POPULAR GOVERNMENT

OCTOBER, 1967

Published by the Institute of Government
The University of North Carolina at Chapel Hill

The Legislative Issue: (Part II)

POPULAR GOVERNMENT

Published by the Institute of Government

Contents

Volume 34 October 1967 Number 2

POPULAR GOVERNMENT is published monthly except January, July and August by the Institute of Government, the University of North Carolina, Chapel Hill. Editorial, business and advertising address: Box 990, Chapel Hill, N. C. Subscription: per year, $3.00; single copy, 35 cents. Advertising rates furnished on request. Second class postage paid at Chapel Hill, N. C. The material printed herein may be quoted provided proper credit is given to POPULAR GOVERNMENT.

This month's cover picture is the first portrait of the six judges of the new Court of Appeals taken after the court had become operative. From left to right are Judge Naomi Morris of Wilson, Judge James C. Farthing of Lenoir, Judge Walter E. Brock of Wadesboro, Judge Hugh B. Campbell of Charlotte, Judge David M. Britt of Fairmont, and Chief Judge Raymond B. Mallard of Tabor City. See the back cover for additional comment on the Court of Appeals.

by David G. Warren

HEALTH LEGISLATION

Chapter numbers given refer to the 1967 Session Laws of North Carolina. HB and SB are the bill numbers of bills introduced in the House and in the Senate. GS refers to the General Statutes of North Carolina.

As health becomes more and more a primary public concern at all three levels of government, it can be expected that federal health legislation will increase and that state legislatures will enact new laws and change old ones to meet the health needs of the community. The 1967 General Assembly made some changes in state policy in several areas relating to health. Among the more significant developments were the granting of new authority at both state and local levels for coping with the ambulance-service problem; establishment of a new agency to deal with air and water pollution; appropriation of grant-in-aid funds for nursing schools; recognition of the deplorable conditions of many local jails and initiation of a new program for their improvement; liberalization of the abortion laws; regulation of LSD; abolishment of the defense of charitable immunity; licensing of practicing psychologists; institution of a new statewide system for port-mortem medicolegal investigations requiring a medical examiner in every county; and new emphasis on the treatment of alcoholics, respect for epilepties, and care of the mentally retarded. These changes and other new health legislation are discussed in this article.

Public Health Legislation

Health Regulations

Several new subjects were added to the regulatory responsibility of the State Board of Health: ambulances and ambulance attendants, sanitary aspects of the scallop industry, marine toilets on boats operating on inland rivers, use of ethyl alcohol in connection with breathalyzer programs, medical examiners, and the sanitary aspects of local jails. Two other subjects related to health are not on this list—air pollution, the regulation of which was placed in the new Board of Water and Air Resources by Ch. 892 (HB 356), and child-care facilities. HB 280 and SB 548, separate bills, would have directed the State Board of Health to license and establish mandatory standards for day-care centers, but neither passed. SB 100-HB 353 would have given the State Department of Public Welfare similar responsibility, but it also failed. However, day-care centers may still obtain a voluntary license from Public Welfare under regulations adopted pursuant to GS 108-3(18). Licenses are a requisite to obtaining state or federal financial assistance.

(a) *Ambulances.* Ch. 343 (HB 159) directs the State Board of Health to promulgate regulations providing for mandatory ambulance vehicle permits and attendant certificates. The regulations will set out standards and inspection procedures for medical equipment and supplies for ambulances and will establish qualifications for attendants. The Board will receive advice from a new Advisory Committee on Ambulance Service composed of representatives from nine named organizations. The regulations will become effective 90 days after promulgation. Violation is deemed a misdemeanor. Local health department sanitarians will probably be involved in the sanitation inspections of the vehicle. Nonprofit rescue squads performing only accident and casualty service will be exempt from the regulations, under the provisions of Ch. 1257 (HB 1374). Another important feature of this legislation authorizes counties—and cities under certain conditions—to regulate, franchise, operate, or provide financial support to ambulance services.

(b) *Scallops.* The Board is authorized under Ch. 1005 (HB 199) to make and enforce regulations concerning the sanitary aspects of harvesting, processing, and handling scallops by a permit system. This authority is similar to that given the Board by a 1965 act relating to shellfish and crustacea. The Board may make agreements with the Department of Conservation and Development as to their respective duties, but C & D will continue to regulate the aspects concerning conservation of fisheries resources.

(e) *Marine toilets.* The 1965 act, codified as GS 75A-6(o), giving the Board responsibility for approval of suitable sewage-treatment devices or holding tanks on boats operating on inland lakes was expanded by Ch. 1075 (HB 1079) to include those boats operating on "inland fishing waters." Not covered, therefore, are only those boats on the coastal waters, including the inland waterway, sounds, and portions of some rivers emptying into the ocean. Specifically exempted from regulation are registered out-of-state boats making interstate trips. The act is effective January 1, 1968.

(d) *Breathalyzers.* Under Ch. 123 (SB 37) the Board will make regulations concerning the ingestion of controlled amounts of beverages containing ethyl alcohol by individuals who submit to chemical analysis in scientific, experimental, educational, or demonstration programs. Records of beverage disposition must be retained for inspection.

(e) *Medical examiners.* The 1955 and 1965 optional medical examiner systems are abolished by Ch. 1154 (SB 153) and replaced by a uniform statewide system. The Board will appoint a skilled pathologist as Chief Medical Examiner, promulgate rules and regulations for post-mortem examinations throughout the state, and supervise laboratory operations in connection with the examinations. The new act gives considerable authority to local medical examiners, to be appointed in every county, in making investigations. Coroners are still responsible for making certain investigations and holding inquests, using information supplied by the medical examiner.

(f) *Local jails.* Under Ch. 581 (SB 289) the State Board of Health is given the responsibility for adopting rules and regulations "governing the sanitation of local confinement facilities, including kitchens, or other places where food is prepared for prisoners." Presumably these regulations will be coordinated with, or referenced in, the jail operation regulations of the Department of Public Welfare authorized under the act. They must "cover such matters as cleanliness of floors, walls, ceilings, storage spaces, utensils and other facilities; adequacy of lighting, ventilation, water, lavatory facilities, bedding, food-protection facilities, treatment of eating and drinking utensils, and waste disposal; methods of food preparation, handling, storage, and serving; adequacy of diet; and such other items as are necessary in the interest of the health of the prisoners and the public." The Board will prepare a score sheet to be used by local sanitarians in making sanitation inspections. These inspections are to be conducted when required by the Board regulations and whenever the public welfare inspector reports "hazards or deficiencies in the sanitation or food service." If the jail is disapproved by the sanitarian, the State Commissioner of Public Welfare has the authority to order the jail or the kitchen, or both, to be closed.

Two other health regulatory measures should be mentioned. Ch. 511 (HB 587) revises the Brucellosis (Bang's disease) program of the State Board of Agriculture. Ch. 771 (SB 436) raises the bedding stamp fee from $10 to $12, effective January 1, 1968.

Vital Statistics

Changes were made in the marriage license laws by Ch. 957 (HB 542). These include (a) deletion of the specific requirement for a Wasserman test and instead authorize any serologic test approved by the U.S. Public Health Service to accompany the health certificate, and (b) elimination of the requirement that the examining physician must immediately file a copy of the health certificate with the State Board of Health. Also Ch. 137 (HB 74) provides that the health certificate must simply state that the applicant is "mentally competent" rather than a list of negative terms, including "not subject to uncontrolled epileptic attacks."

Local Health Departments

Very little legislation was enacted that directly affects local health departments. However, of major significance is the first substantial increase in more than 15 years in state financial support of local health departments. The State Board in its budget request asked for an additional $3,200,000 for local distribution; the approved supplement was $800,000 for the biennium. Increased local activity and costs have meant that the state's percentage share of local budgets has been decreasing, but it is now up slightly to about 16 per cent. This new money will be distributed on a new formula basis by the State Board.

The jail, ambulance service, and possibly air pollution acts only indirectly affect local departments, but all involve sanitarian inspection responsibilities and increase the local workload.

Three minor acts also relate to local health departments. Ch. 1224 (HB 1325) clarifies health personnel status by providing that county health department employees are deemed to be county employees. Ch. 798 (HB 1025) amends several sections of the County Capital Reserve Act, including the 1965 provisions (GS 153-142.22) authorizing a special fund for public health and mental health center capital reserves, to allow the cash balance to be deposited with interest or be invested. Ch. 1192 (HB 1401) is a local act authorizing Edgecombe and Nash counties and the City of Rocky Mount to make agreements for joint administrative functions among themselves under the provisions of GS 153-246 (generally applicable only to counties) in connection with their district health department.

Fluoridation is still an issue in a few locales. Ch. 324 (HB 652) authorizes the Henderson city council to call a vote on the question of fluoridation of the municipal water supply.

Health Inspections

In response to a U.S. Supreme Court decision on June 5, 1967, that health and other administrative inspections cannot be made over the objection of the property holder *without a search warrant,* the General Assembly acted quickly to provide a procedure for sanitarians and others to obtain warrants easily, when needed. Until now administrative warrants were not authorized in the statutes. Ch. 1260 (HB 1390) enacts a new article 4A in GS Ch. 15 to authorize any official or employee of the state or a local government to obtain a warrant to conduct a search or inspection (either with or without the property possessor's consent) in connection with a legally authorized administrative inspection program. This would include the restaurant, motel, and hotel permit program and also such local health department programs as septic-tank regulations. The warrant may be issued by most judicial officials, including clerks. The inspector must certify to the issuing officer that the inspection is part of a legally authorized program of inspection that naturally includes the property to be searched. The warrant is valid for 24 hours and for an inspection to be conducted between the hours of 8:00 a.m. and 8:00 p.m.

Mental Health Legislation

Mental Institutions

Three related measures were adopted which pertain to collection of accounts at state mental institutions. Ch. 958 (HB 560) clarifies the authority of the State Department of Mental Health and institution heads to enter into contracts of compromise of accounts owing to state mental institutions. It also gives the authority in such contracts to base charges on the ability to pay. Ch. 959 (HB 561) provides for a general lien to attach on real and personal property of patients for their care and maintenance at state mental institutions. These liens will last for three years and are not renewable. Ch. 960 (HB 562) provides for the recordation of a three-year lien for unpaid charges upon the death of a patient.

Alcoholism Programs

In 1965 the legislature added 5 cents to the price of each bottle of alcoholic beverages, designating this money for the establishment of three alcoholic rehabilitation centers in three parts of the state. The Department of Mental Health, and others, had urged (SB 121-HB 297) that the 5-cent add-on (which would total over $2,000,000 a year) continue to be dedicated to alcoholic rehabilitation work, but the legislature has directed that these moneys shall now go into the general fund of the state. Two other unsuccessful bills (HB 324 and HB 334) would have increased the add-on to 10 cents and have provided that the money be used for alcoholic rehabilitation programs. In Ch. 1240 (HB 297), however, the legislature did appropriate $500,000 to the Department for use in encouraging local programs. This fund will be available on a 1:1 matching basis for local government units or multi-unit agencies, upon application and approval by the Department, to be used for local alcoholic rehabilitation, education, counseling, and facility-construction purposes. The Department received the $741,000 for the biennium that it requested for the operation of its new alcoholism division.

The Mecklenburg-Charlotte alcoholic rehabilitation interests received a big boost by two local acts. Ch. 1131 (SB 583) authorizes the State Department of Mental Health to spend $150,000 on a matching basis to develop an alcoholic rehabilitation center in Mecklenburg. Ch. 1267 (HB 1424) authorizes the Mecklenburg County commissioners to spend up to $250,000 out of ABC money annually for alcoholism work and facilities.

A minor change was made in the ABC laws in GS 18-45 (15) by Ch. 1178 (SB 739) to authorize county and municipal ABC boards to spend up to 5 per cent of net profits for research on alcoholism, as well as for the presently authorized purposes of education and rehabilitation.

Ch. 834 (HB 596) adds the alcoholic rehabilitation centers, created by the 1965 nickel-a-bottle fund, to the list of other state institutions whose admittees are required to pay the actual cost of their care and maintenance, when able.

Chronic Alcoholics

Until now the penalty for public drunkenness in most counties has been $50 or 30 days; in some counties the penalty rises to a general misdemeanor (two years' imprisonment) for repeaters. New GS 14-335 (rewritten by Ch. 1256 [HB 1373] as recommended by the Judicial Council) provides a *statewide* penalty provision for the offense of public drunkenness—either (a) $50 fine, or (b) 20 days in the county jail. A repeater (within 12 months) may instead be committed to the State Department of Correction (formerly Prisons) for an indeterminate sentence of 30 days to six months. If the convicted offender is sent to Correction, the Commissioner of Correction (formerly, Prison Director) has authority to order conditional release for the purpose of care and treatment from a specified hospital, out-patient clinic, or other appropriate facility or program outside the state correction system.

The new law also provides that chronic alcoholism shall be an affirmative defense to the charge of public drunkenness. Chronic alcoholism is defined as "the chronic and habitual use of alcoholic beverages by a person to the extent that he has lost the power of self-control with respect to the use of such beverages." The law then sets up a new article 7A in GS Ch. 122 to provide procedures for treatment, if the court chooses to utilize them. The court (in which the chronic alcoholic

is acquitted of public drunkenness by reason of the defense) may retain jurisdiction over the chronic alcoholic for a period of two years, during which time the presiding judge may order various alternative arrangements for treatment, including (a) treatment in private facilities or programs approved by the Department of Mental Health; (b) referral to a physician, local mental health center, public welfare department, hospital, or private, social, or welfare organization; or (c) commencement of the judicial hospitalization procedures for the mentally ill or inebriate in Article 7 of GS Ch. 122. The judge's order takes the place of the usual affidavit and request for examination.

This latter alternative simply facilitates the judge's initiation of the standard procedure for commitment to the state hospital system (including the new alcoholic rehabilitation centers). This involves a hearing on the commitment question before the clerk of the superior court after examination by two physicians. The safeguard of independent examination and hearing was determined to be necessary to avoid possible unconstitutional short-cut commitment. Recent cases, such as *Baxstrom v. Herold*, 393 U.S. 107 (1966), indicate that a person initially involved in a criminal proceedings must be given the same rights in a civil commitment proceeding as any other person.

Mental Retardation

Three important measures to promote community care of the mentally retarded were enacted by this General Assembly. Ch. 1030 (HB 911) provides monthly grants-in-aid to licensed day-care facilities for moderately or severely retarded children (at $40 per child) and to nonstate-supported, licensed nonprofit residential facilities for children six years old or less (at $120 per child), plus new personnel in the State Department of Mental Health to administer the program. Appropriations of $150,000 for construction and $112,000 for operation of two pilot community mental health complexes were made to the Department by Ch. 1050 (SB 408). The complexes, designed for both day care and residential care of mentally retarded adults and children, will be developed on a cooperative basis with Mecklenburg and Guilford counties. Another act, Ch. 1074 (HB 1038), authorizes county commissioners to make donations of nontax revenue to any licensed facility for the mentally retarded.

Health Professions

Medicine

The critical shortage of physicians in some areas of the state prompted the adoption of Resolution 60 (SR 540), directing the Legislative Research Commission to make an in-depth study of how to provide more doctors for small towns and communities and to report to the 1969 General Assembly.

Licensed physicians are now permitted to perform legal abortions under a much broader set of conditions than before, and broader than in nearly any other state. Ch. 367 (SB 104) allows abortions when there is substantial risk that (a) the woman's life would be threatened (the only justification previously lawful) or health gravely impaired, or (b) the child would be born with grave physical or mental defect, or (c) the pregnancy resulted from rape or incest which had been reported to a law officer or court official within seven days. In addition, consent and four months' residence is required; the abortion must be performed in a licensed hospital; and three physicians must certify to the hospital in writing that the abortion is justified.

Protection is also given physicians by another act, Ch. 859 (HB 753). The act confers immunity from civil or criminal liability on physicians and pathologists in making cancer diagnosis reports to local health departments pursuant to the State Cancer Control Program and GS 130-184, unless made in bad faith or for a malicious purpose.

Osteopathy

An unsuccessful attempt was made to revise the licensing laws to permit qualified osteopaths in effect to practice medicine as they do in several other states. One bill (SB 505-HB 1069) would have added a doctor of osteopathy to the Board of Medical Examiners and have required the same examination for D.O.'s as is presently required for M.D.'s, plus a supplemental section for D.O.'s. Another bill (HB 1383) would have revised the osteopathy act to provide for two classes of licenses—"limited" for the treatment of persons without the use of drugs or surgery (as is now provided by the licensing act), and "unlimited" for the treatment of persons without such a restriction.

Nursing

The Legislative Research Commission made an extensive study of the nursing shortage in North Carolina and concluded that state financial assistance to nursing schools would alleviate part of the problem. The Commission recommended a $300 per student grant-in-aid program. The General Assembly in Ch. 1004 (HB 156) approved a $300,000 appropriation to the State Board of Education for distribution to nursing schools accredited by the North Carolina Board of Nursing on the basis of $100 per student. This is the first time the North Carolina legislature has given assistance to private nursing schools, although other states have done so.

Dentistry

A minor change was made in the licensing procedure section of the dental practice act. Ch. 451 (HB 418) adds a new section to require that license ap-

plicants be given notice and opportunity to be heard before being denied permission to take the examination, or denied a license (except for failing the exam), and before the Board can withhold a renewal (except for failure to pay the fee) or suspend or revoke a license. Ch. 452 (HB 419) makes the Uniform Revocation of Licenses Act (GS Ch. 150) applicable to the State Board of Dental Examiners, in place of the present separate statutory procedures. Dental hygienist annual renewal certificate fees were raised from $5 to a maximum of $25 by Ch. 489 (HB 420). This act also makes the Uniform Revocation of Licenses Act applicable to dental hygienists.

Pharmacy

Ch. 807 (HB 980) revises GS 90-65, the license-denial and revocation section of the pharmacy practice act. The grounds were expanded to include false representation that endangers the public health or safety, serious physical or mental disability, and failure to comply with Board regulations, in addition to the present grounds (fraud, felony, and addiction to liquor or narcotics).

Podiatry

Ch. 1217 (HB 1278) changes the term "chiropodist" to "podiatrist" throughout the licensing act. It also requires applicants to be graduates of a nationally accredited school of podiatry (rather than state-approved), expands the scope of the examination, ups the fees for examinations and license renewals, and raises the board's compensation. The reinstatement procedure is made more restrictive by requiring re-examination rather than simply paying back fees when delinquent for six months.

Chiropractic

The definition of chiropractic was revised by Ch. 263 (HB 268) to be the science of adjusting the cause of disease by realigning the spine (leaving out the "24 moveable vertebrae" in the former definition). The same act clarified the rule-making powers of the Board of Chiropractic Examiners.

Veterinary

Ch. 796 (HB 923) raises the annual license fee from $5 to $25.

Psychology

After failures in previous legislatures, an act to license psychologists was passed as Ch. 910 (SB 578). The act creates a State Board of Examiners of Practicing Psychologists. The practice is defined as the rendering or offering to render professional psychological services to individuals, singly or in groups, in the general public or in public or private organizations, for a fee. It makes certain exemptions, such as for members of other professions in the practice of their professions. Among other features, the act includes a privileged communications provision similar to that for licensed physicians (judge can compel disclosure if necessary for the proper administration of justice).

Medical Care

Facilities

Under GS 131-126.20 a municipality may lease a hospital facility to any nonprofit association for hospital purposes. Ch. 820 (SB 209) declares that any such lease shall not be deemed to convey a freehold interest. Another act relating to hospital transfers is Ch. 466 (HB 683), which amends GS 131-9 to authorize the board of trustees together with the county commissioners to lease a county hospital to any nonprofit association to carry out the hospital function.

Changes were made to the hospital district provisions of GS Ch. 131, article 13C by Ch. 718 (HB 532). It authorizes hospital districts to issue additional bonds and bond-anticipation notes after a 500-signature petition and favorable referendum; these bonds may be issued up to five years after referendum.

County commissioners are authorized under Ch. 464 (HB 673) to donate nontax revenue to any orthopedic hospital that makes services available to county residents.

Ch. 1211 (HB 1260) eliminates the State Board Fund and authorizes the State Department of Public Welfare to make direct payments to licensed nursing homes and extended-care facilities for a person eligible to receive public assistance under OAA or APTD programs when nursing care is deemed essential for that person by the Department. Ch. 983 (HB 321) removed the restriction on the receipt of public welfare funds by operators of nursing and old-age homes who are blood relatives of public welfare officials.

Patients

North Carolina has joined a growing number of other states in abolishing the old doctrine of charitable immunity. In a personal injury suit against a hospital or other charitable institution for the negligence of employees, the plaintiff has often been barred from any recovery due to the charitable immunity defense. In January, 1967, the North Carolina Supreme Court overruled the defense as it applied to charitable hospitals. The General Assembly in Ch. 856 (HB 616) abolished the defense for all charitable institutions, beginning September 1, 1967.

Two measures growing out of the Legislative Research Commission's study of "post-claim under-

writing" were enacted, in a revised form. Ch. 974 (SB 411) adds a new GS 14-118.3 to prohibit the acquisition and use of information about a hospital patient's illnesses, injuries, or diseases for fraudulent purposes. Ch. 928 (SB 412) adds a new GS 8-45.5 to prevent the use as evidence in court of statements, waivers, releases, receipts, etc., obtained from hospital patients in shock or under influence of drugs, for any use relating to insurance claims.

Another act dealing with medical and hospital records is Ch. 1204 (HB 1220). It requires physicians, dentists, nurses, hospitals and others, as a condition precedent to a lien upon any recovery for personal injuries, to furnish without charge an itemized statement or hospital or medical report to the claimant's attorney for use in negotiating a settlement or in a trial of an injury claim.

The state tort liability for personal injuries occurring in state hospitals and other institutions, or at the hands of state employees, was increased from $12,000 to a $15,000 maximum by Ch. 1206 (HB 1224).

Ch. 1221 (HB 1306) provides for an exemption from gross income, for state income tax purposes, of employer-paid medical costs through self-funded reimbursement plans.

A bill introduced to add podiatry to those services that must be freely chosen under medical service insurance plans was amended and enacted as Ch. 690 (SB 239) to make nearly all the health professions come under the same free-choice requirements.

Environmental Health

Garbage and Trash

GS 153-10.1 authorizes the boards of commissioners of 22 counties to make regulations governing the removal, disposal, and dumping of garbage and trash in unincorporated areas. Punishment for violation of these regulations is specified as up to a $50 fine or 30 days' imprisonment, and each week the violation continues is considered as a separate offense. New legislation adds Carteret, Craven, Harnett, Lincoln, Macon, Pamlico, Pitt, and Union counties to those already under the enabling act.

