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This month

Special Summary
of Legislation
Enacted by the 1971
General Assembly

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Contents

September . . . This month's cover shot, taken at Topsail, recalls the summertime. Photo by Carson Graves.

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71 LEGISLATIVE SUMMARY of the 1971 General Assembly

This September issue of *Popular Government* is devoted to an analysis of legislation passed and rejected by the 1971 General Assembly. Most of the October issue also will be devoted to other aspects of this subject: reorganization of state government, auto insurance, etc. A careful reading of these pages will reveal that in 1971 North Carolina legislators sought to meet major challenges of our time with laws keyed in most instances to state and local governmental advance and, in so doing, moved to protect and further the broad public interest. Time will measure their achievements.

The record of the longest legislative session ever held will not be complete until fall. The General Assembly will reconvene October 26 to consider restructuring higher education. Its deliberations on all other matters were completed July 21. Between January 13 and that date, legislators worked through 136 weekdays to a session of record length.

They introduced 2,589 bills and resolutions, also a record, and passed 1,376 new laws, deriving from 936 public and 440 local bills and resolutions. The trend toward increased public and reduced local legislation, first noticed in 1969, again is evident. In sum, never before had the General Assembly met so long and considered and passed so much statewide legislation.

The 1971 General Assembly broke new ground. It appropriated $4.3 billion, primarily, as always, for education. It completely reorganized state government, created a "watchdog" legislative fiscal research agency, enacted legislative reapportionment and congressional redistricting legislation, approved 18 years as the age of maturity, adopted comprehensive environmental controls, enacted a thorough drug-abuse law, rewrote the alcoholic beverage control laws, enacted the first cohesive law of access, and established new consumer protection in credit and automobile insurance. It may yet restructure the administration and functioning of higher education.

On the other hand, in addition to the question of restructuring higher education, decisions on new systems of auto insurance, merit selection of judges, annual legislative sessions, two-term governors and gubernatorial veto, and further consolidation in local affairs all were deferred. The General Assembly approved two amendments to the federal Constitution—voting by 18-year-olds (new) and women's suffrage (very old)—and submitted five proposed amendments to the State Constitution to the voters this fall.

The legislature chose to delay action in more than a dozen other areas, appointing study commissions to explore them and report back to the 1973 General Assembly. Yet as the articles in this Legislation Issue will indicate, it passed important local as well as statewide legislation. Changes in municipal law featured recodification of laws relating to elections, finance, and property tax administration and included

new provisions for a local sales tax and new laws on planning and development of the environment. Changes in county law, too, were effective in the areas of finance, notably in reinstating the local-option sales tax and amending the property tax law, state assumption of responsibilities for the Medicaid program, and new emphasis on community appearance and historic preservation.

The field of health achieved major gains through substantial appropriations for agencies and new programs. Recognition of new needs in both social services and health took the form of state appropriations for Medicaid, licensing of day-care facilities, a child-abuse reporting law, and establishment of a Governor's Advocacy Commission on Children and Youth. The concern over harmonizing the administration of higher education did not impede the passage of creative legislation for all facets of education, including approval of expansion of the private school subsidies, increased appropriations for public school and university operation and programs, greater borrowing authority, a spreading of the state's medical school program, and new administrative and legal powers and controls for campus and school unrest.

A decade of court reform was consolidated, and new proposals for modernizing the system were adopted. The federal constitutional amendment giving 18-year-olds the right to vote was augmented by state passage of legislation intended to make 18-to-21-year-olds adults under the law in almost all respects.

Not all legislative actions can be considered of themselves. For instance, the drug-abuse law and the various appropriations for law enforcement must be considered in the light of substantial federal funding through the Law Enforcement Assistance Association, allocated through the Division of Law and Order. Similarly, the comprehensive environmental program must be regarded in the light of federal law and financing. And even the various cultural appropriations—such as money for a new dramatic arts building at the University of North Carolina at Chapel Hill—need to be considered together with such other financing as the $1 million private grant to the North Carolina Symphony. Only through such over-all awareness of laws and events can a broad perspective on the significance of legislation passed by the 1971 General Assembly be obtained.

The consolidation of organizational and administrative aspects of state government and the recasting of legislation representation in state and federal government merits special comment. The legislative apportionment and congressional redistricting achieved by the 1971 Assembly are discussed in this issue. It should be noted that single-member Senate and House districts, which would have eliminated present constitutional prohibitions against crossing county lines in forming legislative districts, failed of enactment. So did a bill requiring numbered seats for all multi-member Senate and House districts. The Assembly also defeated bills to establish annual legislative sessions, allow governors to serve two terms, and authorize a gubernatorial veto. It further turned down measures to create an ethics board for legislators, require record votes on yeas and nays on money bills, shift the convening date for the General Assembly to February in years following gubernatorial elections, and repeal the Legislative Retirement Act.

The reorganization of state government into principal departments followed voter approval last November of an amendment to the State Constitution requiring the reduction of state departments to 25 by 1975. An analysis of this legislation will appear in a later issue of *Popular Government*. For present purposes, it should be stated that the nineteen departments include the offices of Governor, Lieutenant Governor, and the departments of the eight other elected officials: Secretary of State; State Auditor; State Treasurer; Superintendent of Public Instruction (Department of Public Education); Attorney General (Department of Justice); Commissioner of Agriculture; Commissioner of Labor; and Commissioner of Insurance. The nine additional departments will be called Administration; Natural and Economic Resources (an expanded Department of Conservation and Development); Human Resources; Social Rehabilitation and Control; Commerce; Revenue; Transportation and Highway Safety; Art, Culture, and History; and Military and Veterans' Affairs. This 1971 Reorganization Act will require further administrative action and legislation to make fully effective the required reduction and reorganization of state departments. To this end the General Assembly passed a resolution directing the Legislative Research Commission to review quarterly reports from the Governor on the progress of reorganization.

