be changed only for future terms. The State Superintendent last received an increase in 1956.

School Bonds

No less than five bills were introduced during the 1963 Session providing state grants-in-aid for local school construction. Four were bond issue bills while the fifth would have appropriated money directly from the General Fund. The result of these proposals is Ch. 1078, the enacted version of Senate Bill 262. This act provides for the issuance, subject to approval by the state's voters, of a maximum of one hundred million dollars in state bonds for school construction. The proceeds from these bonds will be allocated among the administrative units of the state on the basis of 1961-62 average daily membership. The funds are to be used "for the construction, reconstruction, enlargement, improvement and renovation of public school facilities, and for the purchase of . . . equipment . . . essential to the efficient operation of the facilities." In addition, if the State Board of Education determines that funds allocated to an administrative unit are not needed for the above-stated purposes, the funds may be used to retire school bonds previously issued on behalf of the unit. Any allocated bond proceeds may be used to match other federal, state, or local funds which may be available for school plant construction or for purchase of essential equipment.

Allocation of funds to individual administrative units by the State Board of Education shall be made on the basis of plans for school expenditures submitted to and approved by the State Board, with priority being given to expenditures for basic facilities essential to an adequate school program. The State Board is to administer all funds received and disbursed under the act, and the funds are to be used only for the purposes specified in the act.

The State Board of Education is to receive $250,000 of the bond proceeds "for educational surveys and technical assistance necessary to the construction of improved school plant facilities" and for research and evaluation of school planning, design, and construction.

The election on the question of issuing the bonds, under the terms of the act, may be held in 1963 or 1964 at a date set by the Governor.

Selection of School Board Members

Two bills were introduced this session each of which

would have provided uniform, or at least more nearly uniform, methods of selecting members of local boards of education, and which would have regulated size of the boards and terms of members. Neither of these proposals passed, but at least thirty-one local bills were introduced, affecting twenty-four counties, providing for popular election of school board members. Of these, sixteen were passed, fifteen directly establishing procedures for popular election and one providing for a local referendum on the question. Several of the bills introduced further provided for elections on a nonpartisan basis, but most if not all of these wound up in the group which failed to gain General Assembly approval.

School Unit Merger

An increasing local interest in school unit merger was another trend evident from local legislation affecting public schools. Four bills were passed which established merger procedures between city and county administrative units: Ch. 375, HB 632 and Ch. 1037, HB 1360 (Vance County and Henderson); Ch. 700, HB 813 (Pasquotank County and Elizabeth City); Ch. 707, HB 1017 (Scotland County and Laurinburg). This brings to about ten the number of local enabling acts for school unit merger passed by the General Assembly in recent years, although only three of these have been utilized to effect mergers. At least one local bill, providing for a referendum on the question of merger of city and county units, failed to pass.

Higher Education

Teachers' Colleges

One of the more significant developments or trends evident from new legislation in the area of higher education (excluding Ch. 448, already discussed) is the shift away from predominantly teaching training programs by several public senior colleges. Three acts were passed this session dropping the word "Teachers" from the official names of the public colleges in Elizabeth City (Ch. 422, HB 295), Fayetteville (Ch. 507, HB 572), and Winston-Salem (Ch. 421, HB 44). These have been preceded by similar changes in other college names in recent years, and these changes have been or undoubtedly will be accompanied by correspondingly broadened curricula at these institutions. At present Appalachian State Teachers College is the only public college in the state whose name indicates that its primary purpose is the education and training of teachers.

School for the Performing Arts

Chapter 1116 (SB 396) creates a state school for the professional training of students having exceptional talent in the performing arts. The school is intended to serve North Carolina and other states, particularly the southern states. The school is to be governed by a twelve-member board of trustees to be appointed by the Governor. The trustees are to select the site for the school (subject to the Governor's approval), to establish and staff the school, prescribe curricula and tuition, prepare budgets, etc. They are also to cooperate with the Southern Regional Education Board and other regional and national organizations in an effort to have the school designated as the Southern Regional Center. In addition, the Governor shall appoint an advisory board of at least ten performers, playwrights, or composers of national or international distinction, who shall serve eight-year staggered terms.

The primary purpose of the school will be the professional training in music, drama, the dance, and allied performing arts, at both the high school and college levels. The emphasis will be on performance rather than academic study of the arts. The school may accept elementary grade students who display rare talent, but provision must be made for a suitable educational program for such students in cooperation with an elementary school. Tuition shall be free for North Carolina high school students accepted by the school.

The act also appropriates $75,000 for fiscal year 1963-64 and $250,000 for fiscal year 1964-65, contingent upon a firm commitment of a gift of matching amounts from other sources.

Scholarships for Veterans' Children

Chapter 384 (HB 392) liberalizes somewhat the eligibility requirements for and the number of scholarships available to children of North Carolina war veterans. The North Carolina Veterans Commission, which is designated by the act the agency to determine eligibility for scholarships, is permitted to waive, under the act, the requirement that the applicant be born in the state if it can be shown to the satisfaction of the Commission that (1) the applicant's mother was a native born North Carolina resident; (2) that the mother was a resident of the state at the time of marriage to the veteran; (3) that she was out of the state only temporarily at the time of the birth of the applicant; and (4) that the child was returned to the state within a reasonable time thereafter and has lived since in the state continuously.

The eligibility for Class II scholarships has been broadened by making eligible thereunder a child whose father was a veteran and prisoner of war for at least six months, was wounded in combat, and is(or was at time of death) suffering from at least a 20% service-connected disability. The number of available scholarships for Class II and Class III have been increased by the act to fifty for each class.

College Speakers

If any legislation in the area of education attracted more comment and controversy than the changing of N. C. State's name it was without doubt Chapter 1207 (HB 1395), passed quickly under rule suspensions in both houses the day before adjournment *sine die*. The first section of the act provides:

> No college or university, which receives any state funds in support thereof, shall permit any person to use the facilities of such college or university for speaking purposes, who:
>
> (A) Is a known member of the Communist Party;
>
> (B) Is known to advocate the overthrow of the constitution of the United States or the state of North Carolina;
>
> (C) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to communist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state.

By the terms of the act its enforcement is left to the trustees or other governing authority, or their designated administrative officials, of the respective institutions. There are no punitive provisions included in the act. Whether this law will hamper the mission of higher education, whether it will prove to be susceptible to enforcement, and whether all parts of the law are constitutional will remain to be seen.

Stadium Bonds

A football stadium for N. C. State, an idea often discussed but toward which very little tangible progress has been made since the North Carolina Stadium Authority was created in the 1959 General Assembly, moved a step closer to reality this year with the passage of Chapter 686 (SB 322). This act, which repeals the law creating the Stadium Authority (SL 1959, Ch. 917), authorizes the Board of Trustees of the University of North Carolina to finance a stadium not to exceed 42,000 seating capacity for the Raleigh campus through the issuance of revenue bonds. The bonds, which shall not pledge the credit of the state, shall be negotiable, exempt from state and local taxation, and bear a maximum of 6% for up to forty years. Student athletic charges and other revenues are to be used to repay principal and interest. The act gives the University trustees broad powers in locating, constructing, and operating the stadium but presumably no control over who shall win therein.

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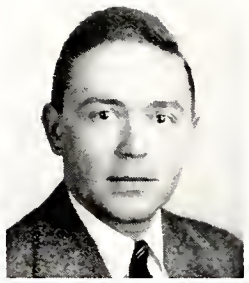

ELECTION LAWS

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

The State Board of Elections has responsibility to make recommendarions to the Governor and General Assembly with regard to the conduct and administration of primaries and general elections whenever it deems advisable (GS 163-10). Prior to the 1963 session of the legislature the State Board made seven separate proposals for changes in the election laws, the principal one having to do with the civilian absentee ballot. Others were concerned with new registration, the continuous registration system, hours for registration, party affiliation of precinct officials, combining the last day of registration with challenge day, and reducing the state residence requirement for voting in presidential elections. Independent of proposals from the State Board of Elections, the General Assembly of 1963 was called on to act on a variety of additional bills designed to alter existing election procedures.

Absentee Ballot Reform

Six specific changes in the civilian absentee ballot law were recommended by the State Board of Elections in a report to the Governor and General Assembly prior to the 1963 session. With some modifications, those proposals were embodied in companion bills introduced in the two houses early in February. After some amendment, SB 10, one of these bills, was enacted as Ch. 457. Set out below are the State Board's recommendations with comments on the extent to which they were adopted. (An independent proposal to repeal the absentee ballot law in its entirety was unsuccessful.)

Absentee Ballot Recommendation (a): "Only the voter, himself, should be allowed to apply for an absentee ballot. This application would be on a form to be provided by the county board of elections, would be signed by the voter and sworn to before a notary public." This recommendation is fully adopted in Ch. 457, with one modification: An individual who becomes unexpectedly ill or physically disabled less than five days before the election may have his application form filled out and signed for him by his or her husband, wife, brother, sister, parent, or child.

Absentee Ballot Recommendation (b): "The voter who made application on the ground of illness or physical disability which prevented him from going to the polls will require a doctor's certificate as to his physical condition." As finally enacted, Ch. 457 adopts this recommendation only in part. An individual who becomes ill or physically disabled more than five days before the election must state the nature of his illness in his application for ballots, but no physician's certificate is required. On the other hand, if a voter becomes ill or physically disabled later than the fifth day before the election (but prior to 10 a.m. on the day before the election), his application cannot be honored unless it carries the attending physician's certificate that the condition has occurred since the fifth day before the election and that, in his opinion, it will prevent the voter's attendance at the polls on election day.

Absentee Ballot Recommendation (c): "The period of application for absentee ballots would be from forty-five days prior to the election until fifteen days prior thereto for voters who applied on the ground of absence from the county on election day; for voters who applied on the ground of physical disability the closing date would be five days prior to the general election." Ch. 457 does not adopt the fifteen day cut-off date, but it does prohibit application for absentee ballots earlier than forty-five days before the election. Ordinarily, the closing date for receiving applications for absentee ballots is 6 p.m. on Wednesday, the fifth day before the election. As already suggested, however, voters who become ill or physically disabled later than that time are permitted to apply for absentee ballots (with the attending physician's certificate) up to 10 a.m. on Monday before the election on Tuesday.

Absentee Ballot Recommendation (d): "All application forms would be passed upon by the county board of elections, by a majority vote, at a weekly public meeting. At this meeting any candidate, member of the county board of elections, or chairman of a county political party might appear and give evidence in favor of or in opposition to the issuance of an absentee ballot to any voters in question." This recommendation was enacted substantially as proposed. Two meetings for this purpose rather than one, however, must be held by the board each week during the application period. Ch. 457 specifies that at such a meeting "any elector of the county may be heard and allowed to present evidence in opposition to, or in favor of, the issuance of an absentee ballot to the voter making application therefor." This is slightly more limited than the State Board's proposal.

Absentee Ballot Recommendation (e): "Absentee ballots would be mailed to the voter following approval of applications at the weekly county board meeting. After marking his absentee ballot, the voter would execute the necessary affidavit upon the container envelope and would then mail it back to the county board of elections. The deadline for receipt of such ballots would be Saturday, noon, preceding the election." Perhaps the essential proposal in this recommendation was mandatory use of the mails in transmitting absentee ballots to the voter and in returning them to the county board of elections. As enacted, Ch. 457 generally adheres to this recommendation except that it allows the chairman of the county board of elections (after an application has been approved by the board) to deliver the ballots to the voter in person as well as by mail and permits the voter to return executed bal-

lots to the board in person as well as by mail. And, again, if the voter is one who becomes unexpectedly ill or physically disabled less than five days before the election, the chairman may send the ballots to him and the voter may return his ballots by a member of his immediate family rather than by mail. In this exceptional situation, absentee ballots may be received as late as 3 p.m. on election day; otherwise, they must be received by 10 a.m. on Saturday before the election.

Absentee Ballot Recommendation (f): "The voter would not be required to sign his absentee ballot, but instead would sign the container envelope. In case of a subsequent election contest the ballot would be identified by a registered number." Ch. 457 enacts this recommendation in its entirety.

Permanent Registration System

For several years counties having within their borders at least one municipality with a population in excess of 10,000 have been allowed to adopt what is called the full-time permanent registration system. (Before doing so, however, it is necessary for the county to install a loose-leaf registration system in place of the usual bound book system.) One of the recommendations of the State Board of Elections this year was that all counties, regardless of the presence of a municipality with a population in excess of 10,000 be allowed to adopt a full-time permanent registration system with loose-leaf records. This was accomplished by Ch. 393 (HB 492).

Nicknames on Ballots

The law governing preparation of ballots carries a stipulation "that in printing the names of the candidates on all primary and general election ballots, only the legal name of the candidate as same appears on the notice of candidacy form shall appear on the ballots. . . ." The expression "legal name," as used in this statute, has consistently been held to exclude the use of nicknames. Ch. 934 (HB 880) expressly authorizes the insertion of a candidate's nickname in parentheses immediately preceding his surname when printed on a ballot.

Residence Requirement for Voting in Presidential Elections

At the general election in 1962 the voters approved an amendment to the North Carolina Constitution authorizing the General Assembly to reduce the one-year state residence requirement for voting in presidential elections. Consquently, the State Board of Elections recommended that, under this constitutional authorization, the General Assembly amend the statutes to permit any resident of the state who has been a legal resident at least thirty days prior to a presidential election to register and vote for presidential electors; this recommendation, however, was not to apply to voting for any other candidates. HB 720 was introduced to carry out the State Board's proposal. It was amended in the House to require sixty rather than thirty days residence and passed the House, but it did not meet with Senate approval.

Other Recommendations of State Board of Elections

In its report to the Governor and General Assembly prior to the 1963 session the State Board of Elections recommended four election law revisions in addition to those already mentioned. Bills were introduced which would have put these recommendations into effect, but none of them was successful. Since it is likely that similar proposals will be made in future years, it may be useful to summarize them and note the unsuccessful bills designed to enact them.

1. *New Registration Recommendation:* Counties which do not have the continuous loose-leaf registration system should be required to have a completely new registration at least once every ten years. The bill (SB 158) embodying this recommendation was somewhat less stringent in terms than the original proposal; it passed the Senate but did not pass the House. Another bill on the same subject (HB 555) also failed to pass the House.

2. *Registration Hours Recommendation:* Registration books should be open at the polling place from 9 a.m. until 5 p.m. on Saturdays during the registration period. (The existing law requires that they be open from 9 a.m. until sunset.) Two bills dealing with this subject (HB 206 and HB 276), neither proposing precisely the same thing as the State Board's recommendation, received unfavorable reports from the House committee to which they were assigned.

3. *Primary Election Officials Recommendation:* GS 163-15 should be amended to delete the portion which requires that if only one political party participates in the primary all of the election officials holding such a primary must be chosen from the party participating. SB 295 was drawn to effect this recommendation. A committee substitute making it apply to judges but not to registrars was passed by the Senate but was not passed by the House.

4. *Challenge Day Recommendation:* Challenge day should be combined with the last day of registration prior to a primary or election. Two bills (SB 380 and HB 277) on this subject were introduced. In addition to combining challenge day with the last day of registration, they spelled out in detail the procedures to be followed in making and deciding challenges. Neither bill passed.

Miscellaneous Unsuccessful Bills

Except for its action on absentee ballots, the 1963 General Assembly demonstrated a general unwillingness to make changes in the election laws. In addition to the measures already commented on, twelve other elections bills were introduced; all of them failed to pass. Three were designed to restrict office-holding and active campaigning by precinct (HB 348), county (SB 296), and state (HB 436) election officials. Two dealt with voting machines: HB 993 would have allowed printed ballots as alternatives in precincts in which voting machines are used, and HB 1228 would have required all voting machines in a given county or city to be uniform in ballot labels and voting mechanism. SB 297 proposed the elimination of markers in general elections. HB 465 prescribed dimensions for the slots in ballot boxes. HB 1187 would have required the posting of a precinct map at each polling place. HB 1188 would have required married women to register according to the following pattern: "Mrs. John (Mary) Doe." HB 505 would have required county elections board chairmen to decide tie votes by lot. And two bills (SB 276 and HB 522) would have eliminated from the party loyalty oath the pledge to support all candidates of the party to which a registrant changes his affiliation.

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GAME, FISH, AND BOAT LAW ENFORCEMENT

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate. When an act is effective upon ratification, the ratification date is included in parentheses following the citation of the act; when there is a different effective date, this is denoted by the use of the abbreviation "eff." All dates are in 1963 unless otherwise noted.

The record of the General Assembly for 1963 in the area of game, fish, and boat law legislation was a rather poor one in many respects. Although three acts strengthening the general game law did manage to pass both houses, one of these was marred by the exemption of thirty-one counties. The two new laws of statewide application relating to inland fishing both restrict rather than enlarge the regulatory powers of the North Carolina Wildlife Resources Commission. And the boat law proposals of the Commission met near total disaster. One that did pass might better have been killed as it sets a sinister precedent in this area by exempting ten counties.

The flood of bills introduced on the subject of commercial fisheries was substantially larger than in previous years—which is saying quite a bit. Some of the bills if passed would have come close to gutting the entire program of fisheries law enforcement. The acts that emerged were not always models of clarity, but at least the Department of Conservation and Development will still collect license taxes from most commercial fishermen and still have some laws to enforce. Yet another study commission has been created. Resolution 72 (HR 1062) (June 11), introduced by Bennett of Carteret and others, created a Commercial Fisheries Study Commission of eleven members to inquire into the feasibility of reorganizing the Division of Commercial Fisheries of the Department of Conservation and Development. The preamble to the resolution states that the Division is now almost entirely geared to law enforcement and should place more emphasis on research, processing, manufacturing, and marketing of seafood products.

Liability of Landowners to Sportsmen

Chapter 298 (HB 187) (April 26) adds Article 10B to Chapter 113 of the General Statutes relating to the liability of an owner, lessee, occupant, or person in control of premises who gives permission to another to hunt, fish, trap, camp, hike, or for other recreational use upon such premises. "Premises" are defined to include lands, waters, and private ways, and any buildings and structures on such lands, waters, and ways. The new law has been hailed in some quarters as one that will encourage landowners to open their lands to sportsmen, since landowners not charging a consideration for the permission to use their premises are held by statute not to have implied, in the granting of the permission, that the premises are safe for the purpose intended, that a duty of care is owed, or that any responsibility is assumed for any injury to person or property caused by an act of persons to whom the permission is granted, nor to any person or persons who enter without permission.

The new act, however, expressly does not affect the liability which would otherwise exist for failure to guard or warn against a dangerous condition, use, structure, or activity. Moreover, it does not limit or nullify the doctrine of attractive nuisance.

More than likely the new act merely codifies the existing common law concerning the liability of landowners to licensees—as opposed to invitees. In a very few instances it may handicap an injured plaintiff who is attempting to read implied assurances of safety into a bare permission given to use property for recreational purposes; if anything more than a bare permission is extended, however, the injured sportsman will very likely be able to beat a nonsuit and still have a jury argument despite the statute.

The prime importance of the legislation is undoubtedly psychological rather than legal. It may to some degree give landowners a sense of security in opening up their lands to sportsmen and even discourage unfounded lawsuits by letting landowners and sportsmen know exactly where they stand.

Game Law Changes

As in previous sessions, several bills were introduced to provide free hunting or fishing for the elderly. Also as in previous years, none of these bills were reported out of committee. A variety of approaches was taken. One was to exempt persons sixty-five years old and older from hunting and fishing license requirements (HB 146); the tack was then varied to provide for the granting of free hunting and fishing licenses to those over sixty-five (HB 452); the third attempt concentrated on fishing licenses only by exempting those sixty-five and over from the license requirements (SB 245); and the final bill introduced narrowed the exemption—for fishing licenses—to apply to those above seventy (SB 317).

Other game legislation that did not pass included a prohibition on possession of game animals and birds in captivity for commercial purposes (SB 507) and an authorization to take game with pistols and revolvers (HB 640).

Hunting Deer Through the Use of Boats

G.S. 113-104 has for a long time prohibited the hunting of any wild animals or birds from boats under power or sail, or from any floating device at night. Thus, it has been generally lawful to hunt during the daytime from manually-propelled boats. A number of special acts, however, in the past several years have prohibited the hunting of *deer* from any kind of boat at any time in specific waters. After approximately a half dozen bills as to particular additional waters were introduced in the 1963 General Assembly, the decision

was made to pass a general law on the subject of taking deer through the use of boats. All the 1963 local bills introduced on the subject were killed.

Chapter 697 (HB 263) (June 5) amends G.S. 113-104 to make it unlawful for any person to take or kill or attempt to take or kill any deer from or through the use of any boat or other floating device. The act, in common with a number of the local acts of earlier years, declares that it shall not prohibit the transportation of hunters or their legally taken game by means of any boat or other floating device. Additionally, it exempts a hunter shooting from his stand if such stand is not within or a part of a boat or floating device. The act amends G.S. 113-109 to punish taking or killing or attempting to take or kill any deer from any boat or floating device in violation of the game law article with either a fine from fifty to one hundred dollars or imprisonment from thirty to sixty days, in the discretion of the court.

Unfortunately, two factors complicate the above picture. (1) Thirty-one counties were exempted from the 1963 law. (2) The new act did not specifically repeal any of the prior local legislation. (Chapter 697 in fact states that two of the prior local acts making it unlawful to take deer from boats are *not* repealed. Since the general rule of statutory construction everywhere is that general repealer clauses in general laws do not repeal local acts—see *State v. Womble*, 112 N.C. 862, 17 S.E. 491 (1893)—, it seems likely that the two other similar acts on the books will also survive.)

Taking into account the prior local acts, the new general law, and the thirty-one county exemption (five of which are affected by local act), the existing situation in the various counties as to taking deer through the use of boats is charted in Tables I-IV. (Note that all of the local acts provide for enforcement by the Wildlife Resources Commission, and since the 1963 act is part of the game law there is no question as to jurisdiction under it.)

Hunting Game from Vehicles

Chapter 381 (SB 112) (May 7) amended G.S. 113-104 to prohibit the taking of game animals and game birds not only from automobiles but also from "any engine powered or self-propelled vehicle or any vehicle especially equipped to provide facilities for taking deer by any unlawful means . . . ." The intent behind the addition of "engine powered or self-propelled vehicle" is self-explanatory, though probably not necessary. An early case dealing with taxation of motor vehicles held that the definition of "automobile" included trucks, *Bethlehem Motors Corp. v. Flynt*, 178 N.C. 399, 100 S.E. 693 (1919), and the holding has in insurance cases been extended to other motor vehicles. See *Kirk v. Nationwide Mutual Insurance Co.*, 254 N.C. 651, 119 S.E.2d 645 (1961). It is less certain what the drafter of the legislation had in mind as to vehicles especially equipped to provide facilities for taking deer by unlawful means. It seems likely some particular vehicle fitted out as a hunting blind (but not self-propelled) came to unfavorable attention. Note that the prohibited vehicle must have been constructed for the purpose of taking *deer* unlawfully, but the statute then makes use of such vehicle unlawful in taking any game animal or game bird.

Wild Turkey Penalty

As part of the effort to preserve the diminishing numbers of wild turkeys in North Carolina, Chapter 147 (HB 265) (April 2) added a new subsection to G.S. 113-109 to punish taking or attempting to take wild turkey during closed season with a fine of not less than one hundred dollars or imprisonment for not less than ninety days, or both in the discretion of the court.

Local Highway Hunting Restrictions

S.L. 1957, Ch. 603 requires the Wildlife Resources Com-

TABLE I

Counties Totally Covered Under General Law

[G.S. 113-104 as amended by S.L. 1963, Ch. 697 (HB 263)]

Counties	*Unlawful Act*	*Waters Affected*	*Punishment*	*Other Provisions*
Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Brunswick, Buncombe, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Clay, Cleveland, Davidson, Davie, Duplin, Durham, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Harnett, Haywood, Henderson, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Onslow, Orange, Pitt, Polk, Randolph, Richmond, Rockingham, Rowan, Rutherford, Scotland, Stanly, Stokes, Transylvania, Union, Vance, Wake, Warren, Watauga, Wilkes, Wilson, Yancey	To take or kill or attempt to take or kill any deer from or through the use of any boat or other floating device.	All	Misdemeanor: fine of not less than $50 nor more than $100 or imprisonment for not less than 30 days nor more than 60 days, in the discretion of the court.	1. This section shall not prohibit: a. The transportation of hunters or their legally taken game by means of any boat or other floating device. b. The hunter shooting from his stand, if such stand is not within or a part of such boat or floating device.

TABLE II

Counties Affected by General and Local Law

Counties	*Unlawful Act*	*Waters Affected**	*Punishment*	*Other Provisions*
Bladen S.L. 1961, Ch. 1023	To take or kill, or attempt to take or kill, any deer with the aid of any boat or other floating device.	Cape Fear River or any of its tributaries within the confines of Bladen County.	Misdemeanor: fine of not less than $100 nor more than $500 *or* imprisonment for not less than 30 days nor more than 6 months.	1. Shall not prohibit the transportation of hunters or their legally taken game up or down the Cape Fear River.
Halifax S.L. 1955, Ch. 1376	To take or kill any deer with the aid of any boat or other floating device.	In or within 100 yards of the Roanoke River which lies between U.S. 17 highway bridge at Williamston and U.S. 301 highway at Weldon.	Misdemeanor: fine of not less than $50 and not more than $100 *or* imprisonment not less than 30 days nor more than 60 days.	1. Shall not apply to any *land* in Halifax County beginning at the water edge on the southern side of the Roanoke River. 2. Does not prohibit the transportation of hunters or their legally taken game up or down the Roanoke River.
Pender S.L. 1961, Ch. 333	To take or kill any deer with the aid of any boat or other floating device.	In or within 100 yards of Turkey Creek, Morgan Creek, or Long Creek, which lie between N.C. 210 highway and Northeast Cape Fear River.	Misdemeanor: fine of not less than $50 and not more than $100 *or* imprisonment for not less than 30 days nor more than 60 days.	1. Does not prohibit the transportation of hunters or their legally taken game up or down Turkey Creek, Morgan Creek, or Long Creek.

* Table I applies to these counties *except* on the waters listed on this table. Local laws supersede the general law only in the specified areas.

mission to post notices in a certain portion of *Craven* County in which it is unlawful to take birds or animals on or from any public roadway. Two 1963 acts created exemptions for two of the roads of the county: State Road No. 1633, better known as Whitford Road, in No. 1 Township (Chapter 268 [HB 406] [April 23]), and State Road No. 1610, known as the Walker Road (Chapter 1163 [HB 1350] [June 24]).

S.L. 1961, Ch. 863 makes it unlawful to hunt game by the use of firearms from the right-of-way of a public road or highway in *Edgecombe* County. Chapter 246 (SB 249) (April 19) amends the 1961 act to grant enforcement jurisdiction to officers of the Wildlife Resources Commission.

Chapter 252 (HB 469) (April 19) makes it unlawful to discharge any rifle having a bore larger than .22 caliber or any center fire rifle on or from the right-of-way of any public highway, roadway, or other publicly-maintained thoroughfare in *Bertie* or *Hertford* counties. It also prohibits firing such weapons from any vehicle, whether moving or standing, upon the right-of-way of the roads of the two counties. The act does not apply to enforcement officers in the performance of their official duties, and does not prohibit the use of shotguns. Violations will result in either a fine not to exceed fifty dollars or imprisonment not to exceed thirty days, or both. The "or both" means that the case cannot be tried before a justice of the peace. Enforcement jurisdiction is granted to "all lawful peace officers of the county and State . . . ." Though the wording is not as explicit as might be wished, this is probably sufficient to give enforcement jurisdiction to wildlife protectors.

Chapter 399 (SB 311) (May 9) makes it unlawful to hunt, take, or kill or attempt to hunt, take, or kill any species of birds, animals, or beasts by the use of firearms from the "roadway, right-of-way of any public highway, roadway or publicly-maintained thoroughfare" in Rich Square Township, *Northampton* County. The punishment and enforcement-jurisdiction provisions of this act are in substance identical with those discussed in the paragraph above.

Local Fox Hunting Seasons

Chapter 830 (HB 1130) (June 11) deletes *Beaufort* County from the listing of counties in G.S. 113-111 with an all-year fox hunting season. This means that the season for taking foxes in Beaufort County is now governed by the Hunting and Trapping Regulations of the Wildlife Resources Commission: foxes may be hunted with guns or dogs or bows and arrows when the season is open for any other game animal or game bird, and may be hunted with dogs during the remainder of the year.

Chapter 211 (HB 192) (April 12) makes it unlawful to hunt foxes with dogs in that part of *Brunswick* County lying north of the Intracoastal Waterway during the months of April, May, June, July, and August. Otherwise and at other times the county is governed by the provisions of the Hunting and Trapping Regulations set out above. A violation of the new act is a misdemeanor punishable by fine or imprisonment or both, in the discretion of the court.

The fox hunting acts applicable to *Granville* County present something of a maze. Pub.-Loc. 1939, Ch. 337 set a day-night open season from October 1-January 15, and two night-only open seasons from September 1-October 1 and January 15-February 15. The act further specified that the closed season on foxes was from February 15 to September 1, and made it unlawful to trap or shoot foxes during that time. The 1939 act was modified by S.L. 1957, Ch. 1001, which made it lawful to hunt foxes "by any lawful method during any hours of the night in Granville County." The apparent intent of the 1957 act, which did not specifically mention the prior act, was to authorize year-round night fox hunting in the county. The 1963 General Assembly has now added Chapter 670 (HB 805) (June 4) which says that "in Granville County foxes may be taken with dogs only, day or night, at any time, except during the open season, when they may be taken in any manner." The 1963 act likewise fails to refer to any previous legislation, and simply contains the

TABLE III

Counties Affected Only by Local Law: Exempt from General

Counties	*Unlawful Act*	*Waters Affected**	*Punishment*	*Other Provisions*
Bertie Martin Northampton S.L. 1955, Ch. 1376	To take or kill any deer with the aid of any boat or other floating device.	In or within 100 yards of the Roanoke River which lies between U.S. 17 highway bridge at Williamston and U.S. 301 highway at Weldon.	Misdemeanor: fine of not less than $50 and not more than $100 *or* imprisonment for not less than 30 days nor more than 60 days.	1. Does not prohibit the transportation of hunters or their legally taken game up or down the Roanoke River.
Gates Hertford S.L. 1959, Ch. 298	To take or kill any deer with the aid of any boat or other floating device.	In or within 100 yards of the Chowan River lying in the area commencing on the Virginia State line on the East or Gates County side of the river and following the river to the Gates and Chowan County line, and in the area commencing on the Virginia State line on the West or Hertford County side of the river and following the river to the Hertford and Bertie County line.	Misdemeanor: fine of not less than $50 and not more than $100 *or* imprisonment not less than 30 days nor more than 60 days.	1. Shall not prohibit the transportation of hunters or their legally taken game up or down the Chowan River. 2. Shall not apply to any of the tributaries or creeks which lie within the specified area set forth in this Act.