GS 153-272 authorizes boards of county commissioners to control private garbage collectors. The board may grant an exclusive franchise in specified areas for reasonable periods of time. In the 1965 session Catawba and in the 1967 session Surry obtained local legislation specifying that the franchise period may be up to 10 years.

Ch. 872 (HB 1108) changes the definition of what type of garbage may be fed to swine and authorizes the Commissioner of Agriculture to prohibit the feeding of wastes resulting from the processing of sea food. It also raises the garbage-feeding permit fee from $1 to $25.

Sanitary Landfills

An unsuccessful bill (SB 110) would have amended GS 160-204 to add sanitary land fills or other garbage-disposal sites to the list of objects which a city may acquire by purchase or *by condemnation*. The bill was first limited by amendments in both chambers, then killed. But the City of Williamston acquired the power to acquire garbage-disposal sites by these means under Ch. 329 (HB 692).

Anti-litter Proposals

An unsuccessful bill (SB 307) would have enacted a new anti-litter act making it unlawful to throw litter from moving vehicles on public streets or highways; to deposit any litter on public streets, beaches, and parks, except in litter cans; or to use litter cans for household waste. Each day the litter remained would have constituted a separate offense (with a $10 to $50 fine), but it could have been suspended if the trash were picked up. The present anti-litter law is GS 14-399, which prohibits trash, garbage, and junk on the right-of-way of public roads in unincorporated areas, with a fine of $10 to $50 for each day of a continuing offense.

Another act was passed as Ch. 707 (HB 699) to authorize counties to enter into agreements with the State Highway Commission for the use of prison and SHC labor and equipment in connection with anti-litter and garbage-disposal activities.

Resolution 42 (HR 488) was adopted urging schools and the news media to promote anti-litter campaigns.

Plumbing Inspections

Four counties (Beaufort, Harnett, Onslow, Wayne) were added to the list of 22 counties authorized to appoint plumbing inspectors to approve or disapprove, on the basis of local and state regulations, all new plumbing and water systems in unincorporated areas of the county.

Sanitary Districts

Several minor changes were made to the sanitary district laws in GS Ch. 130, Article 12. Ch. 632 (HB 950) fills a gap in the corporate powers of sanitary districts. It declares the violation of district regulations, after notice, to be a misdemeanor and authorizes the board to enforce regulations by criminal or civil action, including injunctions. Ch. 637 (SB 457) authorizes sanitary districts to accept advances, after bond resolutions, on any loan for which the federal government has entered a loan agreement, and to secure and repay such advances with proceeds from the sale of the bonds. Ch. 723 (HB 847) raises sanitary district board members' compensation from $8 to $12 a day when engaged in business of the district.

Under present law a sanitary district can merge with a contiguous municipality whether or not it has any outstanding indebtedness under GS 130-151. Ch. 4 (SB 12) clarifies this section to allow a sanitary district to dissolve and convey all its remaining assets to any county, municipality, or other governmental unit, or to any certified (by the State Utilities Commission) public utility company, in return for assumption of the obligation to continue water and sewage services to the area served by the district.

A bill (HB 1096) that never got out of committee would have provided for the establishment of special water-sewer districts by the county commissioners, after public hearings and a discretionary referendum, to encompass the water and sewer functions of the county and cities within a district.

Mosquito Control

The commissioners of Carteret and Pamlico counties have been given the same powers regularly given to mosquito-control districts by GS Ch. 130, article 24. These powers were also extended to the commissioners of Beaufort and Dare counties.

Other Health-Related Legislation

Drugs

The mounting use of psychedelic drugs, especially by young people, and widespread concern about their effects have focused national attention on means of their control. Under federal law, psychedelic drugs are not available for legitimate distribution. But many states, including North Carolina, discovering that their drug laws did not regulate this new type of drug, have plugged this hole. LSD, while it may be produced by a relatively simple chemical process (the raw materials are under federal controls), is thought to come frequently from foreign sources, both legal and illegal. The problems of detecting this drug are special ones, since it is colorless, tasteless, odorless, and concentrated (1/280,000th of an ounce is enough to cause the characteristic effects).

Early in the session a bill (HB 12) was introduced to include LSD within the coverage of stimulant drug regulation. Later a broader act was adopted as Ch. 193 (HB 147) to put LSD under state regulation. With psychedelic drugs and hallucinogens added to the list of drugs and substances classed as "narcotic drugs," LSD is now subject to the same strict regulation in all phases (manufacture, possession, prescription, administering, dispensing, and compounding) as are morphine-type drugs and other "hard" narcotics. The sole exception to this rigid regulation is that written orders for sales and retention of records are not required, but manufacturers' and wholesalers' invoices must be kept for two years, just as for marijuana.

This same act, plus Ch. 194 (HB 148), slightly broadens the utility of vehicles, vessels, and aircraft seized under the Narcotic Drug Act and the Barbiturate and Stimulant Drugs Act, respectively. They can now be used in any official investigations by the SBI and are not restricted to drug investigations.

Another measure, Ch. 552 (SB 135), was enacted to control the dangerous practice of "glue sniffing."

Cemeteries

Ch. 1009 (HB 545) makes several technical changes in the laws governing cemeteries operated for private gain. The applicability of the law to such cemeteries, regardless of whether they advertise or offer perpetual care, is clarified so that a license and provisions for perpetual care are required. The act both increases the amount of deposit required per grave space to be put in a perpetual-care fund and adds bookkeeping requirements.

Ch. 985 (HB 546) makes changes in the laws relating to assessments against mutual burial associations for the expenses of the State Burial Commission. It provides that the aggregate assessment shall be 80 per cent of the Commission's budget. It also changes the bonding requirements for burial association officers.

A cemetery-desecration bill, Ch. 582 (SB 302), was passed to make it a misdemeanor for any person, except the owner, to dump any rubbish in a cemetery or to damage or remove any ornaments, shrubs, etc., without the consent of the person in charge of the cemetery.

Epileptics

Three bills were enacted to restore important rights to persons who are considered epileptics. Ch. 961 (HB 604) removes "grand mal epilepties" from the list of those not entitled to a motor vehicle operator's or chauffer's license. Ch. 137 (HB 74) was enacted to remove "uncontrolled epileptic attacks" from the list of health disqualifications for marriage under GS 51-9 and to eliminate the necessity for sterilization of court-adjudged epileptics in order to receive a marriage license. Ch. 138 (HB 192) makes epileptics no longer subject to mandatory sterilization under the provisions of GS Ch. 35, article 7. This leaves only "mentally diseased and feebleminded" persons who may be forcibly sterilized in North Carolina. Other persons can be sterilized under a voluntary procedure described in GS Ch. 90, article 19, or incidental to medical or surgical treatment for "sound therapeutic reasons" as permitted under GS 35-52.

Red Cross

All Red Cross vehicles used for emergency or disaster work are now authorized by Ch. 284 (HB 277) to carry permanent registration plates.

Study Commissions

At least three studies relating to health will be conducted under new legislation. Ch. 186 (SB 75) establishes a permanent Cancer Study Commission composed of 20 members appointed by the Governor for two-year terms. The Commission is directed to study the entire problem of cancer, as well as the means of implementing the Commission's recommendations, assisting in their development, and promoting the effective use of assembled information. A $5,000 expense limitation was removed by amendment before passage.

Resolution 53 (SR 290) creates a ten-member Jail Study Commission to study existing jail conditions and related problems in state and local government.

Resolution 60 (SR 540) directs the Legislative Research Commission (LRC) to study the shortage of physicians in rural areas.

Another resolution directs the LRC to study child-care facilities and make recommendations for a statewide mandatory inspection and licensing program. This resolution was adopted after two child-care-facility licensing bills had failed.

Another resolution (SR 96-HR 229) would have established an air pollution study commission, but it was not passed. Instead, Ch. 892 (HB 356) was enacted to establish a new state program for controlling water and air resources.

Air Pollution: The New Board of Water and Air Resources

Enacted into law on June 22, Ch. 892 (HB 356) created a new state agency charged with the responsibility to administer a program of water and air pollution control and water resources management. More detailed discussion of this act may be found in the article on Water Resources in this issue, but some of the highlights relating to air pollution are discussed here.

Air pollution is defined in new GS 143-213 as "the presence in the outdoor atmosphere of one or more air contaminants in such quantities and for such duration as to be injurious or detrimental to health or human safety, animal or plant life, or property." This is somewhat broader than the definitions generally found in the local health department regulations.

The Board of Water and Air Resources consists of thirteen members. There are to be two advisory councils, one for air and one for water. Air and water are separated for other purposes as well. A separate $75,000 was appropriated for air pollution control; this sum will be matchable with federal funds.

The Board is to develop comprehensive plans for air pollution control in the state, determine the degree of existing air pollution, adopt air quality standards, classify air contaminant sources, and apply emission control standards. Standards are to be adopted after a public hearing. New sources of pollution are to be controlled by a permit system. In new GS 143-215.2, existing sources of pollution are to be controlled by "special orders" directing pollutors to take or refrain from taking action, or to achieve certain results, upon conditions set by the order and taking into account the economic feasibility of the control or abatement measures required. Appeals from permit denial or special orders shall be to the superior court. The penalty for violation of the permit system or special orders is a fine of $100 to $1,000 to be imposed by a court; willful violations may be considered a separate offense for each day of the violation.

The Board has general supervisory power over local air pollution control programs. It will review local programs for compatibility with the state standards and regulations and certify those that it finds adequate. It may allow local standards that are more effective than state standards. It may require that local programs be "areawide" (i.e., larger than a single city or county) as the only acceptable alternative to direct state administration.

Any local program that becomes certified by the Board can be altered by the Board only after a hearing has been held upon the matter and a reasonable period (up to one year) has been given to take corrective action. But the Board can assume direct jurisdiction at any time over a particular class of pollutant source within a local jurisdiction. Except for applying for new federal grant funds, *no local program in existence on June 22, 1967, is subject to certification or control by the Board until June 22, 1969.* This means that the ongoing health department programs can be carried out, and even expanded, as local needs and resources require. All applications for federal grants (including renewals and supplements), however, must be submitted through and approved by the Board.

Thus, it seems that the intent of the new legislation insofar as air pollution is concerned is to commence a new state effort for determination of appropriate standards and establishment of statewide control. Both voluntary cooperation by pollutors and continuance of local health department programs is encouraged in the provisions of the new law. Responsibility at the state level is shifted from the State Board of Health (which in 1963 had been given little authority and no funding for an air pollution program) to a new agency, the Department of Water and Air Resources. Whether this approach to the difficult problem of air pollution control will be effective remains to be seen. Nevertheless, the General Assembly has expressed new concern by directing more effort and new funding into this area of vital interest to public health officials, industry, and the general public at a time when pressure is also mounting for federal action.

by Elmer R. Oettinger

MOTOR VEHICLES and HIGHWAY SAFETY

Chapter numbers given refer to the 1967 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate. GS refers to the General Statutes of North Carolina.

The concern generated in the 1967 General Assembly by rising accident and death totals on North Carolina streets and highways is reflected in the introduction of 130 bills and the passage of 66 new laws relating to motor vehicles and highway safety. Yet several weeks before the end of the session a veteran legislator in a television interview ventured the opinion that no legislation had been introduced or was likely to be introduced that would save a single life on the state's arteries of transportation. Although the accuracy of this chilling prediction may remain moot, some newly enacted legislation clearly is designed to encourage driver responsibility and promote traffic law enforcement. The legislative permission to add 75 members to the State Highway Patrol, for example, is aimed at saving lives. And a new law, passed the final day of the session amid much debate, provides among other things for federal-state cooperation and planning in traffic safety. On the other hand, legislative limitations on newly expanded enforcement techniques—e.g., air surveillance—and occasional statutory emphasis on matters of driver privilege would appear to do little to further the cause of safety.

It can be questioned whether the 1967 legislative strides are sufficient to counter the highway toll and to anticipate increased vehicle and road usage and travel hazards. At this point, however, it is too early to measure gain versus need. The balance remains to be struck.

Driver Licensing Law

Uniform Driver's License Act

A dozen bills were passed amending the driver licensing law, but the changes were fewer in number and comprehensiveness than in other recent sessions.

From now on, faces as well as names will adorn drivers' licenses. Ch. 509 (SB 111) requires that each license bear the licensee's photograph in a size approved by the Commissioner of Motor Vehicles. Under the statute [GS 20-7(f)] the Department of Motor Vehicles may waive the requirement of a photograph as well as the examination requirements for mail renewal of the drivers' licenses of persons in the armed services. The same new law raises the cost of operators' and chauffeurs' licenses. The issuance or reissuance fee for an operator's license was boosted to $3.25 (from $2.50) and for the chauffeur's license to $4.75 (from $4.00).

New legislation permits approved commercial and private schools to offer courses in driving instruction for 16- to 18-year-olds. Heretofore, such courses have been permitted only in the public schools. Chapter 694 (SB 416) amends GS 20-11(a) to provide that 16- to 18-year-old boys and girls who have satisfactorily completed a driver training course "offered at a licensed commercial driver training school or an approved non-public secondary school" may apply for a motor vehicle operator's license. These schools must be approved in advance by the Commissioner of Motor Vehicles and the State Superintendent of Public Instruction. The expenses of instruction are to be paid by the enrolled persons or by the schools.

Conviction for failure to display a current inspection certificate will not be grounds for the assessment of points against the motorist, nor may any points previously "charged for violations [of this aspect] of Motor Vehicle Inspection laws be considered by the Department of Motor Vehicles as basis for suspension or revocation of an operator's or chauffeur's license" [Ch. 15 (HB 35)].

Ch. 295 (HB 212) modifies the authority of the Department of Motor Vehicles to suspend the licenses of probational licensees (those under eighteen years of age who are licensed to drive motor vehicles). The Department may suspend a provisional license for six-

ty days upon the licensee's conviction of a moving violation in connection with an accident resulting in personal injury or property damage of $100 or more, but it is required to notify the licensee of such action in writing and to hold a hearing within twenty days in the county where the licensee resides or at a place mutually agreed upon. At such hearing the Department may administer oaths, subpoena witnesses and documents, and require re-examinations, and it is authorized to rescind, modify, and or affirm the period of suspension [GS 20-13.1]. Prior to the new legislation, probational licensees, upon such conviction, were subject to mandatory suspension of license without preliminary hearing.

A driver whose license is canceled, revoked, or suspended under GS 20-20 now is required to surrender to the Department of Motor Vehicles "all unexpired licenses"; nor is he entitled to their return at the end of the revocation or suspension, as heretofore [Ch. 280 (HB 290)]. This section formerly provided for the surrender of the operator's "license" upon cancellation, revocation, and suspension. A provision in the original bill (HB 290) making willful violators guilty of a misdemeanor was eliminated.

Under Ch. 961 (HB 604) persons suffering from one of the two major types of epilepsy are restored the privilege to be licensed to operate a motor vehicle. The law amended GS 20-9(d) to eliminate the "grand mal epileptic" from those "insane, idiots, imbeciles, feebleminded" who are denied by statute the permission to operate a motor vehicle. For several years a committee of physicians has made itself available through the State Medical Society for consultation with the Department of Motor Vehicles on drivers suffering from physical illnesses or disabilities. This legislation represents one result of the availability of such medical advice. Burgeoning research indicates that drivers with grand mal epilepsy do not belong in the same category with idiots and the feeble-minded. (For reference to legislation on epileptics and the sterilization law, see Mason P. Thomas, Jr., "Public Welfare and Domestic Relations," *Popular Government*, September, 1967, p. 82.)

Ch. 477 (HB 392) restricts the length of imprisonment for one whose operator's or chauffeur's license has been suspended or revoked "other than permanently" to a maximum of two years. Conviction for violation under this section [GS 20-28] still draws a fine of not less than $200, but the imprisonment previously provided "in the discretion of the court" now cannot exceed the specified two-year period.

Under the statute specifying what persons shall not be licensed [GS 20-9(e)], the Motor Vehicles Department heretofore has been authorized to deny licenses to persons who, in its opinion, are "afflicted with or suffering from any physical or mental disabilities or disease as will serve to prevent such persons from exercising reasonable and ordinary control over a motor vehicle. . . ." A new subsection [GS 20-9(g)] seeks to take out the guess-work and provides a more professional procedure for determining when and which physically or mentally disabled may drive. This new provision [Ch. 966 (HB 1041)] permits physically or mentally disabled but otherwise qualified applicants to obtain licenses through a certificate process. Certificates are to be designed to "elicit the maximum medical information necessary to aid in determining whether or not it would be a hazard to public safety to permit the applicant to operate a motor vehicle. . . ." Such certificates are to be filled out and signed by an examining physician or surgeon upon the applicant's successful completion of the physical examination. The Commission is not bound by the recommendation of the examining doctor but is required "to give fair consideration to it, using the criterion whether it appears it is safe to permit the applicant to operate a motor vehicle." If the Commissioner denies the license, the applicant, by written request within ten days, may have the application reviewed by a five-person board headed by the Chairman of the State Board of Health and consisting of Board members and licensed physicians. Drivers licensed under this procedure are required to present a medical certificate to the Department annually, beginning one year from the date of issuance of license, and certificates can be required by the Commissioner at six-month intervals if public safety demands.

Ch. 1098 (HB 1356) extends the statute [GS 20-30(e)] which makes it unlawful to have, obtain, use, display, withhold, or reproduce driver's licenses by specified fraudulent acts or means. The extended coverage make it unlawful "for any person to procure, or knowingly permit or allow another to commit any of these described acts." Until now, the prohibition has applied only to any person committing any of the prohibited acts. This same bill (HB 1356) adds as grounds for mandatory revocation of a driver's license conviction of using or giving a false or fictitious name or making a false statement or otherwise committing fraud in applying for license renewal, as set forth in GS 20-30(5).

Ch. 477 (HB 392) limits imprisonment for driving while one's license is revoked to two years.

New Legislation Concerning the Motor Vehicle Act of 1937

Increased use of two-wheel vehicles on our streets and highways drew the attention of the 1967 legislature. Motor scooters and motor-driven bicycles are brought within the definition of motorcycle [GS 20-38(2) (d)] and made subject to traffic laws governing motorcycles. Three-wheeled vehicles, when used by law enforcement agencies, are excluded from the definition [Ch. 201 (HB 289)]. Vehicles operated as ambulances, carrying nine passengers or less, are excluded from the definition of "for hire passenger vehicles" [GS 20-38 (20) (b)]. And an ambulance is

defined as a motor vehicle for transporting wounded, injured, or sick persons [Ch. 399 (HB 654)].

Also enacted were revised definitions of (a) exempt for-hire vehicles as vehicles used for transporting property for hire but not licensed as common or contract carriers by the Utilities Commission or the Interstate Commerce Commission, subject to specified exemptions and (b) contract carriers of property vehicles as those used for transporting property under franchise permit of a regulated contract carrier issued by the Utilities Commission or the ICC [GS 20-28 (24)] were substituted. This same law [Ch. 1095 (HB 1174)] amends the rate schedule for registration of self-propelled property-carrying vehicles [GS 20-88 (b)], making the schedule apply not only to contract carriers but also to "flat rate carriers and exempt for hire carriers." And it subjects contract carriers operating with a Utilities Commission permit under GS 62-262 to a gross 6 per cent tax under prescribed circumstances, in addition to the provided rate [GS 20-88 (b), (g)]. This law becomes effective February 15, 1968.

NEW PROGRAMS FOR HIGHWAY SAFETY

The activity of the state in passing new highway safety legislation is likely to be overshadowed by developments at the national level. Since the first disclosures by Ralph Nader that manufacturers were selling motor vehicles which lack certain safety features, the Administration has proceeded to draft and send to Congress substantial proposals for making machines safer. At the last count, some forty-seven changes, all designed to tighten up safety requirements, are pending before congressional committees.

At the state level, too, since legislative adjournment, Governor Dan K. Moore has moved to implement the war on highway death, injury, and destruction. Faced with 1,700 traffic deaths and thousands of injuries on the state's streets and highways last year, the Governor pointed out: "If the people who have died in traffic accidents in North Carolina this year were alive today, it would have taken 25 of those big cross-country busses to bring them to Raleigh. And each of those busses would have been crowded. . . .

"The fatalities . . . are only a relatively small percentage of the number. . . injured. . . If it were possible to get together in one place all who have been injured in accidents this year (nearly 40,000) we could fill the football stadium."

Governor Moore ticked off advancements in the state's safety program, including some authorized by the 1967 General Assembly. He cited:

—Motor vehicle inspection which is causing hazardous defects to be found and eliminated in thousands of cars.

—Reflectorized license plates to make vehicles more visible at night.

—Improvements to make our highways safer; 312 safety projects, costing more than $12,000,000, are under way to eliminate dangerous areas.

—Driver education for every new driver under the age of eighteen.

—New laws governing the use of motorcycles.

—A defensive driving course which already has been given to more than 20,000 people.

The Governor observed: "These and other projects are a tremendous importance to the total highway safety program in North Carolina. They are having a positive effect already, and this will continue to develop. Unfortunately, these projects do not greatly diminish two of the major causes of death on our highways: speeding and driving under the influence. Alcohol figures in over 50 per cent of our fatal accidents. Speed is also a major factor in many accidents."

Accordingly, the Governor has begun an expanded battle against speeding, drinking, and careless motorists. Specifically, he has announced that 33 new "breathalyzer" units will be added to the 36 already used to test drivers for drinking in the state. He further has revealed that speeders would be clocked by "Vascar" (visual average speed computer and recorder), a small device which can compute accurately the speed of a vehicle traveling in any direction and record that speed on a graph. Troopers will be trained in "Vascar" operation in special courses in the state's community colleges, and the 100 new devices will not be used until a thirty-day grace period expires. The courts are expected to be called upon to determine the reliability of this machine and its legality.

The Governor also called for firm and quick handling in the courts of traffic law violators and noted that restriction of driving privileges usually is far more effective than fines. Finally, he appealed to motorists themselves to drive safely.

In sum, the state administration is supporting safety legislation to the hilt and supplementing it with human and machine aids designed to counter the major causes of our traffic toll.

Clarifying legislation to court reform [Ch. 691 (SB 292)] includes a provision amending GS 20-42 (b) to require the Department of Motor Vehicles to furnish free certified copies of certain records for official use, and another statute exempts state, county, and municipal and court officials from the 50-cent fee charged by the Department for furnishing such copies [Ch. 1172 (SB 708)].