—Elmer R. Oettinger

1 Redistricting

Congressional and state legislative redistricting—long anticipated to be among the wrenching issues of the 1971 session—was carried out with little public conflict, considering its large importance to legislators and the state.

The United States Constitution is interpreted by the United States Supreme Court to require that congressional districts be so laid out that each congressman from a particular state represents as nearly as practicable the same number of people as every other congressman from that state. The State Constitution requires that both senators and representatives be elected from districts so laid out that each member will represent "as nearly as may be" the same number of people as does each of his colleagues in the same house. Both congressional and state legislative districts must be revised after each decennial census to equalize constituencies within each system of districts.

Throughout the nation, state legislatures this year faced the task of realigning state legislative districts, and usually congressional districts as well, without fresh guidance from the United States Supreme Court as to the rigor with which it will enforce the rule of one man-one vote. Until June of this year, the most recent congressional or state reapportionment decision of that Court was *Kirkpatrick v. Preisler,* 394 U.S. 526, decided in April of 1969. In that case the Supreme Court had disapproved a congressional districting plan which deviated by a maximum of only 3 per cent above to 3 per cent below the norm (or statewide average population per district), for an average deviation of 1.6 per cent. That decision had strongly implied that an increasingly close adherence to equality of population was to be required and that virtually no reason for departure from population equality would be acceptable to the Court. But since that decision, two important changes had occurred in the membership of the Supreme Court, and those changes were potentially significant.

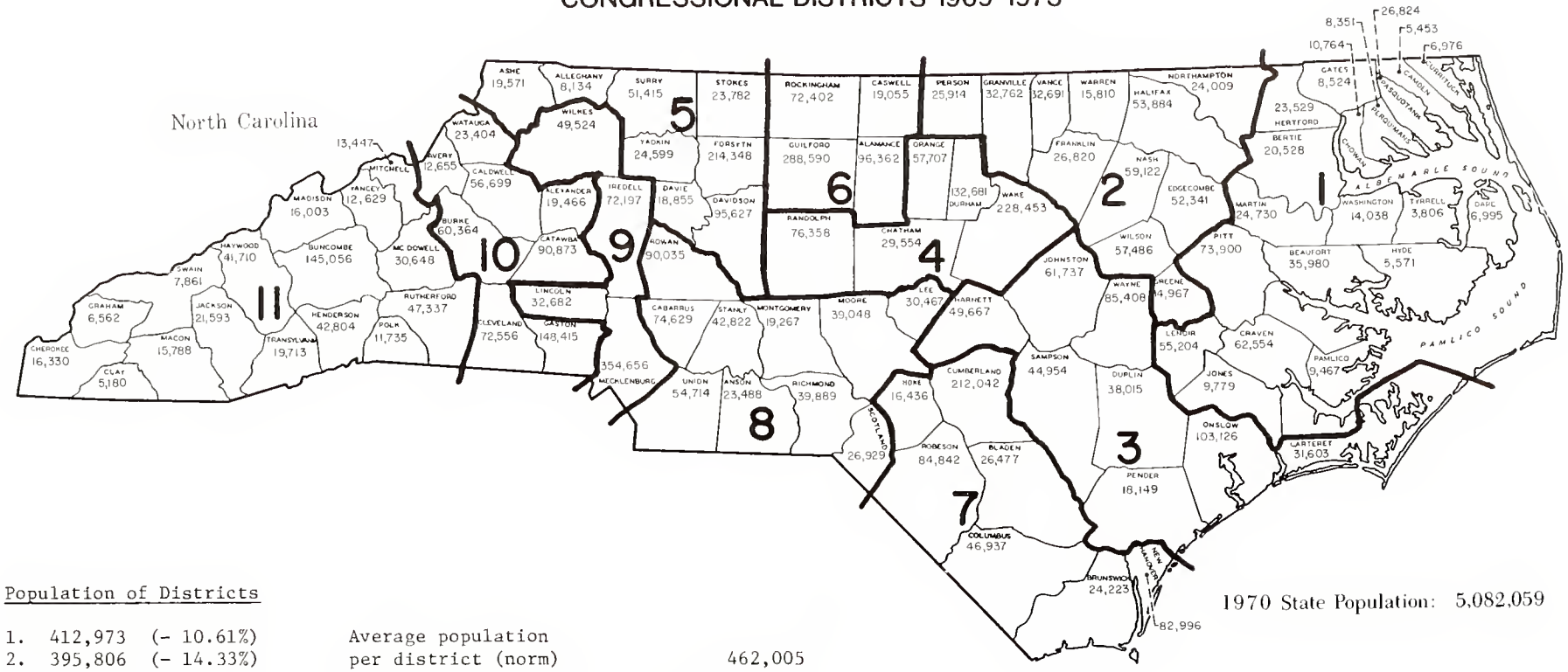
Moreover, there was pending before the United States Supreme Court the case of *Whitcomb v. Chavis,* an appeal from the decision of a three-judge federal district court in Indiana—*Chavis v. Whitcomb,* 307 F. Supp. 1362 (S.D. Ind. 1970). That case had been argued before the Supreme Court on December 8, 1970. One issue was the question whether a state legislative districting plan may include multi-member districts or a mixture of single- and multi-member districts. Since both senate and representative district plans in North Carolina employ districts of variable membership, the outcome of that case could have great significance to the state. If the Court should hold that the United States Constitution requires that all state legislators be elected from single-member districts, or that every district elect the same number of members, the inevitable consequence would be that counties would have to be divided in the formation of legislative districts—a procedure forbidden by the State Constitution and feared for its practical political consequences.

In addition to the likelihood of court review of any plan it adopted for compliance with the equal representation principle, the General Assembly could anticipate with certainty the review of all three plans by the United States Attorney General or the federal courts to determine whether the plans were racially discriminatory in their purpose or effect, in violation of the federal Voting Rights Act.