* In areas other than those designated on this table there are no prohibitions on use of boats in hunting deer.

standard general repeal of all laws and clauses of laws in conflict.

Although the issue is by no mens free from doubt, the probable result of reading all three acts together is as follows:

(1) Foxes may be taken day or night by any lawful method in Granville from October 1 to January 15. (Because there is no specific repeal, the 1939 season probably still applies, and not the season otherwise applicable under general law.)

(2) Foxes may also be taken day or night but with dogs only from January 16 to September 30.

Assuming the above to be correct, the only other problem concerns which statute sets the punishment for taking out of season. The 1957 and 1963 acts in terms merely open seasons for taking and do not specify any punishments. The 1939 act, as noted above, tied its violation to the now obsolete February 15-September 1 closed season. Foxes taken by shotgun, rifle, or bow and arrow during those dates would probably be considered taken out of season under the 1939 act; punishment is either fine from ten to fifty dollars or imprisonment for not more than thirty days. Foxes taken by shotgun, rifle, or bow and arrow from September 2-September 30 or from January 16 to February 14, however, would probably be considered taken out of season under the provisions of the general law; punishment would be under G.S. 113-109 as applicable for first or subsequent offenses.

Chapter 322 (HB 544) (May 1) makes it lawful "to hunt and take red foxes at any time by means and the use of hounds" in *Haywood County*. It is a misdemeanor punishable by fine or imprisonment or both, in the discretion of the court, to take red foxes with guns. Since they are not mentioned, grey foxes in Haywood County still may be taken with guns and dogs at any time during the year, under the provisions of G.S. 113-111.

Prior to the 1963 session of the General Assembly, Pub.-Loc. 1931, Ch. 215 set for *Hoke* County a September 1-March 15 hunting season for foxes—with dogs only. Chapter 321 (HB 538) (May 1) specifies that the open season in Hoke shall be September 1-June 1. As there is no specific repeal of the 1931 act, fox hunting in the county is still restricted to use of dogs only. Punishment for taking foxes out of season will also be under the prior act: fine of not more than fifty dollars, or imprisonment for not more than thirty days.

TABLE IV

Counties Totally Exempt from Any Law

The following twenty-six counties are specifically exempted from Chapter 697 of the 1963 Session Laws (HB 263), and are not affected by any local acts; therefore, in these counties, it is *not* unlawful to take or kill or attempt to take or kill deer through the use of manually-propelled boats or other floating devices in the daytime.

Beaufort	Currituck	Robeson
Burke	Dare	Simpson
Camden	Edgecombe	Surry
Carteret	Hoke	Swain
Cherokee	Lenoir	Tyrrell
Chowan	Pamlico	Washington
Columbus	Pasquotank	Wayne
Craven	Perquimans	Yadkin
Cumberland	Person	

Chapter 827 (HB 1112) (June 11) modifies G.S. 113-111 to set a closed season on foxes between February 15 and October 1 for a portion of *Perquimans* County. The area in question is described as:

> Beginning at the Perquimans River Bridge in the village of Belvidere in Belvidere Township, thence along Highway No. 37 to the Perquimans County line, thence along the Perquimans County and Gates County line northward to Jopa, thence eastwardly along the Perquimans and Gates County line $3^{3}/_{4}$ miles; thence southwardly to a county dirt road No. 1212, thence along said dirt road to a paved road No. 1001, thence westwardly to the Perquimans River, thence down the east side of the Perquimans River to the Perquimans River Bridge at Belvidere the place of the beginning.

As the act does not set out the punishment for taking foxes during closed season in the above area, a violation would constitute a misdemeanor punishable in the discretion of the court under the provisions of G.S. 14-3 as construed by the Supreme Court of North Carolina. The rest of Perquimans County still enjoys an all-year open season on foxes under G.S. 113-111.

Other Local Game Law Changes

S.L. 1959, Ch. 169 made it unlawful to hunt in *Gates* County with firearms other than shotguns, and rifles of .22 caliber or less. The 1959 act failed to provide for law enforcement jurisdiction on the part of the Wildlife Resources Commission. Chapter 224 (HB 136) (April 16) corrects this omission.

Chapter 267 (HB 376) (April 23) makes it unlawful for any person to hunt, take, kill, or attempt to take or attempt to kill deer in *Hoke* County with a rifle. The act does *not* grant enforcement jurisdiction to wildlife protectors. Also, it fails to specify any punishment. This means that a violation is a misdemeanor punishable by fine or imprisonment or both, in the discretion of the court. See G.S. 14-3 and cases cited in the annotation of it. The act does not apply to any land within the Fort Bragg Military Reservation.

S.L. 1955, Ch. 692 permanently closed the season on beaver in Montgomery, Moore, Hoke, Richmond, and Scotland counties, although it did provide for issuance by the Wildlife Resources Commission of permits to kill beavers committing depredations. Chapter 674 (HB 932) (June 4) deletes *Hoke, Richmond,* and *Scotland* counties from the 1955 act. In addition it affirmatively provides that the Commission may fix open and closed seasons and bag limits in the three counties, as well as continue to issue permits to landowners to kill, trap, or take beaver which have become seriously injurious to agriculture or forests or other interests on landowners' property. These affirmative powers, though, merely duplicate powers the Commission has already been granted under general law. In fact, the current set of Hunting and Trapping Regulations opened a statewide February 1-March 1 season on beaver. For a number of years the Commission has kept the beaver season completely closed. It might be noted that G.S. 113-100 provides for a permanent closed season on beaver, but it also grants the state regulatory agency the power to alter the seasons set out in the statute from time to time as the supply of wildlife shall justify. *Montgomery* and *Moore* counties are apparently the only counties that will not be affected by the new statewide beaver season.

Chapter 819 (HB 1001) (June 11) as amended by Chapter 1255 (HB 1387) (June 26) is on the face of it local legislation for *Brunswick* and *Pender* counties relating to trapping, but the real thrust of the two acts is in the area of trespass. It is now unlawful in the two counties:

> for any person to set any spring trap, commonly known as a "steel trap," greater in size and spring tension than those commonly known as Number One (#1) traps, on any lands not owned by such person. Provided that such traps may be set on the lands of another when prior written consent for the setting of such traps has been obtained from the owner of the lands.

Violations are punishable by a fine of not more than fifty dollars or by confinement in jail for not more than thirty days. Neither act specifies who is to enforce this new law, and thus it appears that this responsibility falls upon the sheriffs' departments of the two counties rather than upon wildlife protectors.

Damages for Fish or Wildlife Killed by Pollution

Chapter 1087 (SB 409) (June 21) adds a new G.S. 143-215.3(7) to the General Statutes relating to the powers of the State Stream Sanitation Committee of the Department of Water Resources. The Committee is empowered to investigate any killing of fish and wildlife resulting from pollution of waters. The Committee may recover damages in the name of the State from any person who "has negligently, or carelessly, or unlawfully, or willfully and unlawfully, caused pollution"—whether or not he has been issued a certificate of approval, permit, or other document of approval authorized by this or any other state law.

The measure of damages is to be the amount determined by the Committee and the Wildlife Resources Commission or the Department of Conservation and Development, whichever has jurisdiction over the fish or wildlife destroyed. The cost of the investigation is to be added on as part of the damages.

The proceeds of damages collected, after deduction of investigation costs, are to be paid to the appropriate agency to be used to replace, insofar as and as promptly as possible, the fish or wildlife killed. Where this cannot be done, the agency should use the funds to improve the fish and wildlife habitat in the waters in question.

Inland Fish Law Changes

Landing Net License Exemption

Chapter 170 (HB 172) (April 9) started out as a local Hertford County bill to exempt persons taking herring with dip nets in the county from having to secure a special device license as required under the regulations of the Wildlife Resources Commission. By amendment in the House, twenty-four other eastern counties jumped on the bandwagon. The bill, had it passed in that form, would have resulted in a serious undermining of the regulatory authority of the Commission. A compromise measure was worked out which was statewide in nature and inserted a new G.S. 113-136.2 in the statutes.

In its final form the act exempts "landing nets" from special device license requirements. Landing nets may be of any size or shape if the initial and primary method of taking is by the use of hook and line or rod and reel and if any applicable license requirements as to that method of fishing have been met. If the landing net is used in the direct netting of nongame fish (the act was changed from its original application to herring only), it must come within the following size limitations in order to be used without a license: it must have a handle not exceeding eight feet in length and a hoop or frame to which the net is attached not exceeding sixty inches along its outer perimeter.

"Jug Fishing" Floats

Two 1963 changes in the fishing regulations generated enough ire that a bill was introduced in the House, with the support of several Representatives, to repeal the regulations by statute.

The 1963 printed set of fishing regulations provided that "in Designated Public Mountain Trout Waters it shall be

unlawful for any fisherman to fish with more than one line." Later, on April 25, 1963, the Wildlife Resources Commission amended its regulatory paragraph on trotlines and set hooks to provide that "it is unlawful, when fishing in this manner, to use any floating object other than one constructed of plastic."

Notwithstanding the unfortunately broad language of this latter regulation, the intent of the Commission was merely to outlaw the use of glass jars and other hazardous objects as floats by persons engaged in "jug fishing." This type of fishing is done by tying a string with a baited hook at the other end to a floating object (often a stoppered glass jug). Several floats may be strung together, and they are usually allowed to float free in the water. The fisherman who is watching knows he has a fish when one of his floats starts bobbing under the water. This method of fishing is included by the definition of set-hook fishing that has long been in the regulations ("hook and line which is attached at one end only to a stationary or floating object and which is not under immediate control and attendance of person using such device"), and this accounts for the placement of the new prohibition in the paragraph of the regulations of trotlines and set hooks.

The line-restriction regulation was opposed in part through belief that it applied in *all* cases of trout fishing. The sponsors of the bill to repeal the regulation were mollified somewhat when it was explained to them that Designated Public Mountain Trout Waters were those specially-posted trout waters stocked at public expense. The float restriction, though, was opposed on the valid ground that its literal language would arbitrarily prohibit use of cork floats in cases where the set hook was on a stationary fishing pole. There may also have been some misapprehension that the regulation would somehow totally ban the use of cork floats in all types of fishing.

Within five days after the bill was introduced, the Commission had issued a special regulation changing the trotline and set-hook amendment to read as follows:

> Recognizing the safety hazards to swimmers, boaters, and waterskiers which are created by floating glass jugs, it shall be unlawful to use the said jugs as floats in the technique known as "jug fishing." This shall not be construed to prohibit the use of plastic jugs, cork, styrofoam, or similar materials as floats.

In addition, the prohibition against more than one line in Designated Public Mountain Trout Waters was amended to make it explicit that the regulation did not apply to other public waters of North Carolina.

The new regulation satisfied the desires of the backers of the bill, but by the time the regulation was adopted too large a head of steam had gathered behind the cry for legislation. As a result, Chapter 1097 (HB 1079) (June 21) was finally passed by both houses of the General Assembly in amended form to add a restriction on the power to make fishing regulations, at the end of G.S. 113-136. The Wildlife Resources Commission and the Board of Conservation and Development are now prohibited by statute from requiring the exclusive use of a float made of plastic or any other substance, except that in regulating the technique of "jug fishing" the Commission may restrict or prohibit the use of floats made of glass. Also, neither the Department of Conservation and Development nor the Commission may limit the number of lines to be used by any fisherman in the public waters of North Carolina, except that the Commission may regulate the number of such lines used in Designated Public Mountain Trout waters that have been posted as such and stocked with mountain trout at public expense.

Local Fish Law Changes

Three more counties were exempted by the 1963 General Assembly from the provisions of G.S. 113-247 prohibiting fishing with nets on Sunday: *Northampton* (Chapter 202 [HB 372] [April 11], *Tyrrell and Washington* (Chapter 89 [HB 59] [March 26]).

Chapter 271 (HB 437) (April 23) makes it lawful for any person to net suckers and other forage fish in Haw River, Deep River, Cape Fear River, and Rocky River—in *Lee* and *Chatham* counties between December 1 to and through April 15 of each year.

In a highly unusual bill running counter to this year's trend of encroachment upon the regulatory power of the Wildlife Resources Commission, Chapter 276 (HB 473) (April 23) repealed a 1957 local fish law act. The repealed statute, S.L. 1957, Ch. 198, had formerly made it lawful in *Warren* County to take fish for personal or family use "by means of nets and traps in those portions of Pigeon Roost and Poplar Creeks which enter into the Roanoke River from the North on the Virginia side of said river."

For discussion of an act regulating fishing, swimming, and boating on part of the Yadkin River in Montgomery and Stanly counties, see the discussion under the heading "Yadkin River Local Legislation" in the section on changes in the boat law below.

Boat Law Changes and Water Safety Legislation

The federal legislation setting up the nationwide system of boat numbering required that all states number undocumented vessels propelled by machinery of more than ten horsepower or else the Coast Guard would do it. Since 1958, forty-three states have adopted federally-approved numbering systems. A number of them have followed the suggestion of the Council of State Governments and have numbered boats of the ten horsepower and under class and not just those necessary to get federal approval. In 1961, a bill was introduced with the sponsorship of the Wildlife Resources Commission to make numbering and equipment requirements apply to *all* undocumented vessels propelled by machinery, but it made very little headway in the General Assembly.

This session, the Commission lowered its sights somewhat and sponsored a bill to bring us in line with out neighboring states of Virginia and South Carolina: require numbers on boats of ten horsepower or more. This would affect the sizeable group of craft which are equipped with ten-horsepower motors. The bill in question, SB 163, was never reported out of committee.

Other boat law proposals which failed were:

SB 162: a proposal that overpowering a boat with a motor either larger than recommended by the manufacturer of the boat or as found by the court or jury should constitute prima facie evidence of reckless or negligent operation—in cases where such overpowered boat caused or was responsible for a boating accident.

SB 164 (HB 264): a proposal to make it unlawful for any boat dealer to sell any boat designed for use with an outboard motor unless it has affixed on or close to the transom a manufacturer's recommended maximum safe horsepower rating.

Lights and Life Preservers

One important change in the boat law did pass—in a manner of speaking. Chapter 396 (HB 230) (eff. June 1) added G.S. 75A-6(n) to require that all boats propelled by machinery of ten horsepower or less carry at least one lifesaving device of the sort prescribed by the regulations of the Wildlife Resources Commission (*i.e.*, Coast Guard approved) for each person on board. In addition, this class of motor-propelled boats is now required from sunset to sunrise to carry either a white light in the stern or have on board a hand flashlight in good working condition, to be ready at hand and displayed in sufficient time to prevent collision.

The safety reasons behind the new legislation are obvious. It made no sense to require lights and lifesaving devices only

on boats with motors larger than ten horsepower; a small boat can be just as dangerous as a larger one. Nevertheless, ten counties got themselves exempted from this act. It sets an extremely bad precedent, for up to now the General Statutes on boating had applied uniformly throughout the state.

Even worse, the ten exempted counties include five of the important coastal counties with a great deal of boating on their waters. The counties are Brunswick, Carteret, Chatham, Columbus, Duplin, Lee, New Hanover, Onslow, Pender, and Rockingham.

Carrying Certificate of Number on Board Motorboat

One of the provisions of the overall federal numbering law is that the states must require the pocket-size certificates of number to be kept available for inspection on motorboats when they are in operation. There has been a certain amount of public resistance to this rule in North Carolina; boating is often a carefree activity and it is bothersome to have to keep up with a registration card. Particular trouble was experienced by boat livery dealers; if they gave the certificate to persons renting their boats, they often forgot to turn them back in. In this special situation, the Wildlife Resources Commission has already adopted a resolution (not a regulation) instructing its enforcement officers not to prosecute operators of livery motorboats for failure to have the certificate of number on board if (1) the name of the boat livery is painted on each side of the motorboat abaft the beam and (2) the certificate of number is kept on file at the livery office at all times readily available for inspection by any wildlife protector.

This enforcement leeway apparently was not sufficient, for this session Chapter 470 (HB 597) (May 21) amended G.S. 75A-5(a) to provide that "any person charged with failing to so carry such certificate of number shall not be convicted if he produces in court a certificate of number theretofore issued to him and valid at the time of his arrest."

Neither the Commission resolution nor this amendment to the statute is likely as a practical matter to endanger federal approval of North Carolina's numbering system. The statute still requires the certificate of number to be carried, and only mitigates the penalty. Apparently a defendant must at least take the trouble to show up in court to take advantage of the defense provided. There is, it should be mentioned, precedent for this approach in the motor vehicle driver license law. Nevertheless, some enforcement problems are created.

The Coast Guard is taking an ever larger interest in enforcement of the boating laws on the navigable waters of the United States within North Carolina. It, of course, applies the parallel federal laws and regulations, and does not honor any local variations. In several areas where the state law differs from the federal, wildlife protectors have been encountering public criticism. Somewhat to their chagrin, the protectors find that the public generally assumes that the Coast Guard is "right" and the state officers "wrong" when there is any difference in enforcement policy.

Access Areas

The latest edition of the Fishing Rules lists sixty-six fishing access areas maintained by the Wildlife Resources Commission. More and more over the past several years these areas have been utilized for boat launching by recreational boaters and not just fishermen. Chapter 1003 (HB 718) (June 19) amended G.S. 75A-3(c) to allow the expenditure of motorboat numbering revenue for acquisition of land and provision of facilities for access to waters of the state. The boat law previously restricted use of the money collected to boat law enforcement and educational activities relating to boating safety.

Operation of Vessels—Local Regulations

Under the Boating Safety Act of 1959, in G.S. 75A-15, the Wildlife Resources Commission is given the authority to make local rules and regulations, within the territorial limits of any subdivision of the state, with reference to the safe and reasonable operation of vessels. The Commission does not have such regulatory authority on a statewide basis. The statute provides that subdivisions, after public notice, may make formal application to the Commission for such local regulation of boating. Presumably, regulations of the Commission would provide a more rational and flexible method of solving problems presented by local boating hazards than use of the traditional local acts would.

Unfortunately, however, the Boating Safety Act of 1959 neglected to provide any criminal penalties for violations of Commission regulations in the area of boating. Most of the Commission's boating regulations governing numbering and equipment can be read as merely specifying details as to matters covered in the statute, and these offenses may be punished in the criminal courts. Thus, the lack of criminal sanctions for boat law regulation violations has not been too crippling on the whole, but this lack of authority does prevent the Commission from passing any enforceable local regulations.

Up to now, the Commission has probably been relieved not to be caught in the middle by various local delegations seeking one or another kind of restriction. Moreover, it does not presently have the manpower to make thorough studies as to water safety problems in the different localities so as to make regulations that would truly fit the needs on the local waters.

The general law, of course, in a rough way regulates operation of boats. It prohibits night water skiing; it punishes drunken and reckless operation of boats or water skis; and it sets out requirements for certain boats with motors as to lights, life preservers, mufflers, and other equipment. Nevertheless, where recreational use of some particular water is heavy, there may need to be additional safety regulations such as speed limits or the setting aside of particular areas for such conflicting activities as swimming, fishing, and water skiing. Also, the navigational rules of the road need to be observed especially where there are larger boats or where boating is confined to narrow channels. The federal law makes the Inland Rules apply on all navigable waters of the United States within North Carolina, but there is no state law adopting these rules or permitting wildlife protectors to enforce them. Serious violation of one of the federal rules of the road might at most constitute reckless operation under the North Carolina law.

The discussion above illustrates that rules governing the operation of vessels are necessary in many local waters—and will be forthcoming from one source or another. If the Wildlife Resources Commission cannot make the regulations effectively, and will not seek to be given the power, then it is reasonable to expect in the future a growing number of local acts on the subject. The use of local acts to regulate boating has many drawbacks; we do not generally tolerate the practice so far as the operation of automobiles is concerned. By tradition local acts are passed without careful analysis or study of their provisions (providing the local representatives want the legislation), and it is to be expected that local water safety legislation will too often be arbitrary or fragmentary. Nevertheless, local legislation is perhaps better than nothing.

The first straw in the wind—in 1961—was against the trend to local boating legislation. The only local act passed that year concerning boating, S.L. 1961, Ch. 59, *repealed* a prior local act affecting Pender County. In 1963, however, we have the beginnings in the opposite direction. One act regulates swimming, boating, and fishing near certain dams on the Yadkin River. And, a total of five bills was passed to regulate boating and other connected activities on Lake James. These acts are discussed below.

Yadkin River Local Legislation

Chapter 947 (SB 498) (June 18) makes it unlawful to swim in or enter on a boat, raft, or other floating object the watercourse downstream from or the surface waters upstream from and within a distance of one hundred feet of the dams known as the Tuckertown Dam and the Falls Dam owned by Yadkin, Inc., across the Yadkin River between *Stanly* and *Montgomery* counties. It is also unlawful to fish from the Tuckertown and Falls Dams or from any powerhouses, structures, abutments, or equipment associated with them. Violations are punishable by a fine not to exceed twenty-five dollars.

The Wildlife Resources Commission is instructed to place and maintain markers or other appropriate signs clearly indicating the area in which boating is prohibited, and is given enforcement jurisdiction.

Lake James Local Legislation

Five different bills were introduced in the House of Representatives to regulate various activities on Lake James, which lies in *Burke* and *McDowell* counties. All five bills, after minor amendment in the Senate, passed. They are discussed in order of ratification.

Chapter 502 (HB 496) (May 22) is written in the form of general legislation applicable to public waters throughout North Carolina. Then, at the end, a section restricts the act to Lake James. Apparently the drafter of the act considered it might form a model for more general use. The act makes it unlawful to do the following things on Lake James: (1) operate any power-driven boat within fifty yards of any boathouse, boat dock, pier, whether stationary or moveable, anchored boat, or any boat which is not being propelled by engine power, or when within fifty yards of any person swimming, or fishing from a boat, at a greater speed than five miles per hour; (2) operate a power-driven boat in the near vicinity of any watercraft in which persons are fishing, whether anchored or adrift, in such manner as to create a condition which endangers or is likely to endanger the safety of persons in the fishing boat; (3) wilfully throw or allow to be thrown overboard any trash, debris, etc., likely to become dangerous to boats, swimmers, or fishermen in any public waters used by such persons; and (4) throw or place in any of the public waters used for boating, swimming, or fishing any unattended or unattached bottle, can, or other floating object to which any fishing line, hook, or lure has been attached (see discussion of "jug fishing" in section of fish law changes above). The act provides that any person in actual physical control of the vessel in which any violation is committed is responsible for the conduct of those in the vessel. Unless otherwise shown, the registered owner of any boat operated in violation of the act will be presumed to have been the operator at the time of the violation. Violations are punishable by a fine of not more than fifty dollars or imprisonment for not more than thirty days. Enforcement officers of the Wildlife Resources Commission, along with other law enforcement officers, are given the power to enforce the provisions of the act. The courts of either Burke County or McDowell County are given jurisdiction to try persons charged with any offense committed within one-half mile of the county line. The act does not apply in the waters of the canal connecting the Carawba side of Lake James with the Linville side, over which canal the Canal Bridge is constructed.

Chapter 510 (HB 595) (May 22) makes it unlawful on Lake James "to manipulate any water skis, surfboards, or similar devices, or any power-driven boat towing such devices, within fifty yards or at any distance which constitutes a hazard or a nuisance of a shoreline near which there are swimmers in the water, or within fifty yards of any swimmer in the water except when such manipulation is necessary in starting the skier from a dead stop or in returning him to the shore, or shall be required to rescue or provide for the safety of a person in the water." The act does not stipulate any punishment, and thus a violation is a misdemeanor punishable in the discretion of the court under G.S. 14-3. The act fails also to give enforcement jurisdiction to wildlife protectors. Since G.S. 75A-17(a) grants enforcement jurisdiction only as to the Boating Safety Act of 1959, wildlife protectors will not have the authority to arrest for violations of this act.

Chapter 513 (HB 616) (May 22) makes it unlawful to engage in diving with diving equipment within 300 yards of the intake at the Bridgewater Power House at Lake James, or to dive with equipment in any of the waters of Lake James without having a person in attendance upon the surface, or a buoy floating upon the surface marking the area in which skin diving is taking place. The act does not apply to anyone engaged in an attempt to rescue or provide for the safety of a person in the water, or to anyone engaged in repair, maintenanace, or other activity when officially employed for such. This act is similar to the one above in failing to specify punishment or enforcement jurisdiction.

Chapter 514 (HB 617) (May 22) is identical with Chapter 510 except that the skier and the towing boat must stay fifty yards from a boat or a shoreline from which anyone is fishing. The act is similarly lacking as to mention of punishment and enforcement jurisdiction.

Chapter 912 (HB 497) (June 13) is a lengthy act relating to sewage disposal on or near Lake James. It prohibits discharge of raw sewage into the lake or at any point within 150 feet of the lake's shoreline. Chemical toilets on rafts, houseboats, or boathouses must be approved and inspected by the health department of either Burke or McDowell counties. Violation is a misdemeanor punishable by fine or imprisonment, in the discretion of the court. After the owner has been notified of the violation, each day's continuance constitutes a separate violation. The county commissioners of Burke and McDowell are authorized to appropriate funds for the enforcement of the act. Enforcement is, of course, in the hands of the sheriffs' departments of the two counties.

STUDY AND DEVELOPMENT COMMISSIONS

The creation of the Commercial Fisheries Study Commission by Resolution 72 (HR 1062) (June 11) was briefly discussed in the introductory paragraphs of this article. Other study commissions or development commissions which were either created or altered in some manner during this session of the General Assembly are treated below.

Commercial Fisheries Advisory Board

Chapter 405 (HB 643) (May 9) makes several changes in Article 13A of Chapter 113 of the General Statutes relating to the Commercial Fisheries Advisory Board. A new paragraph is added to G.S. 113-142.2 to require the Board to act as a liaison group between the commercial fishermen and the Commercial Fisheries Committee of the Board of Conservation and Development. The Advisory Board is to consider all matters referred to it for study by the Committee and render written reports. It shall also originate studies on matters and report to the Committee. In general, the Advisory Board is to keep in close touch with commercial fishermen and with the North Carolina Fishermen's Association and advise the Committee on all relevant subjects, including those that do not require specific study.

G.S. 113-142.6 is amended to give the chairman of the Advisory Board (as well as of the Commercial Fisheries Committee) the power to call special meetings of the Board. At such meetings, though, the chairman of the Committee or a member of the Committee appointed by him must be in attendance. The Board is now to meet with the Committee at each regular quarterly meeting. Previously it was only required to meet once annually immediately preceding the July meeting.

G.S. 113-142.7 is amended to raise the per diem compensation of Board members from five to seven dollars.

Kerr Reservoir Development Commission

Chapter 612 (HB 804) (May 29) in effect constitutes the John H. Kerr Reservoir Development Commission an independent state agency. G.S. 143-286 is amended to provide that the Commission shall initiate and carry out policies to promote the development of the John H. Kerr area. The section had originally instructed the Commission to recommend policies to the Department of Conservation and Development, the North Carolina Wildlife Resources Comsion, and the North Carolina Recreation Commission.

G.S. 143-286.1 is now amended to give the Kerr Commission authority to control and develop the Nutbush Conservation Area. Previously the statute empowered the Department of Conservation and Development with the authority to delegate control to the Commission.

G.S. 143-290 is amended to let the Commission make its own budget requests, but G.S. 143-290.1 states that the Department of Conservation and Development still has the responsibility for performing routine duties with respect to preparation of materials relating to the payroll of the Commission, issuing of checks, and other bookkeeping or keeping of records in the same manner and to the same extent as before enactment of the 1963 act.

North Carolina Aquatics Recreation Study Commission

Resolution 83 (SR 510) (June 24) creates the North Carolina Aquatics Recreation Study Commission of ten members. Eight members are to be appointed by the Governor from eight different agencies or organizations named in the resolution; the other two members are to be a Senator and a Representative appointed by the presiding officer of each house. The Commission members serve until they file their report with the Governor for transmission to the 1965 General Assembly. They are to study all matters relating to the recreational use of streams and of all other bodies of water in or bordering North Carolina, including planning, engineering, enforcement, sanitation, education, safety, and zoning. They are, in the process, to investigate ways in which the best multiple use of water resources by fishermen, swimmers, boaters, skiers, recreation travelers and vacationers, skin and scuba divers, and other recreational users can be made with minimal conflict of interests and purpose. The Commission is required to develop specific suggestions as to local and statewide legislation which will permit, protect, promote, and aid in safe, full multiple use of the waters of North Carolina.

North Carolina Seashore Commission

Chapter 989 (SB 487) (eff. August 31) creates a twenty-eight member North Carolina Seashore Commission consisting of a chairman, twenty regular members, and seven ex-officio members. The Commission is to assist in development of plans to preserve the shoreline of North Carolina; assist in sound development of the seacoast areas, with emphasis on attractions and facilities for tourists; assist in planning, promoting, and developing recreational and industrial developments in the coastal areas, with emphasis on making them attractive to visitors and permanent residents; and coordinate activities of local government, and of state and federal agencies in planning and development.

The Commission is required to make an annual report to the Governer on what it has accomplished, and make other reports as the Governor may request. It is also to file such recommendations or suggestions as it may deem proper with other agencies of the state, local, or federal governments.