The procedure for transferring title to new vehicles as prescribed by GS 20-52.1 (c) requires that the dealer must assign to the transferee-purchaser, under formal oath, the manufacturer's certificate of origin for the vehicle, and prescribes the procedure and contents of the assignment [Ch. 863 (HB 956)].

GS 20-64 is amended by Ch. 995 (SB 428) to permit a refund of fees to vehicle owners for unused registration plates. Under this new law, an owner who transfers or assigns his interest in a registered motor vehicle may surrender the registration plate to the Department of Motor Vehicles and receive a refund of the unexpired portion on a monthly basis, beginning the first day of the month following. However, the statute requires that, for this refund to be made, the annual license fee for the surrendered plate be $60.00 or more.

An owner who transfers or assigns his interest in a registered vehicle may, by surrendering registration plates to the Department of Motor Vehicles, get a refund of the unexpired portion of such plate on a monthly basis beginning the first day of the month following the surrender, provided that the annual license fee for the surrendered plate is $60 or more [Ch. 995 (SB 428)]. Another new law makes GS 20-75, describing the registration of vehicles transferred to licensed dealers, applicable to licensed insurance companies taking such vehicles for sale or disposal or salvage purposes when the title is taken over as part of the claims-settlement transaction and for purposes of resale [Ch. 760 (SB 551)].

The state's enhanced interest in financing beautification and tourist attractions led to legislation [Ch. 413 (HB 45)] authorizing owners of private passenger motor vehicles to purchase personalized license plates at $10, to be added to the regular motor vehicle registration fee. Such revenues are to be placed in a separate "personalized registration fund" and, after the deductions of certain expenses, used one-half each by the Department of Conservation and Development to promote travel and industrial development and by the State Highway Commission for the beautification of highways, excluding interstate highways [GS 20-81.3]. Another new law [Ch. 700 (HB 421)] provides special numbered license plates for officers of the North Carolina National Guard and permits such special plates to all members of the state's National Guard upon submission of appropriate certificates.

Another organization privileged under new law to have special registration plates is the American National Red Cross. Ch. 284 (HB 277) amends GS 20-84 to provide that, upon application and payment of $1.00 per plate, each Red Cross chapter is to be provided by the Department of Motor Vehicles with permanent registration plates for vehicles it owns and operates. The legislation specifies issuance of permanent plates to the Red Cross for all disaster vans, blood mobiles, handivans, and sedans and station wagons used for emergency or disaster work. This legislation becomes effective December 31, 1967.

Ch. 1090 (HB 1163) limits the issuance of trip license permits to once for the same vehicle during a registration year. Such trip licenses are required under GS 20-83 when a resident carrier interchanges a licensed trailer or semitrailer with another carrier who is a resident of another state (which is not allowed exemptions) to make occasional trips through North Carolina.

Ch. 1136 (SB 592) repeals GS 20-87 (4), which provided for vehicle registration and taxation of excursion passenger vehicles.

A rewriting of GS 20-90 and GS 90-91(b) extends the license-renewal period on common carriers of passengers and property from January 1 to February 15 (formerly January 31). The statute also makes changes in the bases for determining gross revenue when carrier status is changed. Thus, when a contract carrier or flat-rate common carrier of property becomes a regular common carrier of property, the gross revenue for the purposes of the 6 per cent tax is all revenue earned from operations on and after January 1 preceding the carrier's change to a regular common carrier during the renewal period. (Formerly, gross revenue was all revenue earned from operations on and after January 1 following the carrier's change to a regular common carrier, if changed in December, and all revenue earned from operations on and after January 1 preceding the change, if changed in January.) The new law further provides that when a carrier becomes a flat-rate common carrier of property or a contract carrier during the license-renewal period, the gross revenue for the 6 per cent tax is all the revenue earned from operations through December 31 preceding the change, if made during the renewal period provided for in the act. (Formerly, the carrier's gross revenue included all revenues earned from operations through December 31 following the change, if the change was made in December.) If this report is filed late, a penalty of 5 per cent of the gross tax reported due is to be exacted unless waived by the Commissioner of Motor Vehicles on proof of extenuating circumstances beyond the carrier's control.

Preferred payment of motor vehicle licenses under GS 20-94 was extended by Ch. 712 (HB 930) to motor vehicle owners required to pay more than $200 in license tax, rather than $400 as heretofore. How-

ever, the new provisions for partial payment of license tax are available to owners whose gross license fee exceeds $200 but is less than $400 only when application for partial payment is made by February 1 during the license-renewal period.

Another measure [Ch. 1132 (SB 588)], effective November 15, 1967, requires that all motor vehicles used by franchised motor carriers and exempt for-hire carriers have marking designations printed on both sides (rather than one as at present), and requires such additional information as the certificate number, permit number, or exemption number, under GS 20-101. Punishment prescribed by GS 20-109 for persons who destroy or alter the vehicle identification number now is limited to two years [Ch. 449 (HB 395)]. In the interest of uniformity, a new subsection [GS 20-114(c)] provides that notice of a judicial sale of motor vehicles be given to the Department of Motor Vehicles on a standard form approved by the Commissioner [Ch. 862 (HB 955)].

Special permits required under GS 20-116(j) to operate farm equipment up to 15 1/2 feet wide on state and federal highways may be issued on an annual basis beginning January 1 (instead of a seasonal basis); and this wide equipment is to be permitted to travel ten miles (now four) on highways without flagmen fore or aft. This provision is effective January 1, 1968 [Ch. 710 (HB 912)].

Concern for safety brought new legislation relating to brakes, mirrors, protective helmets, windshield wipers, and lamps. GS 20-124 was rewritten by Ch. 1188 (HB 1200) to apply to motorcycles and other motor-driven cycles the braking requirements that pertain to other motor vehicles; these include adequacy to stop and hold the vehicle, maintenance and good working order, and two separate means of applying brakes. Motorcycle operators and passengers now are required to wear safety helmets of a type approved by the Commissioner of Motor Vehicles [Ch. 674 (HB 333)]. The same new law amends GS 20-126 to require that motorcycles be equipped with a rear-view mirror providing a "clear, undistorted, unobstructed view" for at least 200 feet to the rear. Failure to have such a mirror after January 1, 1968, will bar registration of the vehicle. Violations of these requirements are punishable by a maximum $50 fine or an imprisonment.

Through another new statute [Ch. 282 (SB 147)], motor vehicles other than motorcycles are similarly required to be equipped with an inside rear-view mirror of a type approved by the Commissioner, giving the driver a "clear undistorted, reasonably unobstructed view of the highway to the rear," but without any specification of distance. One provision permits vehicles constructed or loaded so as to make such inside mirrors ineffective to be equipped with a type of rear-view mirror approved by the Commissioner. Another exempts farm tractors, self-propelled implements of husbandry and construction equipment and all self-propelled vehicles not subject to registration under this chapter from this requirement.

The legislature also added to the statute requiring windshield wipers to be in good working order [GS 20-127] a provision that when vehicles are equipped by the manufacturer with wipers on both right and left sides of the windshields, both wipers must be in working order [Ch. 1077 (HB 1098)].

Ch. 1076 (HB 1097) amends GS 20-129 (d) to require every motor vehicle trailer, semi-trailer attached to a motor vehicle, and vehicle drawn at the end of a combination of vehicles to carry two rear lamps and to have all originally equipped rear lamps in good working order and further to have rear number plates so illuminated by a white light from one rear lamp or a separate lamp as to be read from a distance of 50 feet. GS 20-130.2 [Ch. 651 (HB 920)] requires all wreckers (operated on North Carolina highways) to be equipped with an amber-colored flashing light (not a red light as heretofore) visible 500 feet in all directions, and permits any other vehicle required to have warning light, including State Highway Commission maintenance and construction vehicles, to be similarly equipped.

New legislation also affects rules of the road. Imprisonment upon conviction of hit-and-run driving, when the only damage is to property, is limited to a maximum of two years [Ch. 445 (HB 390), GS 20-166 (b)]. Similarly, imprisonment for an owner who has committed the use of his motor vehicle in unlawful racing and for a driver who is convicted of speeding in a rural school speed zone are limited to two years [Ch. 446 (HB 391); Ch. 448 (HB 393); GS 20-166(b), GS 20-141.1]. Yet another two-year limitation of sentence upon conviction is placed upon imprisonment for drunk driving on third offense [Ch. 510 (HB 394), GS 20-179].

Ch. 1053 (SB 660) states specifically that a vehicle making a left turn does not have the right-of-way unless the turn can be completed safely prior to meeting an approaching vehicle and that the driver of the left-turn vehicle is to yield right-of-way when the movement cannot be completed safely [GS 20-155(b)].

The standard of reasonable and prudent speed under existing conditions [GS 20-141(a)] was extended (from driving on highways) to apply also to driving in a number of other areas, including parking lots, drives, driveways, roads, roadways, streets, or alleys, upon grounds or premises of any public or private hospital, college, university, church, benevolent institutions, school orphanage, or any institution maintained and supported by the state or its subdivisions; or upon grounds and premises of any service station, drive-in theatre, supermarket, store, restaurant, or office building, or any other business

or municipal establishment providing parking space for the customers, patrons, or public [Ch. 106 (HB 256)].

Chemical testing for alcohol, introduced earlier into the state's safety program, is subject to newly specified controls. GS 20-139.1 gives permission for the State Board of Health to make regulations, consistent with controlling federal law, concerning the ingestion of controlled amounts of beverages containing ethyl alcohol by individuals submitting to chemical analysis in scientific, experimental, educational or demonstration programs. This act [Ch. 123 (SB 37)] requires appropriate record-keeping of the disposition of the ethyl alcohol or beverage containing it when used in such processes and provides for the availability of such records for inspection by federal and state law enforcement officers having jurisdiction over laws relating to alcohol or intoxicating liquor.

Operators' Licenses and Reflector Plates for the Afflicted

(Article 2A)

Special consideration now is given paraplegic drivers of motor vehicles [GS 20-37.2]. Ch. 296 (HB 272) authorizes handicapped or paraplegic drivers to display a white flag of reflective material approximately 7 1/2 inches wide and 13 inches long with a red "H" and an irregular half-inch red border when they are getting in or out of vehicles or as distress signals of vehicle trouble. The handicapped or paraplegic driver may obtain the distress flag and identifying card from the Commissioner of Motor Vehicles upon application and payment of a $2.00 fee. Replacement flags cost $1.00. Any unauthorized person who uses such distress flags is guilty of a misdemeanor.

New Legislation Concerning the Motor Vehicle Law of 1947

(Article 3A)

The Safety Equipment Inspection of Motor Vehicles Act

Ch. 692 (SB 380) rewrites the statute governing the safety equipment inspection of motor vehicles [GS 20-183.2]. It requires every motor vehicle, trailer, semi-trailer, and full trailer (not including trailers of a gross weight of 2,500 pounds or less and house trailers) registered or required to be registered in North Carolina to be operated on the state's streets and highways to display a "current approved inspection certificate." This certificate must be displayed "at such place on the vehicle as may be designated by the Commissioner" of Motor Vehicles. The inspection certificate is valid for not less than twelve months from issuance and expires at midnight on the last day of the month designated on the certificate. It is unlawful to operate any motor vehicle on the highway unless this inspection certificate is properly displayed.

Other provisions set inspection deadlines for vehicles acquired in or out of the state. Accordingly, vehicles must be inspected and an approved certificate attached within ten days from the date their owners move their residence from other states to North Carolina. Vehicles acquired by North Carolina residents from dealers or owners located outside the state must be inspected and an approved certificate attached within ten days after the vehicle becomes subject to registration upon entry into this state. Vehicles acquired by residents within this state and not already displaying a current North Carolina inspection certificate must be inspected and have attached an approved inspection certificate within ten days from the date the North Carolina registration plate is issued or, if the plate is to be transferred, within ten days from the date of purchase. Vehicles owned by residents who have been outside of the state continuously for thirty days or more immediately preceding the expiration date of the current inspection certificate must be inspected and have attached an approved certificate within ten days of re-entry to the state. Vehicles owned or possessed by a dealer, manufacturer, or transporter within North Carolina and displaying a dealer plate, in order to use the public streets and highways, must have attached to the windshield a valid certificate of inspection or approval. However, these latter vehicles may be operated by the dealer, manufacturer, or transporter while displaying only dealer, demonstration, manufacturer, or transporter plates (without an inspection certificate) from the source of purchase to his place of business or to an inspection station within ten days of purchase, foreclosure, or repossession. All North Carolina motor vehicle dealers are required to have motor vehicles inspected by an approved inspection station prior to the retail sale of any new or used motor vehicle. When a vehicle fails to meet the safety requirements of this statute, the safety equipment inspection station that made the inspection is required to issue a receipt showing that the vehicle has been inspected and enumerating the defects found. The owner or operator may have these defects corrected at a place of his or her choice. Then, the vehicle may be reinspected at the same inspection station without additional charge or at another station upon payment of a new inspection fee.

The same chapter augments GS 20-183.4 to provide an intermediate appeal step for applicants denied a license at the motor vehicle inspection station. The new section authorizes any licensee whose license has been revoked or applicant whose application has been refused—within ten days of notice of revocation, suspension, or refusal—to request a hearing before the Commissioner of Motor Vehicles, who is required to conduct the hearing within ten days of receipt of the hearing request. The Commissioner,

following the hearing, has power to reverse or affirm the previous order. The licensee or applicant, if "aggrieved" by the Commissioner's decision, may petition the superior court of Wake county or of his county of residence, setting forth the fact that his administrative remedy has been exhausted and seeking a restraining order. No such restraining order may be issued without five days' notice of the petitioner's intention to the Department of Motor Vehicles.

The same bill also adds a section (c) to GS 20-183.8 prohibiting the display of any safety inspection certificate known to be fictitious, issued for another motor vehicle, or issued without inspection and approval. The Department of Motor Vehicles is authorized to take immediate possession of any fictitious, unlawful, or erroneously issued and used inspection certificate. Persons violating this subsection are guilty of a misdemeanor subject to a maximum $50.00 fine or thirty days' imprisonment.

State Highway Patrol

(Article 4)

The use of airplanes granted by the 1963 General Assembly and withdrawn by the 1965 legislature was renewed in 1967, but with specific limitations. Ch. 513 (SB 25) permits the use of airplanes to discover certain violations described by part 10 of Article 3 of Ch. 20 [GS 20-138 through GS 20-171] relating to the operation of motor vehicles and rules of the road. Permission covers a host of violations, including driving under the influence of intoxicating liquor or narcotic drugs, reckless driving, unlawful racing, failure to observe speed limits or warning or stop signals, improper overtaking and passing, following too closely, driving on the wrong side of the road, making a wrong turn, and failure to yield right-of-way. However, neither the plane's observer nor the pilot is competent to testify in any court of law in a criminal action in charging violations of GS 20-141, -141.1, and -144 (sections dealing with speed restrictions, speed zones near rural public schools, and speed limitations on bridges). This new law [GS 20-196.2] declares the public policy of North Carolina to be that airplanes should be used "primarily for accident prevention" and "incident to the issuance of warning citations in accordance with the provisions of GS 20-183."

A system for commending members of the State Highway Patrol who distinguish themselves meritoriously in the performance of official duties was set up [GS 20-187.1]. Under Ch. 1179 (SB 740), those receiving such recognition are entitled to a framed certificate award for "Distinguished Service" and an insignia designed to be worn as part of the Patrol uniform. Recommendations for the award are to be made by the Patrol commander and an awards committee of Patrol members. The Commissioner of Motor Vehicles has authority to approve or disapprove recommendations, subject to the final authority of the Governor.

Motor Vehicle Dealers and Manufacturers Licensing Law

(Article 12)

Ch. 1126 (SB 534) makes more specific the law relating to licensing motor vehicle dealers and manufacturers. It augments the definition of "established place of business" for dealers [GS 20-286 (6)], specifying that it be a salesroom containing at least 64 square feet of floor space and attached or adjacent display sign clearly designating the trade name of the business. The statute also increases the grounds for denying, suspending, or revoking licenses [GS 20-294 (2)] by adding violations of statutes dealing with (a) the manufacturer's certificate of transfer of a new motor vehicle [GS 20-52.1]; (b) transfer of title when the transferee is a dealer [GS 20-75]; (c) the use of temporary registration plates or markers by purchaser in lieu of dealer's plates [GS 20-79.1]; (d) requirements that a manufacturer or dealer keep a record of vehicles received or sold [GS 20-82]; (e) the purchase, receiving, sale, concealment, or possession of vehicles without manufacturers' numbers [GS 20-108]; (f) altering or changing engine or other numbers [GS 20-109]; (g) recission and cancellation of dealers' licenses and dealers' plates [GS 20-110 (c), (e), (f)]. Formerly, the grounds for such denial, suspension or revocation of licenses was willful and intentional failure to comply with any provision of Ch. 20, with Article 12 of the General Statutes, or with any regulation promulgated by the Department of Motor Vehicles under the article. The new statute, then, represents an expansion of grounds for loss or refusal of license. Had this bill been passed as introduced, it would also have done away with the requirement that such violations be willful and intentional. As amended and enacted, it does not.

Miscellaneous

The extension amendments [GS 7A-148] to the Judicial Department Act of 1965 (see C. E. Hinsdale, "Courts and Court Officials," *Popular Government,* September, 1967, 33 ff.) direct the chief district judges to prepare uniform traffic tickets for statewide use by 1970.

Three new laws show a definite legislative concern about the abandonment of motor vehicles on public streets and highways. Ch. 1158 (SB 486) adds a new section [GS 20-219.1] to provide that any motor vehicle parked or abandoned on a public highway or right-of-way for forty-eight hours shall be towed to a place of safety and storage at the direction of any law enforcement officer. The latter is required to notify the Department of Motor Vehicles of the storage on a specified form within forty-eight hours, stating the place of and reason for storage and the

description of the vehicle. The owner may redeem the vehicle by paying towing and storage charges, not to exceed $5.00 plus 50 cents a mile for towing and $1.00 a day for storage. If the vehicle is not redeemed within 30 days, the tower and storage keeper is given a lien on the vehicle of authorized charges and may sell it to satisfy the lien. The State Highway Commission is authorized to tow, store, and sell any parked or abandoned vehicles in the manner provided in the act. The right to sell the vehicle under this act does not constitute a warehouseman's lien under Article 7 of the UCC.

Two related statutes expand the power of municipalities to remove abandoned vehicles from the streets. Ch. 1215 (HB 1271) adds a new subsection [GS 160-200 (44)] authorizing municipalities to remove from public or private property abandoned and inoperable, dismantled, or damaged motor vehicles that are five years old or more and worth less than $50.00. Removal is to be undertaken under the direction of a designated official only upon written request of the owner, lessee, or occupant of the property unless the vehicle is declared a health or safety hazard. The owner may reclaim the vehicle upon payment of the costs. If the vehicle is unclaimed after fifteen days, or if not claimed with the consent of the owner, the municipality may destroy and dispose of it, deposit the proceeds in its general fund, and give notice to the Department of Motor Vehicles of the disposition. No civil or criminal liability may be incurred by any person for action under this law.

Ch. 1250 (HB 1289) amends GS 160-200(43) to give municipalities an even broader right to remove abandoned vehicles from streets without regard to the age of the vehicle. A vehicle may be "determined" to be abandoned if it has been left on a public street or highway for not less than seven days or on municipally owned or operated property for forty-eight hours or on private property without the owner's consent for not less than two hours; or unattended upon a street or highway in violation of a law or ordinance prohibiting parking for periods of twenty-four hours. Abandonment may also be determined, in part, from the non-display of a current license plate or the fact that a vehicle is partially dismantled or wrecked and incapable of self-propulsion or the originally intended method of movement. Written notice of removal is required to be given by mail to the registered owner. An unclaimed vehicle of less than $50.00 appraised value may be disposed of in the discretion of the governing body or a designated officer of the municipality. If the vehicle is resold, the Department of Motor Vehicles, upon receipt of the municipality's bill of sale, shall issue the required certificate of title to the purchaser. (See Lee T. Quaintance and Warren J. Wicker, "The Cities and the 1967 General Assembly," *Popular Government*, September, 1967, page 23, for a brief consideration of these bills relating to abandoned vehicles.)

Reciprocity Agreements as to Registration and Licensing

(Article IA)

Ch. 1166 (SB 671) amends GS 20-4.6 by providing that a new permanent or temporary resident of North Carolina is exempted from registration of his or her private passenger vehicles for the first thirty days of residence provided that his or her vehicle is properly licensed in the jurisdiction of the state of which he is a resident or former resident.

Ch. 8 (SB 29) authorizes the Department of Motor Vehicles to have reflectorized vehicle license plates on motor vehicles beginning in 1968. The plates will be wholly treated with reflectorized materials for the purpose of increasing "visibility and legibility" at night.

Motor Vehicle Safety and Financial Responsibility

The 1967 General Assembly took steps to increase and reinforce the financial responsibility of motorists. Insurance requirements were raised, procedures strengthened and clarified, and protection of youth and age encouraged.

Financial responsibility requirements were doubled from $5,000 to $10,000 in accidents involving death or bodily injury to one person and from $10,000 to $20,000 in accidents involving death or injury to two or more persons. These requirements apply to each of the following categories:

(a) The amount of damages that a person must show capability of responding to in order to prove financial responsibility [GS 20-279.1(11)];

(b) Minimum security required when an accident has occurred and there is no evidence of insurance [GS 20-279.5];

(c) Amount to be paid on judgments resulting from such accidents in order that judgment be deemed satisfied for purpose of restoring a suspended license [GS 20-279.15];

(d) Minimum limits that may be placed on motor vehicle liability policies [GS 20-279.21];

(e) Minimum proof of financial responsibility necessary for operators of less than fifteen taxicabs [GS 20-280(d)];

(f) Minimum amount of liability insurance necessary for those engaged in the business of renting or leasing motor vehicles [GS 20-281].

This legislation [Ch. 277 (SB 162)] also amends GS 20-279.25 to raise from $15,000 to $25,000 the value of the deposit of money or securities with the State Treasurer authorized as a means of proving financial responsibility. It deletes from the assigned-risk plan statute [GS 20-279.34] the proviso that the Motor Vehicles Commissioner may require an insurance carrier to issue a policy with not more than $10-20-5,000 limits to an assigned risk requesting

more than the minimum necessary policy. This legislation becomes effective January 1, 1968, and applies only to policies written or renewed on or after that date when the manner of proving financial responsibility is by liability policy.