The anticipated complexity of the redistricting job, especially if the state should be required to resort to single-member state legislative districts or for other reasons to break county lines in the formation of districts, led to early expressions of interest in using a

Figure 1

CONGRESSIONAL DISTRICTS 1969-1973



1970 State Population: 5,082,059

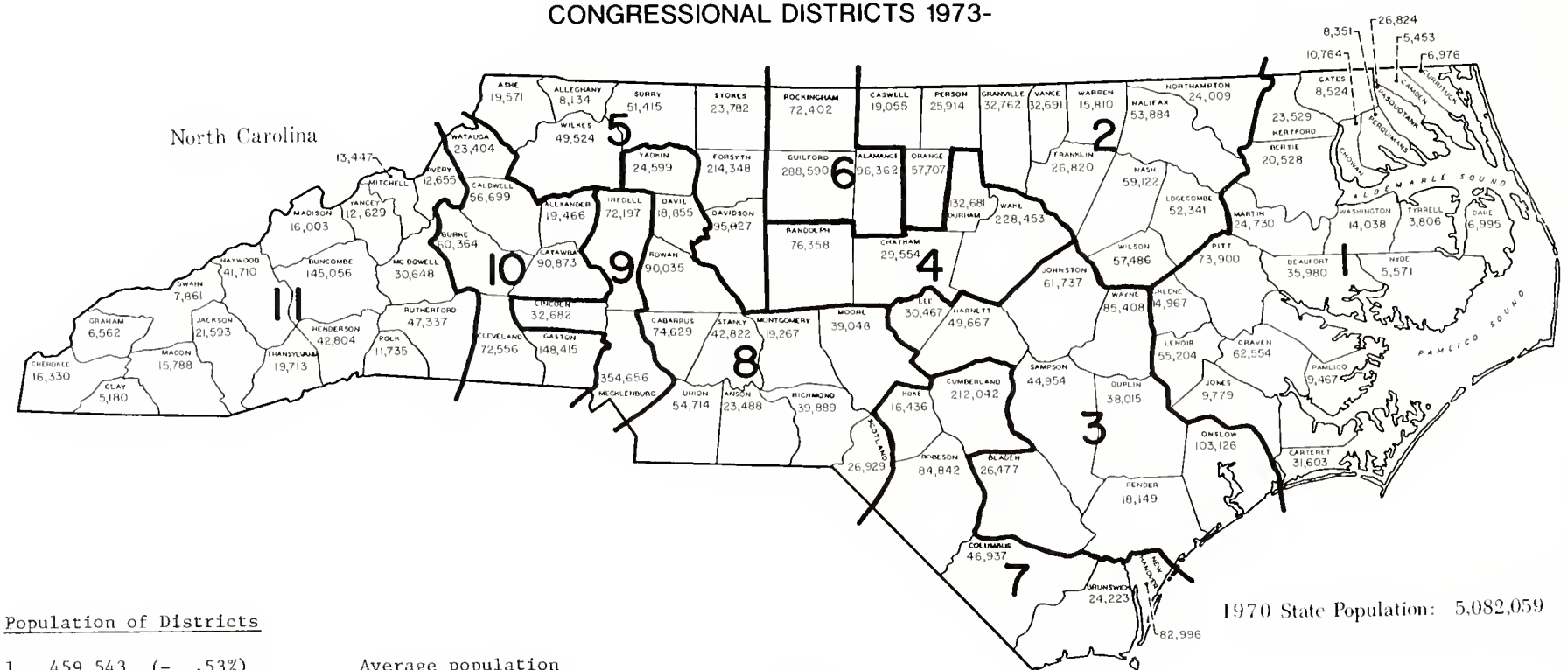
Population of Districts

1.	412,973	(- 10.61%)	Average population
2.	395,806	(- 14.33%)	per district (norm) 462,005
3.	432,659	(- 6.35%)	
4.	524,753	(+ 13.58%)	Range of deviation - 14.33% to + 13.58%
5.	456,331	(- 1.23%)	from norm
6.	476,409	(+ 3.12%)	
7.	493,953	(+ 6.92%)	Average deviation from norm 7.03%
8.	441,288	(- 4.48%)	
9.	509,059	(+ 10.18%)	Largest to smallest ratio 1.33 to 1
10.	484,432	(+ 4.85%)	
11.	454,396	(- 1.65%)	Sess. Laws 1967, c. 1109

5,082,059

Figure 2

CONGRESSIONAL DISTRICTS 1973-



1970 State Population: 5,082,059

Population of Districts

1.	459,543	(- .53%)
2.	457,601	(- .95%)
3.	458,000	(- .87%)
4.	467,046	(+ 1.09%)
5.	462,401	(+ .09%)
6.	457,354	(- 1.01%)
7.	467,476	(+ 1.18%)
8.	454,275	(- 1.67%)
9.	459,535	(- .54%)
10.	471,777	(+ 2.12%)
11.	467,051	(+ 1.09%)
	5,082,059	

Average population per district (norm)	462,005
Range of deviation from norm	- 1.67% to + 2.12%
Average deviation from norm	1.01%
Largest to smallest ratio	1.04 to 1

Sess. Laws 1971, c. 257

computer to aid in the task. Identical resolutions were introduced (S 20, H 22), instructing the Legislative Services Commission to use computers to devise alternative congressional and state legislative districting plans for legislative consideration. This proposal generated only limited legislative enthusiasm and never received committee approval in either house.

The General Assembly resolved to do the job itself and not leave it to the courts, to do it "by hand," and to do it in such fashion as to avoid a successful court challenge to its handiwork. The Supreme Court's decision in *Whitcomb v. Chavis,* U.S. , 39 U.S.L.W. 4666 (1971), when it finally came on June 7, did not rule out multi-member districts, thus permitting North Carolina to continue its traditional mixed pattern of single- and multi-member districts for both houses.