The Board of Water Resources is to provide staff assistance and facilities for the Commission. The act repeals the 1939 act creating the now defunct North Carolina Cape Hatteras Seashore Commission, which was charged with acquiring land to be granted to the United States for the Cape Hatteras National Seashore.

Commercial Fisheries Law Changes

Among the more important commercial fisheries laws passed this session were ones strengthening the oyster lease provisions to encourage greater commercial production, broadening the general law on taking of seafood for personal use, and adding a prohibition against transportation of illegal fishing equipment.

Acts relating to commercial fisheries which have been discussed elsewhere in this article are: (1) amendment as to duties of Commercial Fisheries Advisory Board (see section on Study and Development Commissions above); (2) creation of a Commercial Fisheries Study Commission (see introductory paragraphs of article); (3) provision of damages for fish killed by pollution of waters (see section above to that effect); and (4) restriction on the power to make certain fishing regulations (see heading "'Jug Fishing' Floats" under the section on inland fish law changes). The restrictions in this last act were primarily aimed at the Wildlife Resources Commission, and probably will not hamper the Department of Conservation and Development.

Legislation Defeated

The largest number of bills introduced related in one way or another to taking seafood for personal use. This subject, including consideration of the bills defeated as well as of the acts that passed, is treated separately below.

The most drastic proposal of the session was contained in HB 135, which would have completely repealed the tax on commercial fishing vessels under G.S. 113-174.7—retroactively to January 1, 1963. The bill was not reported out of committee. HB 41, which suffered the same fate, would have cut the tax practically in half and would have exempted boats and skiffs of any type without motors from the tax.

Other bills that failed to pass included:

SB 386: to make it unlawful to sell or offer or process for sale crabs as to which over ten percent consist of female crabs bearing visible eggs or from which the egg pouch or bunion has been removed.

HB 649: to authorize officers of Division of Commercial Fisheries, Department of Conservation and Development, to search all areas of a vessel when they have reasonable grounds to believe that illegally taken or possessed shellfish or other seafood products may be aboard.

HB 802: to permit male or female crabs to be taken, possessed, sold, or offered for sale at any time in Carteret County.

Declaration of Estimated State Income Tax

Chapter 785 (SB 294) (June 11) amends several provisions of the law relating to the filing of declarations of estimated tax to place commercial fishermen who earn at least two thirds of their total gross income from commercial fishing on a parity with farmers. The statutes involved are G.S. 105-163.11 (e) and (f) and G.S. 105-163.15 (b) (1) and (d) (1)c.

Taking Seafood for Personal Use

The taking of seafood for personal or family use can be resolved into three main questions. When? How much? Any tax? Seven bills were introduced in 1963 concerning in some manner the taking of seafood products for personal use; only two of them passed. To understand what happened, it is helpful to review prior legislation.

S.L. 1959, Ch. 444, as amended by S.L. 1959, Ch. 767, made it lawful in New Hanover County and in the portions of Brunswick and Pender counties south and southeast of the Intracoastal Waterway to take *shrimp*, *fish*, and *clams* at any time for personal or family use except from designated polluted areas and areas closed for planting purposes. *Oysters*

were allowed to be taken from open waters during the closed season on Tuesdays and Fridays for personal use and home consumption not to exceed one bushel per person. Nothing was said about taking oysters for personal use during the *open* season, for presumably a person could then take as many oysters as he might wish, for either commercial or personal purposes, so long as laws and regulations relating to licenses, size limits, contribution of shells, and taxes were observed.

In 1961 the bill which eventually was ratified to add G.S. 113-136.1 contained, as introduced, a provision similar to the local 1959 legislation, but applicable to all commercial fishing waters. A critical amendment to the bill, however, changed it to provide for the taking of a limited quantity of *oysters* for personal use for home consumption during the *open* season, and made it unlawful to take *oysters* or *shrimp* during the regular closed season. This had the effect of imposing for the first time a limit on the quantity of oysters that could be taken during the open season. This limit, incidentally, applies in the area covered by the New Hanover-Brunswick-Pender local legislation, which only regulated taking during the closed season.

The above discussion covers the *when?* and the *how much?* in effect prior to 1963. The question of taxes remains to be discussed. Prior to 1953 the commercial fishing statutes imposed taxes on both boats and upon individual items of commercial fishing equipment such as nets and dredges. In 1953, however, the tax structure was simplified to place all of the tax upon the *boat* using the commercial fishing equipment. See G.S. 113-174.7. The only exception was the continuing tax on individual purse seines in G.S. 113-174.3. In 1955, G.S. 113-174.8 was amended so that it allowed tax-free taking of most seafood (except shrimp) for personal or family use—*if* taken without use of a boat using commercial fishing equipment. Otherwise, the tax would be due on the boat. This meant, of course, that the tax exemption was nearly illusory.

In 1963, the following personal-use bills failed to pass:

HB 144: to amend G.S. 113-174.8 to exempt shrimp as well as other seafood from all taxes, including that on boats, when taken other than with dredges and for personal or family use and consumption by residents or citizens of North Carolina.

HB 145: to amend G.S. 113-136.1 apparently to permit taking of shrimp, oysters, fish, clams, escallops, and crabs by legal means other than with dredges from commercial fishing waters any season of the year except on Sunday when for personal use for home consumption.

HB 147: to amend G.S. 113-174.7 to exempt noncommercial fishing craft owned or operated by citizens or residents of North Carolina from the tax on vessels when used for taking seafood from commercial fishing waters for personal or family use and consumption of the owner or operator—whether or not commercial fishing equipment is used.

HB 202: to amend G.S. 113-174.7 in the same manner as HB 147 proposed.

HB 1016: to repeal S.L. 1959, Ch. 444, which permits fish, shrimp, clams, and oysters to be taken for personal use during closed season in New Hanover County and in portions of Brunswick and Pender counties.

The main act that passed, Chapter 810 (HB 498) (June 11), rewrote G.S. 113-174.8 to enlarge the tax exemption on seafood products taken for personal or family use and home consumption exclusively. The act is very badly written. First, it states that no tax prescribed in G.S. 113-174.7 shall be levied *upon* the seafood when taken within the limitations set out; next, it states that no tax upon the *boat* prescribed in G.S. 113-174.7 shall be levied (if the conditions are met) *if it has no motor*. But, the only tax in G.S. 113-174.7 is the boat tax. The taxes elsewhere that are imposed *upon* seafood products, *e.g.*, G.S. 113-174.6, are to be paid by dealers and packers and not by the fishermen.

The construction of the act will probably be in line with the more restrictive second sentence, since the first really makes no sense. Thus:

(1) A bona fide resident or citizen may take seafood products from commercial fishing waters even with commercial fishing equipment (nets, dredges, tongs, scoops, etc.) without paying a tax on the boat used if:

(a) the boat has no motor,

(b) the boat is employed for taking seafood products for personal or family use and consumption exclusively, and

(c) the boat is employed to take not more than one bushel of shellfish per day during the seasons when shellfish may lawfully be taken.

(2) If a motor is used, or the boat is ever used for commercial fishing, or if more than one bushel per day of shellfish is taken through use of the boat, the tax must be paid on the boat.

The first sentence of the act makes it plain that the seafood products covered include *shrimp* as well as *fish* and *crabs*, and that the one-bushel aggregate shellfish limit applies to *oysters, clams*, and *escallops*. It is a misdemeanor punishable by a fine of not *less* than five dollars or imprisonment for not more than thirty days to sell or offer to sell any seafood taken exclusively for home consumption under the tax exclusion granted. Since there is no upper limit on the amount of the fine, the offense is above the jurisdiction of a justice of the peace.

Section 2 of the act provides that it shall not "be construed to permit the taking of any shellfish, shrimp, crabs, or finfish during any closed season which is, or may be established thereon." It is thus totally clear that by general law no personal-use taking—at least with commercial fishing equipment—may be done in closed season; G.S. 113-136.1 is not amended and this act does not change the situation.

The question then arises as to the 1959 local legislation permitting the taking of certain seafood in closed season. The answer seems to be that since this new act is a *tax* measure and the 1959 acts dealt only with *seasons*, there is no conflict between the two. It should be noted, by the way, that Chapter 404 (HB 408) (May 9) added *Carteret* County under the provisions of S.L. 1959, Ch. 444. Thus, in Carteret and New Hanover and in portions of Brunswick and Pender counties, shrimp, fish, clams, and (on Tuesdays and Fridays) oysters may still be taken in closed season. If shellfish (clams and oysters) are taken out of season, however, the tax will be payable on the boat even if it has no motor, since the taking in season is a condition to the tax exemption on shellfish in Chapter 810.

Transportation of Illegal Fishing Equipment

G.S. 113-210.1 makes it illegal to take oysters from any public grounds or natural oyster beds by the *use* of a dredge weighing more than one hundred pounds. Chapter 452 (HB 582) (eff. July 26) supplements the above statute by adding G.S. 113-210.2 to make it unlawful knowingly to transport "aboard any commercial fishing vessel licensed in this State, and which is employed of has been employed in commercial fishing within the waters of North Carolina, any dredge weighing more than one hundred (100) pounds . . . ."

The act additionally makes it unlawful to transport any commercial fishing equipment the use of which is prohibited by law in the waters in which such vessel is, or has been, employed in commercial fishing operations. Violations of the new act are misdemeanors punishable in the discretion of the court.

There is already a statute, G.S. 113-197, making it unlawful to carry on any boat scoops, scrapes, dredges, or winders of the type used to take oysters between certain dates each year (roughly approximating the dates of the closed season on oysters). The act is somewhat similar, but extends to all illegal fishing equipment rather than just that used in taking

oysters. The purpose is to prevent fishermen receiving notice of the approach of an enforcement vessel (by radio, for example) from hauling up the illegal equipment and disposing of the unlawful catch and then putting out equipment to take other seafood that may be lawfully taken in the area. Questions as to why the prohibited equipment is wet are often answered with plausible-sounding reasons.

A problem arises as to the meaning of "equipment, the use of which is prohibited by law in the waters" in question. Suppose the equipment is of a kind primarily useful in taking seafood on which the season is closed in the particular waters? The drafters of the act probably intended to cover such equipment even thought the regulations might not totally ban the use of the equipment for the waters during closed season. There is no *permissible* use so far as fishing is concerned that may then be made of the equipment. But suppose the equipment is at least capable of use (even though not efficient use) in taking some type of seafood which may then lawfully be taken? It can readily be seen that a number of interpretational questions will arise in the enforcement of the act. Fortunately, a revision of the commercial fishing regulations governing the use of particular equipment in various waters can reduce or eliminate many of these uncertainties.

Oyster Leases

Chapter 1260 (HB 929) (June 26) amends three sections of the General Statutes to change the conditions and procedure for leasing of bottoms of waters of North Carolina for oyster and clam culture. The purpose of the act is to restrict, in the future, leases by the Department of Conservation and Development to individuals who will raise oysters in commercial quantities.

G.S. 113-176 is amended to provide that no lease may be granted unless the applicant has filed "a certificate in writing stating that the purpose of obtaining the lease shall be to enter into production of oysters in commercial quantities, and that the purpose is not to raise oysters solely for private use." The amendment appears to have the effect of denying the Board the power of granting or renewing any leases for the purpose of clam culture, though the statutes still contain a number of references to this. (Original leases run for twenty years, and are renewable at ten-year intervals. See G.S. 113-183.)

In connection with the above change, G.S. 113-180 is amended to state that the Commissioner of Commercial Fisheries may (instead of *shall*) execute the lease upon completion of survey and mapping and payment of the costs by the applicant. G.S. 113-181 is amended to provide that the Department of Conservation and Development may cancel any lease granted after the date of ratification of the new act (June 26, 1963) "if the lessee fails to diligently use the bottoms covered by the said lease for the production of oysters in commercial quantities."

Damage to Oyster and Clam Bed Markers

Chapter 645 (HB 788) (May 31) adds a new paragraph to G.S. 113-216 to:

> make it unlawful for any person, firm or corporation to wilfully damage, remove, deface, or destroy any sign, marker, or identifiable monument from any leased or privately-owned oyster and clam beds. Any person who shall be convicted of violation of the provisions of this paragraph shall be imprisoned for not more than thirty (30) days or fined not less than fifty dollars ($50.00), or shall be subject to both imprisonment and fine in the discretion of the court.

It is difficult to determine what the act was intended to accomplish. The first paragraph of G.S. 113-216 already makes it a misdemeanor to "remove, destroy or deface any marker or monument lawfully set up for the purpose of marking any grounds" upon which shellfish are being raised or cultivated. The language seems broad enough to include the "leased or privately-owned oyster and clam beds" covered under the new act. The caption of the section in the statutes is "Injury to private grounds . . .," but even if restrictive in some fashion it would not be controlling in interpretation of the section.

So far as punishment is concerned, the net effect of the new act is to reduce the potential amount of imprisonment that might be imposed for a violation that would formerly have been charged under the first paragraph of G.S. 113-216. In actuality, though, the setting of a minimum fine of fifty dollars may raise the amount of the fines imposed by trial courts in these cases. The only other significant difference in the new act is the addition of the word *damage* to "remove, destroy or deface," but why not add this single word by amendment of the first paragraph?

Fishing Over Planted Grounds

Chapter 554 (HB 581) (May 24) will give further protection to oyster beds planted by the Department of Conservation and Development. It is already unlawful to take oysters from these beds for at least two years after planting, and the Board of Conservation and Development can keep them closed longer. See G.S. 113-223 and -224. The new act amends G.S. 113-223 to make it unlawful:

> for any person, firm or corporation to take or attempt to take fish, crabs, shrimp, clams, or other seafood from the waters over marked oyster beds which have been planted or closed during the period for which they have been closed: Provided, this prohibition shall not apply to the use of crab pots, hand lines, trot lines, drop nets, set nets or any type of sport fishing with rod and reel and/or hook and line.

The act does not apply to New Hanover County.

Although the added sentence literally provides that it is unlawful to take the other seafood in question over marked oyster beds which have been planted *or* closed, it is an amendment in an article dealing exclusively with planted natural oyster beds. Probably it would be construed to cover only beds closed for planting purposes.

Commercial fishermen on occasion have been known to go into marked areas purportedly for other (legitimate) types of fishing but with the ulterior intention of taking oysters illegally if the opportunity presents itself. The 1963 change in the law eliminates this opportunity.

Local Commercial Fisheries Legislation

The addition of Carteret County under the provisions of a 1959 local act governing the taking of seafood for personal use has already been discussed above.

Chapter 116 (HB 65) (March 29) started out as a general bill but was amended in the House to apply to *Brunswick* County only. It makes it unlawful:

(1) to take oysters for the purpose of sale from any privately owned or leased bottom during closed season, and

(2) to sell or attempt to sell oysters taken from public or private bottoms during the closed season.

Violation is a misdemeanor punishable by a fine of not less than fifty dollars nor more than one hundred dollars, imprisonment for not less than thirty days nor more than sixty days, or both fine and imprisonment, in the discretion of the court.

Chapter 195 (HB 223) (April 11) also applies to *Brunswick* County. It makes it a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court, to take clams for commercial purposes or for the purpose of sale from June 1 to October 1 each year.

The General Statutes as codified by the Michie Company note under G.S. 113-213 a local modification applicable to New Hanover, Onslow, and Pender counties that was previously contained in section 1943 of the Consolidated

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LOCAL PROPERTY TAXATION

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

Fifteen proposals affecting state-wide property tax administration were presented in nineteen separate bills introduced in the 1963 General Assembly. Nine of those proposals were enacted, some only after amendment. In addition to these state-wide bills, the legislature considered a substantial number of proposals for special legislation affecting property tax administration in particular localities. This article is confined to comments on the acts which affect all counties and municipalities; *Property Tax Bulletin* No. 26, issued in July, deals with both public and local property tax legislation.

Listing and Assessing Property for Taxation

Records: The Machinery Act (GS 105-323) requires that county abstracts and scrolls be separated by townships, and that each township's records be divided into four parts: (1) white individual taxpayers, (2) colored individual taxpayers, (3) Indian individual taxpayers, and (4) corporations, partnerships, business firms, and unincorporated associations. Municipal records must be divided into the same four groups. With the growing use of business machines and tabulating equipment in the preparation of tax records, the need for maintaining such breakdowns on a permanent basis has been greatly reduced. In recognition of this, Ch. 784 (SB 286) gives boards of county commissioners authority, in their discretion, to authorize tax supervisors to dispense with these record divisions. Although not specifically mentioned, municipalities presumably have the same discretion. (This legislation was sponsored by the North Carolina Association of County Commissioners and the North Carolina Association of Assessing Officers.) A governing body desiring to make use of this authority might find it wise to record its decision in the minutes of a board meeting. In the same connection, it should be noted that the 1963 act deletes from GS 105-335 the township breakdown requirement for forms used in reporting to the State Board of Assessment.

Inventories: Business inventories came in for substantial attention in the 1963 General Assembly and, while major proposals concerning their taxation met with no success, it is likely that future sessions of the legislature will be called on to deal with further inventory proposals. As a prelude to introduction of legislation seeking the exemption of manufacturers' inventories (see below), the General Assembly passed Ch. 302 (HB 487) which took the form of an amendment to GS 105-286(f), the statute which empowers the tax supervisor to require business firms, in connection with their abstracts, to submit a "detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery of valuation of property taxable in the county," but which also provides that information so obtained which does not have to be shown on the abstract "shall not be open to public inspection." To make data contained in these documents available to the General Assembly, the 1963 act required county tax supervisors, upon the request of the Commissioner of Revenue, to allow Revenue Department representatives to examine their "confidential statement" files, but the authority terminates on January 1, 1964. In making report of what they might find, Revenue Department agents were forbidden to present their findings in such a way as to identify particular taxpayers.

In North Carolina and many other states taxpayers' inventories are taxed in terms of their amount and value on a fixed day each year. (In this state that date is January 1.) A number of states, however, have adopted different systems for determining the taxable amount and value of inventories. One of the most common variations is to provide for taxation of an average inventory for the preceding year rather than the actual inventory held on a single tax day. HB 652 provided that agricultural products (other than tobacco, peanuts, and cotton) purchased during the preceding year by processors and held by them on January 1 for processing should be listed on the basis of the arithmetical average of their value on January 1 and the preceding July 1. While the bill failed to pass, it is likely that the principle will be proposed again.

Fiscal Year Listing—An Unsuccessful Bill: The business taxpayer who operates on a fiscal year ending on a date other than December 31 faces certain practical problems in determining the identity and value of the personal property he owns and must list for taxes on January 1. HB 1111 was an unsuccessful attempt to solve this problem. Under its terms a taxpayer who reports on a fiscal year basis for income tax purposes would have been allowed to list his tangible personal property for ad valorem tax purposes on January 1 in accordance with its value as that of the last day of his fiscal year ending during the year prior to January 1.

Classification of Property

As amended at the 1962 General Election, Article V, § 3, of the North Carolina Constitution now provides as follows:

> . . . Only the General Assembly shall have the power to classify property . . . for taxation, which power shall be exercised only on a state-wide basis. No class . . . shall be taxed except by uniform rule, and every classification shall be uniformly applicable in every county, municipality, and other local taxing unit of the State. The General Assembly's power to classify shall not be delegated. . . .

Upon adoption of this amendment, certain statutes establishing state-wide classifications which had been enacted in 1961 became effective. They may be summarized as follows:

(1) *Stored tobacco* (literally, 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") is to be taxed uniformly as a class at 60% of the rate levied for all purposes upon real and personal property in whatever taxing unit it may be listed for taxation [GS 105-294.1, as rewritten by Ch. 1169, Session Laws of 1961].

(2) *Peanuts* in the year following the year in which grown are to be taxed uniformly as a class at 20% of the rate levied for all purposes on real and personal property in whatever taxing unit they may be listed for taxation [GS 105-294.2, as rewritten by Ch. 1169, Session Laws of 1961].

(3) *Baled cotton* held for manufacture or processing is to be taxed uniformly as a class at 50% of the rate levied for all purposes upon real and personal property in whatever taxing unit it may be listed for taxation [GS 105-294.3, as enacted by Ch. 1169, Session Laws of 1961].

(4) "*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," are constituted a special class of state-wide application to be excluded from the definition of the word "property" in GS 105-281 and, therefore, not subject to taxation at all [GS 105-281, as amended by Ch. 1169, Sessions Laws of 1961].

(5) "*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 whear," is to be treated as a special class and excluded from the tax base [GS 105-297, as amended by Ch. 1169, Session Laws of 1961].*

The 1963 General Assembly exercised its power to add a sixth classification to which special treatment is accorded state-wide:

(6) *Fallout shelters:* The individual family fallout shelter meeting criteria and standards established by the Office of Civil Defense, United States Department of Defense, is to be treated uniformly as a class and is to be taxed only to the extent the *appraised* value exceeds $2,000; if constructed by two or more families for joint use, an exclusion of $2,000 of appraised value is granted each family. This is effected by inserting a new section, GS 105-294.4, in the Machinery Act to go into effect January 1, 1964 [Ch. 940 (SB 132)].

An attempt to classify soy beans held for processing and tax them at 60% of the rate applied to property in general was unsuccessful. See HB 652 as amended in the House on June 20 and 21, 1963.

Exemption

As amended at the 1962 General Election, Article V, § 5, of the North Carolina Constitution now provides, in part, as follows:

> . . . Every exemption shall be on a state-wide basis and shall be uniformly applicable in every county, municipality, and other local taxing unit of the State. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this section.

It is noteworthy that the 1963 General Assembly enacted no statutes granting total exemption from property taxation. It is interesting to speculate on whether the new constitutional language served to deter introduction of proposals for local exemption that might have been forthcoming had the wording of this section not been changed.

Records of Exempt Property: Under the provisions of GS 105-312 a list of exempt properties and their value must be prepared annually for each township. Heretofore it has been the tax supervisor's responsibility to file these township lists in consolidated form with the register of deeds by October 1, and the register of deeds, in turn, has been charged with making a duplicate of the list and sending it to the State Board of Assessment by November 1, keeping the original in his office. Ch. 515 (HB 675) relieves the register of deeds of any responsibility under this statute and imposes it all on the county tax supervisor.

State-Owned Timberlands: In 1957 the General Assembly enacted GS 105-296.1 which made provision for certain state agencies to pay the counties in which state timberlands were situated a fixed percentage of amounts received as proceeds of lumbering operations on such lands. (See discussion of Payment of Taxes below.) The same statute authorized the Prisons Department and the Department of Conservation and Development (as to forests held under GS 113-34) to elect to subject their timberlands to regular county ad valorem taxation rather than make the prescribed payments from lumbering proceeds. Ch. 1120 (SB 419) grants the same power of election to the Wildlife Resources Commission. In theory at least, this act represents the removal of an exemption.

Manufacturers' Inventories: Although unsuccessful, the most important proposal for tax exemption dealt with by the 1963 General Assembly was contained in companion bills, HB 1152 and SB 592. They would have exempted the inventories of manufacturers and processors from ad valorem taxation as of January 1, 1965, and thereafter. To replace property tax revenue which counties and municipalities would have received from such property had it remained taxable locally, these bills would have required the state to make each affected county and city a specified cash payment. The amounts of these payments were set out in the bills and would have been continuing in nature. No adjustments would have been made in future years; the amounts would have remained the same. The total of such annual payments, $11,888,700, would have required a biennial appropriation by the state in double that amount beginning with the state budget for the 1965-67 biennium. Before these bills were introduced, as already noted, the General Assembly took steps to have the Commissioner of Revenue survey inventory listings in each county of the state. A great deal of attention was paid these proposals in the press, and they created wide interest among both local officials and groups concerned with attracting manufacturing and processing industries to the state. It may well be that similar proposals will be introduced in future legislative sessions.

Two Unsuccessful Bills: Article V, § 5, of the North Carolina Constitution, permits the General Assembly to exempt "any personal property" to a maximum value of $300, and it also authorizes the legislature to exempt the first $1,000 of value of property held as the owner's place of residence.

For many years the Machinery Act has granted a $300 exemption to certain specified items of personal property. HB 395 was an attempt to amend that statute [G.S. 105-297 (8)] to increase the exemption from $300 to $500. Apparently aware of its lack of constitutional authority to make such a change, the General Assembly did not pass this bill.

Although the authority to grant a $1,000 homestead

(Continued on page 73)

* Curiously, the 1961 legislature provided for the *exemption* of wheat so held rather than for its *classification* and exclusion from the definition of "property" subject to taxation. Technically this presents a constitutional issue since wheat is not included in the list of properties the General Assembly is empowered to exempt in Article V, § 5, of the North Carolina Constitution, but it is likely that the legislation would be construed as an exercise of the classification power (even though tacit) and upheld.

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MOTOR VEHICLES AND HIGHWAY SAFETY

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB are the numbers of bills introduced in the House and in the Senate.

The 1963 General Assembly enacted three major items of highway safety legislation which affect the use of chemical tests for intoxication, suspension of operator's licenses of certain teen-age drivers, and the equipping of vehicles with seat safety belts. Two major items that failed of passage this session are mechanical inspection and the Interstate Driver's License Compact. Significant legislation was enacted which affects the administration of the Financial Responsibility Act of 1957 (compulsory liability insurance law) and the registration of motor vehicles.

Driver Licensing Law

Chauffeur Licensing

Chapter 160 (HB 137) amends GS 20-6 to define *chauffeur* as a person driving a property hauling vehicle or combination of vehicles which is licensed for more than 26,000 (formerly 20,000) pounds gross weight.

Chapter 1022 (HB 968) amends GS 20-7(g) to provide that a chauffeur's license expires on the licensee's birthday in the second year following issuance and to require renewal biennially (formerly annually). This Chapter also amends GS 20-7(i) to fix the fee for issuance and renewal of a chauffeur's license at $4.00 (formerly $2.00).

Operator's License

Chapter 1007 (HB 846) amends GS 20-7(c) and -7(d) to exempt persons who are 60 years of age or older from being required to parallel park a motor vehicle as a part of the examination for initial issuance or reissuance of an operator's license. This provision does not apply to examination of applicants for chauffeur's licenses.

Chapter 968 (HB 884) amends GS 20-11 to provide that operator's licenses may not be issued to persons between the ages of 16 and 18 unless they have satisfactorily completed a driver education course. This requirement may be satisfied by attending and satisfactorily completing a high school driver education course, a driver education course administered by the Department of Motor Vehicles, or any other driver education course which has been approved by the Governor's Coordinating Committee on Traffic Safety. This limitation does not apply unless such a course is available to the applicant without cost to him. Chapter 968 also adds a new GS 20-13 which designates as *provisional licensees* those persons between 16 and 18 years of age. It further provides somewhat more stringent rules for suspension of operator's licenses of drivers in this category. Upon conviction of a second moving violation in any twelve month period the Department of Motor Vehicles is required to suspend the provisional licensee's operator's license for 30 days; for conviction of a third violation within a twelve month period, 3 months suspension; and for a fourth such conviction within a twelve month period, suspension for one year. For conviction of one moving violation in connection with an accident resulting in personal injury, or property damage of $100 or more, 60 days suspension is required.

For purposes of this act, *conviction* includes: (1) a plea of guilty, (2) a plea of *nolo contendere*, (3) a finding of guilt by a court or a jury, and (4) a forfeiture of bail or collateral unless the forfeiture has been vacated. The conviction may not be used as a basis for suspension if prayer for judgment is continued. Effective November 1, 1963.

Implied Consent

Chapter 966 (HB 527) adds a new GS 20-16.2 which provides that any person who operates a vehicle upon the public highways, or driveways, alleys, etc. shall be deemed to have consented to a chemical test of his breath to determine the alcoholic content of his blood. No penalty is provided for refusal, but evidence of refusal is admissible in subsequent criminal actions arising from allegedly operating a motor vehicle while under the influence of intoxicating liquor (See also the discussion of GS 20-139.1). Effective January 1, 1964.

Motor Vehicle Act of 1937

Camping Vehicles

Chapter 435 (HB 205) amends GS 20-38(r)(3) to classify self-propelled motor vehicles equipped with permanent living and sleeping facilities and used exclusively for camping activities as private passenger vehicles. These vehicles were previously classified as *private hauler vehicles.*

Wreckers

Chapter 702 (HB 945) adds new GS 20-38(kk) which defines *wrecker* as "every motor vehicle whose sole operation is moving disabled motor vehicles of an emergency nature [sic] to the nearest point for repairs and/or storage and on which have been permanently attached cranes and are not so constructed to haul other property." This chapter also fixes the annual registration fee at $50.00 for those wreckers weighing not more than 7,000 pounds fully equipped, and $100.00 for those weighing in excess of 7,000 pounds. Registration fees were previously determined by the gross weight of the wrecker and the heaviest vehicle to be towed. GS 20-116(e) is amended to allow a wrecker to tow a combination tractor and trailer to the nearest feasible point for repair and/or storage, and GS 20-118(j) is amended to provide that in such a case the weight of the wrecker is to be disregarded in determining the gross weight of the combination. GS 20-88(a) is amended to conform.

Titling of Trailers

Chapter 552 (HB 351) amends GS 20-50 to require all motor vehicles that are required to be registered, also to be titled. Previously, a trailer with not more than two wheels

and with a gross weight not exceeding 2,500 pounds, and towed by a passenger car or a vehicle licensed for a gross weight of not more than 4,000 pounds was not required to be titled. It was desirable to eliminate this exemption in order to facilitate recording of liens and to give the owner an official document as evidence of ownership.

Registration

Chapter 552 (HB 351) makes several changes in the registration laws including the following:

GS 20-51(f). This section is amended to exempt from registration certain farm trailers or semi-trailers used by farmers in transporting peanuts (formerly cotton and silage only) when not operated for hire.

GS 20-57. The act adds to subsection (b) a provision that the registered owner may acquire additional copies of the registration card from the Department of Motor Vehicles for a fee of 50c each. Subsection (c) is amended to provide that when registration plates are transferred from one vehicle to another under the provisions of GS 20-72, evidence of application for transfer of registration must be carried in the vehicle in lieu of the registration card. A copy of the properly executed application for transfer of registration will satisfy this requirement.