Ch. 1159 (SB 518) permits an extension of uninsured motorist insurance coverage for insured motorists up to a $15,000 limit in the case of bodily injury to or death of one person in any one accident and $30,000 in the event of injury or death to two or more persons in any one accident. These increased limits are to be available only if the insured carries liability insurance of equal or greater amounts for the protection of third persons. This act is applicable only to automobile liability policies issued after January 1, 1968. Heretofore, statutory limits have been $10,000 for injury or death to one person and $20,000 for two or more [GS 20-279.2].

Another new law [Ch. 1155 (SB 394)] raises to $15,000 the maximum amount of motor vehicle liability insurance for injury or death of one person that an assigned-risk carrier can be required to issue to an assigned-risk applicant and increases from $20,000 to $30,000 the amount of insurance for multiple injury or death. The effective date of this legislation was July 1, 1967. Limits formerly were $10,000 and $20,000, respectively.

Motorists whose licenses have been suspended or revoked need no longer provide proof of financial responsibility for the period provided by law for reinstatement and issuance of a new license. Ch. 866 (HB 1033) repeals the section that exacted such requirements.

Henceforth, in addition to the policy owner and other persons using a motor vehicle with the express or implied permission of the insured, persons in lawful possession of a motor vehicle are covered under a motor vehicle liability policy [Ch. 1162 (SB 618)]. Ch. 1162 is applicable only to claims and causes of action arising after ratification (July 8, 1967). That an operator was not in lawful possession is declared by this act a defense to any legal action [GS 20-279.21 (b)].

Ch. 1186 (HB 1172) adds to the requirements of the section on uninsured-motorists insurance [GS 20-279.21(b) (3)]. In addition to other provisions of the section, every policy of bodily injury liability insurance in which liability arises out of ownership, maintenance, or use of a motor vehicle is made subject to the following provisions whether stated in the policy or not:

(a) The insurer is bound by final judgment for the insured against an uninsured motorist if the insured is served a copy of the summons, complaint, or other process in the action as provided by law. Upon service, the insured becomes party to action and may defend suit in the name of the uninsured or in his own name and has time allowed by statute to plead. The consent of the insurer is not required for the initiation of a suit by the insured against the uninsured motorist. No action may be initiated by the insured until sixty days following posting of notice to the insurer or his agent setting forth the insured's belief that the defendant is an uninsured motorist. No default judgment shall be entered when the insurer has filed timely pleading.

(b) When the insured, claiming bodily injury from the collision, asserts that the identity of the owner or operator of the other vehicle cannot be obtained, he may sue the insurer directly, provided that he has reported the accident within twenty-four hours or as soon as practicable. Suit may not be instituted against the insurer until sixty days from posting first notice of injury or accident to the insurer or after personal delivery.

(c) Insurers may not cancel, refuse to renew, or reduce coverage under any automobile liability insurance policy because of any claim by the insured on its uninsured-motorists endorsement. In the event of cancellation or failure of renewal following such claim, the insurer shall furnish the insurer upon request the reasons for policy termination. This is privileged information, not subject to libel or other defamation action.

(d) These provisions apply to renewals and new policies issued after July 6, 1967, the date of ratification of this act.

Another new statute [Ch. 1246 (HB 1189)] provides similar protection for assigned-risk insured and insurers. This legislation amends GS 20-279-21 (f)(1) to see that a default judgment taken against an assigned-risk insured may not be used as a basis for obtaining a judgment against the insurer unless counsel for the plaintiff insured has fowarded to the insurer or his agent by registered mail a copy of the summons, complaint, or other pleading filed or to be filed. A return receipt filed with the clerk of court where the action is pending is admissible as proof of notice to the insurer. The procedure for such notice under the assigned-risk law is set forth. The insurer specifically may not cancel or annul the policy if the assigned-risk insured complies with the provisions of this law as to such liability and the defense of noncooperation is not available, although the insurer is not deprived of policy defenses—(i.e., that the policy was not in force at the time in question, that the operator was not insured under the policy, or that the policy had been canceled at the time of the accident).

Ch. 854 (HB 594) rewrites GS 20-279.21(e) so that, effective January 1, 1968, a motor vehicle liability policy need not insure against loss from any liability for which benefits are in whole or in part payable or required to be provided under the Workmen's Compensation Law or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

The Legislature took steps to protect the aged against discrimination in auto insurance. It added a new subsection [GS 20-310.2] prohibiting any insurance company licensed in the state to write motor vehicle liability insurance from failing to renew any existing policy solely because the insured is sixty-five or over. This legislation, [Ch. 1072 (HB 1004)] sets up the following procedures: The Insurance Commissioner may call into hearing, following notification, any company which he has reason to believe may be violating this law. If the Commissioner determines that the company is not renewing policies of persons 65 or over, he shall order the company to cease and desist from such practices. Should the Commissioner find that the company has continued to refuse to renew a policy solely because the applicant is sixty-five or older, he shall impose a fine on the company not to exceed $1,000 for each separate violation. The company has the right to appeal the order or decision to the Superior Court of Wake County.

The young also were given new rights with regard to auto insurance. Ch. 934 (SB 476) permits a minor sixteen years old or older (who, under already existing law, is competent to enter into an agreement to finance auto insurance) to execute a power of attorney in connection with such insurance or to execute such power in connection with the application for insurance with the Assigned Risk Plan, as if he had reached the age of twenty-one.

The Financial Responsibility Act's provisions for revocation of vehicle registration and suspension of operators' licenses were clarified. Ch. 822 (SB 388) amends GS 20-309(e) and GS 20-311, respectively, to require an owner who has been notified that his car insurance has been cancelled specifically to surrender his current registration plate to a Department of Motor Vehicles employee or agent designated by the Commissioner or to deposit the plate in the mail addressed to the Department of Motor Vehicles in Raleigh. The returned registration plate must be the one "issued to the vehicle at the time the liability insurance was terminated or the current registration plates for the vehicle if the year of registration has changed." The same procedure applies when financial responsibility is not in effect, upon notice of revocation or suspension.

Ch. 857 (HB 691) doubles from 30 to 60 days the period for which a registration plate is to be revoked when financial responsibility is shown not to be in effect and eliminates the section requiring suspension of the operator's license for thirty days [GS 20-309 (c)]. The immediately following statutes [GS 20-309 (e), GS 20-310(a), GS 20-311] are all brought into conformity with provisions that a vehicle owner's failure to certify that he has financial responsibility as required by law shall be prima facie evidence that no financial responsibility exists for the vehicle in question, and unless the registration plate is surrendered in accordance with the prescribed statutory procedure, it is to be revoked for sixty days.

Procedures are prescribed by Ch. 1227 (HB 1359) for the escheat of certain unclaimed financial responsibility funds to the University of North Carolina. When such funds deposited as security for motor vehicle collision damages under the Safety and Financial Responsibility Act of 1953 remain unclaimed for five years, even after notice to depositors, they are subject to escheat. The procedure is set forth as follows:

(a) One year after security deposit, the Commissioner of Motor Vehicles notifies the depositor by registered mail at his last known address of his right of refund of the securities on demonstration of absence of suit and unpaid claim from accidents for which the funds were deposited.

(b) Three years after deposit, if no claim has been received, the Department notifies the depositor and posts notice at the courthouse of his last known county of address containing certain specified information. Two years from such notice, if no claim has been made, that failure and the fact of notice shall be certified to the State Treasurer, who turns the deposit over to the University as escheat [GS 20-279.10].

by Robert E. Phay

PUBLIC HIGHER EDUCATION

Chapter numbers given refer to the 1967 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate. GS refers to the General Statutes of North Carolina.

Nearly every session of the General Assembly in the last decade has made major policy decisions in higher education, many of which became the battlefield for major political conflicts. The 1967 session was no exception. The issue this time centered around East Carolina College's efforts to gain university status. The effect of the East Carolina question was not limited to this one matter, however. It touched and influenced nearly all other policy considerations in higher education. Such controversial legislation as the proposals to revamp the University Board of Trustees, to grant authority to the Board of Higher Education to set college and university admission standards, and to move the Consolidated University offices from Chapel Hill to Raleigh should be evaluated within the context of the East Carolina University issue, though they did not necessarily stem from that question.

These and other items of legislation, including those affecting the community college system, will be summarized in this article.

Community Colleges

North Carolina's community college system will grow considerably in the next biennium. The system received operating appropriations totaling over $47,000,000, a 63 per cent increase over the last biennium. The capital improvement authorization was $2,000,000. Of this amount, $1,367,813 was appropriated from state funds, and the remainder is to come from nonstate sources.

This increase will be used primarily to finance seven new institutions and to upgrade four others. Before the 1967 General Assembly the system had 43 institutions — 12 community colleges, 17 technical institutes, 13 extension units, and one industrial education center. The appropriations act for the new biennium authorized one additional community college, two new technical institutes, and six new extension units. The conversion of Wayne Technical Institute will constitute the new (thirteenth) community college. Extension units in Craven and Beaufort counties will become technical institutes, making a total of 19, and seven new extension units will be added, for a total of 18. The State Board of Education recently announced that new extension units will be located in the following counties: Bladen, Edgecombe, Hertford, Halifax, Martin, Montgomery, and Nash. (The seventh new extension unit was added recently when the Governor and Advisory Budget Commission approved funding a unit in Montgomery County in the second year of the biennium.) Four units are authorized in the first year of the biennium and three in the last year. Except for the elevation of the Onslow County Industrial Education Center to a technical institute, the establishment of new institutions and the upgrading of existing one is contingent on agreement by the voters of the concerned counties to help finance the institutions and on approval by the Governor and the Advisory Budget Commission. (Incidentally, the Onslow institution was the last remaining industrial education center in North Carolina. With its upgrading, and with new money appropriated to establish new IEC's, the future role of this type of institution in the community college system is problematical.)

The increased operating appropriation will enable the State Board of Education to establish a statewide salary schedule for the community college system. The estimated average teacher salary for twelve months will be $8,900 in the first year of the biennium and $9,600 in the second. This will apply to each institution in the system.

The only change in the general law affecting the community college system was made by Ch. 652, (HB 951). It amended GS 115A-5 to authorize the State Board of Education, upon approval by the Governor

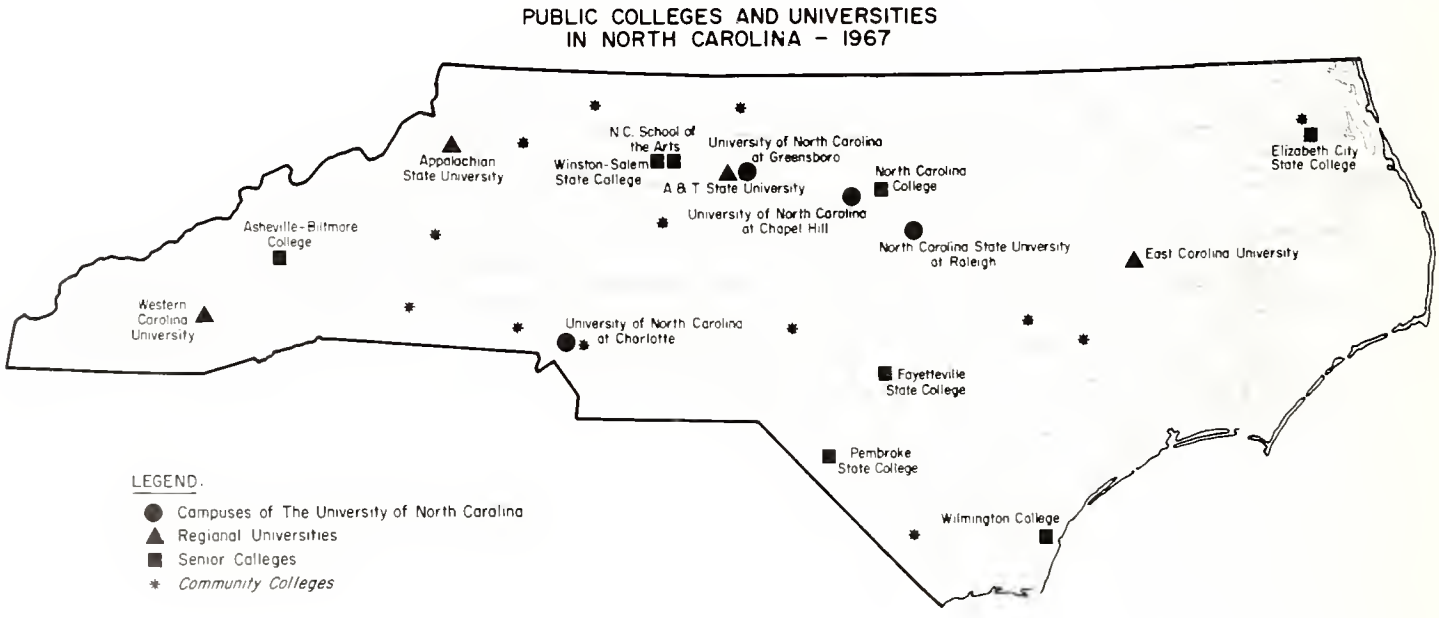
and the Advisory Budget Commission, to enter into agreements with county and city boards of education for the establishment and operation of extension units of the community college system. They are to become semiautonomous institutions under the control of the Department of Community Colleges and the local school board. Heretofore, an extension unit was established and operated as a child of a community college or technical institute.

The act also authorizes the State Board of Education to provide state financial support for operating and equipping extension units. This change permits the State Board to provide money directly to the extension unit as it now does for other institutions in the system rather than route it through a parent institution. Most of the existing and new extension units of the community college system are expected to operate under the new provisions.

To summarize the legislation primarily dealing with the community college system: increases were authorized by the general appropriations act that will substantially increase faculty salaries (permitting the establishment of a statewide salary schedule) and will finance upgrading four institutions and add seven new ones that will increase the total institutions in the system from the present 42 to 50. The new additions mean that more than 85 per cent of North Carolina's high school graduates will be within commuting distance (30 miles) of one of the system's 50 centers. These added facilities and faculties will clearly be needed if the average quarterly enrollment jumps the predicted 80 per cent by the end of this biennium.

Senior Colleges and Universities

The 1967 General Assembly appropriated a record $174,000,000 for the operation of the state's sixteen tax-supported institutions and related services, a 30 per cent increase over the 1965-67 appropriations. This sum includes pay increases of $10,800,000 for teaching, research, and extension personnel, but it does not include the 6 per cent increase for state employees subject to the State Personnel Act. Appropriations for for capital improvements totaled $135,000,000 for the 1967-69 biennium. Of this amount, $68,000,000 will be appropriated directly by the state while the remaining $67,000,000 will come from nonstate funds such as revenue bonds liquidated by student fees and receipts, federal funds, and private grants and gifts.[1] A particularly noteworthy part of the higher education appropriation is $1,000,000 in "catch-up" funds appropriated for the state-supported, traditionally Negro colleges. Watts Hill, Jr., Chairman of the State Board of Higher Education, called the appropriation a "major breakthrough." (At the same time, both he and the colleges that will receive the funds were disappointed at the amount, which was one-third of what the Board had requested and only one-seventh



1. The North Carolina Board of Higher Education's publication *Higher Education in North Carolina*, II, 5 (July 28, 1967), breaks down the general fund appropriation for both current operations and capital improvements by institutions. A copy may be obtained by writing the State Board of Higher Education.

of what the colleges stated they must have to upgrade their institutions appreciably.) The board has stated that this money will be allocated to strengthen facilities and academic programs as admission standards are raised at the institutions.[2]

Regional Universities

Ch. 1038 (SB 563) adds to GS Ch. 116 a new Article 1A, "Regional Universities." It substantially alters the structure of public higher education.

After helping to defeat two earlier attempts that would have provided for structural change—SB 82, which would have made East Carolina a separate university, and SB 99, which would have made East Carolina a campus of the Consolidated University—the Administration could not prevent the regional universities bill from gaining legislative approval in the waning days of the 1967 General Assembly. The new article converted four of North Carolina's former senior colleges into "regional universities." Appalachian State Teachers College became Appalachian State University, East Carolina College became East Carolina University, Agricultural and Technical College of North Carolina became North Carolina Agricultural and Technical State University, and Western Carolina College became Western Carolina University. The original bill designated only East Carolina as a regional university, but as the bill progressed through the Assembly the others were added. A & T, the last addition, gained its new name only by a closely contested House floor amendment. The same amendment had failed initially in the Senate.

The regional university's primary purpose, as set out in GS 116-44.10(b), is the "preparation of young men and women as teachers, supervisors and administrators for the public schools of North Carolina, including the preparation of such persons for the master's degree." This language is taken from GS 116-45 (1), which had set out the "primary purpose" of Western Carolina College, East Carolina College, and Appalachian State Teachers College. The statement of A&T College's purpose (not including the agricultural aspect), as set out by GS 116-45(4), is almost identical. Following the statement of primary purposes, GS 116-44.10 (b) authorizes the new regional universities, subject to the Board of Higher Education's approval, to offer instruction in the liberal arts and sciences (authority three of the institutions had been granted as colleges), to offer extension courses to people unable to be resident students (a function all institutions were already performing as colleges), and to conduct programs of research that will increase their abilities to carry out and enlarge their stated responsibilities (another function these institutions were performing as colleges). Thus there is little new statutory authority to conduct programs not already being offered by these four institutions before they were designated regional universities.

Another section of the article, GS 116-44.14 provides for the designation of additional regional universities. To be eligible, an institution must be a college operating under Article 2 of GS Ch. 116, must have been authorized to grant the master's degree for at least ten years, and must have been authorized by GS 116-46.3 to participate in the sixth-year program of graduate instruction for public school administrators. When an institution's board of trustees applies for redesignation as a regional university, the Board of Higher Education is to study the request and report its findings and recommendations to the General Assembly, which will act upon the matter as it deems appropriate. North Carolina College at Durham is the only senior college of the seven remaining after the new regional universities were designated that meets the statutory requirements for requesting redesignation as a regional university.

The new article also provides in GS 116-44.15 that the Board of Higher Education shall study the regional universities system and its "future role and status in the State System of Public Education" and report its findings and recommendations to the 1973 General Assembly. The study is to consider the continuation of the existing arrangements, the establishment of a single board of trustees for all regional universities, and the conversion of one or more of the regional universities into campuses of the University of North Carolina.

The Board of Trustees of the University of North Carolina

Four bills were introduced in the 1967 General Assembly concerning the size, make-up, and selection of the board of the University of North Carolina. For years this subject has been one of recurrent concern among both members of the General Assembly and many other North Carolinians interested in higher education. In the last decade, every regular session of the General Assembly but one has received at least one bill to alter the size or constitution of the board of trustees, and in 1959, a legislatively established study commission recommended changes in the procedure for selecting trustees. The 1965 General Assembly, upon the recommendation of Governor Dan K. Moore, established the Commission on the Study of the Board of Trustees of The University of North Carolina. This commission, chaired by former Governor Luther H. Hodges, studied the structure of the board over a twelve-month period (during which time it heard from practically every group directly involved with the functioning of the board of trustees). The Commission submitted a report to Governor Moore that included ten recommendations, the majority of which were embodied in the Commission's bill, SB 420. The major changes that would have resulted from this bill are a staged reduction from 107

2. See *State Supported Negro Colleges in North Carolina* (1967), a recent report of the Board that evaluates the needs of North Carolina's five state-supported traditionally Negro colleges.

to 24 members, elimination of ex officio members (including the Governor as ex officio chairman of the board,) limitations on terms for executive committee members, exclusion of legislators and their spouses from election as trustees, and the creation of a 100-member board of advisers.

In addition to the Commission's bill, Representative Hugh Ragsdale, a Commission member, and others introduced HB 941 (identical with SB 426), that would have reduced the number of trustees gradually from 107 to 42 (14 to be selected each two years—11 by the General Assembly and three by the Governor), reduced the term from eight to six years, eliminated ex officio members, and restricted terms on the powerful executive committee. The other two attempts to alter the board of trustees were SB 430, a bill introduced by Senator George Wood that would have organized the board into "trustees groups" assigned to the different campuses of the Consolidated University, and SB 324, a bill introduced by Senator Harry Bagnal that would have created a separate trustee board for each branch of the Consolidated University and still another board for the entire Consolidated University.

Only SB 426 got out of committee. After passing the Senate, it failed second reading in the House.

The Board of Higher Education

The North Carolina Board of Higher Education, created in 1955 "to plan and promote the development of a sound, vigorous, progressive, and coordinated system of higher education in the State of North Carolina," received a biennial appropriation of $2,625,255. Most of this money will be reallocated by the Board to the sixteen institutions of higher education to carry out this statutory charge. Besides the $1,000,000 in catch-up funds for Negro colleges (it is included in this figure), the Board will distribute money for institutional research development offices, the state's participation in the Southern Regional Education Board's student-exchange program, and the state's participation in the federal work-study program under the provisions of the Higher Education Act of 1965. The Board also received money to develop a computerized information system for the collection, processing, storage, and retrieval of information on higher education.

In its interim report to the Governor and the General Assembly, the Board of Higher Education made nine recommendations. Three of these concerned elevating admission standards at state-supported institutions of higher learning by raising the minimum acceptable score in the Scholastic Aptitude Test (commonly known as the SAT). A fourth recommended statutory authorization for the Board to approve minimum admission standards set by state-supported colleges and universities. The Board contends that North Carolina's public policy of providing every high school graduate with an opportunity for education beyond the high school can best be served by placing the graduate in the state-supported institution most appropriate to his abilities, interests, and motivation. With the "open admissions" community college system, higher minimum standards can be set at the senior college and university levels without denying any high school graduate an opportunity for post-high school education. A higher minimum standard should simultaneously benefit students who would profit more from technical and vocational education than from college-level work and make more effective use of senior college and university faculties and facilities.

SB 498 (HB 1031) was introduced to implement these recommendations. It would have authorized the Board of Higher Education to "approve standards for the admission of students" to North Carolina colleges and institutions of higher learning. The bill was not reported out of committee in either house. The Board considered this authority "essential" for it to function properly as a state planning and coordinating agency in higher education. The bill's failure therefore represents a notable defeat for the Board.

Through the State Education Assistance Authority, the Board of Higher Education administers a guaranteed, reduced-interest, student-loan program. This program of low-interest loans was increased by an appropriation of $50,000 that will guarantee an additional $500,000 in low-interest student loans under the Higher Education Act of 1965. It was also enlarged in scope by Ch. 955 (HB 456), which amended GS 116-202 to permit the Authority to guarantee the loans of students attending "institutions of higher education or post-secondary business, trade, technical, and other vocational schools." When the Authority was established in 1966, the program was available only to students attending institutions of higher education. Ch. 955 also amended GS 116-206 to permit the Authority to guarantee up to 100 per cent of low-interest loans to students. Formerly the Authority could guarantee only 80 per cent of any student loan.