The remainder of this article summarizes the procedures employed in preparing the three representation plans enacted by the 1971 session and compares the statistics of the existing and new plans.

Congressional Districts

The General Assembly revised the state's congressional districts in 1961 (when the North Carolina delegation was reduced from 12 to 11 members), and again in 1966 and 1967 in response to court orders. *Drum v. Seawell,* 249 F. Supp. 877 (M.D.N.C. 1965), F. Supp. (M.D.N.C. 1966), aff'd., 383 U.S. 831, 16 L. Ed. 2d 298 (1966).

The 1967 plan had been devised using 1960 census data. The growth and shifts of population revealed by the 1970 census worked many changes in the statistical character of that plan, as Table 1 illustrates.

It was generally anticipated that extensive shifts in district boundaries would be necessary to bring each of the districts as near as practicable to the norm of 462,005 people.

The Senate Committee on Congressional Redistricting, chaired by Senator George M. Wood, and the House Committee on Congressional Districts, chaired by Representative Horton H. Rountree, held no joint meetings but remained in contact through their chairmen. Early in the session, S 42 and H 128, duplicate bills that simply described the existing congressional districts, were introduced to give the committees a vehicle for getting their recommendations before the respective houses. The introduction of other plans in the form of separate bills was discouraged to keep the record clear of plans that might compete with the one eventually to be devised by the General Assembly. In less than a month, a plan was presented to and approved without change by the Senate committee as a committee substitute for S 42. That plan passed the Senate with only one dissenting vote and the House with only minor difficulty, undergoing no alteration on its way to becoming Chapter 257 on April 29.

The virtues of S 42 were several: It achieved a substantial equalization of population among the districts: an average deviation of only 1.01 per cent with a range of deviation from 1.67 per cent below to 2.12 per cent above the norm. And it did so while shifting only ten counties from their current districts, avoiding the pairing of any two incumbent congressmen and denying no congressman his power base. The Republicans were pleased with the plan. The chief criticisms arose over the shift of Orange County from the Fourth to the Second District and Bladen from the Seventh to the Third District. Plans making alternative provisions with respect to both of those features of S 42 were introduced both as separate bills (H 604 and H 605) and as amendments to S 42 when it got to the House floor, but without avail.

Figure 1 is the 1967 congressional district plan with 1970 census figures; Figure 2 is the plan adopted in 1971.

State Legislative Representation

In response to a court order in *Drum v. Seawell,* 249 F. Supp. 877 (M.D.N.C. 1965), the General Assembly in 1966 revised the apportionment of both House and Senate seats to accord with the equal representation principle. The State Constitution was amended in 1968 to bring its representation formulas into line with the new reality. The 1970 census triggered the process of revising the districts and the distribution of seats among them so that each senator would represent about the same number of people as every other senator (101,641) and each representative would represent about the same number of people as every other representative (42,350).

The plans devised in 1966 had kept the deviations of population to no more than 15 per cent above and below the statewide average (or norm), based on 1960 census information. The return of the 1970 census revealed that the uneven distribution of the half-million new residents gained during the decade and the movement