GS 20-63. Subsection (d) is amended to require that registration plates issued for truck-tractors be attached to the front of the vehicle.

GS 20-64(a). This section was amended by Chapter 1067 (HB 1081) to provide that when the registration is to be transferred to a vehicle of a different category (within the meaning of GS 20-87 and -88) than that for which it was issued, the registration plate must be surrendered to the Department in exchange for a plate of proper category. Any unexpired portion of the registration fee paid for the plate surrendered will be credited toward the fee fixed for the new plate. Prior to this act, plates were (and continue to be) transferrable to a vehicle of the same category, but the law contained no provisions relative to transfer of registration to a vehicle of a different category.

Chapter 1190 (HB 1291) amends this section to allow transfer of registration plates from a vehicle owned by a corporation to a vehicle of like category owned by a wholly owned subsidiary of the corporation applying for the transfer.

Distribution of Registration Plates

Chapter 1071 (HB 1248) amends GS 20-63(h) to remove the restriction that prohibited the Department of Motor Vehicles from letting commission contracts for distribution of plates to persons, firms, etc., engaged in competitive commercial enterprises in the locale where plates were to be distributed pursuant to the contract. This restriction was enacted by the 1961 General Assembly and was to become effective July 1, 1963.

Renewal of Registration

Chapter 552 (HB 351) authorizes the Department to issue one or more stickers, tabs or other devices in lieu of new plates for renewal of vehicle registration. The Commissioner of Motor Vehicles is authorized to prescribe the manner in which such devices are to be displayed.

False Report of Motor Vehicle Theft

Chapter 1083 (SB 388) adds a new GS 20-102.1 which makes it a misdemeanor to knowingly make a false report of the theft of a motor vehicle to a peace officer or to the Department of Motor Vehicles.

Size and Weight

Chapter 610 (HB 769) amends GS 20-116(c) to fix the maximum allowable height for all vehicles at thirteen feet, six inches. Prior to this act the maximum height was twelve feet, six inches, except certain automobile transports which were allowed a maximum of thirteen feet, six inches.

This chapter also amends GS 20-116(e) to extend the maximum allowable length of combinations of vehicles from fifty to fifty-five feet. Provisions of this section exempting certain vehicles from the maximum length limitations are retained.

Chapter 356 (SB 254) also amends GS 20-116(e) to allow as many as 4 units in a combination when used by municipalities for collection of rubbish and refuse. In such case, the length of the combination may not exceed fifty feet inclusive of front and rear bumpers. It should be noted that this is shorter than the general limitation on length of vehicles which is fifty-five feet.

Chapter 1022 (HB 998) amends GS 20-116(e) to allow a maximum of three units in a combination when the units are coupled together by saddle mount devices and used in "drive-away service." In order to qualify under this act, the combination must be approved by safety regulations of the Interstate Commerce Commission, the North Carolina Department of Motor Vehicles, and the North Carolina Highway Commission.

Chapter 159 (HB 274) amends appropriate subsections of GS 20-118 to increase the maximum allowable gross weight of vehicles and combinations of vehicles with three axles to 47,500 (formerly 44,000) pounds; combinations with four axles to 64,000 (formerly 62,000) pounds; and combinations with five or more axles to 70,000 (formerly 62,000) pounds. This act also provides that under no circumstances is the gross weight including tolerance to exceed 73,280 pounds. In the case of combinations with five or more axles this limitation will reduce the tolerance which is normally 5 per cent of maximum allowable gross weight. Apparently the 73,280 pound limitation was enacted in order to be consistent with Federal Interstate Commerce Commission regulations.

Directional Signals

Chapter 524 (HB 768) amends GS 20-125.1 to exempt trailers with a gross weight of not more than 3,000 pounds from the requirement of being equipped with directional signals if the trailer and load do not obscure the directional signals of the towing vehicle from the view of a driver approaching from the rear at a distance of 200 feet.

Seat Belts

Chapter 288 (HB 9) amends GS 20-135.2(a) to require all new motor vehicles registered in North Carolina and manufactured, assembled or sold after January 1, 1964 to be equipped with at least two sets of seat safety belts for the front seat at the time of registration. This requirement does not apply to vehicles with a seating capacity in the front seat of less than two passengers. This act merely goes one step further than the 1961 act which required vehicles registered in North Carolina and manufactured, assembled, or sold after July 1, 1962 to be equipped with anchorage units for at least two sets of seat belts for the front seat.

Chemical Breath Tests for Intoxication

Chapter 966 (HB 527) adds a new GS 20-139.1 which provides that results of chemical tests of a person's breath are to be admissible in criminal actions arising out of acts allegedly committed while he was driving a vehicle while under the influence of intoxicating liquor. In order for the results to be admissible and given the prescribed weight the test must have been performed according to methods approved by the State Board of Health and by a person holding a valid permit for this purpose, issued by the State Board of Health.

When tests are performed in accordance with this act, their results are admissible, and a showing of 0.10 per cent or more by weight of alcohol in the person's blood raises a presumption that he was under the influence of intoxicating liquor. This provision, spelling out the weight to be given, will remove one major requirement which existed hereto-

fore—that of an expert witness to testify as to the effects of certain levels of alcohol in the blood. If the results show an alcoholic content of less than 0.10 per cent, no presumption is raised. Apparently, expert testimony would be required in such case to explain the effect of the lower blood-alcohol level if the results were introduced for the purpose of proving intoxication.

It is questionable whether the requirement of expert testimony to explain the technical aspects of the test will be alleviated by this act. The State Board of Health is given authority to approve methods and techniques for conducting the tests, to ascertain qualifications and competence of individuals to conduct the analyses, and to issue and revoke permits based upon the facts ascertained. It is conceivable that the State Board of Health in adopting regulations in the exercise of this authority can make the techniques, etc. sufficiently standard and reliable to gain judicial acceptance of the accuracy of the test without expert testimony.

The act prohibits the arresting officer or officers from administering the test. Presumably, law enforcement officers other than those participating in the arrest will be allowed to administer the test.

Any person who has submitted to a test under the provisions of this act may have an additional test made by a physician, chemist, registered nurse or other qualified person of his own choosing, but the failure or inability to do so does not affect the admissibility of the results of the test taken at the direction of the law enforcement officer. Any officer having in his charge a person who has submitted to a test under this act is required to assist him in contacting a qualified person to administer an additional test.

At the time the test is performed, the person whose breath is analyzed must be furnished the results of the analysis. In addition, the person conducting the test must record in writing (1) the time of arrest, and (2) the time of the analysis and its results. A copy of this record must be furnished to the person undergoing the test, or to his attorney prior to any trial or proceeding in which the results may be used. Although the wording of the act is not entirely clear, apparently these requirements apply only to the test administered at the direction of the officer.

This act is regarded as an improvement over present law because of the elimination of the requirement of expert testimony in cases involving the results of breath tests. It should be remembered, however, that this act does not expressly affect chemical tests of substances other than breath. The act also sets the required percentage of alcohol in the blood which is required to prove intoxication at what is thought to be a realistic level from a highway safety standpoint. (See also the discussion of GS 20-16.2.) Effective January 1, 1964.

Speed Limits

Chapter 456 (HB 766) amends GS 20-141(b)(3) b. to exempt vehicles towing trailers with a gross weight of not more than 3,000 pounds from the speed restriction of 45 m.p.h. imposed by this subsection. This has the effect of subjecting vehicles towing such trailers to the same speed restrictions that they would be subject to if they were not towing trailers.

Chapter 134 (HB 46) amends GS 20-141(b)(5) to allow the State Highway Commission to set the maximum speed limit at 65 (formerly 60) miles per hour.

This chapter also amends GS 20-141(b1) to fix the minimum speed limit at 45 miles per hour in a 65 mile per hour zone.

Chapter 949 (SB 518) sets up a uniform system in which the State Highway Commission is given exclusive authority to vary the statutory speed limits outside of municipalities; and in which local authorities have exclusive authority to vary those on streets within municipalities except upon those streets that are a part of the State highway system and those that are maintained by the State Highway Commission. The changes made are as follows:

GS 20-141(b)(5). The act amends this section to authorize the State Highway Commission to raise the statutory speed limits. The maximum speed limit set under the authority of this section may not exceed 65 m.p.h. under any circumstances. The authority of the Commission to set a higher maximum speed limit within corporate limits of a municipality solely by its own act is not limited to highways designated as a part of the Interstate highway system or other controlled-access highway. Previously the authority to set a higher maximum speed was limited to areas other than business and residential districts.

GS 20-141(d). The act amends this section to clarify the authority of the State Highway Commission to lower the statutory speed limits. This authority extends to any part of a highway outside the corporate limits of a municipality and to any part of a highway designated as part of the Interstate highway system or other controlled-access highway either inside or outside the corporate limits of a municipality.

GS 20-141(f). The act repeals this section which, prior to its repeal, authorized local authorities to fix speed limits at intersections and in the vicinity of schools and recreational areas.

GS 20-141(g). The act amends this section to limit the power of local authorities to fix speed limits higher than those prescribed by GS 20-141 to those streets that are not a part of the State highway system, and not maintained by the State Highway Commission. Previously, the power of local authorities could also be exercised with respect to through highways.

GS 20-141(g1). This new subsection allows local authorities to fix a maximum speed limit of up to 50 m.p.h. upon streets and highways within a municipality which are a part of the State highway system, except those which are a part of the Interstate highway system or other controlled-access highway. The speed limit so fixed is not effective until the State Highway Commission has passed a concurring ordinance adopting the speed fixed by the local ordinance.

GS 20-141(g2). This new subsection empowers local authorities to lower the statutory speed limit upon streets and highways within a municipality which are a part of the State highway system, except those which are a part of the Interstate highway system or other controlled-access highway. The lower limits set pursuant to this section are not effective until the State Highway Commission has passed a concurring ordinance adopting the limit set by the local ordinance. It should be noted that this section does not fix a point below which the speed limit may not be set. This subsection does not prohibit local authorities from setting lower speed limits in school zones under the authority GS 20-141(g3).

GS 20-141(g3). This new subsection empowers local authorities to fix a maximum speed of not less than 25 m.p.h. upon streets and highways within a municipality which are a part of the State highway system (except those which are also a part of the Interstate highway system or other controlled-access highway) in the vicinity of any public or private elementary or secondary school. This authority is limited to such streets and highways as abut school property. Such speed limits may extend for a distance not exceeding 500 feet on either side of the school property lines and may be effective only for 30 minutes prior to and 30 minutes following the times when the school begins and ends its daily schedule. In the case of schools with different beginning and ending schedules for different groups of pupils, the speed limit so fixed may be effective for 30 minutes prior to and 30 minutes following the time of each beginning schedule and each ending schedule. There is possibly a construction problem here as to whether the speed limit may be effective for only one hour at the beginning of the daily schedule and one hour at the ending, or whether it is effec-

tive from 30 minutes before the beginning until 30 minutes after its ending. Speed limits so fixed are not effective until appropriate signs are erected giving notice of the speed limit.

GS 20-141(b1). The act amends this section to add a provision that minimum speed limits fixed under this section shall be effective as to those streets and highways within a municipality which are a part of the State highway system only when adopting ordinances are passed and concurred in by the State Highway Commission and the local authorities.

Where State or local authorities vary the statutory speed limits pursuant to the act, the limit so fixed must be based upon an engineering and traffic investigation except those fixed pursuant to subsections (g) and (f1) of GS 20-141. The limits so fixed are not effective until appropriate signs are erected.

Chapter 318 (HB 448) amends GS 20-141.3(d) to provide that any person whose license has been revoked under this section (prearranged racing) may apply for a new license after 18 months from the date of revocation. Upon receipt of such an application, the Department has discretion to issue a new license upon such terms and conditions as it sees fit to impose for the balance of the three year revocation period. The Department must find that the applicant has been of good behavior during the 18 months next preceding his application and that his conduct and attitude are such as to entitle him to favorable consideration before it may grant his application.

Collision Reports

Chapter 1249 (HB 967) amends GS 20-166.1(i) to authorize the Department of Motor Vehicles to furnish uncertified copies of collision reports and supplemental reports made by State, city or county police, and coroners to members of the general public at a charge of 50¢ each. This does not affect the authority of the Department to furnish (1) certified copies to members of the general public or (2) certified or uncertified copies without charge to governmental units.

Traffic Control Devices

Chapter 559 (HB 771) amends GS 20-169 to add the provision that all traffic signs, signals, markings, islands and other traffic control devices installed on streets or highways of the State highway system within the corporate limits of a municipality shall be subject to the approval of the State Highway Commission. Such signs, signals, etc. are also required by this act to be installed in substantial conformance with specifications contained in the Manual on Uniform Traffic Control Devices for Streets and Highways, as revised. The State Highway Commission is required to assume the cost of installing such devices, and the cost of altering existing devices on the State highway system to conform to specifications set out in the Manual.

SAFETY AND FINANCIAL RESPONSIBILITY ACT OF 1953

Satisfaction of Judgment

Chapter 1238 (HB 1381) amends GS 20-279.15 to increase from $1,000 to $5,000 the amount required to be credited upon a judgment before that judgment will be deemed satisfied for purposes of the Safety and Financial Responsibility Act of 1953 where the judgment is in excess of the amount credited.

Assigned Risk Plan

Chapter 1208 (SB 405) amends GS 20-279.34 to add the provision that upon receipt of an application from an applicant subject to the assigned risk provisions requesting an insurance policy for coverage in excess of the minimum requirements for establishing financial responsibility, the Commissioner of Insurance shall assign the applicant to an insurance carrier. The carrier is required to issue the policy to the applicant in an amount not to exceed $10,000 because of bodily injury or death of one person in any one accident, $20,000 because of bodily injury or death of two or more persons, and not to exceed $5,000 because of injury to or destruction of property. Since the act specifies that the carrier is to issue *the* policy requested, at least a technical question is raised as to what limits of coverage must be written where the applicant requests coverage in excess of the amounts required to be written by the act. Previously, the carrier was required to issue the policy only in an amount sufficient to satisfy the requirements for establishing financial responsibility. The Commissioner of Insurance is authorized to fix rates for those policies which are higher than manual rates. This act does not apply to policies issued on the assigned risk plan prior to the effective date of the act which is January 1, 1964.

DEALERS AND MANUFACTURERS LICENSING

Chapter 1102 (HB 1134) adds a new subdivision to GS 20-294 authorizing the Department of Motor Vehicles to deny, suspend, or revoke licenses of dealers, manufacturers, and salesmen for conviction of certain offenses including (1) unlawful taking of a vehicle, (2) receiving or transferring stolen vehicles, or (3) fraud in connection with rental of motor vehicles. The conviction must be while holding such a license or within five years next preceding the date of application for such licenses.

VEHICLE FINANCIAL RESPONSIBILITY ACT OF 1957

Chapter 964 (HB 384) makes significant changes in several sections of the Vehicle Financial Responsibility Act of 1957, the most important of which is the substitution of the owner's certificate for the FS-1 form. All changes made by the act are effective October 1, 1963. The following sections are affected as indicated:

GS 20-309. This section is amended to provide that no self-propelled vehicle may be registered in this State unless at the time of registration the owner has financial responsibility for the operation of the vehicle, and so certifies at the time of registration. In addition to this certificate, the Commissioner of Motor Vehicles may at any time require the owner to furnish proof that he has insurance; failure to produce such proof is prima facie evidence that no financial responsibility exists with regard to the vehicle concerned. The act places a duty on insurance companies to verify the accuracy of the owner's certification upon request of the Department of Motor Vehicles, and failure to deny coverage within 20 days may be considered by the Commissioner as acknowledgement that the information submitted is correct.

Another new provision of this section prohibits the insurer from terminating an automobile liability insurance policy by cancellation or otherwise without first giving the Department of Motor Vehicles notice 15 days prior to the effective date of cancellation.

GS 20-310. Several minor changes are made in this section which conform to changes made in GS 20-309. The section also is amended to specify that the penalties for operation of a motor vehicle without financial responsibility are loss of license plate, suspension of driver's license for 30 days, and a fine or imprisonment in the discretion of the court. The requirement of notice to the Department of Motor Vehicles within 15 days of termination of any automobile liability insurance policy is deleted. GS 20-309 was amended to require notice when the insurer terminates the policy. So, notice of termination is now required when the *insurer* terminates the policy, but not when the *insured* terminates it.

GS 20-310.1. The act repeals this section which prior to its repeal required notice to the Department of Motor Vehicles by a person repossessing an automobile under a conditional sales contract or similar instrument.

GS 20-311. This section is re-written to require the De-

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PENAL CORRECTION ADMINISTRATION

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

Changes made by the 1963 General Assembly in statutes pertaining to penal-correctional administration continue the trend toward correctional emphasis and away from the penal stress of earlier eras.

Organizational Changes

Included among the topics suggested for study by the 1961-63 Commission on Reorganization of State Government was the desirability of establishing a Department of Corrections to replace the State Board of Correction and Training, the State Probation Commission, the State Prison Department, and the Board of Paroles. This topic was studied by the Reorganization Commission. Their position on the desirability of establishing a single department for all state administered correctional systems is summarized in the following paragraph from their report.

"While we recognize the continuity of the correctional process and the great need for close coordination of probation, institutional care, and parole, and although we believe there should be no fundamental difference in the basic philosophy, methods, and approaches to the problem of the offender whether he be a juvenile or an adult, we are not convinced that it would be wise to place all State correctional agencies in a single Department of Corrections at this time. To the contrary, we believe the lack of a comprehensive study and resolution of the problems involved and the fact that no particular preparations have been made for consolidating correctional agencies would make such reorganization untimely. Furthermore, we have been favorably impressed by the evidence of extraordinary progress being made by each of the correctional agencies here dealt with, and we fear that the momentum of this steadily accelerating forward movement might be lost if the plans for separate development are disrupted by a fundamental change in organizational structure."

The Reorganization Commission was also favorably impressed by the organizational arrangement for the administration of the State Prison System. This arrangement limits the functions of the State Prison Commission to the adoption of general policies, rules and regulations, and to the selection of the Director of Prisons and advising with him on administrative matters. The Director is appointed by the Commission, with the approval of the Governor, for a term of four years overlapping that of the Governor by 18 months; the Director is vested with the power to appoint and remove prison personnel subordinate to him, and he is given the administrative powers and responsibilities respecting prison operations.

Chapter 914 (HB 834) implements recommendations made by the 1961-63 Commission on Reorganization of State Government calling for changes in the statutes pertaining to the administration of the State's probation system to make them similar to the statutes dividing the governing authority of the State Prison Department between the Prison Commission and the Director of Prisons. This legislation provides that the Probation Commission, with the approval of the Governor, shall appoint a Director of Probation for a term expiring July 1, 1966, subsequent appointments to be for four years or to fill the unexpired term in case of the death, resignation, or removal of a Director. The Probation Commission may remove the Director, with the consent and approval of the Governor, but only for cause after notice and hearing. The Director is vested with the authority to administer the probation system in accordance with law under rules and regulations proposed by him and approved by the Commission. The Director is made responsible for the appointment and discharge of other probation personnel.

The 1961-63 Commission on Reorganization of State Government noted that some confusion had been caused by the use of the titles "Board of Correction and Training" and "Commissioner of Correction" for the governing authorities of this State's training school system. Boards of correction and commissioners of correction in other states are usually concerned with institutions for the correction of adult offenders. Therefore, the Reorganization Commission recommended that the title of the State Board of Correction and Training be changed to the State Board of Juvenile Correction, and that the title of Commissioner of Correction be changed to the Commissioner of Juvenile Correction. The Reorganization Commission also recommended that the administrative and executive powers and duties respecting State institutions for the correction of delinquent minors, including authority respecting personnel matters, be vested in the Commissioner of Juvenile Correction to be administered by him in accordance with law under rules and regulations proposed by him and approved by the Board of Juvenile Correction. These recommendations were implemented by Chapter 914 (HB 834).

Suspension of Sentence and Probation

Article 20 of Chapter 15 of the General Statutes deals with suspension of sentence and probation. Chapter 632 (HB 232) adds to G.S. 15-197, the first statute in Article 20, a provision that all conditional release by way of suspension of rendition or execution of sentence or otherwise may be modified as provided by the terms of this Article.

Conditions of probation provide the legal framework within which both the probation officer and the probationer

are confined. Generally speaking, any condition may be imposed providing it does not require illegal, immoral, or impossible behavior on the part of the probationer. Unless a condition is reasonably related to the particular treatment needs of the individual probationer, it will probably handicap the officer in his rehabilitative efforts. Negative and punitive conditions may make it difficult or impossible for the probation officer to establish a constructive relationship with the probationer. While the court is not limited to the list of conditions appearing in G.S. 15-199, and may not include any of them in a particular probation judgment, the fact that a particular condition is included in the statute will probably increase the likelihood of its use by the court. Several specifically authorized conditions were added to G.S. 15-199 by the 1963 General Assembly.

Chapter 54 (HB 89) authorizes the court to impose as conditions of probation that the probationer waive extradition to this State from any jurisdiction in or out of the United States, violate no penal law of the United States or any state, and be of general good behavior. These additional conditions seem likely to appear in most, if not all, of the probation judgments after they are added to the printed probation judgment form provided by the Probation Commission.

More selective use is likely to be made of conditions authorized by Chapter 632 (HB 232), which permit the court, with the defendant's consent and with a statement of the availability of jail accommodations, to require the defendant to report to the sheriff, chief of police, or other law enforcement officer for the confinement in jail or other designated place on week-ends or other time specified. With the defendant's consent he may be required to surrender his earnings to the County Board of Public Welfare or other responsible agency for deducting the cost of his incarceration, applying part to the support of his dependants, and paying any remaining sum to the defendant on expiration of his suspension or when directed by the court. Upon revocation of probation or suspension, the court must certify in the judgment the number of days the probationer was incarcerated; such time (not to exceed the length or original suspended sentence) must be deducted from the term of the sentence suspended.

Chapter 632 (HB 232) amends G.S. 15-200.1 to provide that before a court may revoke probation or suspension of sentence, the probation officer, solicitor, or other officer shall inform the probationer in writing of the intent to seek revocation, setting forth the grounds. On the defendant's request, the court must grant a reasonable time to prepare defense. The defendant is given the right to appeal from inferior court revocations to the superior court, where the issue is limited to whether the terms of probation or suspension have been violated. This issue is determined by the judge without a jury. Upon finding such violation, the lower court's judgment must be enforced unless the superior court judge finds as a fact that circumstances and conditions surrounding the terms and the violation have substantially changed so that enforcement would be unjust. On finding such substantial change, the judge may modify or revoke the terms of the probationary or suspended sentence. Appeals may be heard in or out of term, in or out of the county by the resident superior court judge or the judge assigned to hold the courts of the district or a superior court judge commissioned to hold court in the district or a special superior court judge residing in the district. While G.S. 15-200.1 has thus been amended by Chapter 632 (HB 232) to extend the right to appeal from revocation of a suspended sentence in a court inferior to the superior court so as to apply to a person under the supervision of the Probation Commission, Chapter 20 (HB 88) makes inapplicable to persons under supervision of the Probation Commission G.S. 15-200.2, which requires the solicitor to serve upon the defendant a bill of particulars before praying that a suspended sentence be placed in effect by a superior court.

Prison Administration

Chapter 469 (HB 481) amends subsection (b) of G.S. 148-33.1 so as to permit the Board of Paroles to authorize the Prison Department to grant work release privileges to any inmate of the State prison system serving a term of imprisonment. With the former restriction of a five year term removed by this legislation, the Prison Department and the Board of Paroles can now use the work release plan to prepare an inmate for parole or final discharge in every case where appropriate. Chapter 469 (HB 481) also amends subsection (f) of G.S. 148-33.1 so as to require the Prison Department, after deducting from the inmate's earnings on work release the cost of his keep and a sum to cover his incidental expenses, to retain to his credit an amount necessary to assure a reasonable payment to him on final release before making payments for the support of his dependents.

While the General Assembly's amendment to the work release statute made it a more effective rehabilitative tool, the fact that custody remains a fundamental function of the Prison Department was recognized by Chapter 681 (HB 1022), which amends G.S. 148-45 to provide that any inmate of the State prison system granted work release privileges or temporary parole who fails to return to custody is guilty of escape. Escape is defined to include wilful failure by an inmate to return to an appointed place and at an appointed time as ordered.

Chapter 1174 (SB 571) amends or repeals a number of statutes pertaining to prison administration or paroles. G.S. 148-20, which authorized whipping of prisoners under specified conditions, is rewritten to make corporal punishment of any prisoner unlawful. G.S. 148-21, which required a prisoner's clothes and supplies to be marked with the prisoner's number, G.S. 148-43, which required white and colored prisoners to be kept separate, and G.S. 148-75, which called for a deputy warden of the State prison to be appointed director of the Prison Department's Consolidated Records Section, are repealed. G.S. 148-44 is amended to remove the requirement for separate sleeping and eating spaces for prisoners of different races. A sentence stating that salaries and expenses of the Board of Paroles shall be paid by the State Prison Department is struck out of G.S. 148-55. The words "Board of Paroles" are substituted for "Commissioner of Pardons" in G.S. 148-83 and 148-84, which prescribe the procedures for compensating persons erroneously convicted of felonies and imprisoned in the State prison system.

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PLANNING

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

Authorization for counties and cities to acquire property rights in order to preserve "open spaces," together with minor amendments to the state's zoning and urban redevelopment laws, highlighted a slim legislative year for North Carolina planners. Such organizations as the N. C. Planning Association and the N. C. Section of the American Institute of Planners saw most of their proposals killed, and failed even to find introducers for some bills.

Open Spaces

North Carolina fell into step with an increasing number of urbanizing states when the General Assembly passed Chapter 1129 (SB 494). This act authorizes counties and municipalities, either singly or jointly, to purchase or otherwise acquire property rights ranging from fee simple title to so-called "development rights" in order to preserve open spaces within their zoning jurisdiction. Open spaces are defined as "any space or area (1) characterized by great natural scenic beauty or (2) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources."

The act is modelled closely after a California law adopted in 1959, which has since been copied by New York, Maryland, and other states. It enables local governments in North Carolina to participate fully in the federal program for preservation of open-space land (42 U.S.C. Chapter 8C, §§ 1500-1500e), under which grants of 20-30 per cent of the cost of property acquisition are available to such governments.

A large range of possibilities for preserving open spaces is made available under the act. In addition to purchasing full title to the land, a local governmental unit may (a) acquire only "development rights" to the land, allowing the owner to continue farming or making other uses of the land which preserve its open characteristics, (b) acquire title to the land and lease it back to the former owner or others, subject to appropriate limitations on its use, (c) acquire title to the land and sell it back to its owner, subject to appropriate deed restrictions. The purpose of all these possibilities is to achieve the community objective—preservation of open spaces in areas where rapid development is gobbling up the land—without burdening the community with excessive costs and without removing the land from all use.

One major change was made in the originally-proposed bill by the General Assembly—deletion of provisions authorizing use of the power of eminent domain in carrying out such a program. This means that local governmental units may encounter instances of "hold-ups" by property owners unwilling to participate in the program. However, there is full authority for voluntary purchase as well as receipt of gifts of such property rights, and units which act in advance of immediate need should be able to carry on an effective program.

Appropriations authorized by the act may be made from surplus or nontax funds, and after approval in a special election, from taxes levied for this purpose. The act does not apply to Alamance, Columbus, Craven, Duplin, Forsyth, Gates, Hoke, Nash, Pender, Rockingham, and Warren Counties.

Local Act

A special act gave Mecklenburg County Commissioners authority to acquire land in flood plains for the purpose of mitigating potential flood damage. This act can be used in conjunction with the open-space law to achieve broader results.

Zoning

Three minor, but nagging, problems were dealt with by Chapter 1058 (HB 542), which amended the municipal zoning enabling act. Section 160-176 of the General Statutes provides that when 20 per cent of the owners of certain tracts in the vicinity of property which is proposed for rezoning file a protest, the amendment accomplishing such rezoning may not be passed except upon a favorable vote of three-fourths of all the members of the city council. Unfortunately, the law has not specified the form and manner in which such protest may be filed. Chapter 1058 adds a new Section 160-176.1 which supplies these specifications. Under this section, no protest petition shall be valid unless (a) it is written, (b) it bears the actual signatures of the requisite number of property owners and states that they protest the proposed amendment, and (c) it is received by the municipal clerk in time to allow at least two normal work days (excluding weekends and legal holidays) prior to the public hearing on the amendment, so as to allow time for municipal personnel to check the accuracy and sufficiency of the petition. The act also allows municipalities by ordinance to prescribe the forms on which petitions must be submitted.

The second problem dealt with by this act was indicated by the North Carolina Supreme Court in the recent case of *Jarrell v. Board of Adjustment*, 258 N.C. 476 (1963). In that case the court held that a zoning board of adjustment must base its findings in controverted fact situations on sworn testimony. But it pointed out that no member of the board had authority to administer oaths to witnesses. Chapter 1058 authorizes the chairman of the board (or any member temporarily acting as chairman) to administer such oaths in any matter coming before the board.

The third problem was the long-standing one created by the so-called "four-corner proviso" to Section 160-173 of

the General Statutes. This proviso, in essence, provides that when two or more corners at an intersection are zoned in a particular way, the owners of the other corners are entitled (on application) to automatic rezoning of their corners in the same manner. Several cities have been tricked into rezoning under this proviso, three cases in the State Supreme Court have resulted from it, and special acts have removed from its coverage all towns in 12 counties plus six additional towns. Chapter 1058 repeals this proviso with respect to all counties other than Hoke, Iredell, Lee, Pender, Vance, Warren, and Washington. Prior to its adoption special acts made the proviso inapplicable to towns in Robeson county and to the city of Wilson.

Local officials are cautioned that Chapter 1058 does not go into effect until January 15, 1964, and then it will not apply to any written application made prior to that date nor to any pending litigation.