Ch. 1177 (SB 728) enacts GS 116-209.1 through -209.15. Among other provisions, these sections include federal savings and loan associations among the lenders eligible to make low-interest, guaranteed loans to students; authorize the Authority to issue revenue bonds for student-loan purposes; and establish a State Education Assistance Authority loan fund for making student loans.

Miscellaneous

Ch. 716 (SB 18) amended GS 105-149, the statute that sets out exemptions to the state income tax, to grant taxpayers an additional $600 exemption for each dependent who is a "full-time student at an accredited college or university" or other institution of higher learning designated by the Commissioner of Revenue. A full-time student is defined as a dependent "enrolled for full-time study for a period of at least five months (whether or not consecutive) during the income year."

Tuition for out-of-state students will go up in the 1968-69 fiscal year. The institutional budgets of the universities and colleges for the second year of the biennium were constructed on the basis of increases in out-of-state tuition from $600 to $700 at the Consolidated University and from $300-$390 to $500 at five of the senior colleges and regional universities.

Ch. 1040 (SB 716) enacts GS 116-70, authorizing the North Carolina School of the Arts, with the approval of the Advisory Budget Commission, to issue revenue bonds for acquiring dormitory facilities and for other purposes authorized by GS Ch. 116, Article 21 ("Revenue Bonds for Student Housing, Student Activities, Physical Edueation, and Recreation").

Ch. 1004 (HB 156) appropriates $1,200,000 to the State Board of Edueation for distribution to eligible hospitals for nursing education.

Ch. 1148 (HB 1056) amends GS 116-187 and GS 116-189 to enlarge the authority now granted to institutions of higher learning to issue revenue bonds for faculty housing and for parking facilities.

Several other noteworthy bills either were defeated or were not reported out of committee. They include SB 379, a bill to require any new facility for the Consolidated University offices to be located in Raleigh; SB 214, a bill to appropriate funds for the dental education wing at the University of North Carolina School of Dentistry; and six bills to appropriate funds for a variety of purposes at East Carolina University.

The Interstate Compact for Education (Ch. 1020 [SB 203] and the Governor's Study Commission on the Public School System of North Carolina (Resolution 81 [HR 1026]) are other education-related measures important to higher education. The legislation setting up the compact and the study commission were discussed in the September issue of *Popular Government*, together with other legislation affecting public elementary and secondary education. The article on Public Personnel in this issue will discuss important and basic changes made in the Teachers' and State Employees' Retirement Act by Ch. 720 (HB 646).

Conclusion

The focal point of policy decisions in higher education in the 1967 General Assembly was whether the existing educational structure was to be altered before the completion of the long-range plan for the state's public education system in 1968. Governor Moore and the Board of Higher Edueation repeatedly asked the General Assembly not to enaet legislation requiring a major change in the present structure before the study is complete.

Exeept for the regional universities act, the Assembly aequieseed. This act created an intermediate level of institutions between the Consolidated University and the state's senior colleges. As Senator L. P. McLendon, Jr., an opponent of the original bill, observed, "the change made by the 1967 General Assembly, irrevoeably altered North Carolina's system of higher education." What impact this change will have and what the future role of the Board of Higher Education will be in shaping that system, only time and experienee can tell.

The Institute's November Calendar

School Attendance Counselors	1- 2
N. C. Section of American Institute of Planners	3
Superior Court Solicitors Conference	3- 4
Staff Development Personnel, State Department of Welfare	7- 9
Court Reporting Seminar	10-11
District Court Judges	10-11
Municipal and County Administration	16-18
New Superior Court Judges Conference	18
N. C. Association of Assessing Officers	Nov. 29-Dec. 1

by Donald B. Hayman

PUBLIC PERSONNEL

Chapter numbers given refer to the 1967 session laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate. GS refers to the General Statutes of North Carolina.

Major statewide personnel legislation enacted by the 1967 General Assembly provides for (1) sizeable salary increases for the state's top administrative officials and some judicial officials, (2) smaller increases for all other full-time permanent employees, (3) improved retirement benefits, (4) death benefits to survivors of employees who die before retirement, (5) increased workmen's compensation benefits, (6) restrictions on political activity, and (7) the defense of civil or criminal actions brought against employees acting within the scope of their employment.

Major local personnel legislation enacted included (1) a flood of bills increasing the salaries of county commissioners, elected county officials, and mayors and councilmen; (2) increased retirement benefits for members of the Local Governmental Employees' Retirement System; and (3) the local defense of civil or criminal actions against employees who act within the scope of their employment.

Of the 1,271 bills or resolutions enacted, 134 affected some aspect of state, county, and/or local personnel administration. The 134 personnel bills represented by the smallest number of personnel bills enacted by a North Carolina General Assembly since 1943 and the smallest percentage of all ratified bills since 1941. Efforts during the past fourteen years to increase local control over salaries, fees, and other personnel matters reduced the workload of the 1967 General Assembly.

Compensation

State Employee Compensation

Ch. 1107 (SB 19), the general appropriations act, provides funds for granting a 20 per cent salary increase for teachers (10 per cent in 1967 and a second 10 per cent in 1968) and a 6 per cent salary increase to each permanent, full-time employee subject to the State Personnel Act effective July 1, 1967.

Ch. 1130 (SB 568) raises the salaries of the Attorney General and the members of the Council of State to $20,000 as of January 1, 1969. Ch. 1238 (SB 743) provides that as of July 1, 1967, the salaries of the members of the Utilities Commission shall be the same as the pay of judges of superior court, who receive $21,000.

Ch. 1170 (SB 697) raises the salary of the Lieutenant-Governor to $5,000 and his expense allowance to $4,000 effective January 1, 1969.

County Commissioners and Officials

The 1967 General Assembly authorized or directed salary increases for the chairman of the board of commissioners in 20 counties and for the members of the board in the following 22 counties: Camden, Cherokee, Graham, Greene, Halifax, Haywood, Jackson, Johnston, Jones, Lincoln, McDowell, Martin, Northampton, Polk, Richmond, Robeson, Rockingham, Rutherford, Scotland, Tyrrell, Union, and Yadkin.

Salary increases were authorized or required for one or more of county constitutional officers or employees in the following 19 counties: Alamance, Alexander, Avery, Burke, Brunswick, Cabarrus, Camden, Cherokee, Graham, Haywood, Hyde, McDowell, Macon, New Hanover, Richmond, Rowan, Rutherford, Vance, and Watauga.

County Salary Home Rule Increased

The trend toward greater county home rule in regard to salaries of county officials and employees continued. County commissioners in Camden, Caswell, Edgecombe, Forsyth, and Swain counties were authorized to set the salaries of elective officials and the number and salaries of appointive officials and employees.

Boards of commissioners in 59 counties are authorized to set the compensation of elected officials.

In 70 counties the boards are authorized to set the number and salaries of all appointive officials.

County commissioners in two additional counties, Caswell and Cleveland, were authorized to fix the fees of all elective and appointive officials. County commissioners now have authority to fix the fees of registers of deeds in 62 counties, of sheriffs in 51 counties, and of clerks of court in 46 of the 78 counties not yet under the district court system.

Compensation of Municipal Officials

Thirty-three local acts changed the salary or authorized the change of the salary of the mayor and/or members of the governing body of the following cities and towns: Angier, Aulander, Belmont, Boone, Broadway, Burlington, Chadbourn, Concord, Cornelius, Enfield, Eureka, Forest City, Goldsboro, Goldston, Greensboro, Grimesland, Hickory, High Point, Huntersville, Jacksonville, Kings Mountain, Lillington, Marion, Monroe, Morganton, Mount Gilead, Pembroke, Randleman, Sanford, Shelby, Siler City, Spruce Pine, and Wadesboro.

State Personnel

Management Development and Training

In accordance with Governor Moore's recommendation in his budget message, the General Assembly appropriated $50,000 to the State Personnel Board to institute a management development and training program. The program, in the words of Governor Moore, will enable the state to employ outstanding college graduates who have an interest in public administration, a capacity for leadership, a willingness to accept responsibility, and an aptitude for administrative and organizational work. The program will include on-the-job training, formal group training, and additional studies. Governor Moore expressed the hope that the program will permit the state to compete for the better college graduates on a more nearly equal basis with the federal government and private industry.

State Personnel Act Coverage Extended

Ch. 1143 (SB 645) extends the coverage of the State Personnel Act to physicians and dentists on the staffs of hospitals, mental institutions, reformatories, and correctional institutions of the state and to deputy directors, the director of professional training, and the director of research of the Department of Mental Health.

Veterans' Preference

By Ch. 536 (HB 548) Vietnam veterans will receive, as other veterans do, a preference rating of ten points on all examinations of applicants and of one point for each year of service up to a maximum of five points on promotional examinations.

Employee Political Activity Restricted

Ch. 821 (SB 254) provides that no employee subject to the State Personnel Act nor any temporary state employee shall (1) take any active part in managing a campaign, or campaign for political office, or otherwise engage in political activity while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the state; or (2) use the authority of his position or state funds, supplies, or vehicles to secure support for or oppose any candidate, party, or issue in a partisan election involving candidates for office or party nominations, or to affect the results thereof.

The act further provides that no state employee or official shall use any promise of personal preferential treatment or threat of loss to encourage or coerce any employee subject to the Personnel Act or temporary state employee to support or contribute to any political issue, candidate, or party.

Failure to comply with the provision of the act is deemed to be grounds for disciplinary action which, in case of deliberate or repeated violation, may include dismissal or removal from office.

Defense of State Employees

Ch. 1092 (HB 1168) authorizes the state to provide for the defense of any civil or criminal action or proceeding brought against a state employee in his official or individual capacity on account of an act done or omission made in the course of his employment. The Governor is authorized to issue regulations as to the methods to be used in providing for the defense of state employees. The act specifies that employees may be defended by the Attorney General or other authorized counsel, or insurance may be purchased which would provide for the defense of employees.

Sick Leave of District Court Employees

Ch. 1187 (HB 1198) provides that all county and municipal court employees and all court reporters who become state employees as a result of the establishment of the new district court system may transfer sick leave accumulated as local employees up to a total of 30 work days.

Retirement

Twenty-two retirement or pension acts were enacted by the 1967 General Assembly. Five pertain to either state or statewide retirement systems for local governmental employees. Seven authorized or amend local retirement funds for general employees. Six amend local firemen's pension or relief funds. Two amend local law enforcement officers' pension funds, and two abolish local peace officers' relief funds.

Teachers' and State Employees' Retirement System

Ch. 720 (HB 646) revises the Teachers' and State Employees' Retirement System and increases the at-

tractiveness of the system to former, present, and prospective state employees.

Benefits of retired members of the system are increased a minimum of 5 per cent and an additional 1 per cent for each year of retirement prior to 1966 up to a maximum of 29 per cent. The minimum increase paid — beginning July 1, 1967—is $10.00 a month.

This cost-of-living increase in retirement benefits is an innovation that will in fact equal the increase in the cost of living for members who have retired since 1964. The 29 per cent increase in benefits to members who retired in 1942 will only partially compensate for the 105 per cent increase in the cost of living between 1942 and September 1, 1967.

State employees who retire today or have retired since 1963 are receiving considerably more attractive retirement allowances than those who retired in the 1940's and early 1950's because of (1) increases in average salaries, (2) changes in the benefit formula, and (3) the addition of Social Security.

Ch. 720 increases employee contributions and benefits. The rate of contributions is increased from 4 to 5 per cent of the first $5,600 earnings each year. This increase was made in order to pay the members' cost of the increase in the retirement benefit. Prior to July 1, 1967, retiring employees 65 years of age or over received a retirement allowance of 1 per cent of the first $5,600 of average final compensation plus 1.5 per cent of such compensation in excess of $5,600 multiplied by the number of years of creditable service. As a result of the 1967 amendments, the formula has been increased to pay 1.25 per cent of the first $5,600 of average final compensation plus 1.5 per cent of compensation in excess of $5,600.

A new death benefit provision was added in 1967. The benefit is paid to survivors of employees who have had at least one full calendar year of service and who die prior to retirement. The benefit will equal the compensation earned by the member during the calendar year preceding the year in which his death occurs but not to exceed $15,000. This payment will be in addition to the return of the employee's contributions to the retirement system plus interest at 4 per cent.

After 1968 the death benefit will not be paid to the survivors of any employee who dies after attaining age 70. The maximum age for the payment of the death benefit will be reduced one year in each of the following five years. After 1973 the survivors of employees 65 years of age and over will not be eligible to receive this payment.

Other amendments (1) reduce the minimum service required for vesting from 15 to 12 years, (2) permit members to be absent from service for up to seven years in any period of eight consecutive years without loss of credit for service, (3) permit members to select an optional method of receiving retirement benefits after the attainment of age 55 or after the completion of thirty years of creditable service, (4) change the reduction in the benefits paid to employees retiring before 65 from 5 to 4 per cent a year, (5) authorize creditable service at time of retirement to include one month for each 20 days of unused sick leave credited to the member, and (6) include several other minor or technical amendments.

Ch. 1234 (SB 627) permits persons 60 years of age or over who are employed by the state to become members of the Teachers' and State Employees' Retirement System.

Ch. 1205 (HB 1222) authorizes the Board of Trustees of the Teachers' and State Employees' Retirement System to retain the services of a "reputable investment counseling firm."

Local Governmental Employees' Retirement System

Ch. 978 (SB 669) amends the Local Governmental Employees' Retirement Act to bring it into general conformity with the Teachers' and State Employees' Retirement System as amended in 1967 and described above.

The new amendments to the statewide local retirement system differ from the amendments to the Teachers' and State Employees' Retirement System in the following three major provisions: (1) The death benefit was not added to the local retirement act. (2) The minimum monthly increase in retirement benefit is $5.00 rather than $10.00. (3) The maximum monthly increase in retirement due to the cost-of-living amendment is 25 per cent, as the local fund has been operative only since 1946.

Local Retirement Acts

Ch. 871 (HB 1104) amends the State Revenue Act to exempt pensions paid by municipal and county firemen's retirement and pension funds from gross income for state income tax purposes. This act provides the same tax advantage for firemen as is enjoyed by members of the larger statewide retirement systems.

Ch. 412 authorizes Union County to abolish the Union County Employees' Retirement System, which is not actuarially sound, and bring county employees under the Local Governmental Employees' Retirement System.

Ch. 1258 (HB 1376) empowers the Forsyth County and Winston-Salem retirement system and the state to enter into an agreement to protect the retirement benefits of county and municipal employees who will become state employees as a part of the new court system.

Local acts authorize the towns of Fuquay-Varina, La Grange, and Rockingham to establish local retirement systems. Ch. 168 (HB 245) authorizes the Town of Lincolnton to pay pensions to certain retiring employees in addition to those paid by the Local Governmental Employees' Retirement System.

Other local retirement acts (1) establish or amend the supplementary firemen's pension fund of Albemarle, Greenville, Mt. Airy, and Wadesboro; (2)

delete the restrictions on the number of firemen retiring annually who belong to the Charlotte Firemen's Retirement System; (3) liberalize the benefits paid to policemen by the Mecklenburg County Emergency and Pension Fund; (4) authorize changes in the Emergency Reserve Fund for law enforcement officers of the City of Greensboro due to the discontinuance of the court cost fee; (5) abolish the Columbus County Peace Officers' Association and distribute unobligated funds to individual members on a pro rata basis; and (6) pay the funds of the Brunswick County Peace Officers' Relief Association into the general fund of the county to be spent for any county public purpose.

Other Local Acts

Defense of Local Employees

Ch. 1093 (HB 1169) authorizes municipalities and counties to provide for the defense of their employees and officials in any civil or criminal action or proceeding brought against such an employee or official in his official or individual capacity on account of an act or omission in scope and course of his employment. Defense may be provided by the local governmental unit by its own counsel, by employing other counsel, or by purchasing insurance requiring the insurer to provide the defense.

Residence of Local Officials

Despite the Supreme Court's holding that a municipal policeman is a public officer and that only registered voters are eligible for office, the towns of Lincolnton and Robbinsville were authorized to employ policemen who are not residents or qualified voters. The Town of Speed was authorized to appoint a town clerk who is not a resident.

Workmen's Compensation

Ch. 84 (SB 80) amends the Workmen's Compensation Act to increase the maximum weekly compensation rate of disabled employees from $37.50 to $42 and total compensation from $12,000 to $15,000. The act also increases maximum compensation for serious facial, head, or body disfigurement or loss of or permanent injury to any important external or internal organ or part of the body from $3,500 to $4,000. Maximum burial expenses payable under the act are increased from $400 to $500.

Ch. 1229 (HB 1385) amends the Workmen's Compensation Act to provide that in case of death as well as disabling injury to a volunteer fireman or member of an organized rescue squad under compensable circumstances, compensation payable shall be calculated upon average weekly wages earned in his principal employment.

Chapter 182 (HB 359) provides that the sheriff of Union County may not exclude himself or his deputies from the provisions of the Workmen's Compensation Act. The sheriffs of thirteen other counties may still exempt themselves and their deputies from the act.

BEN OVERSTREET

In memoriam

Ben Overstreet was a warm and friendly man with long experience at the national level in the field of corrections. When he joined the staff of the Institute of Government in 1963, he was retiring from the roles of penologist with the Office of the Provost-Marshal General, Department of the Army, and consultant to the National Council on Crime and Delinquency. An attorney at law, with B.Sc. and LL.B. degrees, respectively, from Mercer University and the University of Georgia in his home state, Ben also had practiced law and served with the U. S. Department of Justice and the U. S. Bureau of Prisons.

As an assistant director and associate professor of public law and government at the Institute of Government from 1963 to 1967, he worked with Lee Bounds and, when Bounds became State Prisons Director in Raleigh, took over the Corrections field. During this period, he was consulted by the President's Commission on Law Enforcement and Administration of Justice.

On October 11, 1967, shortly after retiring to Florida from his post at the University and the Institute, Ben Overstreet died. He had hoped to return to Chapel Hill from time to time for spot consultation and appearances on Institute of Government programs. His Institute colleagues and clientele will miss him.

by Ben F. Loeb, Jr.

REGULATION of INTOXICATING LIQUORS

Chapter numbers given refer to the 1967 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate. GS refers to the General Statutes of North Carolina.

Several significant bills relating to the regulation of intoxicating liquors were enacted during the 1967 Session of the North Carolina General Assembly. The most highly publicized of these was Ch. 222 (SB 2), the so-called "brown bag bill," which was introduced on February 8 by Senator John J. Burney, Jr., of New Hanover County. This bill was finally ratified on April 24 after two committee substitutes, numerous amendments, and some heated debate. Two other important enactments include Ch. 614 (HB 976), which added a new provision authorizing the manufacture of fortified wines, and Ch. 759 (SB 478), which changed the method of collecting the beer and wine excise taxes.

Although efforts to legalize sales of liquor by the drink were unsuccessful, this session of the General Assembly probably did more to liberalize the liquor laws than any since 1937, when the present system of government-owned alcoholic beverage control (ABC) stores was established.

The Brown Bag Bill

Ch. 222 (SB 2) is a very complex and carefully drawn piece of legislation that authorizes the transportation, possession, and consumption of alcoholic beverages under certain specified circumstances. Generally speaking, Ch. 222 is statewide in application and, except as specifically noted, applies in all cities and counties whether or not the governmental unit in question has elected to establish ABC stores.

The first section of the act completely rewrites GS 18-51, thereby amending in several vital respects the Alcoholic Beverage Control Act of 1937. It should be noted that new GS 18-51 applies almost exclusively to "alcoholic beverages" as that term is defined by the aforementioned ABC Act—in other words to beverages containing over 14 per cent of alcohol by volume. The laws relating to beer, unfortified wine, and other beverages with a lower alcoholic content remain substantially unchanged.

Transportation

Subsection 1 of GS 18-51 provides that a person may transport up to one gallon of alcoholic beverages to and from any place where the beverage may be lawfully possessed or consumed. If the seal on the beverage container has been broken, however, the beverage may not be kept in the "passenger area" of a motor vehicle. The obvious intent of this provision is to keep alcoholic beverages out of the reach of the vehicle driver, thus making it impossible to drink while driving. Whether the glove compartment constitutes part of the passenger area remains an open question. In view of the intent of the provision, however, it is probable that the courts will construe "passenger area" to include the glove compartment.

Private Property

Subsection 2 permits a person to possess and consume alcoholic beverages in certain private places including: (1) his own home; (2) the home of another person; (3) a hotel or motel room; (4) a place of secondary residence, such as a beach cottage; (5) on any other private property provided (a) the property in question is not used primarily for commercial entertainment, (b) the premises are not open to the general public at the time, and (c) the consumption takes place out of the view of the general public. This last provision makes it permissible to consume alcoholic beverages on any private property subject to the three enumerated conditions. The prohibition as to premises used for commercial entertainment was probably aimed at preventing consumption in the so-called "go-go clubs."

Social Establishments

Subsection 3 authorizes "social establishments" to furnish lockers on their premises for the storage of

alcoholic beverages belonging to the establishment's bona fide members. The quantity that may be so stored for any individual member is limited to one gallon, but there is no limit on the total amount that may be kept on the premises.

No country club, veterans' or fraternal organization, or other social establishment may store these beverages until it has secured a permit from the State Board of Alcoholic Control for this purpose. An original permit may be obtained by a qualified establishment upon application to the State ABC Board and payment of a $200 application fee. Permits must be renewed each year; the annual renewal fee is 25 per cent of the original fee, or $50.

A social establishment is not considered qualified for a permit unless it is operated *solely* for purposes of a social, recreational, patriotic, or fraternal nature. Thus establishments that operate for a profit are not eligible for a permit under this subsection.

The beverages must be stored in individual lockers with the name of the owner clearly displayed on both the locker and the bottle or bottles. The act also provides that the beverages are for the exclusive use of the member who owns them and his guests; their distribution to any other person is not permitted.

Restaurants

A restaurant or "related place" located in any county in which at least one county or city ABC store has been established may secure a permit authorizing the on-premises consumption of alcoholic beverages provided that the restaurant or related place: (1) has an inside dining area with a seating capacity for at least 36 persons; (2) has a separate kitchen facility; and (3) is engaged primarily and substantially in the preparation and serving of meals or the furnishing of lodging. (Thus a motel or hotel with a restaurant or coffee shop accounting for only a fraction of its gross income might still be eligible for a permit because it would be engaged primarily in the furnishing of lodging.)

Permits may be obtained from the State ABC Board in Raleigh. The fee for an initial permit is $100 if the restaurant has a seating capacity for less than 50 persons and $200 for all other restaurants and related places. The annual renewal fee is 25 per cent of the original permit fee, or $25 and $50 respectively.