Table 1

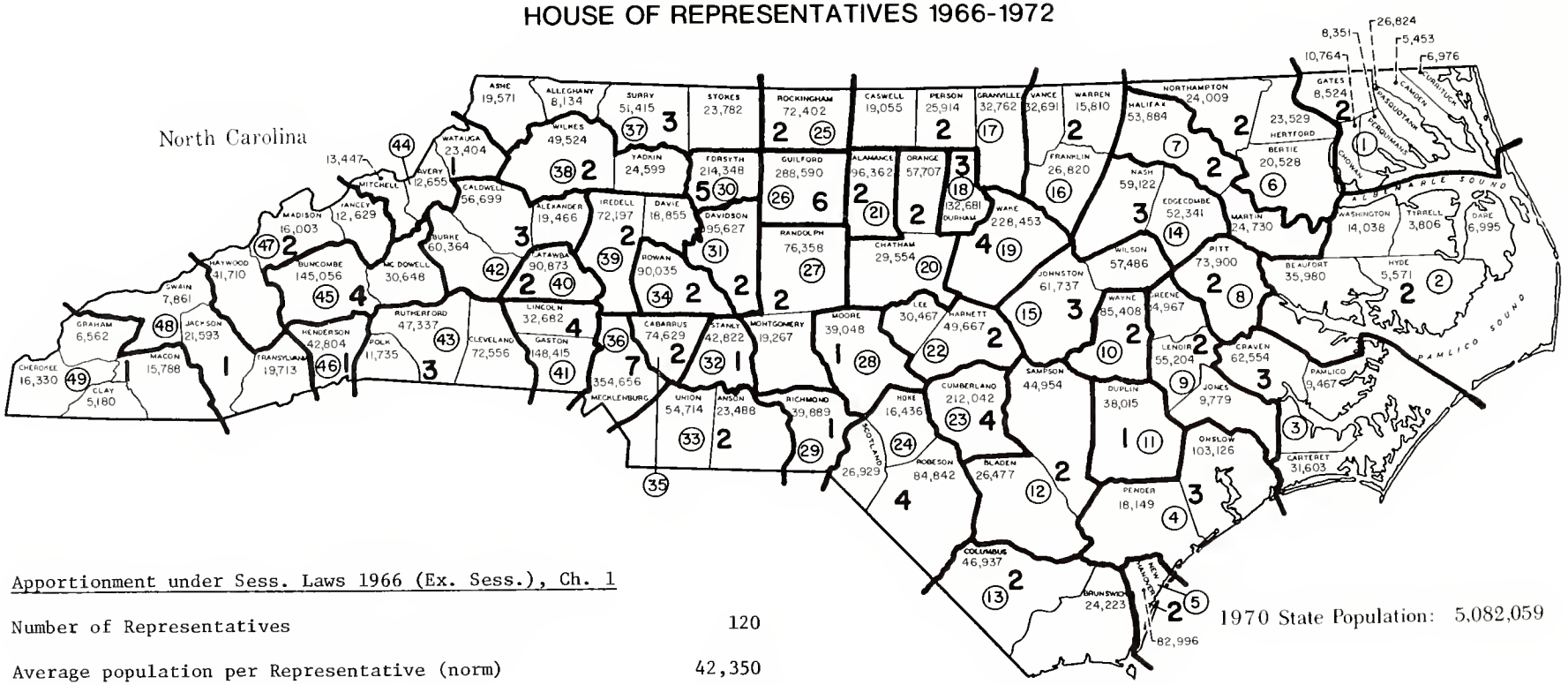
1967 NORTH CAROLINA CONGRESSIONAL DISTRICTS

1960 and 1970 Populations Compared

	1960	*1970*
Average population per district (norm)	414,196	462,005
Average deviation from norm	1.06%	7.03%
Range of deviation from norm	−1.86% to +2.31%	−14.33% to +13.58%
Largest to smallest ratio	1.04 to 1	1.33 to 1

Figure 3

HOUSE OF REPRESENTATIVES 1966-1972



Apportionment under Sess. Laws 1966 (Ex. Sess.), Ch. 1

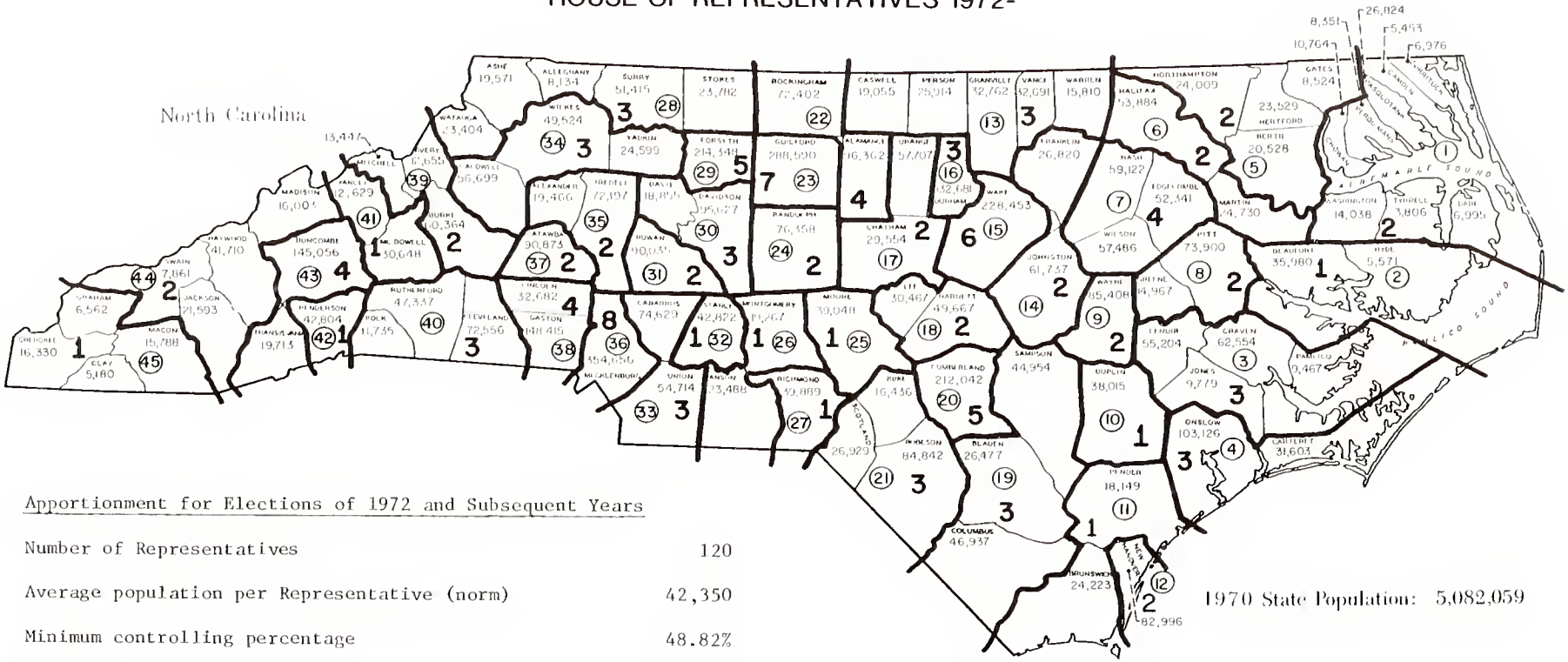
Number of Representatives	120
Average population per Representative (norm)	42,350
Minimum controlling percentage	44.86%
Largest to smallest ratio	1.78 to 1
Range of deviation from norm	-24.32% to +34.86%
Average relative deviation per Representative	12.03%

1970 State Population: 5,082,059

Sess. Laws 1966 (Ex. Sess.), Ch. 5

Figure 4

HOUSE OF REPRESENTATIVES 1972-



Apportionment for Elections of 1972 and Subsequent Years	
Number of Representatives	120
Average population per Representative (norm)	42,350
Minimum controlling percentage	48.82%
Largest to smallest ratio	1.21 to 1
Range of deviation from norm	- 10.24% to + 8.22%
Average relative deviation per Representative	4.07%

1970 State Population: 5,082,059

Sess. Laws 1971, Ch. 483

Table II

STATE SENATE AND HOUSE OF REPRESENTATIVES

1966 Apportionments Compared under 1960 and 1970 Censuses

	1960	*1970*
Senate		
Average population per member (norm)	91,123	101,641
Range of deviation from norm	−14.75% to +12.76%	−26.70% to +19.68%
Average deviation per member	6.49%	10.79%
Minimum controlling percentage	48.80%	46.66%
Ratio of largest to smallest district in terms of population per member	1.32 to 1	1.63 to 1
House of Representatives		
Average population per member (norm)	37,968	42,350
Range of deviation from norm	−13.98% to +14.42%	−24.32% to +34.86%
Average deviation per member	6.73%	12.03%
Minimum controlling percentage	47.54%	44.86%
Ratio of largest to smallest district in terms of population per member	1.33 to 1	1.78 to 1

of people within the state had greatly enlarged the population deviations of the 1966 districts, as Table II illustrates.