Local Acts

As usual there were numbers of local bills affecting zoning powers. The town of Aurora and towns in Harnett County were brought under the enabling act for extraterritorial municipal zoning (G.S. 160-181.2), while towns in Caldwell and Richmond Counties were removed from its coverage. Portions of Hoke County were removed from Red Springs' extraterritorial zoning jurisdiction, as were portions of Camden County in Elizabeth City's jurisdiction.

At the county level, special acts gave New Hanover and Vance Counties power to zone under the state's general enabling act (G.S. Chapter 153, Article 20B).

Urban Redevelopment

The legislative proposals of the Carolinas Association of Renewal Officials received a mixed reception in the General Assembly. Their basic proposals consisted of a number of procedural improvements, embodied in HB 845. This provided for (a) simplified and more definite condemnation procedures, authorizing use of special masters in lieu of committees of appraisal, specifying when title should vest in the redevelopment commission, authorizing the property owner to accept amounts paid into court by the commission without prejudicing his right to appeal, spelling out interest to be paid, and deleting the requirement that the commission pay the property owner's attorney fees; (b) acquisition of property by the commission, with council approval, prior to final approval of the redevelopment plan; and (c) clarification of the authority to borrow money. This bill was not reported out of the House committee to which it was referred.

Chapter 1212 (SB 577) fared better. Under the general redevelopment law, the commission has been required to use competitive bidding procedures in disposing of property except to municipalities, counties, and other public bodies. Chapter 1212 now authorizes disposition at private sale to a non-profit association or corporation operated exclusively for educational, scientific, literary, cultural, charitable, or religious purposes. Such sales may be made only (a) for use in accordance with the redevelopment plan, (b) subject to restrictive covenants guaranteeing that it will be used for such purposes, (c) after an advertised public hearing, (d) subject to the approval of the municipal governing body, and (e) at an agreed-upon price not less than the fair value determined by three professional appraisers appointed by the commission. The act does not apply to Craven, Duplin, Edgecombe, Forsyth, Macon, Madison, Mecklenburg, New Hanover, Swain, and Yancey Counties.

Chapter 194 (HB 199) validates all actions prior to April 11, 1963, pertaining to notice and conduct of required public hearings by redevelopment commissions and municipal governing boards.

Local Act

A special act authorizes Kinston to hold a referendum on urban redevelopment. A bill amending the general state law to require referendums of this type received an unfavorable committee report.

Subdivision Regulations

There were no amendments to the state's general subdivision-regulation enabling acts, although Harnett, Caswell, and Halifax Counties were added to the coverage of the county act (G.S. Chapter 153, Article 20A), and Mount Airy and towns in Durham, Harnett, Johnston, Lee, and Person Counties were brought under the municipal act (G.S. Chapter 160, Article 18, part 3A). Durham's special act was amended to authorize the city to require certain improvements as a condition to approval of subdivisions.

Provisions of the Uniform Map Law (G.S. 47-30, 47-32) governing the recording of plats were amended slightly by Chapter 71 (SB 31) to ease the enforcement responsibility of the register of deeds. Bladen County was brought under the coverage of the Map Law, while Mitchell and Rockingham Counties were removed from its requirements. Provisions of G.S. 102-5, which had forbidden use in recorded plats or deeds of coordinates based on the N. C. Coordinate System where the point was more than one-half mile from a monument or station of the System, were repealed by Chapter 783 (SB 274).

Planning Organization

Although there were no changes in the general laws relating to planning organization and jurisdiction, there were a number of special acts which affected particular localities. A new Hickory Regional Planning Commission was created. A series of acts revised the distribution of planning powers in the Chapel Hill-Carrboro area. Gastonia's extraterritorial planning powers were rewritten extensively. And members of the Wilson planning board, board of adjustment, and airport zoning board of appeals were given authority to serve two consecutive terms.

Economic Development

As has been usual in recent legislative sessions, there was considerable attention to problems of economic development. Chapter 1229 (HB 1151) amended the provisions of G.S. Chapter 158 to make clear that a vote of the people is not required in order to use non-tax funds for industrial development programs. Carteret, Duplin, Haywood, Mitchell, Montgomery, Onslow, Perquimans, and Warren Counties, and the cities of Charlotte, Dunn, High Point, New Bern, and Selma, received new authority to appropriate funds for advertising and other development programs.

New County Powers

Chapter 985 (SB 217) grants counties authority to levy special assessments against benefited properties in order to pay for water and sewerage systems, although representatives of some 61 counties chose to remove their counties from its coverage. Special acts authorized Mitchell and Watauga Counties to construct water and sewerage systems and roads to serve unincorporated communities having industrial plants.

Chapter 1060 (HB 606) gives counties broad powers to adopt police-power regulations, particularly for the regulation of nuisances outside municipal jurisdiction. (For a more detailed account of this act, see the article on "County Government.") In addition, New Hanover County was brought under the county building inspection enabling act, while Lee and Orange Counties received authority to appoint plumbing inspectors.

Streets and Highways

The two street and highway bills of most significance to planners—HB 269 regulating billboards on Interstate Highways and SB 555 providing for the adoption by the State Highway Commission or municipalities of official maps to preserve the rights-of-way of proposed streets—both were

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PUBLIC HEALTH

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB are the bill numbers of bills introduced in the House and in the Senate.

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

Local Board of Health May Charge Fees

Chapter 1087 (SB 420) adds a new subsection (e) to present G.S. 130-17 which reads as follows: "The local boards of health are hereby authorized to enter into contracts with the Veterans' Administration or any other governmental or private agency, or with any person, whereby the local board of health agrees to render services to or for such agency or person in exchange for a fee to cover the cost of rendering such service. This authority is to be limited to services voluntarily rendered and voluntarily received, and shall not apply to services required by statute, regulation, or ordinance to be rendered or received. The fees to be charged under the authority of this subsection are to be based upon a plan recommended by the local health director and approved by the local board of health and the State Health Director, and in no event is the fee charged to exceed the cost to the health department of rendering the service.

"The fees collected under the authority of this subsection are to be deposited to the account of the health department so that they may be expended for public health purposes in accordance with the provisions of the County Fiscal Control Act. No individual employee is to receive any compensation over and above his regular salary as a result of rendering services for which a fee is charged."

Filling Vacancies on County Board of Health

Chapter 359 (HB 471) deals with the matter of filling vacancies on county boards of health. Prior to this bill the law had provided that all vacancies in the membership of the public members of a county board of health were to be filled by the ex officio members at the next meeting of the county board of health following the creation of the vacancy. Although this portion of the statute is unchanged by the new law, the new law provides: "If a vacancy shall arise among the public members, a majority of the ex officio members may call a meeting of all of the ex officio members for the purpose of selecting such public members as may be necessary to fill the said vacancies, and such selection of public members shall be by majority vote of the ex officio members of the county board."

Since this bill repeals all laws in conflict with it, it could be that this would be interpreted to be in conflict with the prior law concerning the filling of vacancies and repealed the prior law. It is, therefore, suggested that the provisions of this new law be followed when filling a vacancy in the public membership of a local board of health.

State Board of Health to License Persons and Approve Methods of Giving "Breath-o-lizer" Tests for Drunk Driving Purposes

Chapter 966 (HB 527) provides that in any criminal action arising out of acts alleged to have been committed by a person while driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood as shown by a chemical analysis of his breath shall be admissible in evidence. A presumption that the person was under the influence of intoxicating liquor exists if there was at the time 0.10% or more by weight of alcohol in the person's blood. This chapter further provides: "Chemical analyses of the person's breath, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the State Board of Health and by an individual possessing a valid permit issued by the State Board of Health for this purpose. The State Board of Health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State Board of Health; provided that in no case shall the arresting officer or officers administer said test." This chapter does not become effective until January 1, 1964.

Vital Statistics

Chapter 492 (SB 265) makes several changes in the vital statistics laws. G.S. 130-46 is amended so as to make it the duty of the physician making the medical certification as to the cause of death to complete said certification prior to interment but in no event more than 72 hours after death (the physician is allowed to designate the cause of death as unknown pending an autopsy or upon some other reasonable cause for delay, but if he does so he is responsible for sending the supplementary information to the local registrar as soon as it is obtained).

G.S. 130-49 is amended to authorize the State Registrar to adopt regulations providing for the extension of the time period prescribed for the filing of death certificates, fetal death certificates, medical certifications of cause of death, and for the obtaining of burial-transit permits in cases in which compliance with the statutorily prescribed period would result in undue hardship.

G.S. 130-47 is amended to provide that no cremation of a dead body, in cases of death without medical attendance, may take place within a period of seventy-two (72) hours following death without approval of either the county medical examiner or local health director, or district solicitor of the superior court of the district in which the person died.

G.S. 130-76 is amended to make a violation of the vital statistics laws by a licensed embalmer or licensed funeral director grounds for suspension or revocation of his license by the State Board of Embalmers and Funeral Directors. This

penalty section is also amended to make the interment, cremation, or other final disposition of a dead body without a burial-transmit permit a misdemeanor rather than a felony.

Lastly, G.S. 130-69 is amended so as to require the local registrar, within seven days of the date of his receipt of a certificate of birth or death, to transmit to the register of deeds of the county or his agent a copy of each certificate registered by him. The present law requiring the transmission of all original certificates to the State Registrar on the fifth day of each month was not changed. Thus, under the new law it is necessary for the local registrar to transmit a copy of each birth and death certificate to the register of deeds within seven days of its receipt, and necessary to send the original to the State Registrar on the fifth day of each month.

Nursing Homes

Chapter 859 (HB 811) adds two new subsections to G.S. 130-9(e) relating to the licensing of nursing homes and boarding homes for the aged and infirm. Prior to the new legislation the licensing of nursing homes was a responsibility of the State Board of Health and the licensing of boarding homes for the aged and infirm was a responsibility of the State Board of Public Welfare. This chapter changes that to a certain extent by providing that a person may operate a nursing home and a home for the aged and infirm in the same building or in two or more buildings adjoining or next to each other on the same site. In such cases, both the nursing home and the home for the aged and infirm must comply with standards prescribed by, and be licensed by, the State Board of Health and it is not necessary for these combination homes to secure a license from any other state agency. The State Board of Health is directed to consult with the State Board of Public Welfare regarding the standards for the boarding home area of the homes licensed by the State Board of Health as combination nursing homes and boarding homes for the aged and infirm.

The second part of this chapter makes it the duty of the State Board of Health, in co-operation with the State Board of Public Welfare, to prescribe the method for the evaluation of residents in homes for the aged and infirm in order to determine when any such residents are in need of professional medical and nursing care as provided in licensed nursing homes.

Mental Health

There were several bills enacted by the General Assembly relating to the general area of mental health. One of the most significant of these was Chapter 1166 (SB 182) which creates a State Department of Mental Health and a State Board of Mental Health, replacing the present Hospitals Board of Control. This law gives the new State Department of Mental Health jurisdiction ". . . over all phases of mental health in North Carolina to the extent provided in this Act including that heretofore vested by law in the State Hospitals Board of Control and in all other state agencies with respect to mental health." Among the duties of the Department, as set out in the bill, are the duty to co-operate with any local health authorities in augmenting, promoting, and improving local residential programs for the mentally retarded, mentally ill and inebriate; and, to co-operate with the State Board of Public Welfare and the State Board of Health in their programs of preventative and rehabilitative services through home care and maternal and child health.

With respect to local mental health clinics, the Act adds a new Article 2A entitled "Local Mental Health Clinics" to Chapter 122 of the Statutes. In this article:

(1) the State Department of Mental Health is designated as the State's mental health authority for purposes of administering federal funds allotted to North Carolina for mental health activities;

(2) the State Department of Mental Health is designated as the State agency authorized to administer minimum standards and requirements for mental health clinics as conditions for participation in federal-state grants-in-aid, and is authorized to promote and develop community mental health outpatient clinics in accordance with the provisions of this chapter (nothing in this chapter is to be construed to prohibit the operation of outpatient mental health clinics at any of the institutions under the control of the State Department of Mental Health, or the operation of an outpatient mental health clinic at the North Carolina Memorial Hospital in Chapel Hill or at any other hospital acceptable to the State Department of Mental Health);

(3) the governing authorities of local governmental units are authorized to appropriate funds for the support or partial support of mental health clinics which serve such localities (whether or not the facilities of the clinic are physically located within the boundaries of such cities, towns, or counties, and whether or not such clinics are owned or operated by the local governmental units, and such support or partial support is declared to be a necessary expense within the meaning of the North Carolina Constitution);

(4) the Community Mental Health Services Division of the State Department of Mental Health is to develop and administer local mental health clinics and a state-wide program of mental health education;

(5) the Department of Mental Health is authorized to establish community mental health services within a framework of policies which provide for the joint operation of mental health clinics within local communities which agree to participate financially and otherwise in the program;

(6) local mental health services, when approved by the Department of Mental Health, may be established by (a) any board of county commissioners, (b) any governing body of a municipality with a population in excess of 25,000, (c) any independent community agency interested in mental health, (d) two or more counties, (e) a combination of two or more cities with a combined population in excess of 25,000 or (f) a combination of one or more cities with one or more counties, (the governmental unit or agency establishing the local mental health service shall be known as a "local mental health authority");

(7) any local mental health authority desiring to establish a mental health clinic is to submit an application to the Department of Mental Health; and if the Department gives favorable consideration to the application, the Department may include the State's share of the cost of operating the proposed local clinic in its next budget request, or it may request an allotment of funds for this purpose from the Contingency and Emergency Fund;

(8) each clinic must be operated under the supervision of the State Department of Mental Health and there must be a resident clinical director of each clinic who is responsible for its administration and who appoints members of the staff of the clinics, (the clinical director, appointed by the local mental health authority, must be a medical doctor duly licensed by the State of North Carolina with adequate training and experience in psychiatry acceptable to the Commissioner of Mental Health);

(9) all real estate, buildings, and equipment necessary to the operation of the local mental health clinic is to be supplied from local or federal funds or both, and such property remains the property of the local mental health authority;

(10) the collection of fees for services performed in the child guidance clinics is to be optional with the local mental health authority, but no person is to be refused services because of the inability to pay fees;

(11) the local mental health authority shall be responsible for obtaining the necessary local funds for the support of the clinic; and

(12) from state and federal funds available to the Department of Mental Health, the Department is to make grants-in-aid to the local mental health authorities as follows: Two-thirds of the first $30,000 of the approved budget of the local mental health authority and one-half of the remainder of the approved budget (where the actual expenditures of the local mental health authority are less than the approved budget, the state and federal grants-in-aid are to be determined on the basis of actual expenditures rather than the approved budget).

The other major Act falling under the mental health heading was Chapter 1184 (HB 1154) which completely rewrote the laws relating to the admission of persons to the mental institutions of the State. Among other significant changes, this Act better organizes the existing laws relating to admissions to the institutions and also clarifies and makes uniform the terminology. The term "mental illness" is used throughout in lieu of the terms "insane," "lunatic," etc.; the term "mentally retarded" is used throughout in lieu of the words "feeble-minded" or words of like import; and, the terms "hospitalize" and "hospitalization" are substituted for the words "commit" and "commitment." This Act brings together in Chapter 122 all of the laws of the State relating to the admissions to the institution, thereby removing the portions of the law relating to the hospitalization of inebriates from Chapter 35 to Chapter 122, and the laws relating to the centers for the retarded from Chapter 116 to Chapter 122. Each of the four types of admission to the institutions (voluntary admission, admission by medical certification, judicial admission, and emergency admission) are retained but placed in separate articles and made applicable not only to the mentally ill but also to inebriates. One of the principal changes in the present law is the fact that the inebriate and the mentally ill are placed in the same position insofar as admission, payment for care, treatment, etc. are concerned. Another change, brought about by an opinion of the North Carolina Supreme Court in 1962, is to make the initial admission for observation and treatment for a period of 180 days (rather than for 60 days subject to being extended by an additional 120 days). Before the admission for observation and treatment can be converted into hospitalization for an indefinite period, the mentally ill person must receive notice and an opportunity for a hearing. (The Supreme Court has held that detention beyond the observation and treatment period without another hearing constituted a denial of due process of law and indicated that, therefore, the patient could be released in a habeas corpus proceeding.)

Chapter 451 (HB 459) deletes from the present law the assignment of mentally ill patients to institutions on the basis of race and residence, and substitutes authority for the State Department of Mental Health to establish regulations governing the assignment of patients to the various institutions.

Chapter 813 (HB 710) defines a private hospital (as used in the article relating to private mental hospitals) to include psychiatric services in general hospitals licensed by the Medical Care Commission (but exempts these from the licensing requirements which other private mental hospitals must comply with), but provides that no mentally ill person is to be committed to a general hospital unless such hospital has adequate facilities and qualified personnel for the proper observation, care and treatment of such person and the hospital director agrees to accept such mentally ill person.

Chapter 712 (HB 1127) makes Mr. John W. Umstead, Jr. a life member of the North Carolina Hospitals Board of Control and provides that he is to serve as chairman of said board at his pleasure as long as his health permits and appoints him as Chairman Emeritus of the Board for life upon his resignation as Chairman.

Chapter 668 (HB 786) creates a Medical Advisory Council to the State Board of Mental Health composed of 15 members appointed by the Governor who serve three-year staggered terms. It is the duty of the Council to make periodic reviews and studies of the operation, maintenance and administration of the facilities and programs of the State Board of Mental Health, and to make reports and recommendations from time to time to the Board.

Chapter 991 (SB 549) appropriates funds to the State Department of Mental Health to employ two community education consultants to provide professional consultation, assistance and guidance to local alcoholism programs throughout the State; and, funds in the amount of $50,000 for the biennium as financial assistance in the form of grants to local alcoholism programs to assist them in securing professional personnel to meet the demands for referral services by individuals, alcoholics and members of their families, and to assist local programs in program evaluation and planning, and professional assistance and guidance in planning educationl programs.

Chapter 845 (SB 384) appropriates funds to deal with the problem of mental retardation as follows: $390,000 for establishing a child development center, including in-patient facilities, for emotionally disturbed children at the University of North Carolina; approximately $241,000 for the biennium to the University of North Carolina for the establishment of a training program for teachers who will teach retarded children in the public schools; approximately $156,000 for the biennium to Murdoch School for a training institute or program to train specialists and nonspecialists for work with the retarded; $190,000 for the biennium to the State Board of Education for a scholarship program to attract teachers to train for education of the retarded; $90,000 for the biennium to employ curriculum specialists in mental retardation, development of curriculum library, and to provide an adequate supply of texts; $222,000 for the biennium to the Hospitals Board of Control to provide vocational training for trainable and educable retarded persons; $30,000 to the Department of Public Instruction to establish vocational rehabilitation programs in all residential schools for the retarded, and to permit creation of rehabilitation houses and centers and to make possible the employment of additional counselors; $354,000 to the State Board of Health for the purpose of identifying and evaluating retarded persons and to establish and operate during the biennium three evaluation and development clinics spaced geographically around the State so that such facilities are reasonably accessible to all persons in the State; and, $40,000 to the Council on Mental Retardation for continuing study of state-wide problems of mental retardation and to co-ordinate the attack on the mental retardation problem.

Chapter 669 (HB 797) creates a Council on Mental Retardation composed of eight persons. The function of the Council is to study ways and means of promoting public understanding of mental retardation problems in the State; to consider the need for new State programs and laws in the field of mental retardation; and to make recommendations to and advise the Governor on matters relating to mental retardation.

Cancer

Two bills were enacted relating to the general area of cancer control. Chapter 254 (SB 100) relates to reporting and provides: "It shall be the duty of every pathologist diagnosing any case of any type of cancer (malignant neoplasm) to report the same to the central office of vital statistics of the State Board of Health. Such report shall be made within five days of the time such diagnosis of cancer is established on forms prescribed and furnished by the central office of vital statistics of the State Board of Health, and shall contain such items of information as may be specified by the State Board of Health."

The other bill, R. 49 (SR 102), continues the Commission to Study the Cause and Control of Cancer in North Carolina (which was originally created in 1957 and extended in 1959 and 1961) composed of ten medical persons and ten non-medical persons. This resolution commends the State Board of Health and other agencies for their efforts to control cancer by education programs, research, operation of diagnostic centers, and care of terminal cases. The resolution provides that the existence of the Commission is continued for the effective use of assembled information, to study means of implementing their recommendations, and to make such additional studies and recommendations as circumstances may warrant.

Cystic Fibrosis

Chapter 113 (SB 208) appropriates to the State Board of Health for the biennium $25,000 to be used by the Board to provide medical assistance for some victims of certain inborn errors of metabolism, including cystic fibrosis. The assistance is to be furnished only to persons under 21 years of age who are medically indigent and have been so certified by appropriate welfare department officials. The funds are to be administered under regulations adopted by the State Board of Health.

Fluoridation

Two local Acts relating to an election on the question of fluoridation were passed, but the two are considerably different. Chapter 828 (HB 1114) started out as a public bill applicable to all municipalities in the State but was amended so as to be applicable to the City of Burlington only. It authorizes the City Council to submit to the voters the question of whether or not the process of fluoridation is to be used in the municipal water supply of the City. It provides that if a majority of the qualified electors voting in the election are for the use of fluoride in the municipal water supply, then fluorides shall be used in the water. But if a majority of the qualified electors voting in the election are against the fluoridation process, then it shall not be introduced into the water supply.

The other local Act is Chapter 165 (SB 145) and concerns the Town of Louisburg in Franklin County. It authorizes the Town Council of the Town of Louisburg to conduct an election for the purpose of determining the wishes of the voters as to the fluoridation of the town water supply. This Act differs from the Burlington act in that this one makes it clear that the results of the election are to constitute but an expression of opinion of those voting, and is not to be binding upon the Town Council.

Radiation

Chapter 1211 (SB 530) amends Chapter 104C of the General Statutes relating to atomic energy, radioactivity, and ionizing radiation. Among other things, the State Board of Health is authorized to:

(1) provide by rule or regulation for general or specific licensing of by product, source, special nuclear materials, or devices or equipment utilizing such materials (the rule or regulation is to provide for amendment, suspension or revocation of licenses);

(2) adopt reasonable rules and regulations necessary to carry out an effective licensing program designed to protect the public health or safety in this field;

(3) exempt certain sources of ionizing radiation or kinds of uses or users from licensing or registration requirements when the Board makes a finding that the exemption will not constitute a significant risk to the health and safety of the public;

(4) impose a right to inspect premises as a condition of issuance of a license; and,

(5) impound or order the impounding, in the event of an emergency, of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this Chapter or any rules or regulations issued thereunder.

The Governor is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by the State. In such cases, any person who possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this Act, and the license is to expire either 90 days after receipt from the State Board of Health of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

Chapter 66 (HB 34) provides that none of the provisions of Chapter 104C of the General Statutes shall apply to X-ray facilities in or a part of any hospital or medical facility which is or will upon its completion become subject to the provisions of law relating to the licensing thereof by the North Carolina Medical Care Commission.

Air Hygiene

Chapter 536 (SB 146) adds a new article to Chapter 130 of the General Statutes numbered Article 25 and entitled "State Air Hygiene Program." This article defines air pollution to mean the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration that they are injurious to human, plant, or animal life or property. The State Board of Health is authorized to: (1) create a state air hygiene service and to administer the provisions of this article; (2) employ or appoint such personnel as are necessary for carrying out the provisions of the article; and (3) expend such state funds, federal grants-in-aid, or donations as are made to the State Board of Health for the purpose of establishing a state air hygiene service and otherwise carrying out the provisions of the article.

The State Air Hygiene Service is authorized to: (1) advise, consult, and co-operate with other state agencies, local governmental units, industries, the federal government, and other affected agencies or groups in matters relating to air pollution; (2) collect and disseminate information relative to air pollution prevention and control; (3) initiate, supervise and encourage research and studies of existing air quality methods of examination and appraisal, and develop procedures and standards for state-wide application with special emphasis on the effect of air contaminants; (4) encourage local agencies to handle air pollution problems to the maximum extent that their resources will permit; and, (5) provide technical assistance and co-operation to local and regional air pollution control programs.

The State Health Director, or his representative, is authorized to enter at reasonable times and inspect any building or equipment for the purpose of investigating a known or suspected source of, or contributing factor to, air pollution (except that no entry into a non-commercial private dwelling may be made without the consent of the occupants thereof). The State Health Director, or his representative, is also authorized to require persons engaged in operations which may result or contribute to air pollution, to supply information when available about the pollution (including such things as composition of effluent sources or emission and rate of discharge, but no person is to be required to disclose any secret formula, processes, or methods used by any manufacturing operation carried on by him under his direction).

This Act makes it clear that it is to be in addition to all other laws relating to air hygiene or air pollution and is not to be construed to affect or modify the authority of a municipality to adopt ordinances pursuant to other provisions of law.

Sanitary Districts

Chapter 512 (HB 615) sets out a procedure for the dis-

solution of sanitary districts which have no outstanding indebtedness and the boundaries of which are located wholly within, or are coterminous with, the corporate limits of a city or town. Upon such dissolution, all taxes levied by the district prior to the dissolution but which are collected after the dissolution are to vest in and inure to such city or town, as well as all property owned or controlled by the district, and also all judgments, liens and causes of actions in favor of such district.

Chapter 1232 (HB 1316) amends G.S. 130-128 so as to authorize a sanitary district to contract with private persons and corporations, as well as political subdivisions of the State, for the treatment of the district's sewage in a sewage disposal plant.

Chapter 1247 (HB 839) amends G.S. 130-134 and 130-138 to authorize the issuance of bonds by a sanitary district for the purpose of acquiring and constructing district buildings including fire stations, office buildings, and other district facilities, and provides that the bonds are to carry a maximum maturity of 30 years.

Chapter 1226 (HB 838) amends G.S. 130-141, which deals with the valuation of property for tax purposes, to provide a procedure for equalizing the burden of taxation within a district located in two or more counties when the counties have different assessment ratios for tax purposes.

Chapter 664 (HB 533) amends G.S. 130-126 to provide that prior to the appointment of a sanitary district board by the boards of county commissioners, or prior to the election of the members of a sanitary district board at any general election, the board of commissioners may by resolution, and upon the request of the sanitary district board, determine that the district board is to consist of five members, residents within the district. In such cases, the term of office of the members is to be four years. The terms are to be staggered so that at the first biennial election after the adoption of the resolution, and every four years thereafter, three members of the board are to be elected; and, at the next biennial election and every four years thereafter, two members are to be elected. This Act then spells out the procedures for determining candidates for the board under such circumstances.

Sanitation of Public Swimming Pools

Chapter 397 (HB 291) adds a new article to Chapter 130 to be numbered Article 13A (the Sanitation of Agricultural Labor Camps was also designated as Article 13A) and entitled "Design, Construction, Operation and Maintenance of Public Swimming Pools." This Act begins by defining the words person, swimming pool, public swimming pool, and residential swimming pool. It then authorizes the State Board of Health to prepare minimum standards regarding the design, construction, maintenance and operation of public swimming pools (public swimming pools are defined as any swimming pool, other than a residential swimming pool, intended to be used collectively by numbers of persons for swimming or bathing, and operated by any person, whether he be owner, leasee, operator, licensee, or concessionaire, and regardless of whether or not a fee is charged for such use). Standards are to relate to water supply, sewer and waste connections, bathing load, recirculation equipment, piping and appurtenances, filtration equipment, disinfection and chemical feeding equipment, bathhouse, showers and toilet facilities, safety equipment, and water quality (as well as operation of such sanitation equipment).

The minimum standards established by the State Board of Health are to be made available to local governmental units as a recommended guide in the development of local ordinances governing the design, construction, and maintenance of public swimming pools, and may be adopted by reference by the local governmental units as the standards of the local governmental unit. Local governmental agencies with authority to enact ordinances or regulations for the protection of the public health are then authorized to adopt and enforce ordinances governing the design, construction, and maintenance of public swimming pools, using the minimum standards adopted by the State Board of Health as their standard guide. The standards provided by the State Board of Health are not to apply to lakes, ponds, streams and other natural places used for swimming, but the approval of such places as not being dangerous to the public health is to be based on the results of a sanitary survey and the bacteriological quality of the water.

The Act expressly provides that it does not apply to residential swimming pools, and it becomes effective January 1, 1964.

Sanitation of Agricultural Labor Camps

Chapter 809 (HB 461) adds a new article to Chapter 130 to be numbered Article 13A (the swimming pool article is also numbered Article 13A) and entitled "Sanitation of Agricultural Labor Camps." The Act defines agricultural labor camps to mean and include one or more buildings or structures, tents, trailers, or vehicles, together with the land appertaining thereto, established, operated, or used as living quarters for ten or more seasonal or temporary workers engaged in agricultural activities, including related food processes. Camp operator is defined to mean a person having charge or control of the camp housing for migrant agricultural workers; and, crew leader is defined to mean the individual who handles the contract and is recognized by the group as the leader.

The Act provides that no person is to operate, directly or indirectly, an agricultural labor camp unless he has obtained a permit to operate such camp from the local health department having jurisdiction over the area in which the agricultural labor camp is located. The permit must be posted in the camp to which it applies at all times during the maintenance and operation of the camp. Provisions are made for applications for a permit and provides that the local health department to which the application is made is to issue the permit if the health director is satisfied, after an investigation or inspection, that the camp meets the minimum standards prescribed by the article. The permit is to be valid for a period of one year and is not to be transferable. If the applicant is denied a permit, he is entitled to a fair hearing (upon due request) before the local board of health having jurisdiction over the area in which the agricultural labor camp is located.

The camp operator is to be responsible for complying with the provisions of the Act concerning sanitation standards, and the crew leader is to be responsible for maintaining the agricultural labor camp in a sanitary condition.

The next section of the Act provides that every employee or occupant of a camp is to use the sanitary facilities provided and is to maintain in a sanitary manner that part of the housing or camp premises which he occupies. There follows sections relating to the cleanliness of the camp area, adequate and safe water supply, adequate sewage facilities, adequate bathing facilities, adequate shelter, adequate lighting, sanitary food facilities, and sanitary garbage disposal.