Special Occasions

As a general rule a person may not possess over one gallon of alcoholic beverages even in an establishment that has secured a permit from the State ABC Board. The General Assembly did, however, make provision for the lawful possession of alcoholic beverages in quantities in excess of one gallon on "special occasions" such as wedding receptions, parties, etc. There are three separate types of places where an individual may possess over one gallon of alcoholic beverages for a special occasion: (1) in his personal residence or premises under his exclusive control; (2) in a social establishment of which he is a member; or (3) in a commercial establishment if he is using the premises or a certain part of the premises for a private meeting or party.

The possession of over one gallon of alcoholic beverages in a social or commercial establishment is lawful only if the establishment has obtained a special-occasion permit from the State ABC Board. This permit is in addition to the regular permit required for the on-premises consumption of alcoholic beverages.

Apparently the quantity of alcoholic beverages that a person may lawfully possess for a special occasion in one of the three above-enumerated types of places is not limited. However, no statutory authority exists to transport over one gallon of alcoholic beverages at any one time. In addition, GS 18-32 still makes the possession of over one gallon of spirituous liquors (a form of alcoholic beverage) prima facie evidence of unlawful possession for the purpose of sale; therefore a person possessing over one gallon might find himself having to establish that the liquor was indeed for a reception or party and not for sale.

Unlawful Possession or Use

Subsection (6) of new GS 18-51 makes it unlawful to drink alcoholic beverages or to offer a drink to another person on the premises of an ABC store, or on any other premises used by a local ABC board, or on a public street. This same subsection also prohibits the public display of alcoholic beverage at an athletic contest. As originally enacted subsection (6) would also have contained penalties for public drunkenness. Late in the session, however, a bill (HB 1373) was enacted that completely rewrote GS 14-335 (the principal public-drunkenness statute) and repealed the public-drunkenness prohibition contained in Ch. 222. For a complete analysis of HB 1373 (Ch. 1256), see the article on Health in this issue.

Other provisions of subsection 6 prohibit (1) the possession or consumption of alcoholic beverages at social establishments or restaurants not displaying an appropriate permit issued by the State ABC Board; and (2) the possession or consumption at any other place unless specifically authorized by law.

Sales to Minors

Section 3 of Ch. 222 rewrote and clarified GS 18-90.1. New GS 18-90.1 makes it unlawful for any person *knowingly* to sell or give malt beverages or unfortified wine to a minor under 18 years of age. It is also declared to be unlawful for the minor to purchase or possess, or for any person to aid him in purchasing, any of these beverages. This section likewise prohibits any person from *knowingly* selling or giving any alcoholic beverage (fortified wine, spirituous liquor) to a minor

under 21 years of age, and makes it illegal for the minor to purchase or possess, or for anyone to aid him in purchasing, alcoholic beverages.

Malt Beverage and Wine Tax Collection

Ch. 759 (SB 478) rewrote major portions of GS 18-81, which is part of the Beverage Control Act of 1939. Heretofore excise taxes levied on malt beverages and wine were paid by the manufacturer to the State Department of Revenue. This was actually accomplished by the manufacturer's buying wine tax stamps, or malt beverage tax-paid crowns or lids, from the Revenue Department. The stamps, crowns, or lids were then affixed by the manufacturer before delivery of the beverage to the wholesale distributor. In effect, the manufacturer paid the tax in advance.

Ch. 759 alters this system in two vital respects: (1) The tax will henceforth be paid by the wholesale distributor rather than the manufacturer; and (2) tax-paid crowns, lids, or stamps need no longer be affixed to the beverage containers.

Under the new act, which becomes effective on January 1, 1968, each wholesale distributor will pay the excise tax on or before the fifteenth day of the month following the calendar month in which he sells the beverages. The wholesaler must submit a report with the monthly payment showing the quantity of malt beverages or wine: (1) constituting his beginning and ending inventory for the month; (2) shipped to him from inside this state; (3) shipped to him from outside this state; (4) sold or otherwise disposed of by him in this state; (5) sold by him to United States military units in this state; (6) sold or disposed of by him to persons outside this state.

This report shall be rendered on forms prescribed by the Commissioner of Revenue and must contain any other information required by the Commissioner. In addition the wholesaler is required to maintain for a period of three years books and records that may be necessary to substantiate the monthly reports and excise tax payments. Any wholesaler failing to produce these records on demand of the Revenue Commissioner or his agent will be guilty of a misdemeanor, punishable by fine or imprisonment in the discretion of the court.

Wholesale distributors are given an automatic 2 per cent discount on the monthly tax to compensate for the spoilage and breakage of beverages and for expenses incurred in preparing the monthly reports. In addition to the 2 per cent allowance, wholesalers are not required to pay the excise tax on any beverages destroyed or rendered unsaleable by a "major disaster." Fifty or more cases of malt beverages or twenty-five or more cases of wine must be damaged or destroyed before the wholesaler may file for a credit under the major-disaster clause.

Failure of a wholesaler to make timely excise tax payments will result in a 10 per cent penalty, plus interest on the delinquent tax and penalty at the rate of 1/2 per cent a month.

The new act does not change the excise tax rates on malt beverages and wines, and theoretically should not cause any revenue loss to the state. The fact is, however, that with the elimination of tax stamps and lids, it can no longer readily be discerned whether the taxes have been paid on a particular container of beverages being sold at retail. Thus, an enforcement problem of considerable magnitude has undoubtedly been created by the enactment of Ch. 759.

Manufacture of Fortified Wines

Ch. 614 (HB 967) amended the Fortified Wine Control Act of 1941 by adding a new GS 18-99.1. The principal effect of the new section is to legalize the manufacture of fortified and sweet wines in North Carolina. Fortified wines are those having over 14 per cent of alcohol by volume, while sweet wines are defined as those having 14 per cent to 20 per cent of alcohol by volume. Their alcoholic content puts both types within the statutory definition of alcoholic beverages—that is, a beverage having an alcoholic content in excess of 14 per cent. The manufacture of malt beverages and unfortified wine was authorized by the Beverage Control Act of 1939; but the manufacture of alcoholic beverages was not lawful prior to the enactment of Ch. 614. The General Assembly did not amend existing law to permit the distilling of spirituous liquors or the manufacture of any type of alcoholic beverage other than as noted above.

Expenditures For Research

Prior to 1967 GS 18-45 (15) permitted county and municipal boards of alcoholic control to expend 5 per cent of their total profits "for education as to the effects of the use of alcoholic beverages and for the rehabilitation of alcoholics." Ch. 1178 (SB 739) amended this section to add "research as to the effects of the use of alcoholic beverages" to the other purposes for which the 5 per cent could be expended.

Local Acts

A variety of local bills affecting intoxicating liquors were enacted by the 1967 General Assembly. Many of these acts permit municipal elections on the question of establishing alcoholic beverage control stores. Under the general law, all ABC store elections must be conducted on a county-wide basis; therefore special legislation or a local act is a prerequisite to holding a municipal election. Several of the local acts are concerned solely with regulation of sales of beer and unfortified wine, while a few relate to ABC stores as well as to beer and wine sales. The more interesting of the local acts are noted below in alphabetical order by county.

Alamance

Ch. 250 (HB 115) authorizes the sale of beer and wine for off-premises consumption within the corporate limits of the Town of Elon College, but prohibits the sale of these beverages for on-premises consumption within one mile of the Alamance Building on the Elon College campus. Ch. 417 of the Public Laws of 1933, which prohibited the sale of beer and wine within the village of Elon College, was repealed.

Ch. 150 (HB 210) amends Ch. 500 of the 1961 Session Laws to provide that the Graham city council shall determine what percentage of the funds received by the city from ABC store profits are to be used for educational purposes. Prior to this amendment, a maximum of 10 per cent could be so expended.

Bertie

Ch. 21 (HB 73) repealed Ch. 903 of the 1947 Session Laws, which prohibited the sale of beer and wine within one mile of the Aulander Baptist Church or the Aulander High School. Evidently these beverages may now be sold in the formerly restricted area —subject, of course, to the provisions of the Beverage Control Act of 1939.

Buncombe

Ch. 836 (HB 737), which incorporated the Town of Montreat, prohibits the sale of beer or wine within the corporate limits of the town. Apparently no beer or wine election pursuant to the Beverage Control Act may be held within this area.

Cabarrus

Ch. 195 (HB 428) provides for an ABC store election in the City of Concord. In the event that the election is successful, net profits from the ABC store operation (after 5 per cent is deducted for law enforcement purposes) will be distributed as follows: (1) 25 per cent to Cabarrus County, and (2) 75 per cent to the City of Concord. Ch. 196 (HB 429) authorizes an ABC store election in the Town of Mt. Pleasant; profits will be distributed exactly as the profits from the Concord store if the electorate votes for establishment of the stores.

Catawba

Ch. 288 (HB 438) amends Ch. 784 of the 1953 Session Laws to provide that the county ABC board may expend 5 per cent to 10 per cent of total profits for law enforcement, education as to the effect of alcohol, and rehabilitation of alcoholics. The board may contract with public or private agencies to furnish these services.

Chatham

Ch. 365 (HB 791) authorizes an ABC store election and a beer-wine election in the Town of Pittsboro. If the beer-wine election is successful, these beverages may be sold for off-premises consumption only and must be unrefrigerated at the time of sale. In addition, the beer must be sold in kegs or six-packs. These restrictive provisions are contrary to general law, which permits sales for on-premises or off-premises consumption in containers of several sizes and at any temperature. ABC store profits will be distributed as follows: (1) 65 per cent to the general fund of the city, with 5 per cent earmarked for law enforcement, 10 per cent for debt retirement, and 10 per cent for library and recreational purposes; (2) 35 per cent to the county general fund, with 5 per cent earmarked for law enforcement purposes.

Ch 366 (HB 849) provides for an ABC store election in the Town of Siler City. Profits from the operation of the store are to be distributed exactly as are the profits from the Pittsboro store.

Cherokee

Ch. 891 (SB 637) provides for an ABC store election in the Town of Andrews. Seventy per cent of the profits will go to the Andrews general fund and 30 per cent to the general fund of the county. The act specifies that at least half the funds going to the county must be expended for public education.

Cleveland

Ch. 245 (SB 197) authorizes a special election in Kings Mountain on the question of the off-premises sale of beer and wine and the establishment of one or more ABC stores. Five per cent to 10 per cent of the ABC store profits are required to be expended for law enforcement; an additional 5 per cent may be expended for education as to the effects of alcohol and for the rehabilitation of alcoholics. Of the remaining funds, 25 per cent is to go to the board of education of the Kings Mountain city administrative unit, one-fifth of this amount being earmarked for supplementing teachers' salaries. All other funds are to go to the city to be used for any authorized function or purpose.

Columbus

Ch. 540 (HB 764) authorizes an ABC store election in each incorporated municipality in the county if (1) a county-wide election is not called on or before June 1, 1967, or if (1) a county-wide election is held but the vote is against establishing ABC stores. In those municipalities in which ABC stores are established pursuant to this chapter 5 to 10 per cent of gross revenues must be used for law enforcement purposes. Net profits will then be distributed as follows: (1) 5 per cent to the municipal general fund to be used for the fire department, (2) 50 per cent to the municipal general fund to be expended for any public purpose for which tax or nontax revenues may be used, (3) 45 per cent to the county general fund to be allocated in equal parts to

the school units in which at least one ABC store is located.

Dare

Ch. 318 (HB 612) exempts Dare County from the provision of G.S. 18-45, which requires each county ABC board to employ at least one ABC officer. The sums formerly expended by the ABC board for liquor law enforcement are to be used by the sheriff's department. Another act, Ch. 969 (HB 1279), increased the amount to be expended for liquor law enforcement from 5 per cent to 10 per cent of total ABC store profits.

Gaston

Ch. 830 (SB 619) authorizes the Gastonia city council to call a special election on the questions of (1) permitting beer and wine to be sold for off-premises consumption, and (2) establishing city ABC stores. In the event that ABC stores are established, all profits from their operations will be paid into the Gastonia general fund.

Ch. 612 (HB 718) authorizes the governing body of the Town of Dallas to call a special election on the questions of legalizing the sale of beer and wine for off-premises consumption and establishing municipal ABC stores. All ABC store profits are to be paid quarterly into the town general fund, with 5 per cent of the net profits to be expended in enforcing the alcoholic beverage control laws.

Guilford

Ch. 951 (SB 667) amends Ch. 841 of the 1955 Sessions Laws relating to the distribution of profits from the High Point ABC stores. Under the new act 5 per cent is to be expended for law enforcement, education, and rehabilitation purposes; 20 per cent is to be paid into the Guilford County general fund; and the remaining 75 per cent is to go to the High Point tax collector to be used by the city for any public purpose.

Harnett

Ch. 604 (HB 999) authorizes an ABC store election in the Town of Coats, with profits to be distributed as follows: 25 per cent to the Harnett County public library, and 75 per cent to the general fund of the Town of Coats.

Haywood

Ch. 671 (SB 526) provides for an ABC store election in the Town of Canton. Ten per cent of the net profits are to be used for law enforcement and an additional 5 per cent may be used for education and rehabilitation programs. Of the remaining profits, 64 per cent is to go to the town general fund and 36 per cent to the county general fund; one-half of this 36 per cent is earmarked for the county board of education. The act specifies that the town ABC officers are to have county-wide jurisdiction—a somewhat unusual provision, since municipal ABC officers normally exercise jurisdiction only inside the corporate limits.

Ch. 609 (SB 455) provides for an ABC store election in the Town of Waynesville. Profits from the operation of the store or stores are to be distributed as follows: (1) Ten per cent will be used for law enforcement and, in the discretion of the board of aldermen, 5 per cent for education and rehabilitation programs. (2) Sixty-four per cent of the remaining profits are to go to the town, with various percentages earmarked for industrial development, the county public library, the town recreational commission, and the Waynesville general fund. (3) The other 36 per cent will go to the general fund of Haywood County, with one-half earmarked for the school fund.

Jackson

Ch. 406 (SB 347) provides for an ABC store election in the Town of Sylva, with net profits to be distributed as follows: (1) Five per cent for law enforcement purposes and 5 per cent each for the town and county recreation commissions. (2) The remaining funds are to be divided equally between the town and county general funds.

Lincoln

Ch. 603 (HB 864) provides for an election in the Town of Lincolnton on the questions of authorizing the sale of beer and wine for off-premises consumption and establishing one or more ABC stores. Fifteen per cent of the ABC store profits are to go to the county and the remainder to the city.

Mecklenburg

Ch. 1267 (HB 1424) authorizes the county ABC board to spend an additional $250,000 yearly for programs of education, research, and treatment of alcoholics.

Ch. 1273 (HB 1425) attempts to authorize any county or municipal peace officer (including ABC officers), if so designated by the county ABC board, to (1) investigate the operation of premises holding a license or permit for the sale, storage, or possession of intoxicating liquors; (2) examine the books and records of these permittees; and (3) procure evidence with respect to liquor law violatons. HB 1425 originally had five sections, the first two of which were deleted by a committee amendment. Unfortunately the key remaining section (original section 3) is dependent for its meaning and effect on deleted section 1, to which it refers. Therefore this act is possibly in large part a nullity.

Northampton

Ch. 426 (HB 745) authorizes the county ABC Board to expand annually 15 per cent of its net profits or $12,500, whichever is greater, for liquor law enforcement. Under the general law as contained in GS 18-45 (15), a maximum of 10 per cent may be so used.

Pasquotank

Ch. 504 (HB 872) repealed Ch. 368 of the 1947 Session Laws. The repealed act had authorized the appropriation of 15 per cent or $6,000 of the county ABC store profits to the County Board of Education to supplement teachers' salaries.

Richmond

Ch. 1062 (HB 833) repeals Ch. 535 of the 1965 Session Laws and amends Ch. 982 of the 1963 Session Laws to provide that 10 per cent of the Hamlet ABC store profits shall be paid to the general fund of Richmond County for the use for the Richmond Technical Institute, and the remaining 90 per cent shall be paid to the Hamlet general fund.

Robeson

Ch. 405 (SB 343) authorizes an ABC store election in any municipality of the county that has a population of over 1,000 persons. Forty-five per cent of the net profits are to go to the municipal general fund and 50 per cent to the county general fund, with the remainder to be used for law enforcement.

Rockingham

Ch. 616 (SB 205) amends Ch. 650 of the 1965 Session Laws to give Reidsville ABC officers county-wide jurisdiction.

Transylvania

Ch. 291 (SB 204) authorizes an ABC store election in the Town of Brevard. The act provides that as much as 10 per cent of the ABC store profits may be used for law enforcement purposes and an additional 5 per cent for education and rehabilitation programs. Of the remaining funds 25 per cent are to go to the county and 75 per cent to the town.

Wilson

Ch. 147 (HB 303) modifies G.S. 18-45(15) to permit the Wilson ABC board to spend 15 per cent of ABC store profits for law enforcement, rather than the 10 per cent authorized by general law.

Proposals That Failed Passage

Approximately twenty-five bills that would have had statewide application failed to pass one or both houses. A few of these proposals are of general interest and deserve brief mention.

SB 89 would have made it unlawful to possess beer or unfortified wine in an open container on a public street or in a motor vehicle. Absent a local ordinance, no law presently prohibits a person from drinking these beverages on a public street or even while driving a motor vehicle.

SB 182 would have authorized liquor by the drink on a local-option basis. An election on the question of "adoption of control of on-premises consumption of alcoholic beverages" could have been conducted in any municipality or county that had previously voted to establish ABC stores. Under this bill licenses to engage in by-the-drink sales would have been issued by the appropriate local ABC board to qualified clubs, hotels, and restaurants. SB 182 failed to pass either house, but probably the last has not been heard of the liquor-by-the-drink issue.

SB 648 would have permitted any incorporated municipality with an organized police force to conduct an ABC store election without having to secure the passage of a special act in the General Assembly. Profits, after expenditures for law enforcement and education as to the effects of alcohol, would have been divided equally between the general funds of the city and the county.

SB 661 would have enlarged the jurisdiction of the state ABC officers. Under present GS 18-39.2, these officers may make arrests for only liquor law violations. SB 661 would have vested them with authority to arrest for any crime committed in their presence and with the power to serve warrants and other process.

HB 1340 would have amended G.S. 18-140 to give the State ABC Board and its hearing officers the powers of a trial justice for the purpose of compelling the attendance of witnesses at Board hearings. Witnesses would have received $2 per day and 5 cents a mile. Presently GS Ch. 18 is silent on mileage and per diem for witnesses and on the appropriate procedure to follow if a witness refuses to appear.

by S. Kenneth Howard

STATE TAX POLICY

Chapter numbers given refer to the 1967 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate. GS refers to the General Statutes of North Carolina.

Two events that occurred before the 1967 General Assembly convened provided the backdrop against which questions of tax policy were subsequently considered. The first was the submission of the *Report of the Commission for the Study of the Revenue Structure of the State*, commonly known as the *Report of the Tax Study Commission*, in September, 1966. The second event was Governor Moore's announcement on November 25, 1966, that he would propose "a general and broad tax reduction" to the legislature.

The Governor's Budget Message on February 13, 1967, made explicit [pp. 26-29] the components of his tax-reduction proposal. It contained four parts, each of which was subsequently adopted in Ch. 716 (SB 18). All of the changes affected the individual income tax and will become effective for income earned after January 1, 1968. First, the basic dependency allowance is to be increased from $300 to $600 —the level that is the most common among states taxing personal income and equivalent to that granted by the federal government. Second, an additional $600 deduction is to be allowed for each dependent enrolled at an "accredited college or university or other institution of higher learning." Precise criteria of eligibility for this deduction are to be determined by the Commissioner of Revenue, but the Governor's intentions on this point were clear in his Budget Message: "This additional dependency allowance would cover students attending colleges and universities within and without the State of North Carolina, as well as those students attending community colleges, technical institutes, business colleges, barber and beauty schools" [pp. 27-28]. Third, an additional income exemption of $1,000 will be granted to persons 65 years of age and older. Finally, all of the service pay of enlisted men, and up to $500 per month of the pay of commissioned officers, earned while serving in an area declared by the President to be a combat zone will be exempted from state income taxes. In all, these changes would reduce state revenues during the 1967-69 biennium by approximately $23.3 million [Budget Message (1967), p. 28].

The Tax Study Commission's proposals fared less well than the Governor's. Of the Commission's 22 proposals [*Report of the Tax Study Commission* (1966), pp. 7-9], nine were incorporated into law, although not always in precisely the form recommended by the Commission. However, one of its proposals, dealing with the exemption of military pay received while in a combat zone, was incorporated into the Governor's program. Three of the others were included in Ch. 1196 (SB 271), which reorganized the State Board of Assessment [See Property Taxation, in *Popular Government* (September, 1967), p. 70.]

Supporting or implementing legislation was not introduced on eight of the Commission's recommendations.

Local Tax Sources

The Tax Study Commission viewed the narrow tax base, limited revenue production, and general fiscal difficulties of local governments with great sympathy. Many local units deem property taxes to be too high, and the Commission received numerous suggestions that local governments be given additional productive tax sources or that state support for local activities be increased through a variety of means. The Commission itself sought to provide some property tax relief while at the same time not reducing the revenues available to local units. It recommended a package of proposals that included granting to manufacturing companies a tax credit against corporate income taxes equal to 50 per cent of the local property taxes that those companies paid on their inventories of raw materials and goods

in process. The revenue loss resulting from this action would have occurred in the state's general fund rather than in local revenues and was to be offset by the inauguration of a cigarette and tobacco products tax. The Commission also recommended establishment of a new local tax source and enlargement of another one. It called for the creation of a 1 per cent county-wide local - option sales tax to be "piggy-backed" onto the state sales tax, and for municipal motor vehicle tags to be increased from $1 to $10 per year.

The record of the 1967 General Assembly indicates that it was far less convinced of the plight of local governments than was the Tax Study Commission. None of the Commission's above recommendations were adopted, and a plethora of other measures designed to augment local revenues were also defeated. Although it was a part of the legislative program of both the League of Municipalities and the Association of County Commissioners, the local-option sales tax (HB 593) did not muster sufficient general support for its enactment. It was estimated that adoption of the bill, which was introduced by one of the legislators who served on the Tax Study Commission, would produce nearly $54 million annually for the state's cities and counties. Although the Governor had not given the proposal a clear endorsement, he had urged in his Budget Message [p. 19] that the General Assembly "give serious consideration" to it. The proponents of additional local revenues did not capitalize on the initiative they held at the outset of the session.