In the House, the Committee on State Legislative Districts was headed by Representative Liston B. Ramsey, and its 35 members included five Republicans. Its Senate counterpart, the Committee on General Assembly Redistricting, was headed by Senator Herman A. Moore and included among its 16 members two Republicans. The two committees held only one joint meeting, that at the beginning of their work. It was understood between them that, in keeping with tradition, each house would initiate and act first on a plan for its own redistricting.

A closely related issue concerned whether and to what extent to number the seats in each multi-member district, a practice begun on a partial basis in each house in 1967. It will be mentioned further in connection with the action taken on each apportionment plan.

The prospect that the Supreme Court might require the adoption of single-member districts led to the preparatory introduction of H 1024, which called for only single-member senatorial and representative districts, and H 1314, which would have eliminated the present bar to the division of counties in the formation of legislative districts. Both were reported unfavorably in the House.

House of Representatives

Early in its work, the House Committee on State Legislative Districts resolved to proceed with its task and not wait the decision of the Supreme Court in *Whitcomb v. Chavis*. The Committee divided itself into two subcommittees (one composed of western members and one of eastern members), divided the state roughly in half, and directed each subcommittee to produce a plan to apportion its section of the state. Meetings of the subcommittees were frequent and public. This process continued from mid-February until mid-May, when the full Committee amended and approved the plan generated by the subcommittees (H 230).

In the House, the plan survived three amendment attempts and one re-referral motion. The chief House debate came over the question whether the state constitutional requirement of contiguity is met when portions of a district are connected only at a point constituting the common corner of two counties. This condition is found in four of the new districts, and as to one of them there is dispute even as to the existence of a common corner. The House resolved in favor of point contiguity. The Committee's plan was adopted by the House without change on May 20 and by the Senate 11 days later, and became law as Ch. 483 on June 1.

Figures 3 and 4 illustrate the the existing and new House apportionment plans.

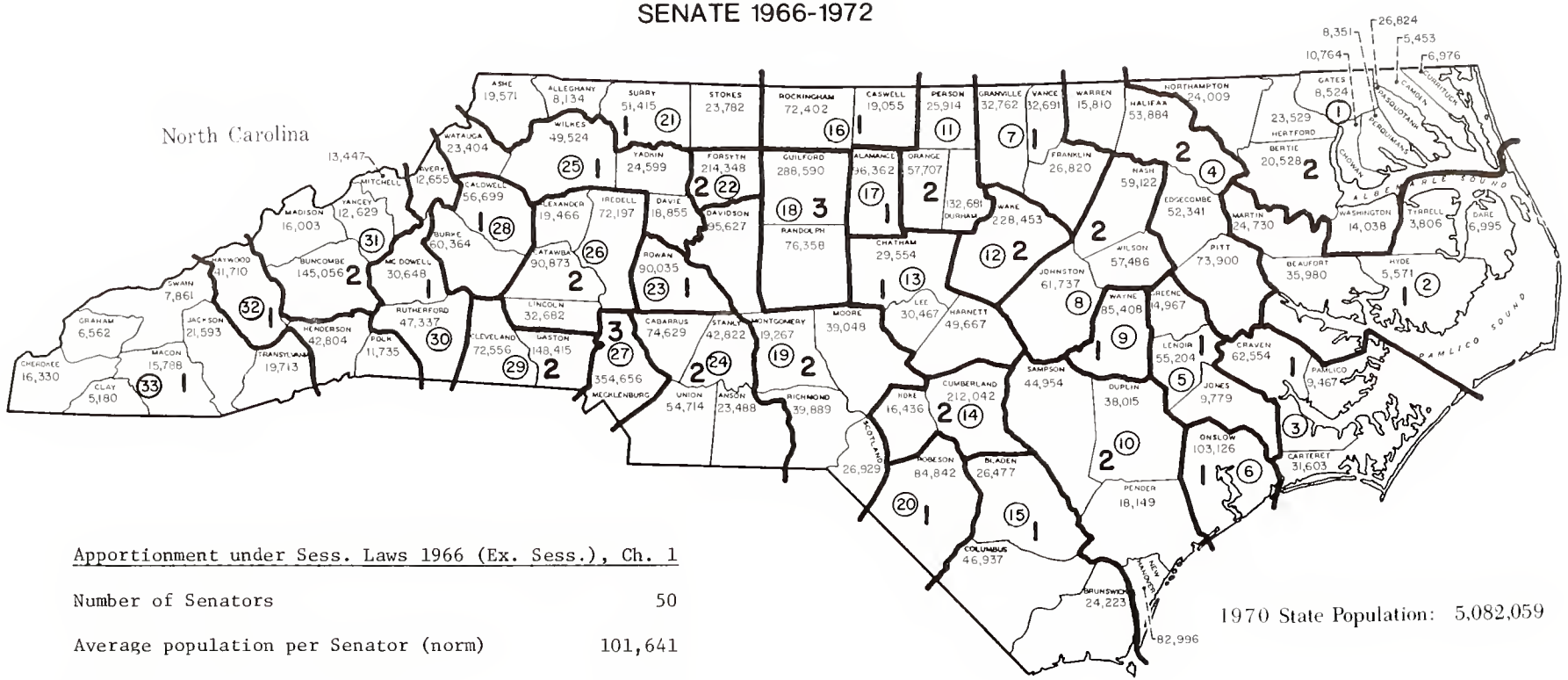
G.S. 163–117, as amended by Ch. 1237 (H 1503), requires the numbering of seats in 23 of the 35 multi-seat representative districts (districts 15, 17, 20, 21, 23, 29, 34, 35, 36, 37, 39, and 44 are exempted). The ten single-member districts are unaffected. Where seats are numbered, a candidate declares for a particular seat and he runs only against the other candidates who declare for the same seat—not against the field.