The State Board of Health and its duly authorized representatives are made responsible for the enforcement of the article, and the State Board of Health is to cause the provisions of the Act to be permanently displayed on the premises of each agricultural labor camp. This Act becomes effective January 1, 1964.

Water Well Contractors

The 1961 General Assembly enacted a statute creating a Board of Water Well Contractor Examiners and requiring persons engaged in the occupation of water well contractor to obtain a license from said Board. Many of the counties in the State were exempted from that Act. Several of the coun-

ties that were exempted in 1961 had the exemption removed by the 1963 General Assembly. Those counties to which the Act was made applicable by the 1963 General Assembly are as follows: Catawba, Chapter 557 (HB 651); Cumberland, Chapter 682 (HB 1026); Davidson, Chapter 741 (HB 1091); Halifax, Chapter 906 (SB 624); Jackson, Chapter 597 (HB 874); Lee, Chapter 879 (HB 1209); Nash, Chapter 250 (HB 416); Orange, Chapter 545 (HB 683); Stokes, Chapter 879 (HB 1209); Union, Chapter 879 (HB 1209); and, Wake, Chapter 461 (SB 323). Two counties to which the Act was applicable exempted themselves by 1963 legislation. They were Avery, Chapter 179 (HB 347) and Buncombe, Chapter 272 (HB 458).

Medical and Nursing Education

R. 53 (SR 131) creates a Commission to be known as the Medical Center Study Commission. It is to be composed of nine members appointed by the Governor, at least three of whom must be medical doctors in good standing in North Carolina. It is the duty of the Commission to make a detailed and exhaustive study of the feasibility of establishing a medical center for the training of doctors, surgeons, nurses, technicians, nurse anesthetists, and other medical personnel at Charlotte, Mecklenburg County, or any other locality in North Carolina that in its judgment should be considered as a location for said medical center. The study is to include the means of financing, staffing, equipping, and maintaining the training center. Inquiry is also to be made into the feasibility of plans to provide portional parts of the tuition and other expenses of trainees who shall agree to serve in towns of less than 5,000 population and in rural areas of North Carolina. The Commission is to report, with recommendations, to the 1965 General Assembly.

Chapter 493 (SB 271) amends the laws relating to student loans administered by the Medical Care Commission to delete the requirement that students of nursing agree to practice in a rural area in North Carolina. In fact, it defines a rural area insofar as the nursing loan program is concerned to mean any community in North Carolina regardless of population.

Chapter 787 (SB 302) amends G.S. 105-90 and G.S. 105-90.1 (which relate to license taxes for certain employment agencies) so as to exempt from said taxes any registry of registered nurses or licensed practical nurses when not operated for profit.

R. 67 (SR 189) provides that the North Carolina Board of Nurse Registration and Nursing Education is requested to employ qualified personnel whose duty it will be to aid in the establishment of nursing schools and to encourage the continuance and maintenance of schools now in existence.

Chapter 1246 (SB 45) authorizes the Medical Care Commission, in accordance with rules and regulations adopted by said Commission, to grant scholarships to graduate nurses who complete courses in the field of anesthesiology in accredited schools for nurses in anesthesia, and who are enrolled in or accepted for enrollment in any of the accredited schools appropriate for this purpose. The scholarships are to be made to bona fide residents of the State who are graduate nurses and who agree to reside and render service in such field in North Carolina for a period of five years after graduation. Provisions are made for repayment of the loan with interest if the graduate nurse fails or refuses to complete the course. The Act appropriates $40,000 to the Medical Care Commission for the first year of the biennium, and $60,000 for the second year of the biennium, to be used for providing the scholarships provided for under this Act.

Chapter 1185 (HB 1165) appropriates $25,000 to the Medical Care Commission for the purpose of providing scholarships for medical technicians.

Chapter 365 (HB 560) amends G.S. 131-121(3) as it relates to loans to medical and nursing students who specialize in psychiatry so as to provide that the loans may be cancelled on the basis of credit of the amount of one year's loan for each year of satisfactory service performed as a member of the staff of any of the institutions, clinics, or other facilities under the administration of the North Carolina Hospitals Board of Control. This is made applicable to service performed since July 1, 1960 (the law had provided for repayment for one year of service at one of the four mental institutions named in the law).

Chapter 1045 (SB 546) appropriates additional funds to the State Department of Mental Health for the employment of additional attendants at the four mental institutions, for the employment of two special education teachers and three basic training aides at Murdoch School, and for three basic training aides at Caswell School.

Miscellaneous

Chapter 1087 (SB 409) amends the laws relating to stream sanitation to authorize the Stream Sanitation Committee to investigate any killing of fish and wildlife which in the opinion of the Committee is of sufficient magnitude to justify investigation and is known or believed to have resulted from pollution of waters. It authorizes the Committee to recover, in the name of the State, damages from such person. The measure of damages is to be the amount determined by the Committee and the N. C. Wildlife Resources Commission to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. The proceeds of the recovery, less the cost of investigations, are to be paid to the appropriate State agency to be used to replace, insofar and as promptly as possible, the fish and wildlife killed.

Chapter 599 (SB 8) establishes from federal, State, and county appropriations a State fund for medical assistance for the aged. The State Board of Public Welfare is authorized to adopt regulations under which payments are to be made from said Fund. The non-federal share of the Fund is to be divided between the State and counties (except that equalizing funds from State appropriations are to be made to the counties less able to contribute their share). From the Fund established the State Board of Public Welfare is to pay or cause to be paid all or part of the cost of medical services for any person in the State 65 years of age or over when it is essential to the health and welfare of such person that medical services be provided, and when the total resources of such person are not sufficient to provide the necessary medical services. Chapter 1122 (SB 423) appropriates funds for the carrying out of the medical assistance for the aged program. It appropriates $200,000 for the biennium to the State Board of Public Welfare for the purpose of providing dental care to persons 65 years of age or over in accordance with the provisions of the prior Act. It also appropriates $450,000 for the biennium for the purpose of providing out-patient hospital services and for the purpose of providing drugs to recipients of public assistance and to medically indigent persons who meet the State Board of Public Welfare requirements. Further, it appropriates an additional $100,000 for the purpose of assisting the counties in the administration of the expanded medical program provided for in the Act.

Chapter 1171 (SB 493) authorizes the State Board of Public Welfare to contract with other State agencies or private organizations whereby such agencies or organizations can act as agent of the said State Board of Public Welfare in arranging for the providing of any or all of the services described and authorized by the provisions of Chapter 108 (Public Welfare chapter), or for agreements with suppliers or for arrangements as to payments of suppliers of such services.

Chapter 646 (HB 871) amends the statutes relating to the licensing of chiropractors to require that, in order to

(Continued on page 73)

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PUBLIC WELFARE AND DOMESTIC RELATIONS

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB are the bill numbers of bills introduced in the House and in the Senate.

[*Note: Other articles in this issue—e.g., the articles on "Legislation of Interest to County Officials" and "Public Personnel"—will be of interest to readers of this section.*]

It would appear safe to say that the 1963 General Assembly enacted more laws relating to public welfare than any General Assembly since the beginning of public assistance programs in North Carolina in 1937. This was, undoubtedly, due in large part to the report and recommendations of the Commission To Study Public Welfare Programs. That Report was submitted to the General Assembly in January of this year and called for 15 changes (excluding the ones that could be effected without legislation), 12 of which were enacted in submitted or modified form.

Another contributing factor to the many public welfare changes was the adoption by Congress of The Public Welfare Amendments of 1962. These changes in the federal law made possible modifications of the state law.

By way of contrast, this was not a bumper year for laws falling into the area of Domestic Relations. There were some and they are included in this article.

Public Welfare Administration

G.S. 138-5 provides a $7.00 per diem and certain allowances for members of state boards and commissions generally. This section had not been applicable, however, to the members of the State Board of Public Welfare. Chapter 392 (SB 89) amends G.S. 138-5 and G.S. 108-1 to make it clear that the members of the State Board of Public Welfare are to receive the same per diem as is provided for other boards and commissions.

G.S. 108-16 provided that the Commissioner of Public Welfare, with the advice and approval of the Governor, was to employ a whole-time executive to be known as "Director of Public Assistance." The section then spelled out his duties, provided method for determining his salary, and specified his tenure in office. Chapter 138 (HB 155) repeals that section in its entirety, thereby eliminating the position of Director of Public Assistance as a statutory position. Thus, the Director of Public Assistance is placed in the same position with respect to method of employment, tenure, etc. as the directors of the other divisions within the State Board of Public Welfare.

Chapter 247 (HB 157) amends G.S. 108-11 and deals with the size of the county board of public welfare. The present law concerning the size of, and method of appointment of, the county board of public welfare is unchanged but this Act adds thereto authority for the board of county commissioners to increase (at any time) the size of the county welfare board from three to five members. If the board of county commissioners makes such a decision, the commissioners are to report that fact immediately to the State Board of Public Welfare. If the size of the board is increased to five members the five members are to be appointed as follows: the board of county commissioners is to appoint two members, one or both of whom may or may not be a member or members of the board of county commissioners; the State Board of Public Welfare is to appoint two members; and the four members so appointed are to select a fifth member. If the four appointed members are unable to agree on the selection of a fifth member, he is to be appointed by the senior resident superior court judge of the district in which the county is located.

The last paragraph of present G.S. 108-11, which provides for the rotation of the members, is rewritten to provide that if the county welfare board is composed of three members, the term of the member appointed by the State Board of Public Welfare is to expire on June 30, 1963, and triennially thereafter; the term of the member appointed by the board of county commissioners is to expire on June 30, 1965, and triennially thereafter; and the term of the third member is to expire on June 30, 1964, and triennially thereafter. In the event that the county welfare board is increased to five members, the State Board of Public Welfare is to appoint an additional member for a term expiring simultaneously with the term of the existing member appointed by the county commissioners, and the county commissioners are to appoint an additional member for a term expiring simultaneously with the term of the existing member appointed by the State Board of Public Welfare; thereafter all appointments are to be for three years upon the expiration of the term of any member. The Act goes further and spells out that it is the intent of this provision relating to five member boards to provide for the appointment of one member by the board of county commissioners and one member by the State Board of Public Welfare in each year except for every third year when the fifth member is appointed.

The Act also provides that if the board of county commissioners elects to have a five-member board and thereafter desires to return to a three-member board, it may do so effective on July 1st next following the decision to reduce the size of the board to three members. On the said July 1st, the term of one member appointed by the State Board of Public Welfare and one member appointed by the county commissioners shall thereupon cease. The term of the member appointed by the State Board of Public Welfare whose term would have expired on June 30, 1965, or triennially thereafter, shall thereupon cease; and the term of the member appointed by the county commissioners whose term would have expired on June 30, 1966 or triennially thereafter, shall thereupon cease. Thereafter the terms of the three remaining members shall expire as provided previously.

Nine counties are exempt from this chapter and, therefore, may not increase the size of the county board of public welfare from three to five members. Those counties are: Alexander, Burke, Cabarrus, Chatham, Columbus, Gaston, Mitchell, Pender, and Watauga. By virtue of a local act Stokes County must have a five-member board.

The present G.S. 108-38, dealing with public welfare administrative expenses, provides that the board of county commissioners and the county board of public welfare, in joint session, are to determine the number and salary of employees of the county board of welfare, having been advised by the county director of public welfare and the State Board of Public Welfare. Chapter 248 (HB 158) adds a provision at the end of that sentence which provides: "Provided, however, that the members of the county boards of welfare shall not have a vote at such joint sessions."

Chapter 139 (HB 165) amends G.S. 108-11 by adding a new paragraph thereto, immediately following the fourth paragraph, which reads as follows: "Two or more county boards of public welfare are hereby authorized to employ jointly a director of public welfare to serve the appointing counties. The appointing counties must agree as to what portion of the total salary of the director is to be paid by each of the counties he serves. All laws referring to county directors of public welfare shall be applicable to a county director of public welfare appointed to serve two or more counties."

Chapter 866 (HB 1116) adds a new G.S. 108-75.1 to allow any board of county commissioners to combine the tax levies for any or all of the public welfare programs into one levy, but requires that the appropriations and expenditures for each of the various programs and purposes be separately stated and accounted for.

Chapter 535 (SB 94) amends present G.S. 108-73.1, which deals with the levy of county taxes for purposes of aid to the permanently and totally disabled, by removing from that section the five cents limit on the amount of the special levy for APTD purposes.

Public Assistance

The second sentence of G.S. 108-35, dealing with the removal of an old age assistance recipient from one county to another, provides: "The county from which the recipient moves shall pay the assistance for a period of three months following such removal, not in excess of amount paid before removal, and thereafter assistance shall be paid by the county to which such recipient has moved." Chapter 136 (HB 123) deletes the words "not in excess of the amount paid before removal," thereby authorizing the county to which the recipient has moved to determine the appropriate grant which may or may not be more than the grant prior to removal.

Chapter 788 (SB 310) adds G.S. 108-73.10.1 setting out in the statutes the eligibility requirements for aid to the permanently and totally disabled. They are:

"(1) Is at least 18 years of age and under 65 years of age;

"(2) Has resided in this State for one year immediately preceding application for assistance;

"(3) Has not sufficient income or other resources to provide reasonable subsistence compatible with decency and health;

"(4) Is not an inmate of a public institution or an institution for tuberculosis or mental diseases;

"(5) Is not a patient in a medical institution as a result of having tuberculosis or psychosis;

"(6) Is found to be permanently and totally disabled within the meaning of this section. A permanently and totally disabled person is one who because of a mental or physical impairment is according to the present diagnosis substantially precluded from doing any work. The impairment must be of major importance and must be a condition not likely to improve or which will continue throughout the lifetime of the individual; and

"(7) Is not receiving any public assistance from the State or from any political subdivision thereof, or any other type of Federally aided public assistance."

These requirements for APTD are substantially the same as the eligibility requirements heretofore spelled out in the Public Assistance Manual except for the addition of the requirement that the applicant have resided in the state for one year immediately preceding the application for assistance.

This Chapter also provides: "For the purpose of determining whether or not applicants for assistance are permanently and totally disabled within the meaning of this section, the Board of County Commissioners of any county, with the approval of the County Board of Public Welfare, may set up in the county a Medical Review Board who shall review all medical examinations of applicants applying for assistance and certify their findings of disability to the State Board of Public Welfare in the manner and form prescribed by said State Board."

Chapter 1085 (SB 397) adds three new sections to Article 3 of Chapter 108 of the General Statutes (G.S. 108-73.12.1, 108-73.12.2, and 108-73.12.3) to provide for a lien upon the realty, and a claim against the recipient and his estate, of all recipients of APTD, to the extent of the total amount of assistance paid to the recipient from and after October 1, 1963. The claim and lien, and the provisions for the enforcement thereof, are the same as the present law governing the old age assistance lien law.

Chapter 551 (HB 161) rewrites the law of North Carolina relating to equalizing funds for the public assistance programs. It first amends G.S. 108-73 to authorize the State Board of Allotments and Appeal to set apart and reserve out of the appropriations for APTD (as well as OAA and ADC) funds for equalizing purposes. These funds are to be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the State Board of Allotments and Appeal, producing, as far as practicable, a just and fair distribution thereof.

The second part of this Chapter deletes from G.S. 108-73 the requirement of a 10¢ tax levy by a county in order to be eligible for equalizing funds.

Chapter 380 (SB 91) amends the laws relating to aid to dependent children grants by adding a new section, numbered G.S. 108-76.6, which provides: "In addition to the use of personal representatives as authorized in G.S. 108-76.3 through G.S. 108-76.5, the State Board of Public Welfare is to adopt rules and regulations providing for the use of protective payments to the extent authorized by Title IV of the Federal Social Security Act, when it is determined that the payee in an aid to dependent children case fails to use the assistance funds for the purpose for which they were intended." The Social Security Act limits the use of protective payments to 5% of the ADC caseload.

Chapter 1013 (HB 906) rewrites G.S. 108-71 relating to the obtaining of ADC by fraud and provides: "Whoever knowingly obtains an initial award of assistance, assistance, a continuation of assistance after such initial ward, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by means of failing to disclose a material fact, or by impersonation or by any fraudulent scheme, plan or device; or, whoever knowingly attempts to obtain or aids and abets any person to obtain an initial award of assistance, assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially

or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by failing to disclose a material fact or by any fraudulent scheme, plan, device, or impersonation, shall be guilty of a misdemeanor, and, upon conviction, or plea of guilty, shall be fined or imprisoned, or both, at the discretion of the Court."

Chapter 1062 (HB 907) rewrites G.S. 108-42 relating to obtaining of OAA by fraud and is substantially the same as Chapter 1013 above except that it also covers disposing of property with intent to defeat the purpose of the OAA Article.

Chapter 1024 (HB 990) relates to obtaining APTD by fraud and is substantially the same as Chapter 1013 above.

Chapter 1061 (HB 888) rewrites G.S. 108-50 to specify certain conditions of eligibility for ADC as follows:

"(1) No child having passed his sixteenth birthday shall be eligible for assistance if such child has the ability and capacity for gainful employment, unless the child is regularly enrolled and attending school or unless no gainful employment is available: Provided that no such child will be eligible for assistance during the summer months unless no gainful employment is available.

"(2) No parent with whom a dependent child is living shall be made the payee of an assistance grant if such parent has the ability and capacity for gainful employment and is not employed (either on a part or full time basis) unless the parent is needed in the home to provide continuous care for, or supervision over, a child or children in the home, or unless no gainful employment is available.

"(3) Any child or parent required by this section to engage in gainful employment, but for whom no gainful employment is available, shall be registered with an employment service and shall make reasonable and continuous efforts to find gainful employment. Proof of registration with an employment service shall be provided by the child or parent to the County Welfare Department."

Since this Act rewrites G.S. 108-50 which was the "ADC-Unemployed Parent" law, the "ADC-Unemployed Parent" law is repealed.

Hospital and Medical Care of Needy

Chapter 599 (SB 8) is an enabling act authorizing the establishment of a program of medical assistance for the aged and other groups in North Carolina. It amends Parts 4 and 4A of Article 3 of Chapter 108 of the General Statutes and adds a new Part 4B entitled "Medical Assistance for the Aged." It provides that the State Board of Public Welfare is authorized and empowered to establish from Federal, State, and county appropriations available for the purpose, a fund to be known as the "State Fund for Medical Assistance for the Aged," and to adopt rules and regulations under which payments are to be made out of said Fund in accordance with the provisions of the Act. The non-Federal share of the cost of the program is to be equally divided between the State and the counties (except that equalization is authorized). The Chapter provides that counties are to levy and impose, at the time other county taxes are levied, a tax sufficient to cover the county share of the cost of the program.

From the Fund established and within the limits of appropriations made for the purpose, the State Board may pay or cause to be paid all or part of the cost of medical services for any person 65 years of age and over, when it is essential to the health and welfare of such aged person that such medical services be provided, and when the total resources of such person are not sufficient to provide the necessary medical services.

The Chapter authorizes the acceptance of Federal grants and provides "Nothing in this act or the regulations made pursuant thereto are to be construed to deprive a recipient of assistance of the right to choose the provider of the care or service made available under this act within the provisions of the Federal Social Security Law."

The Chapter also amends the present law relating to the hospitalization of assistance recipients and of "no money payment" cases so as to include out-patient hospital services (as well as in-patient services) and the providing of necessary drugs.

The effect of SB 8 on the present program for hospitalization of assistance recipients and for the "no money payment" hospitalization program will be:

(1) The "no money payment" program for the medically indigent 65 years of age and over will be replaced by MAA (medical assistance for the aged). This program is to provide both in-patient and out-patient hospital care. It is also expected to provide for the payment of drugs and a dental care program.

(2) For old age assistance recipients, aid to dependent children recipients, and aid to the permanently and totally disabled recipients, the present hospitalization program is to be expanded to include out-patient hospital care and payment for drugs.

(3) The ADC and APTD hospital care programs for "no money payment" people are to be expanded to include out-patient hospital care and drugs.

Chapter 1122 (SB 423) appropriates for the 1963-65 biennium: (1) $200,000 for the purpose of providing dental care to persons 65 or over, in accordance with the provisions of Chapter 599 (discussed previously); (2) $450,000 for the purpose of providing out-patient services and drugs in accordance with the provisions of Chapter 599; and (3) $100,000 for the purpose of assisting the counties in the administration of the expanded medical programs provided for in Chapter 599.

This Chapter authorizes the State Board of Public Welfare, with the approval of the Advisory Budget Commission, to transfer any of the funds appropriated by this Act between the programs authorized by Chapter 599. The State Board of Public Welfare is also authorized, in its discretion, to transfer and add to the $450,000 appropriation for out-patient services and drugs "all or any portion of the appropriation for old age assistance, aid to families with dependent children, and aid to the permanently and totally disabled as are necessary to include in the monthly grants to persons covered by such programs the Ten Dollars ($10) per month for medical care, in order that medical care for public assistance recipients may, insofar as is practicable, hereafter be provided on a vendor payment basis."

Chapter 1142 (HB 218) appropriates to the State Board of Public Welfare, for the 1963-65 biennium, $325,000 "for the purpose of paying the actual costs of hospitalization of public assistance recipients in the three categories of old age assistance, aid to dependent children, and aid to the permanently and totally disabled, up to but not in excess of twenty dollars ($20.00) per day." The Chapter also appropriates $175,000 to be used by the State Board "for the purpose of paying the actual costs for hospitalization for the 'no money payment' medically indigent, up to but not in excess of twenty dollars ($20.00) per day."

Chapter 1171 (SB 493) authorizes the State Board of Public Welfare "to make arrangements and contracts with other State agencies or private organizations, including those governed by Chapter 57 of the General Statutes [Chapter 57 relates to hospital and medical service corporations], whereby such agencies or organizations can act as agent of said State Board of Public Welfare in arranging for the providing of any or all of the services described and authorized by the provisions of Chapter 108 of the General Statutes or for agreements with suppliers or for arrangements as to payments of suppliers."

Divorce

Chapter 540 (HB 229) amends G.S. 50-10 (requiring jury trial in divorce cases) by adding a new sentence thereto which reads as follows: "Notwithstanding the above provisions, the right to have the facts determined by a jury shall be deemed to be waived in divorce actions based on two years separation as set forth in G.S. 50-5(4) or 50-6, where defendant has been personally served with summons, or where the defendant has accepted service of summons, whether within or without the State, unless such defendant, or the plaintiff, files a request for a jury trial with the Clerk of the Court in which the action is pending, prior to the call of the action for trial." If the case is tried without a jury, the presiding judge is to answer the issues and render judgment thereon.

Chapter 1173 (SB 569) amends G.S. 50-5(6) so as to provide an alternate basis of establishing incurable insanity for divorce purposes. It authorizes the divorce if the evidence shows (1) that the allegedly insane spouse was adjudicated to be insane more than 5 years preceding the action for divorce; (2) that such insanity has continued without interruption since such adjudication; and (3) proof of incurable insanity existing after the institution of the action for divorce is furnished by the testimony of two reputable practicing physicians, one of whom must be a psychiatrist.

Adoptions

Chapter 696 (HB 775) rewrites subsection (c) of G.S. 48-4 relating to residence requirements for adoption purposes. The present law requires that the petitioner or petitioners must have resided in North Carolina, or on federal territory within the boundaries of North Carolina, for one year next preceding the filing of the petition. This new Chapter provides that in cases where the petition is for adoption of a stepchild, the petitioner must be in fact residing in North Carolina, or on federal territory within the boundaries of North Carolina, at the time the petition is filed, but does not require that the residence have existed for a period of one year.

Chapter 967 (HB 585) amends G.S. 48-23 to clarify the inheritance rights of adopted children. The present language of G.S. 48-23(a), to the effect that upon the entering of the final order of adoption the relationship of parent and child is established and the child is entitled to inherit both real and personal property by, through and from the adoptive parents, remains the law. This Chapter adds a new subsection (b) to that section to make it clear that "the natural parents of the person adopted, if living, shall, from and after the entry of the final order of adoption, be relieved of all legal duties and obligations due from them to the person adopted, and shall be divested of all rights with respect to such person."

This Chapter also adds a new subsection (c) which provides: "(c) From and after the entry of the final order of adoption, the words 'child', 'grandchild', 'heir', 'issue', 'descendent', or an equivalent, or the plural forms thereof, or any other word of like import in any deed, grant, will or other written instrument shall be held to include any adopted person, unless the contrary plainly appears by the terms thereof, whether such instrument was executed before or after the entry of the final order of adoption and whether such instrument was executed before or after the enactment of this Act."

Present subsection (b) of G.S. 48-23 is encompassed in a new subsection (d). It continues the present law to the effect that if an interlocutory decree of adoption has been entered and one of the petitioners dies before the final order of adoption has been entered, the wife or husband of the deceased petitioner may go ahead and obtain a final order of adoption in which case the child may inherit from the deceased petitioner. It adds a provision that in such cases the adopted child shall be held to be the "child, grandchild, heir, issue, descendent, or an equivalent of such deceased petitioner or of his or her ancestor, as the case may be, and any such word or words of like import appearing in any deed, grant, will or other written instrument shall be held to include, whenever appropriate, said child unless the contrary plainly appears by the terms thereof."

Chapter 1258 (HB 889) adds a new section to the adoptions laws, numbered G.S. 48-6.1, which reads as follows: "Wherever it has been judicially determined in a proceeding instituted pursuant to the provisions of N.C.G.S. 110-25.1 that a child born out of wedlock is living under such conditions that the health or general welfare of such child is endangered by its living conditions and environment, then, the consent of the mother to the adoption of such child shall not be necessary as a prerequisite to the validity of the adoption of said child." G.S. 110-25.1, added by Chapter 1259, is discussed under the heading "Juvenile Courts", supra.

Juvenile Courts

Present G.S. 110-31 provides, in part, that the county director of public welfare is to be the chief probation officer of every juvenile court in his county and is to have supervision over the work of any additional probation officer who may be appointed. Chapter 633 (HB 580) adds a proviso to that section as follows: "Provided, that in those counties which have a domestic relations court or a juvenile court with is own probation staff separate from the county department of public welfare, the chief probation officer duly appointed by the judge of such domestic relations court or juvenile court shall be the chief probation officer of the court rather than the county director of public welfare and shall have supervision of all probation services authorized under this Article."

Chapter 631 (HB 121) deals with the authority of a juvenile court judge to make a disposition of a child when the court is satisfied that the child is in need of the care, protection and discipline of the state and adjudicates the child to be delinquent, neglected or in need of more suitable guardianship. The law had provided, as one of the alternative dispositions, in such cases, the commission of the child to the custody of the State Board of Public Welfare to be placed by such Board in a suitable institution, society or association as specified in subsection 4 of G.S. 110-29. This Act rewrites that law [G.S. 110-29(3)] to provide that the juvenile court judge is authorized to commit the child to the custody of the county department of public welfare of the county in which the child has legal residence, to be placed by said department in a suitable home (again, as designated in subsection 4 of G.S. 110-29). The Act further specifies that the county department of public welfare to which custody is awarded is to be responsible for the general oversight and supervision of the child and is to pay the cost of care for said child.

The juvenile court taking jurisdiction is to have authority to determine the legal residence of the child and to award custody of said child to the county welfare department of the county which has been determined by the court to be the legal residence of the child. However, if it appears to the judge of the juvenile court exercising jurisdiction over the child that the child might be a legal resident of some county other than the county in which the court is sitting, then the judge of the court is not to enter a final order pertaining to the custody of the child until at least ten days notice shall have been given to the county department of public welfare of the county which the judge determines probably is the legal residence of the child. The county welfare department thus given the ten days notice is to have an opportunity to appear and show cause why the

legal residence of such child should not be found to be in that county.

Chapter 1259 (HB 890) adds a new section to the juvenile court law, numbered G.S. 110-25.1, which relates to certain illegitimates. It provides: (1) whenever it comes to the attention of the State Bureau of Vital Statistics or any local official that a child has been born to a woman by a father other than her husband, which woman has previously given birth to two or more children out of wedlock, such Bureau or local official is to furnish that information to the local health director of the county of residence of such woman; (2) the local health director is to notify, by registered or certified mail, such mother that she is, or may be, subject to the provisions of this section, and instruct her to report to the county director of public welfare in the county of her residence for consultation and advice within fifteen (15) days after receipt of such letter (a copy of the letter is sent to the county director of public welfare and if the mother fails to report within 15 days the county director is to begin the investigation hereinafter required); (3) the county director of public welfare is to advise the mother and is to make, or cause to be made through his own staff or through the staff of a private social agency, an investigation for the purpose of determining if such child and any other children living with such mother, are living under such conditions, or are under such improper or insufficient guardianship or control, as to endanger the health or general welfare of any such child or children, within the meaning of subsection (2) of G.S. 110-21; (4) if, upon such investigation, the county welfare director is of the opinion that the health or general welfare of any such child or children is endangered, the director or the private social agency is to consult and advise with the mother of such child or children to the end that such conditions and surroundings might be improved, and proper and sufficient guardianship and control might be established; (5) if, after such consultation and advice the director is of the opinion that the health or general welfare of any such child or children is and will continue to be in danger, then the director is to file with the juvenile court a verified petition stating the alleged facts (upon the filing of such petition, the issuance and service of summons and the making of any interlocutory orders is to be in accordance with the provisions of G.S. 110-26, G.S. 110-27, and G.S. 110-28); and (6) the court then conducts a hearing and if, upon said hearing, the court is satisfied that the health or general welfare of any such child or children is in danger, and that such child or children are in need of more suitable guardianship, then the court may thereupon take action as, in its discretion, it deems proper and suitable, and as provided in G.S. 110-29 (2), (3), (4), or (5).

Chapter 910 (HB 226) makes North Carolina a party to the "Interstate Compact on Juveniles." It authorizes the Governor to execute a compact on behalf of the State with any other state or states legally joining therein in substantially the form set out in the Act. Although the Compact sets out detailed procedures concerning interstate actions dealing with juveniles, perhaps the best summary of the Act can be obtained by taking a look at Article I which deals with findings and purposes of the Compact. Article I states the finding that juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. It further points out, therefore, that the co-operation of the states that are a party to the compact is necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) co-operative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more party states may find desirable to undertake co-operatively. In carrying out the provision of the compact the party states are to be guided by the non-criminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It is to be the policy of the compact states to co-operate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of the compact. Some opinion has been expressed that, inasmuch as the compact was amended after introduction so as to make it different from the compact that had been adopted in most other states, there is a question as to whether or not the compact is legally effective in North Carolina insofar as non-delinquent runaways are concerned.