The General Assembly, however, did not leave local units completely empty-handed. In ratifying Ch. 1272 (HB 1369) on the last day of the session, it altered the allocation of the franchise tax paid by electric, street railway and bus, gas, water, sewerage, and telephone companies. Currently 3/4 of 1 per cent of the 6 per cent franchise tax rate is earmarked for return to municipalities [GS 105-116 (g) and -120 (d)]. Under this statute, the municipal share will rise to 2 per cent after June 30, 1969, and to 3 per cent after June 30, 1970. In doing this, the legislature rejected two proposals (SB 384 and HB 874) that would have raised the local share to 3 per cent immediately (July 1, 1967) and rejected a section of the ultimately adopted bill that would have raised the share to 1 1/4 per cent beginning in July, 1968. Thus one-third and then one-half of the collections from this source will ultimately be returned to the local level. However, another General Assembly will convene between now and the effective date of this new allocation.

Counties obtained a brand new source of revenue in accordance with one of the proposals of the Tax Study Commission [*Report, op. cit.*, pp. 9, 68, 78-79]. This is a real estate transfer tax [Ch. 986 (HB 563)] that replaces a similar federal tax due to expire on January 1, 1968. [See County Legislation, *Popular Government* (September, 1967, p. 25.]

Apparently the General Assembly concluded that as a general rule direct state action to mitigate local revenue problems was unnecessary and that local governments should utilize more fully the sources already available, particularly the property tax. Nonetheless, the legislature was not unmindful that the severity of the difficulties tends to vary from one locality to the next. The legislators from the Charlotte area argued the special needs of their constituents with sufficient persuasiveness that the General Assembly empowered Mecklenburg County to hold a local-option election on the imposition of a sales tax within the county [Ch. 1096 (HB 1249).] [See City Legislation, *Popular Government* (September, 1967), p. 30, and Property Taxation, *ibid.*, p. 71.]

Except for the revenue increases noted above and two acts [Ch. 701 (HB 427) and Ch. 788 (SB 208)] that clarified the applicability of the intangible personal property tax to the beneficial interest that state residents may have in foreign trusts, the General Assembly defeated all other proposals that would have directly affected the tax and revenue resources of local governments. These proposals provide an interesting panorama of alternatives.

The largest proposal in terms of its potential monetary impact was probably HB 1238. It was introduced late in the session and sought to increase the statewide sales tax by 1 per cent, with the collections from the additional surtax earmarked for allocation to counties and municipalities. HB 1090 also sought to make sales tax proceeds available to local units in this instance by returning 15 per cent of the sales tax collections to the county of origin.

Another proposal that would have entailed large dollars amounts was HB 1263, which would have returned 50 per cent of net individual income tax collections to the county of origin, assuming that such county did not levy a supplementary ad valorem tax for purposes of school construction or salary augmentation. The proceeds of this shared tax were to be earmarked for school construction and salaries of school personnel.

North Carolina is unique among the states in not having a cigarette and tobacco tax. The 1967 General Assembly left the state's status intact by defeating two proposals. HB 1037 called for a cigarette tax of 2 cents per pack and a 10 per cent tax on the retail price of other tobacco products, with proceeds to go into the state general fund. HB 939 called for higher rates (5 cents and 20 per cent respectively) and would have earmarked the proceeds to counties exclusively for school purposes.

The General Assembly also defeated HB 182, which called for a tax of 2 cents per package on all cigarettes sold from vending machines in the City of Asheville. Thus the special new tax possibilities were limited to the sales tax and to Mecklenburg County.

Supported by the Tax Study Commission [*Report, op. cit.*, p. 27] and introduced by a legislative member of the Commission, SB 157 sought to raise the municipal motor vehicle license tag price from $1 to $10. The measure never got out of the Senate Finance Committee. [See City Legislation, *Popular Government*, September, 1967, p. 19.]

Beer and wine taxes were another frequently suggested source for additional local revenues. These taxes are currently collected by the state and shared with local units. HB 1348 sought to impose a 10 cents per bottle additional tax on all wines, with proceeds returned to the city or county in which the retail seller is located. SB 492 (HB 1028) sought to raise the local shares by increasing the local beer tax distribution from 47 1/2 per cent to 75 per cent, and the wine tax distribution from 50 per cent to 75 per cent.

HB 1021 would have authorized local governing bodies of counties and municipalities to levy a tax on alcoholic beverages sold through ABC stores. The amount of the tax was to vary according to the size of the container sold, and the proceeds were to be apportioned locally in accordance with the distribution of ABC store profits. HB 1248 provided for exactly the same type and rate of taxation, but it removed local initiative and discretion in this matter and called for a statewide tax to be imposed at the stated rates, the proceeds to be redistributed among the counties and municipalities. The latter bill was more in keeping with the tone of SB 386, which sought to prohibit local units from levying any tax on goods sold through ABC stores. All of these measures failed.

Mecklenburg attempted to use the local-bill route in another effort to obtain additional local revenue, this time through ABC store sales. HB 1424 as introduced called for a special 10 cents per bottle surtax to be imposed in Mecklenburg County on all sales in ABC stores, with half of the proceeds marked for alcoholic rehabilitation, treatment, and education. Presumably the other half of the collections was to be remitted to the state general fund. As enacted, however (Ch. 1267), the county is simply authorized to expend an additional $250,000 for alcoholic rehabilitation, treatment, education, and research, and the additional tax is not imposed. [See the article on liquor laws in this issue, p. 28.]

The Tax Study Commission had proposed some changes in the intangible personal property tax [*Report, op cit.*, pp. 13-17]. On balance, these proposals would have netted slightly larger revenues for local units from this source (*ibid.*, p. 120), but implementing legislation was not introduced. HB 1305 would have reduced local receipts from intangibles by granting holders of interests in foreign trusts a tax credit against the North Carolina intangibles tax for similar taxes paid in other states. SB 49 sought to reduce the tax rates applied to intangibles but would have offset this loss to local units through payments out of a state equalization fund that was to be created for this purpose. Neither of these measures passed.

Averse as it was to giving substantial additional revenues to local units, the General Assembly resisted the temptation offered by SR 383 (HR 901), which called upon Congress to strengthen state and local governments by sharing federal taxes with them. These resolutions never got out of the committees to which they were assigned.

State Tax Sources

Aside from the Governor's tax package, the General Assembly made few substantial changes in the state's tax structure. However, one of the biggest bills of the session, in bulk, was a technical revision of the revenue laws [Ch. 1110 (SB 183)], which covered 125 pages in all. Only three of the most important aspects of these changes will be summarized here. First, the income tax article (GS 105-130 through -159) has been broken into three distinct divisions so that provisions covering corporation income taxes are clearly separated from those governing individual income taxes. This separation will do a great deal to clarify the law and simplify taxpayer compliance. Second, the individual income tax law as it pertains to estates and trusts, the third of the three new major sections of this part of the statutes, has been completely rewritten. Third, throughout the income tax laws and elsewhere, effort has been made to bring state law more nearly into conformity with federal statutes.

Individual Income Tax

A variety of additional changes were made in the individual income tax laws. Exempted from taxation under GS 105-141 were federal military disability pay [Ch. 1151 (SB 8)], retirement benefits up to $1,200 received by certain other federal employees [Ch. 1025 (HB 80)], certain medical benefits that are provided employees under programs administered entirely by their employers rather than by insurance companies [Ch. 1221 (HB 1306)], amounts received from local (as contrasted with state-operated) firemen's retirement and pension funds [Ch. 871 (HB 1104)], and moving expenses paid by the employer [Ch 1110 (SB 183)]. All of these provisions are applicable to income earned during 1967. Some new deductions are also to be allowed. Substitute school teachers may deduct summer-school expenses [Ch. 550 (SB 83)], farmers may deduct land-clearing expenses [Ch. 259 (HB 354)], and individuals who move may deduct unreimbursed moving expenses [Ch. 1110 (SB 183)]. Beginning in 1969, a self-employed individual or an owner-employee may deduct contributions to an approved retirement plan for the self-employed [Ch. 1252 (HB 1312)].

Two administrative changes relating to individual income taxes were also adopted. A taxpayer is no longer required to pay a tax balance of less than $1.00, and the state will not refund an amount below this except upon written request [Ch. 702 (HB 448)].

Penalties and interest will no longer accrue on taxes owed by members of the armed forces while they are serving in a combat zone [Ch. 706 (HB 656)].

Some efforts to alter the individual income tax met with defeat. HB 3 sought to give every individual who maintains a household an income exemption of $2,000, while HB 176 sought to give such an exemption to a wife living with her husband if the husband's adjusted gross income was $2,000 or less. The effort to allow husbands and wives to file joint returns also failed (HB 285).

Sales and Use Tax

The only significant change in a tax base occurred in the sales and use-tax field, where boats were added to the list of items to which the 1 1/2 per cent sales tax is to be applied, with the maximum tax to be $120 [Ch. 1116 (HB 749)]. Sales made through penny vending machines were exempted from sales and use taxes [Ch. 756 (SB 170)]. Unsuccessful efforts were made to raise the sales tax on motor vehicles to 3 per cent (HB 1191) and to exempt newspaper dispensers and newspaper-vending machines from the sales and use tax (HB 1318). Companion bills (HB 1007 and SB 636) sought to exempt from sales and use taxes meals furnished employees in restaurants, cafes, cafeterias, hotel dining rooms, and similar places. HB 515 sought to subject items taken for trade-in to the sales tax when resold; the sales tax on the sale in which the trade-in was accepted was to be calculated on the net rather than the gross amount of the sale. Under current practice, the sales tax is applied to the gross amount of the initial sale and the trade-in item is not subject to a sales tax when resold. An alteration in the applicability of the sales tax to farm machinery, equipment, and supplies was also defeated (HB 253). Attempts to refund sales taxes to airport agencies (SB 565) and housing authorities (SB 280) were equally unsuccessful.

Alcoholic Beverage Taxes

In a significant change in procedures for tax collection (although not rates), the state eliminated crown, lid, and stamp markings as the method of evidencing payment of excise taxes on beer and wines [Ch. 759 (SB 478)]. [See the article on liquor laws in this issue, page 28.] After January 1, 1968, the excise taxes levied at the rates currently in effect will be paid on a monthly basis by the first resident wholesaler or importer receiving the taxed items. At present, the taxes are paid and the containers marked by the producers before shipment into the state. HB 1035 sought to increase the taxes on beer to provide funds for highway beautification, and HB 324 would have raised from 5 to 10 cents per bottle the surtax on alcoholic beverages earmarked for alcoholic rehabilitation programs. Neither measure passed. An attempt was also made to raise from 10 per cent to 12 per cent the basic tax on spirituous liquors sold in ABC stores (HB 338). Also defeated was a bill (HB 1380) that would have exempted wines sold in ABC stores from an additional 5-cent surtax levied in accordance with GS 18-39(3).

Privilege License Taxes

The Tax Study Commission (1965) recommended substantial changes in the entire structure of privilege license or "Schedule B" taxes. [*Report, op cit.*, pp. 20-51]. The General Assembly never really considered the kind of overhaul the Commission envisaged for one of the most widely criticized sections of the revenue laws. The changes that were made or considered were rather minor. Exempted from the privilege license tax were chain stores dealing solely in fertilizers, farm chemicals, soil preparants, or seeds [Ch. 553 (SB 155)]; entertainments or amusements presented on the Cherokee Indian Reservation [Ch. 865 (HB 967)]; bakery thrift stores [Ch. 551 (SB 126)]; real estate mortgage brokers [Ch. 1080 (HB 1112)]; and insurance premium finance companies [Ch. 1232 (SB 474)]. In the last instance, however, the license fees required under GS 58-56 (e) were revised and scaled according to whether the insurance premium finance company financed premiums for only one or more than one agent or agency.

The most substantial revisions in privilege license taxes will take place under Ch. 1118 (HB 1036), which revised the taxes to be paid on certain dispensing machines. Beginning on July 1, 1968, a $50 operator's license will be required to operate dispensing machines that provide drinks in open cups, cigarettes and other tobacco products, and food or other merchandise that costs 5 cents or more per unit. At the present time, the operator's licenses on these machines range between $100 and $250. However, the reduction in the cost of the operator's license was accompanied by a requirement that operators of these machines, as well as operators of weighing machines and machines dispensing merchandise costing less than 5 cents per unit, pay a gross receipts tax after July 1, 1968. For cigarette dispensers the rate will be 6/10 of 1 per cent; for the rest of the dispensers covered by the gross receipts tax, the rate will be 1/10 of 1 per cent. If the gross receipts tax is applicable, the dispenser operator is not subject to location privilege licenses for these operations.

When this legislation becomes effective, it will also alter slightly the privilege license taxes on operators of soft-drink machines that use containers other than open cups. All operators of drink dispensers using containers other than open cups will continue to pay an operator's license of $100, but if the drink dispensed is a soft drink, a bracket tax levy is also imposed. The first bracket, covering operators of not over 50 machines, has been changed from a flat $355 to $7 per machine for operations of more than 5 but less than 50 machines.

Unsuccessful efforts were made to broaden the privilege license tax to include operators of children's

riding devices (HB 1153) and wholesale fish dealers (HB 1136). HB 1318, which would have exempted newspaper dispensers and newspaper vending machines from the license tax also failed. However, this exemption was obtained as a part of Ch. 1118 (HB 1036) by altering GS 105-65.1 (h) to include newspapers in the exempted list.

Finally, the process tax was made inapplicable in counties where a new district court has been established [Ch. 691 (SB 292)].

Franchise Tax

The franchise tax was also amended in minor ways. Ch. 286 (HB 383) removed some causes of complaints by making a variety of small changes in the law, one of which had the support of the Tax Study Commission [*Report, op. cit.*, pp. 18-19]. For income years beginning on or after April 30, 1968, the franchise tax year will coincide with the corporate income tax year, and a single combined return may be filed for both income and franchise tax purposes.

Ch. 519 (HB 898) permits reimbursement of a manufacturer who uses piped gas as an ingredient or component part of a manufactured product in an amount equivalent to the franchise tax paid by the gas company on the gross receipts resulting from sales of such gas to that manufacturer. Also, Ch. 1079 (HB 1101) clarified the calculation of the gross receipts tax applicable to common carriers that change status (from contract or flat rate to regular common carrier, or vice versa) between January 1 and February 15, the annual license-renewal period. Finally, the franchise tax on new corporations will be $10 for the initial return rather than computed on the existing basis and prorated for the number of months remaining in the tax year [Ch. 1110 (SB 183)].

One effort to alter the corporation franchise tax was defeated (HB 1022). This bill sought to remove the total assessed valuation of all real and personal property within the state as a minimum figure a corporation might report in calculating its capital stock, surplus, and undivided profits subject to the franchise tax.

Inheritance and Gift Taxes

The inheritance and gift tax laws were also subjected to some minor changes. Ch. 1222 (HB 1309) enables a surviving spouse to claim exemptions of a minor child or children when substantially all of the decedent's property passes to the spouse. Previously, additional exemptions were limited to the widow of a testate decedent. Inheritance tax procedures were also altered so that any gift tax paid on a transfer that is subsequently included as part of an estate may be considered an advance payment on the inheritance tax due from the beneficiaries of the estate [Ch. 1220 (HB 1304)]. Under these circumstances the gift tax becomes a prepayment on the inheritance tax.

A new section was added to the Uniform Commercial Code (GS 25-8-407) empowering husbands and wives to hold corporate stock and securities in joint ownership with the right of survivorship granted for inheritance tax purposes [Ch. 864 (HB 959)].

Finally, GS 105-29 (a) was amended to require that refund claims on inheritance taxes be made within six months after the date of the final determination of the federal estate tax liability [Ch. 1171 (SB 707)].

Efforts to amend the inheritance and gift tax rates applicable to sons-in-law and daughters-in-law (HB 1308) and to brothers-in-law and sisters-in-law (HB 1307), and to make the basic $10,000 exemption provided under the inheritance tax apply to "spouses" rather than "widows" (HB 151) were defeated.

Motor Fuel and Vehicle Taxes

Motor fuel taxes also received legislative attention. In a redistribution of funds, the Wildlife Resources Commission was designated the trustee of a portion of the gasoline tax rebates due but unclaimed by individual motorboat owners [Ch. 1161 (SB 601)]. Currently these funds are retained totally by the Highway Commission, but during the next biennium approximately $150,000 per year will be transferred to the Wildlife Commission. [See Wildlife in a subsequent issue.] Hereafter, requests for reimbursements on fuel taxes paid for motor vehicles not used on the highways are to be made on a calendar-year basis [Ch. 699 (HB 93)].

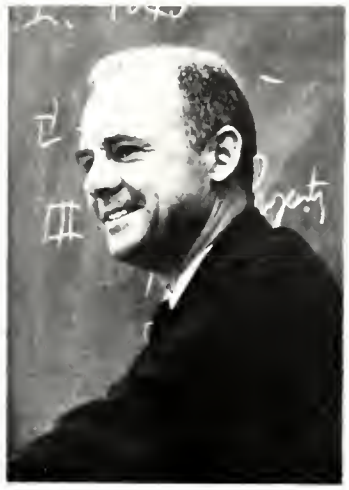
Finally, in the vehicle field, new legislation permits those whose vehicle license fees exceed $200 per year to request that payment of half of their tax be deferred until June 1 each year [Ch. 712 (HB 930)]. Previously only those whose payments exceeded $400 were allowed such a deferral.

Tax Study Commission

Although the most recent Tax Study Commission was not particularly successful in getting its proposals enacted into law, the 1967 General Assembly used precisely the same statutory language as its 1965 predecessor to create a similar commission, which is to report prior to the 1969 session. One change is notable. The new commission will not be burdened with the title Commission for the Study of the Revenue Structure of the State; it is simply the Tax Study Commission [R 67 (HB 1230)].

by Milton S. Heath, Jr.

and Warren J. Wicker



WATER RESOURCES

Chapter numbers given refer to the 1967 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate. GS refers to the General Statutes of North Carolina.

The 1967 General Assembly produced two new landmark water laws, one concerning the regulation of water use in "capacity use areas" and the other concerning organization of state water and air programs. (Air pollution aspects of the new law are discussed in the article on Health.) This session also saw the enactment of a large volume of related legislation on such subjects as dam safety inspection, well-construction standards, small watersheds, flood-plains management, local water and sewerage and marshland dredging.

The immediate stimulus for this outpouring of water legislation was a study by the Department of Water Resources of the need for water-use legislation, directed by Resolution 82 of the 1965 General Assembly. Though sparked by the growing ground-water problems of the phosphate mining areas in and around Beaufort County, this study covered the entire range of water resource programs and laws. It resulted in two substantial departmental reports on water resources legislation and a report to the department by a board of independent consulting engineers concerning the eastern ground-water problem (*North Carolina Department of Water Resources: Wise Management of North Carolina Water Resources Through Law*, an orientation brochure, and a final report; Jacob, Sayre, and DeWiest, *Evaluation of Potential Impact of Phosphate Mining on Ground Water Resources of Eastern North Carolina).*

The more fundamental origins of the 1967 water laws can be traced to a decade of patient planning and study by state water agencies.

Twelve years ago a mildly revolutionary proposal, born of the extended drought of the early 1950's, was offered to the 1955 General Assembly: to replace the traditional riparian rights doctrine that has perennially guided the use of Carolina surface waters with the rule of prior appropriation, modeled on the principles that govern water use in the arid western states. Strong backing from agricultural and municipal interests met with stronger resistance from industrial water users, and the proposal was rejected in favor of a compromise solution, involving the creation of a water-policy study group (the State Board of Water Commissioners) with limited authority to control water use in local water-supply emergencies. During the late 1950's the water commissioners—led by General James Townsend, an early backer of water-law reform—studied and ruminated. In 1959 the old Board was transformed into a new one, the State Board of Water Resources, originally conceived as a single coordinating board for all state water programs to be staffed by a single Water Resources Department. Nominally, a single Department was created by the 1959 Assembly; but instead of fashioning a unitary water board, the 1959 legislation created one Department with two policy heads: the State Board of Water Resources, to carry forward the water-use policy and development functions of the old water board, and the

Stream Sanitation Committee, to continue as master of the state's water pollution control program. General Townsend moved over from the old board to head the new Board of Water Resources, while former Senator J. Vivian Whitfield, the father of the Stream Sanitation Law, stayed on as head of the Stream Sanitation Committee. Through the early 1960's the fledgling Department slowly gathered its forces, strengthening and expanding the stream sanitation program, building a ground-water staff, and initiating a planning program.

From this long and slow evolution finally emerged in 1967 the first substantial policy output of a decade of study and appraisal — legislation unifying the direction of the Water Resources Department under a single board and separate acts granting additional powers to the Department, including the authority to regulate water use in "capacity water use areas."

The combination of the water and air board reorganization and the capacity-use-areas law gives North Carolina the statutory basis for a unified program of coordination and control of both water quality and quantity that is matched by few if any eastern states. Soon after enactment of these laws, the retirement of General Townsend from the Board of Water Resources and the appointment of Senator Whitfield as Chairman of the new Board of Water and Air Resources were announced. The new laws may therefore serve as both a fitting tribute to General Townsend upon his retirement and a solid starting point for Senator Whitfield in his new assignment.

Worthy of special note is the unusually vigorous role played in the formulation of these bills by legislative committees, notably in the Senate handling of the capacity-use-areas and well-construction-standard bills and the House handling of the reorganization bill. Major contributions were made to the form, content, and public understanding of these bills by the legislative subcommittees and committees, going far beyond the usual experience in these regards.

Departmental Legislative Program

Nine bills were introduced this session on behalf of the Department of Water Resources. Eight of these were enacted with some revisions: the reorganization act; the "capacity-use-areas" law; and measures relating to dam safety inspection, well-construction standards, flood-plains management, local water-storage assurances in connection with federal projects, water-use information, and well cuttings and borings. Only one item in the Department's program failed to pass— a proposed revision of the occupational licensing act for water well contractors, which was reported unfavorably by Senate committee after being postponed indefinitely in the House (SB 461-HB 994). This bill would have made the (now) localized licensing program statewide and have brought the licensing board within the Department of Water and Air Resources. Its defeat can probably be attributed largely to the longstanding aversion of the North Carolina General Assembly to extending occupational licensing measures.

The Water and Air Board Reorganization

Ch. 892 (HB 356) brought about the merger of the old Board of Water Resources and the Stream Sanitation Committee into a unified Board of Water and Air Resources. It added air pollution control to the jurisdiction of the new board and to the staff functions of the Department of Water and Air Resources created by the act. It also introduced some procedural innovations in the water and air program.