Senate

The initial attitude of the Senate Committee on General Assembly Redistricting was that it should wait until it had the guidance of the United States Supreme Court in the *Whitcomb* case before proceeding with its task. As the months wore on without an opinion in that case, however—six months elapsed from argument to decision—work was undertaken quietly in a subcommittee headed by Senator F. O'Neil Jones. By June 9, the subcommittee published a tentative plan, followed by hearings and modifications of the plan. On June 29, the Committee adopted a committee substitute for S 395 which was based on the work of the Jones subcommittee and sent it to the floor of the Senate on June 30. From there it was re-referred to committee without debate, further modified, and a second committee substitute was reported to the Senate on July 12. In the Senate, an amendment attempt by the far-western senators, seeking to reshape the districts in the mountain area, was first rejected 20–22, then adopted 25–17

Figure 5

SENATE 1966-1972



1970 State Population: 5,082,059

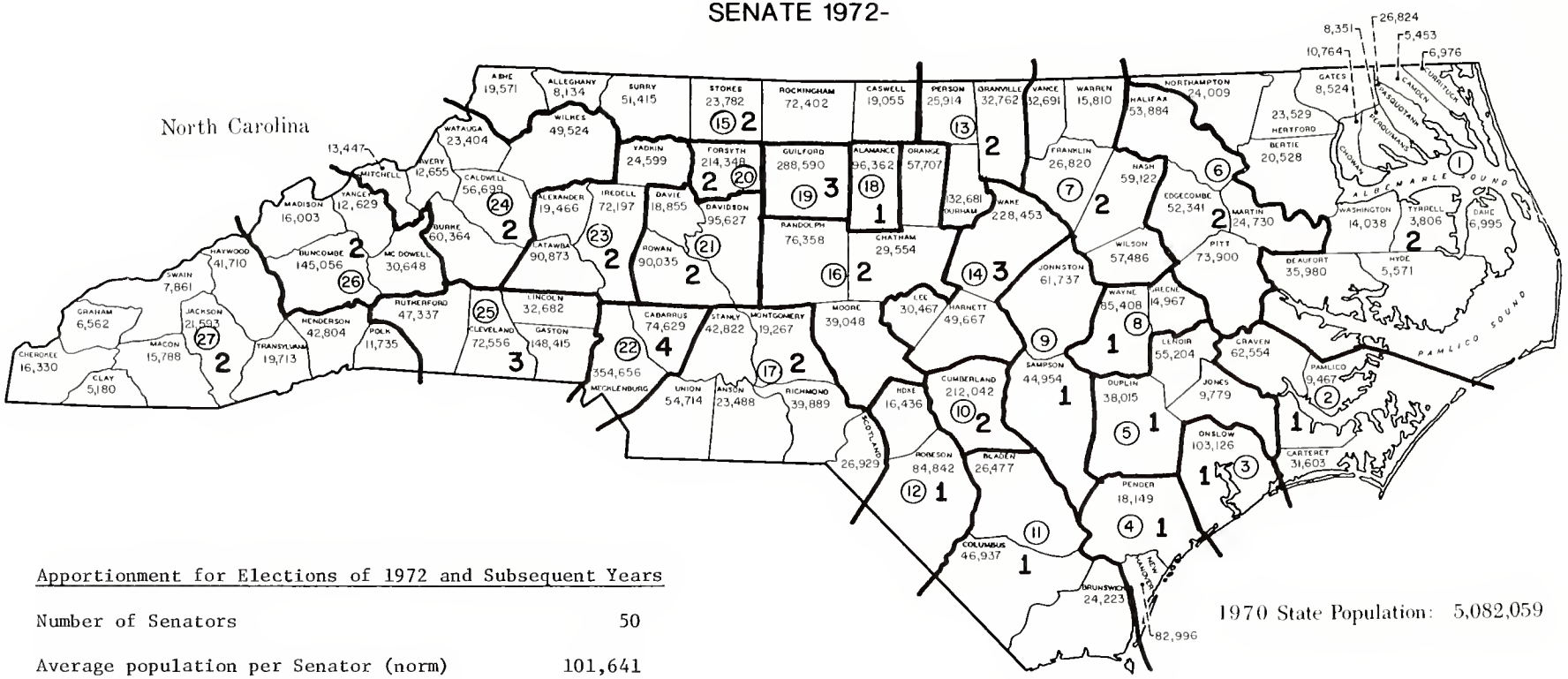
Apportionment under Sess. Laws 1966 (Ex. Sess.), Ch. 1

Number of Senators	50
Average population per Senator (norm)	101,641
Minimum controlling percentage	46.66%
Largest to smallest ratio	1.63 to 1
Range of deviation from norm	-26.70% to +19.68%
Average relative deviation per Senator	10.79%

Sess. Laws 1966 (Ex. Sess.), Ch. 1.

Figure 6

SENATE 1972-



1970 State Population: 5,082,059

Apportionment for Elections of 1972 and Subsequent Years

Number of Senators	50
Average population per Senator (norm)	101,641
Minimum controlling percentage	50.45%
Largest to smallest ratio	1.14 to 1
Range of deviation from norm	-6.89% to +6.30%
Average relative deviation per Senator	3.17%

Sess. Laws 1971, Ch. 1177

the next day, then (following another re-reference to committee) deleted 23–17, and then adopted in a modified form. Two other amendments had been handily rejected by the Senate along the way. Approved by the Senate on July 15, the bill gained speedy approval in the House without further change and was ratified on July 21 as Ch. 1177.