Chapter 600 (SB 83), relating to sterilization operations on a voluntary basis, involves the juvenile court if the person requesting the operation is a juvenile. For a discussion of this Chapter, see the article on "Public Health in this issue.

Guardian and Ward

Chapters 111 (SB 43) and 112 (SB 44) authorize the guardian or trustee of an incompetent, with judicial approval, to make gifts from the principal and income of an incompetent's estate for public, religious, charitable, literary, scientific, historical, medical or educational purposes. These chapters spell out in detail the conditions under which judicial approval may and may not be given.

Chapter 113 (SB 45) authorizes a guardian or trustee of an incompetent, with judicial approval, to declare a revocable trust irrevocable and to make the incompetent's life interest the subject of a public, religious, charitable, literary, scientific, historical, medical or educational gift. This chapter also spells out in detail the conditions under which judicial approval may be given.

Chapter 999 (HB 571) amends G.S. 33-48 to add infants to the class of nonresident persons who have a right to have personalty removed from North Carolina upon petition of the guardian or trustee to the North Carolina court. This Chapter also amends G.S. 33-49 (which prescribes contents of petition for removal of personalty) so as to make it applicable to a guardian or trustee petitioning for the removal of a nonresident infant's property.

Married Women

Chapter 909 (HB 126) amends G.S. 52-12(e) so as to make voidable, instead of void, a conveyance of a married woman's property to a third party and reconveyance to the grantor and her husband as tenants by entirety without complying with G.S. 52-12. The action to avoid must be brought within seven years of recordation. Not validated are conveyances where an additional conveyance has been made on the assumption that the reconveyance referred to above did not create a tenancy by the entirety, and the Chapter does not apply to pending litigation. This Chapter is not applicable to the counties of: Alleghany, Beaufort, Bladen, Cabarrus, Caldwell, Craven, Duplin, Edgecombe, Halifax, Haywood, Hyde, Jones, McDowell, Montgomery, Moore, New Hanover, Pender, Pitt, Richmond, Robeson, Sampson, Scotland, Surry, Wake and Warren.

Chapter 1209 (SB 455) calls for the submission at the next general election of the question of whether or not the portion of Article X, Section 6 of the North Carolina Constitution which requires the written assent of the husband to a conveyance of realty by the wife shall be repealed. If the vote is favorable, the Constitution will authorize the married woman to convey her realty subject only to such regulations and limitations as the General Assembly may prescribe.

Miscellaneous

Nursing and Boarding Home Licensure

Chapter 859 (HB 811) makes certain amendments to the present law concerning the licensing of nursing homes and boarding homes for the aged and infirm. It adds new subsections 5 and 6 to present G.S. 130-9(e). New subsection 5 provides that any person may operate a nursing home and a home for the aged and infirm "in the same building or in two or more buildings adjoining or next to each other on the same site". In such cases, "both the nursing home and the home for the aged and infirm must comply with standards prescribed by, and be licensed by, the State Board of Health; it shall not be necessary for these combination homes to secure a license from any other State agency; and other State agencies must accept the standards prescribed by, and the license issued by, the State Board of Health". The State Board of Health is to consult with the State Board of Public Welfare regarding the standards for the boarding home area of the homes licensed by the State Board of Health as combination nursing homes and boarding homes for the aged and infirm.

New subsection 6 makes it the duty of the State Board of Health, in co-operation with the State Board of Public Welfare, to prescribe the method for the evaluation of residents in homes for the aged and infirm in order to determine when any such residents are in need of professional medical and nursing care as provided in licensed nursing homes.

Solicitation Licensure Exemption

Article 5 of Chapter 108 of the General Statutes provides for the regulation by the State Board of Public Welfare of organizations and individuals soliciting public alms. G.S. 108-84 exempts certain organizations from these requirements. Chapter 110 (SB 31) added to the list of exempted organizations "any college holding membership in the North Carolina College Conference."

Week-end Jailing

Chapter 632 (HB 232), among other things, adds a new subsection (14) to G.S. 15-199 (dealing with suspension of sentences and probation for persons convicted of crimes) to provide that under certain circumstances the court may, with the defendant's consent and with a statement of the availability of jail accommodations, require the convicted person "to report to the sheriff of the county or to the chief of the police of any municipality or other law enforcement officer and submit himself to be incarcerated in the county or municipal jail or other designated place of confinement during week-ends or at such other times or intervals as the court may direct." Furthermore, "the court may, with the consent of the defendant, require the surrender of his earnings less standard payroll deductions required by law, to the county board of public welfare or other responsible agency." After deducting from the earnings the amount determined to be the cost of the defendant's keep while incarcerated, the balance is to be applied as may be needed for the support and maintenance of the defendant's dependents, and any sum remaining is to be released to the defendant upon the expiration of his suspension or at other times as the court may direct.

Work Release Law Amendment

Chapter 469 (HB 481), among other things, amends G.S. 148-33.1(f) which has provided that the earnings of a work release prisoner were to be used: (1) to pay for his keep; (2) to pay, through the county department of public welfare, for the support of his dependents; and (3) to pay any remaining amount to the prisoner upon his release. This Chapter rewrites that section so as to specify different priorities and provides: "After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the prison department shall (1) allow the prisoner to draw from the balance a sufficient sum to cover his incidental expenses, (2) retain to his credit such amount as seems necessary to accumulate a reasonable sum to be paid to him on his release from prison, (3) cause to be paid through the county department of public welfare such part of any additional balance as is needed for the support of the prisoner's dependents."

Effect of Legitimation Under G.S. 49-10

Under G.S. 49-10, a procedure is provided whereby the putative father of a child born out of wedlock may petition the clerk of court to declare the child legitimate. The mother and child are necessary parties to the proceedings. If the clerk of court determines that the petitioner is the father of the child, the clerk enters an order pronouncing the child legitimated. Chapter 1131 (SB 508) rewrites G.S. 49-11 to spell out the legal relationships created by such legitimation. It provides: "The effect of legitimation under G.S. 49-10 shall be to impose upon the father and mother all of the lawful parental privileges and rights, as well as all of the obligations which parents owe to their lawful issue, and to the same extent as if said child had been born in wedlock, and to entitle such child by succession, inheritance or distribution, to take real and personal property by, through, and from his or her father and mother as if such child had been born in lawful wedlock."

Penalty for Non-Support of Children

Chapter 1227 (HB 866) provides: "Any husband who, without just cause or provocation, wilfully abandons his child or children for six months and who wilfully fails or refuses to provide adequate means of support for said child or children during the six months period, and who attempts to conceal his whereabouts from his lawful child or children with the intent of escaping his lawful obligation for the support of said child or children, shall upon conviction thereof, be guilty of a felony and punished in the discretion of the court." The offense had been a misdemeanor heretofore. The sponsor of this Chapter stated that its primary purpose was to make extradition easier in such cases.

Commission on Intergovernmental Relations

Resolution 80 (HR 943) provides for the appointment of a Commission on Intergovernmental Relations. The Commission is to consist of nine members appointed as follows: two members from the House of Representatives to be appointed by the Speaker of the House; two members from the Senate to be appointed by the President of the Senate; three members who are county commissioners to be appointed by the Chairman of the North Carolina Association of County Commissioners; and, two state officials presently involved in the administration of federal-state-local co-operative programs to be appointed by the Governor. The Governor shall designate one of the members as Chairman.

The Resolution directs the Commission "to study the full range of intergovernmental co-operation in the financing and administration of governmental activities. It shall give particular attention to existing federal grants which now partially support activities carried on by the state and its counties, weighing the advantages of these grants against problems arising from the nature of intergovernmental co-operation in administration, and considering alternative methods of financing and administering these activities. It shall also give attention to the possibility of requesting the federal government to return to the states the full range of welfare, health, and educational programs in which the federal government now participates, so as to allow each state and its local governments to develop their own programs to meet the needs of the state, and reducing federal taxation to the extent of the

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PUBLIC PERSONNEL

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and Senate.

Major state-wide personnel legislation enacted by the 1963 General Assembly provides for sizable salary increases for the State's top executive judicial and administrative officials and smaller increases for all other full-time permanent employees, improved retirement system, increased mileage allowance for employees who use their own cars while on official business, increased Workmen's Compensation benefits, an incentive awards program, and a 48-hour maximum work week for all employees subject to the State Personnel Act.

Major local personnel legislation enacted by the 1963 General Assembly included a flood of county salary increase bills, and several county salary and fees home rule bills, local peace officers relief funds, and local retirement bills.

Of the 1,263 bills or resolutions enacted, 183 affected some aspect of state, county and/or local personnel administration. An analysis of the new personnel acts reveals that 22 were state-wide acts, 137 were county acts, and 24 pertained to cities and towns or their employees.

Compensation

State Officials Compensation

Chapter 839 (SB 113) increases the salary of the Chief Justice to $22,500, of other Justices of the Supreme Court to $21,500, of Judges of Superior Court to $17,000, and of district solicitors to $11,500.

Chapter 1178 (SB 666) increases the salary of the Governor from $15,000 to $25,000, the salaries of the Secretary of State, State Auditor, State Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance from $12,000 to $18,000. The salaries of the Attorney General and the Superintendent of Public Instruction are increased from $13,500 to $18,000. All salary increases are effective July 1, 1963.

State Employee Compensation

Chapter 683 (SB 13) grants a $120 annual salary increase to each permanent, full-time employee subject to the State Personnel Act or the salary setting authority of the Advisory Budget Commission. The minimum, maximum, and each step in the State Personnel salary schedule is increased by that amount. Public school teachers were granted an increase of $15 per month for the first year of the biennium and an additional $10 for the second year of the biennium. Funds were appropriated to the institutions of higher education to be used on a merit basis that would permit the salaries of academic personnel to be increased 10 per cent each year of the biennium.

The appropriation act also provides funds for automatic and merit salary increases in accordance with the provisions of the State Personnel Act, and for continuing the salary adjustments program for which funds have been appropriated since 1959. The latter adjustments are to give salary increases to employees whose duties have increased and to keep the salary plan competitive with other private and public employment in the area.

Mileage Allowance

Chapter 1049 (SB 623) increases the mileage allowance for employees using their personal cars on official business from $.07 to $.08 a mile.

County Employee Compensation

The 1963 General Assembly passed 63 county salary acts. The General Assembly authorized or directed salary increases for the chairman and/or members of the board of commissioners in the following 25 counties: Ashe, Avery, Buncombe, Camden, Cleveland, Davidson, Durham, Edgecombe, Forsyth, Gaston, Granville, Harnett, Haywood, Jackson, Jones, Martin, Northampton, Pamlico, Person, Pender, Perquimans, Richmond, Swain, Vance, and Washington.

Salary increases were authorized or required for one or more of the county constitutional officials in the following 23 counties: Ashe, Cabarrus, Camden, Chowan, Forsyth, Franklin, Granville, Guilford, Harnett, Haywood, Hyde, Jackson, Jones, Mecklenburg, McDowell, New Hanover, Swain, Vance, Wake, Watauga, Wilkes, Wilson, and Yancey.

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 of 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 1961 General Assembly the county commissioners of 45 counties could set the salaries of elected officials and of 60 counties could set the salaries of appointive officials.

The 1963 General Assembly adopted legislation providing that commissioners of eight additional counties may henceforth set the salaries of both elective and appointive officials. These counties include Ashe, Beaufort, Greene, Jackson, Moore, Pasquotank, and Wilkes.

Today county commissioners in 53 counties are authorized to set the salaries of elected officials, and commissioners in 66 counties are authorized to set the salaries of appointive officials and employees.

The state-wide home rule act permitting county commissioners to determine the number and salaries of elective and appointive officials appears as G.S. 153-48.5. Because it contains a 20 per cent a year limitation on the increase of salaries, a number of counties have secured the passage of bills exempting them from this limitation. The 1963 General Assembly granted greater salary setting discretion to commissioners of Henderson and Surry counties.

County Fees Home Rule

Most county officials in North Carolina are today paid a salary, and all fees they collect are turned into the county general fund. Only a few officials are still exclusively dependent upon the fees they collect for their entire compensation. The register of deeds in Polk was placed on a salary by the 1963 General Assembly. Less than twenty county constitutional officials receive a majority of their compensation from the fees they collect.

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 in proportion to the cost of providing these services.

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. The 1963 General Assembly authorized county commissioners in Chowan, Forsyth, Halifax, Jackson, Person, Sampson, and Swain counties to set all or most fees charged in those counties. With the addition of these counties, commissioners may set the fees of clerks of court in 54 counties, registers of deeds in 59 counties, and sheriffs in 48 counties.

Compensation of Municipal Officials

Fourteen local acts changed the salaries or authorized the change of the salaries of the mayor and/or aldermen in the following cities and towns: Farmville, Grifton, Hazelwood, Lexington, Lumberton, Maxton, Mt. Airy, North Wilkesboro, Rocky Mount, Sanford, Valdese, Waxhaw, Whitaker, and Winston-Salem. Most of the acts authorize small salary or per diem increases.

State Personnel Department

Incentive Awards

Chapter 1047 (SB 608) establishes an incentive award program for State employees on a two-year trial basis. The State Personnel Council was directed to adopt rules and regulations governing the program. The Governor will appoint a five-member Employees' Incentive Awards Committee to determine what suggestions or innovations merit commendations or cash awards. Cash awards are not to exceed 10 per cent of the savings resulting from the first year of operation following the adoption of the suggestion or a maximum of $1,000, whichever is smaller.

Jurisdiction of Department Extended

Chapter 958 (SB 609) extends the jurisdiction of the State Personnel Department to include all hourly employees. Chapter 1011 (HB 897) extends the department's jurisdiction to include all officials and employees of the Eastern North Carolina School for the Deaf and the North Carolina School for the Deaf at Morganton.

48 Hour Maximum Work Week

Chapter 1177 (SB 647) provides that no State employee subject to the State Personnel Act shall work longer than an annual average of 48 hours a week.

Study of the State Personnel Practices

Senate Resolution 702 directs the State Legislative Council to cooperate with the State Personnel Department in making a study of the manner and methods of classifying State positions of employment and fixing salary scales, and to report its findings and recommendations to the 1965 General Assembly.

Civil Service

Chapter 258 (SB 243) establishes a three-member Concord Civil Service Board with responsibility for the supervising the selection and promotion of policemen and firemen of the city. An employee suspended by the chief of the department may have a hearing before the Civil Service Board which shall report its findings and recommendations to the Concord board of aldermen.

Although not mentioning the words civil service, Chapter 1039 (HB 1346) attempts to increase the security of tenure of employees and officers of the City of Leaksville. It amends the city charter to provide that "such employees or officers shall serve as long as their services are satisfactory, or until they voluntarily sever their connections with the City . . ." The charter amendment further provides that no salaried employee of the City shall be dismissed until he or she shall be given an opportunity to be heard in his or her behalf in an executive meeting, at which time, a quorum of the Board of Commissioners must be present.

Workmen's Compensation

Chapter 604 (HB 477) amends the Workmen's Compensation Act to increase the maximum weekly compensation rate of disabled employees from $35 to $37.50 and total compensation from $10,000 to $12,000.

Retirement

Thirty-three retirement or pension acts were enacted by the 1963 General Assembly. Eight pertain to either state employees or state-wide retirement funds; fourteen authorize or amend local retirement funds; and five establish or amend local law enforcement officers' relief funds.

State Retirement Systems

Ten years ago a study of retirement systems in North Carolina listed nine suggestions or proposed amendments for improving the Teachers' and State Employees' Retirement System. Included among the 1953 suggested amendments were vesting after fifteen years of service and a change to an "average final salary" type of benefit formula. The 1963 General Assembly enacted both suggestions. With the enactment of Chapter 687 (SB 363) all nine goals set for the Teachers' and State Employees' Retirement System only a decade ago were achieved. The other seven suggestions were adopted by previous legislatures.

The old formula for determining a retirement allowance, a money-purchase formula, was impossible for the average employee to use in estimating his future retirement allowance. It based the allowance on an employee's earning throughout his career, including his low-pay years.

Under the new formula the employee's retirement benefit will be based on an employee's five consecutive calendar years of highest pay during the last 10 years of work for the State. The new formula tends to adjust with the cost-of-living for retirement purposes since benefits are based on a percentage of high-pay years multiplied by all the years an individual has worked for the State.

If a state employee's retirement occurs on or after his 65th birthday, his allowance shall be equal to 1 per cent of the portion of his average final compensation not in excess of the maximum salary upon which he could contribute to Social Security (now $4,800) plus 1½ per cent of his average compensation for the five year period in excess of the maximum contribution to Social Security.

A portion of the cost of the increased retirement benefits provided by the new formula will be financed by increasing each employee's contribution to the retirement fund by one per cent. Employees will contribute four per cent of all salary under $4,800 and six percent of all salary in excess of $4,800.

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WATER RESOURCES

Chapter numbers given refer to the 1963 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate.

The 1963 General Assembly enacted some 60 bills affecting in some manner the protection, use and development of water resources. They ranged from local acts adding a county to the water well drilling contractors license law to major revisions of the watershed improvement district statutes. In terms of facilities being provided, significant changes were made in the powers of counties and sanitary districts and minor changes were effected in the case of cities and metropolitan sewerage districts. Recreational uses of water resources were the subject of a number of acts, including the establishment of a special commission to study the question. The legislation adopted will be reviewed in this summary under six headings:

I. Regulatory Laws
II. Water and Sewerage Facilities
III. Watersheds
IV. Drainage Districts
V. Recreation
VI. Soil and Water Conservation

Regulatory Laws

Stream Sanitation

Chapter 1087 (SB 409) amends G.S. 143-215.3 and authorizes the Stream Sanitation Committee to investigate any killing of fish or wildlife of significant magnitude which is known or believed to have resulted from the pollution of waters of the state, and to recover damages caused by the pollution, either by negotiation or by suit, if the killing was caused by negligent or unlawful acts. The measure of the damages is set as the replacement cost of the fish or wildlife, plus the cost of investigations.

Proceeds collected from either negotiation or suit, after deducting costs of investigations, are to be turned over to the appropriate state agency to be used to replace the killed fish or wildlife, or, if this is not practicable, for improving the fish and wildlife habitat in the waters in question.

Well Drilling

There were ten local acts amending G.S. 87-82 to either include or exclude certain counties from the operation of the Water Well Contractor's License Act of 1961. Avery and Buncombe Counties were exempted from the operation of the Act. Alamance, Catawba, Davidson, Jackson, Lee, Cumberland, Nash, Orange, Stokes, Union, and Wake Counties were brought under it. The Catawba act, Chapter 557 (HB 651), provides that the licensing requirements shall apply to all persons practicing the well drilling profession in Catawba County, whether residents of the County or not. This is in contrast to the general law which applies only to residents of the counties subject to its provisions.

Water and Sewerage Facilities

Metropolitan Sewerage Districts

G.S. 153-298 was amended by Chapter 471 (HB 609) to provide a different procedure for the appointment of metropolitan sewerage district boards in cases where the district lies wholly within the corporate limits of two or more municipalities. In such cases, Chapter 471 provides that each municipality within the district shall appoint two members to the district board and the members thus appointed shall appoint a final member from within the district. All appointments are for four-year terms, and the appointments by each municipal board are staggered, with one appointment every two years after the initial appointments.

This method of making appointments is in contrast with the general approach which provides for appointments by the board of county commissioners as well as by the governing boards of political subdivisions within a metropolitan sewerage district.

Sanitary Districts

Under G.S. 130-126 sanitary district boards may consist of either three or five members who serve two-year terms, and who are elected by the voters of the district, except for initial members who are appointed by the board, or boards, of county commissioners pending the first election.

This statute was amended by Chapter 664 (HB 533) to provide for five-member boards with staggered four-year terms (two or three members elected, respectively, at alternate elections). The amendment provides that the five-member, four-year staggered term arrangement may apply to either the initial appointments or to subsequent elections, however, the amendment stipulates that adoption of this arrangement requires a resolution of approval by the board (or boards) of county commissioners *upon the request of the sanitary district board*. This requirement appears to eliminate the possibility of adopting the five-member, four-year staggered term plan initially since there would be no existing board to make the request.

A procedure for the dissolution of sanitary districts which have no bonded indebtedness and which are wholly within the corporate limits of a city or town is established by Chapter 512 (HB 615). Upon dissolution, all taxes levied by the district prior to dissolution, but which are collected after dissolution, are to vest in the city or town, as well as all property and assets of the district.

Chapter 1247 (HB 839) amends G.S. 130-134 and 130-138 to authorize the issuance of bonds by sanitary districts for the purpose of acquiring and constructing district buildings, including fire stations, office buildings, and other facilities. Maximum maturities for such bonds are 30 years.

Sanitary districts were previously authorized to contract with political subdivisions of the state for the treatment of

district sewage. Chapter 1232 (HB 1316) authorizes contracts with private persons and firms for the same purpose.

Sanitary districts located in two or more counties may have a tax equity problem because different assessment ratios are established in the different counties. Chapter 1226 (HB 838) permits the sanitary district board in such cases to adjust the rates certified to the various boards of county commissioners so as to produce uniform rates for the property owners within the district for district taxes. Such districts which levy and collect their own taxes may vary rates in the different counties to achieve the same purpose.

Counties

Authority for counties to levy special assessments for the construction, reconstruction and extension of water and sewerage systems is provided by Chapter 985 (SB 217), which is to be codified as Article 24A of Chapter 153 of the General Statutes. Under this legislation, counties may levy special assessments throughout the county, except that no property within a municipality may be specially assessed for water and sewerage works without the approval of the municipal governing board.

Either of five different bases of assessment may be used:

1. Frontage on the lines.
2. The acreage of land served.
3. The valuation of the land (without improvements).
4. An equal rate per lot of lots served.
5. A combination of two or more of the first four.

Partial exemption for corner lots is permitted, and all land within a flood plain is totally exempt.

The assessment procedure calls for public hearings on each proposed project, after mailed notice to all owners of land affected. Similar hearings and notices are provided in the case of assessments after projects are completed and the costs to be assessed are determined. Property owners are given the option of paying assessments in cash or in installments over a period of ten years.

The board of county commissioners may also hold assessments in abeyance, without interest, for a period of ten years or until structures on assessed property are actually connected with the water or sewerage system, whichever is less.

Finally, boards of county commissioners were also granted authority to require connection to water and sewerage systems.

With respect to both the special assessment authority and the connection power, the Act vests counties with authority parallel to that possessed by cities for many years.

A total of 63 counties were exempted from the Act before its passage.

Mitchell and Watauga Counties were authorized by local acts—Chapter 756 (HB 586) and Chapter 105 (HB 255), respectively—to make appropriations for the purpose of making water and sewer extensions in areas outside municipal boundaries—authority which both Counties already possessed under the general laws.

Cities

Legislation relating to the provision of water and sewerage services by cities was quite limited. The single general law, Chapter 693 (SB 519), extends from five to ten years after a bond order takes effect, the time in which cities and counties may issue bonds when the bonds are being issued to finance the local unit's share of a joint Federal-local water supply project undertaken pursuant to the Water Supply Act of 1958. Local financing in such cases is for the added cost of water supply arrangements to projects of the Federal government which are primarily designed for navigation, flood control, irrigation, or multiple purposes.

Among the local acts relating to water and sewerage facilities, the Raleigh special assessment act deserves mention. Chapter 315 (HB 338) authorizes the City of Raleigh to base water and sewer assessments on average costs for the past year, plus anticipated increases in cost of labor and materials. This approach enables property owners to know in advance the exact assessment to be anticipated and the immediate assessment of the costs after the project is completed—there is no delay while determining costs. Right of way costs, if any, are to be in addition to the average costs of installations which are assessed.

Watersheds

A number of changes in the watershed improvement district statutes and in local programs were made by the 19 watershed bills enacted by the 1963 General Assembly. The major changes in the watershed improvement district statutes may be summarized as follows:

1. Subsection (a) of G.S. 139-26 was amended to make clear that the initial assessment should be for a period of three years, should include all expenses of the district prior to the first assessment and for the first three fiscal years thereafter, and that debt service expenses are to be included in the assessments. [Ch. 1228 (HB 1047)].

2. Subsection (e) of G.S. 139-26 was amended to make clear that the trustees' power of correction, cancellation, remission or adjustment of any particular benefit assessment does not limit their responsibility for maintaining the fiscal integrity of the district and for providing for all debt service needs by reassessment or otherwise. [Ch. 1228 (HB 1047)].

3. G.S. 139-26 was amended with a new subsection (i) to increase the maximum annual assessment from $5.00 to $7.00 an acre. [Ch. 1228 (HB 1047)].

4. Subsection (h) of G.S. 139-26 was amended to make clear that assessments made subsequent to the initial assessment should include provision or meeting all expenses of the district, including debt service, administration, and the cost of new or contemplated construction. [Ch. 1228 (HB 1047)].

5. Subsection (a) of G.S. 139-27 was amended to provide:

   a. that owners of property assessed who do not give notice within 15 days of confirmation of the assessment roll of intention to pay assessments in cash shall be deemed to have elected to pay in installments. [Formerly, a notice from owners was necessary to the scheduling of payments in installments.]
   b. that the period for installment payment of an assessment may be as long as the trustees determine. [Formerly, it was not clear that there was authority for an installment period of more than three years.] [Ch. 1228 (HB 1047)].

6. A new section, to be designated G.S. 139-27.1, was added to Chapter 139 of the General Statutes to make clear that districts may incur indebtedness to be repaid over a period longer than three years and to levy assessments as necessary to meet debt service on such indebtedness. [Ch. 1228 (HB 1047)].

7. G.S. 139-28 was rewritten to provide clearly that the trustees of a district have authority to incur indebtedness with or without a referendum; to eliminate the requirement that the Local Government Commission approve all indebtedness; to limit the term of any indebtedness to a maximum of 20 years; and to make clear that indebtedness may take the form of bonds, bond anticipation notes, benefit assessment anticipation notes, or revenue anticipation notes. [Ch. 1228 (HB 1047)].

8. G.S. 139-31 was repealed and G.S. 139-30 and 32 were amended to eliminate references to the Local Government Commission and its approval or participation in the

issuance of bonds or other forms of indebtedness. [Ch. 1228 (HB 1047)].

9. Subparagraph (8) of G.S. 139-17 was amended to require that the petition asking for the establishment of a watershed improvement district (and which is filed with the supervisors of the soil and water conservation district) set forth the maximum levy proposed for the initial assessment. Prior to amendment, the petition set forth the maximum possible levy of $5.00 an acre (now $7.00). [Ch. 1151 (HB 908)].

10. Chapter 1025 (HB 995) amended the notice requirements contained in G.S. 139-25 with respect to benefit classification and in G.S. 139-26 with respect to the amount of assessments. As amended, these sections now require that notices shall be mailed to owners as shown on the tax records of the county, and to the address shown on these records. No mailed notices at all are required in the case of owners of land classified for no assessments. Prior to amendment, these sections required mailed notices to all owners, and did not provide that county tax records could be used to establish ownership. Chapter 1025 (HB 995). In the eyes of watershed trustees and their attorneys who were instrumental in obtaining passage of this legislation, it will minimize or eliminate the necessity of costly title searches in connection with the organization of districts. In any event it will greatly simplify the task of notifying landowners of classifications and assessments.

11. G.S. 139-21 was amended to make a minor change in trustee election procedure and G.S. 139-22 was amended to provide for the payment of a per diem allowance and necessary expenses to trustees while engaged in official duties, rather than only for attendance at meetings of the board as was the case prior to amendment. [Ch. 1026 (HB 996)].

12. Chapter 918 (HB 882) validates the creation of all watershed improvement districts attempted or completed prior to March 1, 1963, and amends subsection (m) of G.S. 139-18 to provide that the order declaring the district created which the supervisors of the soil and water conservation district certify to the State Soil and Water Conservation Committee and other officials and agencies must be accompanied by a certified copy of the petition asking for the establishment of the watershed district.

In all, these changes should increase the flexibility in financing on the part of watershed districts and simplify their administration. For the most part, they are changes recommended by trustees and their attorneys after some experience with the organization and operation of watershed improvement districts.

Local watershed legislation in the 1963 General Assembly was primarily concerned with the power of eminent domain and special taxing powers for counties.

Six counties—Davie, Iredell, Polk, Rowan, Wake and Yadkin—obtained the power of eminent domain in connection with small watershed programs in 1961 (Ch. 794, Session Laws of 1961). In general, this act required that the district request approval for the exercise of the power from the State Soil and Water Conservation Committee and show that at least 75% of the tracts needed for the particular construction project has been secured *without* the exercise of the power of eminent domain. This act also provided that county programs, operated under Article 3 of Chapter 139 of the General Statutes, would have the same power and that the board of county commissioners could exercise the power with respect to a county program.

Five more counties were brought under the terms of the 1961 legislation this year: McDowell [Ch. 637 (HB 951)]; Guilford [Ch. 734 (HB 1037)]; Stokes [Ch. 155 (HB 42)]; Yadkin [Ch. 401 (HB 235)], and Forsyth [Ch. 761 (HB 988)]. With respect to county programs, the Stokes and Forsyth acts provide for exercise of the power by the board of county commissioners whether the program was organized under Article 3 of G.S. 139, or under any special act. And Yadkin County, which had previously been under the 1961 legislation, was added to the Stokes special legislation with respect to county operated programs.

Two counties—Rowan, Chapter 109 (HB 298) and Iredell, Chapter 995 (SB 556)—removed themselves from the operation of the 1961 legislation by rewriting the act to eliminate the 75% requirement and to provide that a county operated program would have the eminent domain powers whether organized under Article 3 of Chapter 139 of the General Statutes or by special act. Two other counties secured identical legislation with respect to eminent domain—Surry with Chapter 441 (SB 226) and Transylvania with Chapter 495 (SB 342).