In its reorganization provisions, Ch. 892 created a single Board of Water and Air Resources composed of thirteen members to be appointed by the Governor. The initial board is to consist of eleven members selected from the membership of the old seven-member Water Board Resources and seven-member Stream Sanitation Committee, plus two additional members. The additional members are to be a licensed physician and a person connected with state or local public health programs. The new Board must include specified representation of industrial, fish and wildlife, agricultural, and local governmental interests. In this regard, the act followed the model of the old Stream Sanitation Committee and rejected the model of the old Water Resources Board with its nondesignated membership. The new Board may delegate to committees of its members such functions as holding hearings preliminary to board decisions and making investigations. (This provision would apparently permit a form of organization similar to that of the State Board of Conservation and Development.)

To assist the Board in its work, the establishment of advisory councils on water control and on air control is authorized, with nine members each, appointed by the Governor. Membership would consist of representatives from designated interests affected by the water and air program.

At the staff level, the reorganization measure specified two principal departmental officers, a director and an assistant director. Both officials are to be appointed by the Board with the approval of the Governor. The assistant director is made specifically responsible for supervising the water and air pollution control program (with authority to approve the plans and specifications required by law of permit applicants under these programs).

Procedural innovations in Ch. 892 included an additional enforcement weapon for the department, the authority to seek injunctions to restrain violations; a doubling of minimum and maximum fines for violations; and new, streamlined procedures for dealing with water and air pollution emergencies. Also, the applications of the "fishkill law" was extended to fishkills caused by air pollution, and the ability of departmental personnel to secure access to property for inspection was strengthened by making it unlawful to

refuse access or interfere with inspections. Finally, a provision was eliminated from the old law which had prohibited enforcement against *any* polluters in a segment of a stream where enforcement could not legally be obtained against municipalities.

The subject of judicial review of agency orders and decisions provoked as much legislative debate as any aspect of the reorganization bill. Under the law that was in effect when the bill was introduced, final orders and decisions were subject to trial de novo in the superior court. This constituted an exception from procedures applicable to most state agencies, which provide for a review under Article 33 of GS Ch. 143 on the record, principally for errors of law or lack of support by substantial evidence. As originally introduced the reorganization bill would have retained de novo review, but a House committee substitute proposed adoption of an Article 33 standard of review, slightly modified so as to permit the reviewing court to hear additional evidence and make additional fact findings. By a single vote the Senate rejected this change and reinstated something more closely resembling the present law. In its final form, Ch. 892 provides for hearing of appeals "de novo on the transcript certified by the court and any evidence or additional evidence" competent in nonjury superior court trials. [In evaluating questions of evidence, the Board and parties appearing before it will want to familiarize themselves also with Ch. 930 SB 425, which is summarized at page 52 of the September, 1967, issue of *Popular Government*.]

Although proposed as simply a reorganization bill, Ch. 892 stimulated more public and legislative discussion of the substance of water and air quality programs than North Carolina has witnessed in many years. Conservationists and public health supporters played an especially active role in the legislative debates. It may prove that this heightened public interest in water and other resource programs is the most lasting contribution of Chapter 892, transcending its organizational and procedural innovations.

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Since the enactment of the reorganization law, Governor Moore has announced the following appointments to the new State Board of Water and Air Resources: *first* (from the former State Stream Sanitation Committee)—J. Vivian Whitfield, Chairman, of Wallace, H. Grady Farthing of Boone, Walter M. Franklin of Charlotte, J. Nelson Gibson of Gibson, P. Greer Johnson of Asheville, and W. Grady Stevens of Shiloh; *second* (from the former State Board of Water Resources)—S. Vernon Stevens, Jr., Vice Chairman, of Broadway, P. D. Davis of Durham, Wayne Mabry of Badin, J. Aaron Prevost of Waynesville, and Glenn M. Tucker of Carolina Beach; and *third*, Dr. Robert A. Ross of Chapel Hill, representing the medical profession, and J. M. Jarrett of Raleigh, representing public health programs. The new Board appointed Colonel George Pickett (former Director of the Department of Water Resources) as Director of the Department of Water and Air Resources and Earle Hubbard (former Executive Secretary of the State Stream Sanitation Committee) as Assistant Director.

The Capacity-Use-Areas Law

The capacity-use-areas law, Ch. 933 (SB 465), gives the Department of Water and Air Resources limited authority to regulate the use of water in areas where the Department finds that water shortages or conflicts exist or are impending. It is the first regulatory authority over the use of water to be adopted in North Carolina, other than an unworkable irrigation-permit law that was repealed several years ago (former GS 143-355(c), repealed by S. L. 1961, Ch. 315.).

A three-step process is contemplated under the act. First the Board, after studies and hearings, must find that a "capacity use area" should be declared. In this phase the Board is specifically directed to pursue all alternatives short of regulation. Second, the Board must conduct a rule-making proceeding. If it finds, after further hearings, that any controls are appropriate, the Board is to choose from a specified group of provisions those that it considers appropriate to the particular area. Third, permits are issued to large water users whose usage is likely to contribute substantially to the problems of water-short areas. In these permits, conditions may be included that carry forward the purposes of the regulations adopted in the second phase of the proceedings. No permit conditions can go beyond the scope of those regulations.

The range of controls available to the Department in implementing the act includes provisions on timing of water withdrawals; protection against salt-water encroachment and against unreasonable adverse effects on water users in the area; well-spacing controls; limitations on well-pumping rates or levels; and reporting requirements. To guide the board in the exercise of these powers, detailed criteria are laid down bearing a marked similarity to the factors that have traditionally been evaluated by the courts in resolving water-use disputes.

To insure that only the largest users will be brought under regulation, the minimum usage for which a permit is required is fixed at 100,000 gallons per day. To insure that only those users are regulated (even among the 100,000-gpd class) who contribute significantly to the problem, the permits with conditions are required only for "consumptive users" of water — those who, as defined by the act, substantially impair water quantity or quality. Finally, to insure that fixed investments are not unfairly impaired, the Board is directed to take into consideration the reasonable needs of existing and certain potential water users, to the extent that their needs do not unreasonably damage others. This provision, adopted

in lieu of a grandfather clause, provoked vigorous and much-publicized committee debates.

The same opportunity for court review is provided in this act as for review of pollution-control orders under the water and air reorganization law. Consistent with the ultimate unity of the hydrologic cycle, the act treats both surface and ground water in one law that applies equally to both. However, in recognition of the better-developed and more equitable rules of law that now govern the use of surface water (by comparison with ground water), it expresses an intent that the Board operate generally within the framework of the concept of riparian rights with regard to surface streams.

Taking into account formal notice periods under the act, together with necessary time for staff preparation, the activation of the first capacity-use area is likely to require at least a year's time, and perhaps longer.

Well-Construction Standards

If the capacity-use-areas law represents the first substantial regulatory authority over water use in North Carolina, the well-construction standards law gives the new water and air board a basis for dealing with an entirely different aspect of water management: the construction and maintenance of wells [Ch. 1157 (SB 466)].

Based upon a statutory finding of hazards to the public health and ground-water resources of the state that may result from improper well construction, this law sets forth a three-fold approach to the problem. First, it lays down some specific requirements and prohibitions for construction and maintenance, including sterilization of water-supply wells, provision of access ports to facilitate measuring water levels, and maintenance of valves and casings on flowing artesian wells. Second, it vests in the Water and Air Board a general rule-making power concerning well location, construction, repair and abandonment, and pump installation and repair. Third, it establishes permit requirements for wells or well systems with a design capacity of 100,000 gallons per day or greater, and for any wells in areas found by the Board to need such protection for ground-water resources and for the public safety and welfare. Permit applications may be rejected only for noncompliance with the act or with regulations of the Board.

The act prohibits the use of wells for re-charge, injection, or disposal of wastes into the ground without prior permission of the Board of Water and Air Resources after consulting the State Board of Health. This provision was adopted after several alternatives were considered in subcommittee, including an absolute prohibition against discharge into the ground and a prohibition against discharge without independent approval of the Board of Health and of the Board of Water and Air Resources.

Excluded by definition from regulation under this act are wells constructed for domestic use on land appurtenant to single-family dwellings. Under a limited grandfather clause, the permit requirements of the act do not apply to wells or pumps existing and in use on the effective date.

Other Departmental Program Bills

The remaining departmental program bills enacted this year include:

. . .Ch. 1068 (HB 993) authorizing a program of inspecting and certifying dams for public safety and stream-flow maintenance;

. . .Ch. 1070 (HB 997) authorizing a program of flood-plains management, including the establishment of criteria by the Department of Water and Air Resources for small watershed projects;

. . .Ch. 1071 (HB. 998) authorizing conditional assurances by the Board for nonfederal cooperation in water-supply aspects of federal reservoir projects;

. . .Ch. 1117 (HB 996) requiring monthly water-use reports to the Department on request;

. . .and Ch. 1069 (HB 995) strengthening and clarifying the statutes that require well drillers to furnish samples of well cuttings to the Department.

Several aspects of these laws merit special comment.

One of the most striking features of the new water laws is their number and bulk — especially striking in contrast to the complete absence of legislation on these subjects in recent years. Two factors are probably responsible for this sudden spurt of lawmaking. First, it represents less a product of recent inspiration than a backlog of recommendations piled up for years. (Thus, the Board of Water Resources had been on record as favoring a dam safety law, the amendments to the well-cuttings law, and flood-plains management legislation for at least five years.) Second, as many close observers have remarked, 1967 was psychologically the "right" year for water-law reform. Thus, a combination of a backlog of recommendations with a receptive legislative mood set the scene for this unusual record of success in water legislation.

In the course of committee and floor consideration of the water-use information law and the well-cuttings amendment, a common problem was encountered: the dilemma of how to provide necessary information concerning industrial water use to a public agency for its programs without turning over to business competitors access to information possibly gathered at considerable expense by the business. There is no easy answer. The solution adopted by the 1967 General Assembly in these two laws reflected an effort to compromise these conflicting concerns in a manner that will protect the public interest in obtaining necessary data without unfairly treating the industries supplying the data. In the water-use information law the

Assembly's answer was to provide that all reports be provided solely for the purpose of the department. In the well-cuttings amendment, the solution was a provision prohibiting the Department from reporting results of analyses to anyone until authorized in writing by the "person authorized to do so." Only through experience with the administration of these laws can their workability be tested.

The passage of the dam safety law was more closely contested than any of its companion measures other than the reorganization and capacity-use-areas bills. Vigorous objections were raised, especially on the Senate floor and in Senate committee, to the potential application of this inspection and certification law to owners of small dams, especially farm ponds. After a second referral of this bill to the Senate Committee on Conservation and Development, a compromise solution was adopted exempting dams costing less than $5,000. Here again, time and experience alone can tell whether this compromise will be workable and fair. Whatever the results, it is quite likely that enactment of any dam safety law in 1967 would not have been possible without this provision or a substitute acceptable to the opponents of the measure.

Watershed Improvement Programs

The 1967 General Assembly made major changes in the small watershed legislation by broadening the authority of cities and counties to support such programs and to borrow funds to finance watershed improvement projects; by enabling counties and districts to condemn land for watershed purposes; by permitting counties to expend funds for watershed purposes outside their boundaries; and by authorizing cities, counties, and districts to include recreational features in watershed improvement projects and to promote the preservation of fish and wildlife habitat. The assessment collection procedure for watershed improvement districts was also revised. And a dozen local acts dealt with similar matters in as many counties.

Ch. 987 (HB 969) authorized cities and counties to issue bonds to finance the provision of storage capacity for anticipated future or present water-supply needs in conjunction with any watershed improvement project. Two or more cities or counties are authorized to support jointly the development of such storage capacity, with the sharing arrangements to be jointly agreed upon. Bonds issued for this purpose must be issued in general accord with the requirements of the Municipal and County Finance Acts, and may have maximum maturities of forty years.

The same legislation also amended GS 153-77 and -80 to empower counties to issue general obligation bonds to finance "regular" watershed improvement projects (without regard to the presence of water storage for future water-supply needs), whether such projects of the county be authorized by a special local act or undertaken under Article 3 of General Statutes Chapter 139. The maximum maturity for these bonds is also forty years.

Small watershed projects often include territory located in more than a single county. Ch. 987 amended the existing statutes to make clear that any county that has been authorized to levy a watershed improvement tax (either under the general law procedure or by special legislative act) may expend funds for watershed purposes outside as well as inside the boundaries of the county if the board of county commissioners finds that "substantial flood prevention, drainage or water supply benefits" will accrue to property inside the county as a result. The decision on benefits may be delegated to a watershed improvement commission by the board of county commissioners if it so chooses.

The power to condemn land for watershed purposes has been the subject of much local legislation for the past four sessions of the General Assembly. As a result of the enactment of Ch. 987, both watershed improvement districts and counties that are operating watershed programs now have authority under the general law to condemn land for watershed purposes. The procedure, in general, follows that prescribed by Article 2 of GS Chapter 40, except that prior approval and supervision by the State Soil and Water Conservation Committee is added to the arrangements.

The recreational possibilities of watershed improvement projects and the need to protect and promote fish and wildlife habitat in connection with such projects is receiving increased attention by sponsors of watershed improvement work. Ch. 987 also clarified the authority of watershed sponsors—including watershed districts, counties, cities, soil and water conservation districts, and drainage districts—to install and maintain recreational facilities and services and to provide for the conservation and replacement of fish and wildlife habitat in connection with present, past, or future watershed projects. These sponsors may thus build any necessary roads, hiking or nature trails, picnic areas, campsites, boat-launching areas and facilities, bathhouses, and the like. Sponsors should obtain legal advice, however, as to the exact nature of their powers, especially where the expenditure of funds was authorized prior to this year by vote of the people or by special act.

Protection of fish and wildlife is to be given special attention in future watershed programs. Applications for watershed planning grants under Public Law 566 (83d Congress) must be referred to both the North Carolina Wildlife Resources Commission and the North Carolina Department of Conservation and Development. These agencies will make recommendations concerning the replacement of fish and wildlife habitat in mitigation of anticipated damage to habitat from the planned watershed projects.

The procedure for collecting watershed improvement district assessments, as set forth in GS 139-27, was revised by Ch. 1085 (HB 1133). While a number

of minor changes were made, the major changes essentially bring the procedure into accord with that followed by counties in collecting ad valorem property taxes. Previously, installments on watershed special assessments were due on the first Monday in August of each year and were subject to interest (when not paid) at the rate of 4 per cent per annum. Watershed assessments (or installments thereof when installments are established) now become due each year when property taxes are due, and the statute provides that "Interest shall be charged for late payments, and discount shall be allowed for prepayment of assessments, in the amounts and during the periods covered by law with respect to payment of ad valorem property taxes in the county."

In local legislation, seven acts endowed as many counties with the power to condemn for watershed purposes; with the later adoption of Ch. 987, as noted above, they are now largely superfluous in light of the general law on this subject. The other major class of local acts authorized a number of counties to levy a county-wide tax to support watershed activities without a vote of the people. Rowan and Iredell were authorized to levy up to 2 cents; Person was authorized to levy up to one cent; Alexander, up to 5 cents; Graham, up to 10 cents; Onslow, up to 5 cents; and Union's authorized levy was increased from 1/2 to 2 cents.

Water and Sewerage Services

Legislation affecting the provision of water and sewerage services by public bodies was limited.

Two more counties, Forsyth and Northampton, secured authority to levy special assessments for water and sewer extensions by removing themselves from the list of excepted counties in GS 153-294.19. Thirty-three counties now have authority to levy such special assessments.

The maximum term of revenue bonds issued by local governments for water and sewerage purposes, and for other purposes as well, was extended by Ch. 100 (HB 120) from 35 to 40 years. The same act also empowered cities to contract for water supply for 40 years by amending GS 160-2 (6) to that effect. The previous maximum contract term was 30 years.

Local acts relating to municipal water supplies were largely concerned with specific support for actions already covered by the general law. For example, water-supply contracts between Raleigh and Cary and Garner were validated. Outside service, authorized in general by GS 160-255, was expressly authorized for Pineville and (with a specified limit of 1 1/2 miles) all the towns in Anson County. Cary and Garner secured legislation that expressly authorized the making of acreage charges for water and sewer extensions, charges already made by a number of cities under the general authority of GS 160-256. The Cary and Garner acts provide that such charges may vary according to land use — industrial, commercial, residential, etc. — while this classification is not expressly covered in the general statute.

Express authority for counties to adopt regulations to protect county water and sewerage systems from improper use, damage, vandalism, and the like was authorized by Ch. 462 (HB 631). Violations of any such regulations are made a misdemeanor, punishable by a fine of up to $50 and imprisonment of up to 30 days.

A proposal to authorize creation of county water and sewerage districts to be governed by the board of county commissioners was also considered this year (HB 1096). This bill, modeled generally on the metropolitan sewerage districts law, died in House committee.

Miscellaneous

Soil and Water Conservation

The number of counties authorized to expend nontax funds by GS 153-9 (35 1/2) for soil and water conservation work was increased to eighty when Catawba County was added to the list by Ch. 319 (HB 620). The same act amended GS 153-9 (35¾) to permit Catawba County to expend tax funds for the same purpose, while Ch. 1002 (SB 695) granted the power to spend tax funds to McDowell County. Sixty-four counties may now expend tax funds for soil and water conservation purposes.

Flood Control

The 1965 legislature authorized coastal counties to levy taxes and expend funds for beach-erosion control and flood prevention. Ch. 205 (HB 371) authorized Duplin County to expend surplus and nontax funds to support flood-control projects on the Northeast River. Duplin is one of the few inland counties with such powers.

Drainage

No general legislation affecting drainage districts was enacted except a minor change in notification procedures when establishing a district [Ch. 621 (HB 554)]. Of some interest is the local modification secured by Hyde County through Ch. 1010 (HB 838) authorizing the clerk of court, upon the recommendation of the board of county commissioners, to appoint the county accountant as treasurer of the local drainage district. Under the general law (GS 156-81.1), he is simply directed to appoint a treasurer, presumably not the county accountant.

Title to "Built-Up" Lands

Frequently in erosion-control projects along the coastal beaches and sounds, new land is built up

along the shore, usually by the construction of a berm and the filling in of areas with sand. In connection with such projects, a "building line" or "project protection line" is established, driving vehicles or construction on the water side of such lines prohibited, and ownership of the new land is established. Two 1967 local acts—Ch. 566 (HB 642) for Hyde and Ch. 664 (SB 329) for Brunswick and New Hanover—generally provide that title to new built-up lands on the water side of the "building line" be vested in the city or county governments, while title to lands on the inland side will vest in the owner of abutting property.

Marshland Dredging

A proposal was introduced this session that, in its original form, would have required permits from the Department of Water and Air Resources for earth-moving projects in state-owned marshlands, beaches, and tidelands (SB 400). Permits would have been issued only for work not detrimental to the best usage of natural resources.

As finally enacted, this bill (Ch. 907) was limited to a registration measure, requiring that owners and operators of dredges and other earth-moving equipment used in certain coastal and marshland areas register their equipment with the Department.

Interim Studies

Two interim studies established by the 1967 General Assembly have significance for water resources. The first, Resolution 83 (SR 726), assigned to the Legislative Research Commission an evaluation of the actual operation of the 1967 water laws, the need for amendments to these laws, the need for recodification of water resources legislation, and the need for legislation providing a special master or hearing-officer procedure in the new department. Resolution 80 (SR 177) created a Conservation and Development Study Commission made up of three appointees each by the Governor, the President of the Senate, and the Speaker of the House. This commission is to study reorganization of state activities in the resource field. More specifically, it is to examine the question of splitting the Department of Conservation and Development into two departments, one concerned with industrial development and the other with natural resources. Among other things the study commission is empowered to consider the appropriate scope for a new conservation or resources department, including conservation and regulation of "water resources, fish and game resources, parks, forests, recreational resources, and the environment generally."

Cover Photo: Courtesy of the *News and Observer.*

Warren Wins Public Health Award

David Warren, Institute staff member specializing in health law, received the 1967 Distinguished Service Award from the North Carolina Public Health Association at its annual meeting in October. He was presented the award, including a certificate and a handsome plaque, by Dr. W. Fred Mayes, Dean of the UNC School of Public Health and chairman of the NCPHA Awards Committee. The award is given annually to a person who is not a public health professional but who has performed outstanding service to public health in North Carolina. Last year it was given to Dr. John R. Bender of Winston-Salem and the year before to Senator Julian Allsbrook of Halifax.

Warren has been with the Institute for three years, after graduating from Duke Law School and serving in the U. S. Navy. During this time he has been primarily engaged in teaching, writing, and consulting on health law. He has researched and drafted several pieces of health legislation for the State Board of Health and others and has reviewed many local health regulations. He has organized and participated in in-service training courses and seminars for health directors, public health nurses, sanitarians, air pollution workers, coroners and medical examiners, and other health personnel. In addition to individual consultation he has kept public health officials and employees informed of current legal matters by publishing the *Public Health Bulletin* periodically.

Warren is married and the father of a first grader. His other interests at the Institute include municipal parking, legislative computer applications, and consultation to the Legislative Research Commission.

THE COURT OF APPEALS

This month's cover picture shows the six judges of the new Court of Appeals—Judges Naomi Morris of Wilson, James C. Farthing of Lenoir, Walter E. Brock of Wadesboro, Hugh B. Campbell of Charlotte, and David Britt of Fairmont and Chief Judge Raymond B. Mallard of Tabor City.

Judges Brock, Campbell, and Farthing and Chief Judge Mallard were appointed from the superior court bench; Judge Britt, a practicing attorney in Robeson County, resigned the speakership of the House of Representatives to accept the judgeship; and Judge Morris was practicing law with a firm in Wilson.

The judges are temporarily quartered in chambers on the fourth floor of the North Carolina National Bank building in Raleigh, where the cover picture was taken. The clerk, Theodore Brown, formerly an assistant attorney-general, is occupying offices on the first floor of the Legislative Building. The court will hold its hearings for the next few months in the Legislative Building also. The Finance Committee room has been temporarily converted into a courtroom for this purpose.

In the spring of 1968 the court will occupy newly renovated quarters in the old State Library Building, across Fayetteville street from the Justice Building.

The Court of Appeals "opened for business," jurisdictionally speaking, on October 1. Several months will be required for the appellate pipeline to channel a normal operating caseload to the court, by which time, the court's chief reason for existence—to relieve the Supreme Court of some of its extraordinary burden—should be realized.

The Court of Appeals will be expanded to a total complement of nine judges in 1969 by appointment of three additional judges by the next Governor. All judges, after the initial appointment, must stand for election to office at the next general election for the remainder of an eight-year term.