Thus a total of 12 counties now possess the power of eminent domain in connection with small watershed programs.

Special acts for four counties were passed which authorize the boards of commissioners in those counties to exercise the powers set forth in Article 3 of Chapter 139 of the General Statutes, the county watershed program powers, without a referendum, and to levy county-wide taxes to support such a program. Stokes [Ch. 156 (HB 43)], and Surry [Ch. 442 (SB 227)], were authorized to levy a tax not to exceed 2 cents on the $100.00; Mitchell was authorized to levy a maximum of 5 cents [Ch. 1033 (HB 1294)]; and Polk's maximum levy was set at 7 cents [Ch. 996 (SB 632)]. Forsyth County was vested with all the powers of the aforementioned Article 3. [Chapter 761 (HB 988)], but is limited to the use of nontax funds until approval of the voters in a referendum is given for a maximum levy of 2 cents. The first four of these counties join Yadkin and Clay, which received similar authority in 1961, in possessing authority to levy a tax without a referendum.

The State budget appropriations bill [Ch. 683 (SB 131)], included one major increase for watershed work, a $50,000 revolving fund to assist local watershed organizations in meeting their initial expenses.

The final piece of watershed legislation [Ch. 1147 (HB 817)], appropriated $9,000 for 1963-64 and $4,000 for 1964-65 to be used in a study of the Ahoskie Creek watershed in Northampton and Hertford Counties.

Drainage Districts

Numerous amendments to the drainage district legislation in Subchapter III of Chapter 156 of the General Statutes were made by Chapter 767 (HB 1035). The most significant changes resulting from this legislation are:

1. Provides that the treasurer of the district, who may be a member of the board of commissioners of the district, shall be appointed by the clerk of superior court for the county where the district was organized. Previously, the treasurer of the county served ex-officio as district treasurer.

2. Amends G.S. 156-83 to delete the requirement that the drainage engineer be approved and recommended by the Board of Water Resources.

3. Amends G.S. 156-97.1 to provide that assessment anticipation notes issued by the district commissioners may be either serial notes or an amortized note. Previously, only serial issues were authorized.

4. Adds a new section, to be designated G.S. 156-100.3, which authorizes drainage district commissioners to establish a sinking fund to be used to pay bonds and notes issued by the district.

5. G.S. 156-133 was rewritten to provide that the clerk of superior court, rather than the board of county commissioners, shall annually appoint an auditor for the district.

There were two local acts affecting drainage districts. Chapter 104 (HB 64) includes the Town of Chadbourn within the Chadbourn Drainage District, and Chapter 142

(HB 208) limits drainage district assessments for improvement, enlargement, and extension of canals or structures in Beaufort County to a total of $5.00 an acre, with a maximum assessment of $1.00 an acre.

Recreation

The increasing importance of water resources to recreation was recognized in three general acts and in several local acts. The major general act [Resolution 83, (SR 510)] authorized the creation of the North Carolina Aquatics Recreation Study Commission to study all matters relating to the recreational use of streams and waters of the state and to develop specific recommendations for local and statewide legislation. The President of the Senate is to appoint one member from the Senate membership and the Speaker of the House one member from the House membership. The Governor is to appoint the other eight members of the ten-member Commission, one each from the following agencies: N. C. Recreation Commission, Wildlife Resources Commission, Wildlife Federation, Board of Health, Department of Conservation and Development, Department of Water Resources, Stream Sanitation Committee, and the Attorney General's Office. The report of the Commission is to be presented to the Governor for transmission to the 1965 General Assembly.

Chapter 1003 (HB 718) amended G.S. 75A-3 (c) to allow the use of motorboat registration revenue to provide access to public waters, including the acquisition of land. Previously such revenue could be used only to enforce the motorboat registration law and for educational work in connection with boating safety.

Landowners are encouraged to give permission for the recreational use of their lands for camping, hiking, hunting, fishing and the like by Chapter 298 (HB 187) which removes their liability for injury to persons or property resulting from such activities on their land. Liability is not removed where charges are made for use of lands (including waters) and in other circumstances where owner has a duty to user to keep premises safe. [See Criminal Law, page —, for a fuller discussion of this legislation.]

The local acts were concerned primarily with the safe use of water for boating, fishing, swimming, and skiing, or with the pollution of waters which have recreational value. Typical of these was Chapter 510 (HB 595) which makes it unlawful for skiers on Lake James in Burke and McDowell Counties to ski so as to endanger swimmers.

Of more than routine interest was the defeat of one local bill, SB 639 (HB 1293). This bill would have prohibited ordinary drawdowns of lake levels on certain artificial lakes in Davidson County in excess of three feet. As drafted, the bill would have applied primarily if not exclusively to High Rock Lake, a storage reservoir on the Yadkin River constructed to supply hydroelectric power for the aluminum smelter works at Badin. High Rock Lake is under license from the Federal Power Commission, and the subject of permissible lake level fluctuation is covered by the FPC license. Any potential conflict between the Federal license and SB 639 failed to materialize, however, as the bill was reported unfavorably in the Senate and was not reported out of committee in the House.

Soil and Water Conservation

Relatively minor procedural changes were made in the Soil and Water Conservation district legislation by two acts of the 1963 Legislature.

Chapter 815 (HB 818) amended G.S. 139-6 to provide that the date of the annual election for members of the county committee shall be at a date between December 1 and December 15 selected by the committee, rather than during the week of December in which the first Tuesday after first Monday falls, as has previously been the case. The election procedure is also set out.

Chapter 536 (HB 819) amends G.S. 139-7 to provide that per diem and travel and subsistence expenses of supervisors of soil and water conservation districts be the same as provided in G.S. 138-5 for state boards, commissions, and committees generally. The effect of this is to increase supervisors' per diem from $5.00 to $7.00.

Chapters 290 (HB 333) and 701 (HB 862) added Jackson and McDowell Counties to the list authorized by G.S. 153-9 (35½) to cooperate with federal, state and local soil and water conservation agencies and to appropriate nontax funds for soil and water conservation purposes. More than three-fourths of the counties of the State are now covered by this statute.

Authority to spend tax funds for soil and water conservation purposes was granted to Anson, Bladen, Brunswick, Chatham, Columbus, Davie, Duplin, Hoke, Jones, Lee, Martin, Onslow, Pender, Perquimans, and Sampson Counties by Chapters 933 (HB 713) and 1230 (HB 1275).

Revision of the Courts...

(Continued from page 12)

warrants, and one general law to this effect. (See article in this issue on new Criminal Procedure laws.)

By "omnibus" bill, the legislature appointed over 500 Justices of the Peace to two-year terms, and by Chapter 383, Session Laws of 1963, ratified 7 May 1963, the jurisdiction of Justices of the Peace in claim and delivery cases involving the vendor-vendee relationship, was raised from $50 to $200. In an advisory opinion of the same day to Senator Hamilton, the Attorney General ruled that this enlargement of JP jurisdiction was unconstitutional, since the old Article IV (Judicial Department) of the Constitution fixing JP jurisdiction was still in effect. He further expressed the opinion that the new Article IV would not be in effect until such time as the legislature established a system of District Courts. This was discussed in the June, 1963 issue of *Popular Government*. The ramifications of this ruling have yet to be fully explored.

Finally, by local acts, costs in many inferior courts were raised.

Planning

(Continued from page 54)

killed by the General Assembly. However, Chapter 559 (HB 771) setting specifications of traffic control devices and requiring State Highway Commission approval of such devices on "system" streets, and Chapter 757 (HB 905) creating a North Carolina Turnpike Authority, both were enacted.

Other Legislation

Planning officials will also be interested in Chapter 685 (SB 315) authorizing condominiums in North Carolina; Chapter 790 (SB 326) authorizing municipalities to adopt technical codes by reference; Chapter 403 (HB 381) making requirements of the Uniform Map Law inapplicable to annexation maps; Chapter 811 (HB 510) clarifying enforcement responsibility under the State Building Code; and a House resolution which directed the newly-created Legislative Council to study the powers of municipalities with reference to preservation of historic areas and to make recommendations for needed legislation.

Proposals to create a State Topographic Mapping Commission (SB 148, HB 250) and to step up the rate of mapping the state, to require a vote on every new public housing project (SB 588), to require a vote on annexations (SB 39, HB 72), and to redefine the definition of "engineering" in the laws governing its practice in such a way as to raise jurisdictional questions with planners (HB 743) were among the bills which failed of passage.

Public Health

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receive a license, an applicant must meet the qualifications presently prescribed in G.S. 90-143 and in addition he must satisfy the Board of Examiners that he has completed two years of college work and received credit for a minimum of 48 semester hours or its equivalent. It exempts from this requirement persons now enrolled in, or who have already completed a course in, a reputable chiropractic college.

Chapter 1195 (HB 1337) changes the word "chiropody" throughout the statutes to read "podiatry," and requires that applicants for an examination for a license to practice podiatry must have two years of college or university instruction as a prerequisite for application.

Chapter 600 (SB 83) makes it lawful for physicians and surgeons licensed in this State (and acting in collaboration with at least one other physician or surgeon so licensed), when requested by any person 21 years of age or over, or less than 21 years of age if legally married, to perform in a hospital licensed by the Medical Care Commission, upon any person a "surgical interruption of vas deferens or Fallopian tubes" as the case may be. A request must be made in writing for such operation at least 30 days prior to the performance thereof and the request must also be made by the spouse of such person, if there be one, unless the spouse has been declared mentally incompetent, a separation agreement has been entered into between the parties, or the parties are divorced either absolutely or from bed and board. If the operation is to be performed on a minor a request must be made by the minor, and the juvenile court of the county wherein the minor resides, upon petition of the parent or parents, if they be living, or the guardian, must determine that the operation is in the best interest of such minor. No operation is to be performed prior to 30 days from the date of the consent or request therefor. The Act specifically provides that no physician or surgeon is to be liable either civilly or criminally by reason of the performance of the operation if he performs it in a non-negligent manner. It is also specifically stated that this shall not affect the provisions of the law relating to eugenical or therapeutic sterilization.

R. 80 (HR 943) creates a North Carolina Commission on Intergovernmental Relations to study the full range of intergovernmental co-operation in the financing and administration of governmental activities. For further discussion of this Chapter, see article on "Public Welfare" in this issue.

Chapter 1142 (HB 218) makes appropriations to the State Board of Public Welfare so as to increase from $16 per day to $20 per day the amount paid to hospitals for the care of public assistance recipients and medically indigent persons who qualify for such welfare aid.

Chapter 1060 (HB 606) authorizes boards of county commissioners to make and enforce regulations (applicable to areas outside of municipalities unless a municipality agrees that they shall be applicable within the municipality) for the protection of public health, morals, comfort, safety, convenience and general welfare. It specifically provides: "Nothing herein shall affect the authority of local boards of health to adopt rules and regulations for the protection and promotion of public health."

This Chapter does not apply to 51 counties. They are: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Burke, Cabarrus, Caldwell, Carteret, Catawba, Chatham, Cherokee, Clay, Craven, Dare, Duplin, Gaston, Graham, Halifax, Harnett, Hoke, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Onslow, Pamlico, Pasquotank, Pender, Pitt, Polk, Randolph, Richmond, Rowan, Rutherford, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wilkes, Wilson and Yancey.

Local Property Taxation

(Continued from page 46)

exemption from property taxation has been in the Constitution since the 1930's it has never been exercised. HB 531 was designed to put it into effect, but the bill received an unfavorable report from the House Finance Committee and was not enacted.

Revaluation Schedule

In 1959 the General Assembly adopted a comprehensive real property appraisal law which set out the dates at which each county in the state should conduct a revaluation of real property by actual appraisal, thereafter requiring each county to conduct such programs on an octennial basis (GS 105-278). This was strong legislation, and it was a matter of wide interest what the 1961 legislature would do if an individual county sought postponement or re-scheduling. The same interest continued in 1963. Although at least one county considered having postponement legislation introduced, no such bill reached the floor of either house, and the schedule enacted in 1959 remains intact.

Reassessment of Real Property in Non-revaluation Year

Ordinarily the values assigned real property in a revaluation year cannot be altered until a new revaluation is held. The exceptions to this rule are set out in GS 105-279(3). Ch. 414 (HB 466) adds a new exception to the list: It requires reassessment of affected real property in a non-revaluation year if it has increased or decreased in value on account of a change in the acreage allotment of any farm commodity if, at the preceding revaluation, a fixed per-acre value was assigned to the allotment. Thus, if no per-acre figure was used in valuing allotments in the revaluation, this subsection is not available, and, in such a case, if allotments are changed the tax authorities would have to decide whether other provisions in GS 105-279(3) would justify reappraisal.

Tax Collection Records

As already noted, Ch. 784 (SB 286) gives boards of county commissioners authority to dispense with division of county abstracts and scrolls by race and business status. Although GS 105-324, dealing with the preparation of tax receipts, requires no such division, most counties and municipalities have maintained race and business status divisions in preparing and filing tax receipts. It is now clear that such divisions are not required by law; both counties and cities are free to prepare and file tax receipts in any way they find conducive to efficiency.

Payment of Taxes

GS 105-296.1 requires certain state agencies administering, leasing, controlling, or owning timberlands to pay into the general fund of each county in which timberlands are situated an amount equal to 10% of the proceeds of the gross sales of trees, timber, pulpwood, and other forest products therefrom. Ch. 1120 (SB 419) increases this percentage from 10% to 15%. Although not payment of taxes in the strict sense, this is equivalent to a payment in lieu of taxes. (See prior discussion of State-Owned Timberlands under Exemption.)

Collecting Taxes of a Different Unit

GS 105-386 establishes the conditions on which and procedures by which the collector of one unit may certify an uncollected tax bill to the collector of another unit for collection. The statute contains this significant language with regard to the unpaid receipt and the sending collector's certificate: "Such receipt and certificate shall have the force and effect of a tax list of his own unit in the hands of the collec-

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Public Personnel

(Continued from page 68)

ment for an employee's retirement contribution to vest from 20 to 15 years. As of July 1, 1963, a state employee with 15

As indicated above, the bill reduces the service requirement years of service may leave his contribution in the system and receive a retirement allowance at age 60.

A companion feature allows an employee who separates from State service and who is 50 years of age or more, with at least 20 years of service, to begin drawing a reduced retirement immediately. Previously, the Act stated that reduced retirement could be drawn after 30 years service, with no age restriction.

Chapter 582 (SB 331) authorizes county and city boards of education to purchase non-forfeitable annuity contracts for their employees.

Chapter 840 (SB 308) permits Justices of the Supreme Court upon attaining 75 years of age and having served 8 years to retire on two-thirds of annual salary.

Chapter 1262 (HB 1393) requires members of the Teachers' and State Employees' Retirement System with creditable membership in the Local Governmental Employees' Retirement System to file detailed statements of all service in such local governmental units.

Chapter 953 (SB 544) authorizes the Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund to formulate regulations under which governmental units or member may elect to pay into the fund to an individual account (1) an amount not to exceed 15 per cent of a member's compensation in any one year, and (2) a sum not to exceed three times the value of prior service of such member. This act required the State to contribute for each State law enforcement officer an amount equal to three times the value of prior service and an amount equal to three times the cost of matching his contribution. Chapter 1123 (SB 545) which appropriated the State funds to carry out the latter provision provided funds to double the amount of the special matching appropriation (not triple as Chapter 953 provided) as a temporary supplemental retirement benefit to members who retire beginning July 1, 1963. The benefit would terminate upon the depletion of the appropriated fund or on June 30, 1965.

Local Retirement Systems

While the General Assembly was freezing the oldest municipal retirement funds in the state (the Wilmington police and fire funds) because local administration had resulted in insolvency, the General Assembly was authorizing five new local retirement systems. The new local retirement systems authorized were for Elkin, Leaksville, Mt. Airy, Pilot Mountain, and Wayne County. Two acts authorized adjustments in the Durham City and Durham County and the City of Wilson supplemental retirement plans.

Three municipalities amended their firemen's pension fund. These included Albemarle, Morganton, and Salisbury. A new firemen's pension fund was established for Goldsboro firemen.

Eleven local acts pertained to local peace officers' relief funds. New local relief funds were established in Caswell, Dare, Lee, Richmond, and Stanly counties. The Franklin, Halifax, Harnett, Johnston, Rowan, and Vance county funds were amended to increase court costs, or clarify membership or benefits.

Police Residence

The Supreme Court has held that a municipal policeman is a public officer. The State Constitution provides that every legally registered voter shall be eligible to office, and the Supreme Court has interpreted this to mean that only registered voters are eligible for office. To be a registered voter a citizen must reside within the jurisdiction. However, in spite of the efforts of the Attorney General to inform municipalities of these facts and opinions, five local acts were enacted by the 1963 General Assembly authorizing police officers to reside outside the jurisdiction in which they hold office. These acts were applicable to the towns of Bakersville, Hamlet, Louisburg, Snow Hill, and all towns in Polk County.

Other acts of possible interest to public officials and employees: Chapter 332 (SB 255) authorized Winston-Salem to establish auxiliary policemen and firemen; Chapter 714 (SB 537) authorized Raleigh to buy up to $10,000 of life insurance for each employee and pay all or part of the premium; and Chapter 1009 (HB 856) authorized the Governor to employ counsel at State expense when it appears to the Attorney General that a civil action has been commenced against any State employee for any action taken in good faith in the course and scope of the employee's work.

Public Welfare and Domestic Relations

(Continued from page 66)

expenditures thus reduced so as to allow the states and the local governments to increase their taxes to meet expenditures. It shall provide opportunity to all agencies involved in intergovernmental activities to present views and recommendations concerning the activities, and it shall provide similar opportunity to the general public. It shall present its conclusions and recommendations in the form of a report, which shall be filed with the Governor no later than September 1, 1964, for transmittal to the 1965 General Assembly."

School Attendance Counselors

Chapter 1233 (HB 74) makes several changes in the provisions of the public school laws regarding enforcement of attendance laws. It changes the term "attendance officer" to read "attendance counselor" and "truancy" to read "unlawful absence." More important, it authorizes the salaries of attendance counselors to be a part of the State's expenditure for the operation of the schools, but does provide that the school administrative units are to provide in their local operating budgets for travel and necessary office expense "for such counselors as may be employed through State and/or local funds." The Act further provides: "The State Board of Education shall determine the formula for allocating attendance counselors to the various county and city administrative units, establish their qualifications, and shall develop a salary schedule which shall be applicable to such personnel; provided that persons now employed by county and city boards of education as attendance officers shall be deemed qualified as attendance counselors under the terms of this Act, subject to the approval of said county and city boards of education; provided further, that until qualified persons become available, county and city boards of education are hereby authorized to employ as attendance counselors persons not determined by the State Board of Education to be qualified under the terms of this Act."

In rewriting G.S. 115-168, the following proviso is omitted: "Provided, that in any unit where a special attendance officer is employed, the duties of attendance officer or truant officer as provided by law shall, insofar as they relate to such unit, be transferred from the county director of public welfare to the special attendance officer of said unit."

Mental Health

For a discussion of new laws relating to the general area of mental health, see the article on "Public Health" in this issue. These include Chapter 669 (HB 797) providing for creation of a Council on Mental Retardation; Chapter 1184 (HB 1154) which rewrites the laws relating to the commitment of patients to institutions; and, Chapter 1166 (SB 182) which creates a State Department of Mental Health.

The Cities

(Continued from page 11)

application for a permit, for investigation of the applicant by the municipality, for a reasonable limitation of activities as to time and area, for submission of credentials and proof of financial stability, and for posting of an adequate bond to protect the public from fraud. This specific authority to prohibit or regulate provides statutory authority for the so-called Green River ordinance prohibiting solicitation for magazine subscriptions, as well as for comprehensive regulation in lieu of prohibition.

Chapter 488 (SB 141) makes moot many of the provisions of municipal ordinances governing retail activities on Sunday. The act rewrites G.S. 14-362.2 to make it a misdemeanor punishable in the discretion of the court to engage on Sunday in the business of selling the following items: clothing and wearing apparel; clothing accessories; furniture; home, business or office furnishings; household or office appliances; hardware; tools; paints; building and lumber supply materials; jewelry; silverware; watches and clocks; luggage; musical instruments; and recordings. Part or all of 39 counties—largely those with resort or tourist activities—are exempted from the act. Constitutionality of the act has been challenged by a number of discount houses. For a further discussion, see the article on CRIMINAL LAW AND PROCEDURE.

Special legislation granting additional regulatory powers to municipalities has dropped off in importance as the volume of general, discretionary legislation has increased. Chapter 828 (HB 1114) is of interest in that it authorizes Burlington's council to submit the question of fluoridation of water supplies to a vote of the people. The bill was introduced as a state-wide act but passed as a local bill. Albemarle joined the small number of cities with specific authority to license and franchise ambulance operations. Chapter 848 (SB 472).

Sale of Beer, Wine and Liquor

A number of general laws amended the statutes relating to beer and wine elections and to control of beer and wine. See the article on CRIMINAL LAW AND PROCEDURE.

Although a state-wide bill to authorize ABC elections in all municipalities failed, the volume of special acts authorizing municipal ABC elections seems to establish a different attitude statewide toward controlling the sale of alcoholic beverages than was present ten years ago. Special acts authorized votes on ABC stores in Bunn, Burnsville, Granite Falls, Hamlet, Hot Springs, Lenoir, Lillington, Monroe, Morganton, Mount Airy, Roseboro, Valdese, and Wadesboro, as well as in Pender County. Efforts to secure authority for votes in Blowing Rock, Brevard, and Lexington were unsuccessful.

Other Municipal Functions

Chapter 945 (SB 375) completely rewrites and revises Article 8 of Chapter 160 dealing with the government of public libraries. The primary emphasis of the revision is to permit greater flexibility in the joint operation and financing of library service by two or more counties, two or more municipalities, or by one or more municipalities in conjunction with one or more counties. To the extent that there is a definite trend toward larger administrative units for library administration (county-wide or regional), municipal officials will be interested in the ease with which joint contractual arrangements with a county or another municipal library can be made under the new statute. Since the act is detailed, officials interested in more effective public library services should consult their library board or the North Carolina State Library for futher information.

Conclusion

Limitations of time and space discourage further analysis of the total volume of special legislation, and further analysis of state-wide legislation. There are interesting implications in the charter revisions of many municipalities, just as there are many fine points in new general legislation which will intrigue, annoy and perhaps delight municipal officials throughout the state. More than anything else, the net result of the 1963 General Assembly is, as indicated in the introduction, that municipalities were neither greatly harmed nor greatly benefitted.

As municipal officials look forward to 1965, they must, however, seek for a better state-wide understanding of their particular problems and functions in an increasingly urbanized society.

Local Property Taxation

(Continued from page 73)

tor receiving it, and it shall be the duty of such collector to proceed immediately to collect such taxes by any means by which he could lawfully collect taxes of his own unit."

Despite the fact that most units operate under the ten-year statute of limitations contained in GS 105-422, a substantial number do not. Many may collect taxes for any year since 1926. In those instances in which such a unit certifies a bill more than ten years past due to a unit under the ten-year statute, serious questions arise about the authority of the collector in the receiving unit. Attorneys do not agree on the answers. Under the sponsorship of the North Carolina Tax Collectors Association, the League of Municipalities, and the North Carolina Association of County Commissioners, the 1963 General Assembly passed legislation to clarify the matter. Ch. 132 (SB 185) inserts a provision in GS 105-383 to prohibit forwarding any unpaid tax bill to another unit for collection after ten years from the date the bill became due. This seems to cover the problem except in those receiving units which happen to have statutes barring collection less than ten years after the due date.

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

In April 1962 the Institute of Government published *Property Tax Bulletin* No. 23 which was devoted to an analysis of GS 105-405, a statute authorizing, under certain conditions, downward adjustment in a property owner's assessment or tax bill against property destroyed, partially destroyed, or damaged by tornado, cyclone, hurricane, or other wind or windstorm. The numerous problems of interpretation, administration, and constitutionality were presented in that bulletin and need not be repeated here. Several associations of local officials directly concerned with this statute made its repeal part of their 1963 legislative programs, and their efforts were successful. Ch. 548 (SB 186) repeals GS 105-405.

Game, Fish—Boat Law...

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Statutes. The modification, which may well no longer be in effect, purports to authorize the purchase of unculled oysters in the three counties named. Chapter 611 (HB 787) (May 29) clarifies the situation at least for *Onslow* County. It provides that "notwithstanding . . . any local law to the contrary," G.S. 113-213 relating to the culling of oysters, and the applicable provisions of the lawful regulations governing the taking of shellfish and the culling of oysters, and the legal size of oysters which may be taken, shall be applicable to oysters taken from the waters of Onslow County. The act then inserts a variation: in the waters of Queens Creek and White Oak River, in the county, the legal size limit for oysters is reduced from three to two and one-half inches.

Motor Vehicles

(Continued from page 50)

partment of Motor Vehicles, upon receipt of evidence that financial responsibility was not in effect at the time of operation or certification that insurance was in effect, to revoke the registration of the vehicle and suspend the owner's driver's license for 30 days. When the vehicle's registration is revoked under this section, it may not be re-registered in the name of the owner, his spouse, or any child of the owner or any child's spouse within 30 days after revocation.

As a condition precedent to re-registration or reinstatement of revoked or suspended driver's licenses under this section, the owner is required to give and maintain for two years thereafter, proof of financial responsibility. The provision requiring the owner to pay appropriate fees for the new registration is retained.

GS 20-313. This section is amended to delete the penalties ($10-$50 fine, or imprisonment not to exceed 30 days) and to provide that the violation of this section (operation of a motor vehicle without financial responsibility) is punishable by fine or imprisonment in the discretion of the court.

GS 20-313.1. This new section declares it a misdemeanor for the owner to make a false certification concerning his financial responsibility for the operation of a motor vehicle. The wording of this section does not require that the false certificate be made with knowledge where the owner is making the certificate. It is likely, however, that the courts, in following the modern trend, will require proof of knowledge in order to obtain a conviction under this section. This section also makes it a misdemeanor for any person, firm, or corporation to give false information concerning another's financial responsibility, knowing or having reason to believe the information is false. Punishment prescribed for violation of this section is a fine or imprisonment in the discretion of the court.

GS 20-316. This section is repealed. Before its repeal, it specified the punishment for giving false information, forging proof of financial responsibility, etc.

Highway Patrol Airplanes (New)

Chapter 911 (HB 483) prohibits the State Highway Patrol from using airplanes to discover violations of the rules of the road except (1) unlawful racing and (2) failure to stop and render assistance in case of an accident. The act does not prohibit the use of airplanes in observing heavily congested traffic situations, nor does it prohibit their use in coordination of traffic control.

Driver Training Courses (New)

Chapter 968 (HB 884) requires the Department of Motor Vehicles to establish and maintain in each county at least one driver training and safety education course which will qualify persons between the ages of 16 and 18 for the driver license examination. Their purpose, of course, is to make available to persons within that age group a means of meeting the requirements of the new *Provisional Licensee Law*. These schools are to be in addition to those offered in the high schools. Effective November 1, 1963.

Interstate Vehicle Equipment Safety Compact (New)

Chapter 1167 (SB 228) enacts the provisions of the Interstate Vehicle Equipment Safety Compact. In general the compact provides for a commission to (1) promote uniformity in regulation of and standards for equipment; (2) secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety; and (3) provide the means for encouragement and utilization of research which will effectuate the foregoing purposes.

The commission is to be composed of one representative from each state enacting the compact. Expenses of the commission are to be borne by the party states equally; the commission may not pledge the credit of any party state.

Miscellaneous

Automobile Liability Insurance Rates

Chapter 1144 (HB 539) amends GS 58-248.8 to delete the authority of the Commissioner of Insurance to distinguish between classes of drivers on the basis of a series of minor traffic violations. The act sets out a schedule of the maximum number of points that may be assigned for specific violations as follows:

Manslaughter	8	Speeding in excess of 75 mph	3
Prearranged highway racing	8	Illegal passing	1
Highway racing	6	Two convictions of speeding in excess of 55 mph	1
Drunken driving	6	Two convictions of following too close	1
Hit and run, involving bodily injury	6	Two convictions of driving on wrong side of the road	1
Transporting whisky for sale	6	Accident caused by insured while insured's vehicle is [sic] in motion	1
Driving after license suspended or revoked	6		
Hit and run, property damage only	3		
Reckless driving	3		
Passing stopped school bus	3		

The Counties

(Continued from page 6)

expenditures thus reduced so as to allow the states and local governments to increase their taxes to meet expenditures.

Miscellaneous. Chapter 991 (SB 549) appropriates funds to the State Hospitals Board of Control to be used to employ two community education consultants to provide assistance and guidance to local alcoholic programs and to provide financial assistance to local programs.

Senate Bill 280, which failed to pass, would have allocated to the counties of the state 15% of the total net sales and use tax collections to be used for acquisition, maintenance and improvement of school plant facilities.

Senate Bill 175, which also failed to pass, provided for a statewide election upon issuance of $200 million of road bonds.

Chapter 1000 (HB 613) authorizes the state to participate in the financing of street, water and sewerage improvements made by cities and counties, part or all of cost of which is to be assessed against benefited property, in cases in which state property benefits from such improvements.

Miscellaneous

The use of microfilm to make record copies of instruments recorded in the several county offices is authorized by G.S. 153-15.1 through 153-15.3. Other statutes, however, require subsequent entries to be recorded in the margins of real property deeds of trust and mortgages in certain circumstances, particularly in cases of cancellations (satisfaction) and foreclosures. No practical method has been devised for entering marginal notations on microfilm records. The result has been to deny this space and money saving technique to the very office, that of the register of deeds, which more often than not could make the most effective use thereof. Chapter 1021 (HB 961) overcomes this problem by providing alternate procedures and methods for recording subsequent marginal entries in registers' offices utilizing microfilm. Commissioners of counties facing a space problem in this office will now be able to consider the use of microfilm as a solution.

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