A final Senate redistricting bill, S 988, introduced on July 21, embodied the same district scheme as an amendment which the sponsor of S 988, Senator Bobby Lee Combs, had offered unsuccessfully when S 395 was under consideration in the Senate. It was not acted on by the committee to which referred.

Figures 5 and 6 exhibit the existing and new Senate districting plans.

G.S. 163–117, as amended by Ch. 1234 (S 995), requires the numbering of seats in 11 of the 18 multi-seat senatorial districts (10, 13, 14, 19, 20, 23, and 26 are exempted). The nine single-member senatorial seats are not affected.

Late in the session, Senator George M. Wood introduced S 977, which would have amended the Constitution to authorize the General Assembly to enlarge the Senate from 50 to not more than 60 members. Under this amendment, had Senate membership been increased to 60 (half the size of the House), the separate senatorial and representative districts would have been replaced with one set of legislative representation districts. Two representatives would have been apportioned to a district for each senator apportioned to it. This arrangement would have reduced the labor of decennially revising legislative districts and also would have simplified the task of senators representing multi-county Senate districts, which now often include parts of two or more representative districts. The bill was not reported by the Senate Committee on Constitution.

Conclusion

The 1971 General Assembly addressed its task of revising congressional and state legislative districts and produced a set of plans which in statistical terms should bear scrutiny by any but the most fastidious champions of mathematical equality of representation. See Table III.

Comparing the 1966 and 1971 plans in regional terms (and making due allowance for the inevitable differences of opinion about where the boundaries between the regions of the state lie), it appears that the Piedmont has gained three Senate seats (drawing one from the East and two from the West) for a total of 25 and three House seats (drawing two from the East and one from the West) for a total of 54.

It is likely that the courts will be asked to review some or all of the plans to determine their compliance with the equal representation principle. There have not been enough cases testing the validity of 1971 reapportionment schemes to forecast with confidence the outcome of a case challenging the North Carolina plans. For the House plan, another issue to be resolved will be the validity of point contiguity in forming districts.

Before the plans can be put into effect for the 1972 elections, the federal Voting Rights Act requires that they be reviewed by the United States District Court for the District of Columbia and found to have neither the purpose nor the effect of racial discrimination. (Alternatively, the plans may be submitted to the United States Attorney General; if he makes no timely objection to them, they may be enforced.) No public criticism was made of the racial consequences of any of the plans while they were under consideration in the General Assembly, but that does not insure that no such objections will be raised in the future.

The numbering of seats in the Senate and House poses a closely related but judicially separable issue that may draw its own challenge, especially under the terms of the Voting Rights Act. Moreover, the fact that in neither house does the numbering practice apply to seats in all multi-member districts and the further fact that the exclusion of districts was not based on apparent objective criteria may raise equal-protection questions.

The legislative reapportionment tasks for the 1970s are now done. Whether some or all of them will have to be redone within the decade remains for time's telling.

Table III

STATE SENATE AND HOUSE OF REPRESENTATIVES

1966 and 1971 Apportionments Compared under 1970 Census

	1966 Plan	*1971 Plan*
Senate		
Average population per member (norm)	101,641	101,641
Range of deviation from norm	−26.70% to +19.68%	−6.89% to +6.30%
Average deviation per member	10.79%	3.17%
Minimum controlling percentage	46.66%	50.45%
Ratio of largest to smallest district in terms of population per member	1.63 to 1	1.14 to 1
House of Representatives		
Average population per member (norm)	42,350	42,350
Range of deviation from norm	−24.32% to +34.86%	−10.24% to +8.22%
Average deviation per member	12.03%	4.07%
Minimum controlling percentage	14.86%	48.82%
Ratio of largest to smallest district in terms of population per member	1.78 to 1	1.21 to 1

Postscript

On September 9, after the text of this article had been set in type, the Executive Secretary of the State Board of Elections announced that the Attorney General of the United States had approved the 1971 congressional redistricting and house reapportionment plans as not violative of the Voting Rights Act. The 1971 senate reapportionment plan remained under his review. The Attorney General disapproved as violative of the Voting Rights Act the numbering of seats in those senatorial and representative districts that contain one or more of the 39 counties under the ban of the Voting Rights Act. The effect of this ruling is to prohibit seat-numbering in six senatorial districts and sixteen representative districts in which 1971 legislation had provided for it. In consequence, seat-numbering will be enforceable *only* in senatorial districts 16, 21, 22, 24, and 27 and in representative districts 12, 16, 24, 28, 30, 31, and 43—subject to the outcome of a suit pending in the Eastern District of the United States District Court, testing the constitutionality of the seat-numbering practice.

—John L. Sanders

PRESIDENTIAL PREFERENCE PRIMARY

Ch. 225 (S 39) provides for presidential preference primaries at the regular political party primaries in 1972 and subsequent presidential election years. Candidates may become eligible for a party's ballot in either of two ways:

(1) By decision of the State Board of Elections (made not later than the deadline for filing notices of candidacy—Monday before the tenth Tuesday before the primary) that an individual is "generally advocated and nationally recognized" as a candidate of a party qualified to participate in elections in this state.

(2) By a petition signed by 10,000 registered and qualified voters of the party with which a candidate is affiliated, this petition to be filed with the State Board of Elections by the fifteenth day following the deadline for filing notices of candidacy and to be accompanied by the candidate's written consent to the petition.

Upon selection under either procedure, the candidate must file a formal notice of candidacy; in addition, if nominated by the State Board of Elections, the candidate must pay a filing fee of $1,000.

North Carolina's convention-delegate vote of a particular party is to be divided and automatically cast on the *first* convention ballot in accordance with the statutory instructions illustrated below. (The primary results have no binding effect on subsequent convention ballots.)

Assume, for example, that a political party allocates 25 convention votes to North Carolina. Assume that the names of five candidates appear on that party's presidential primary ballot and that Candidate A receives 90,000 votes; Candidate B, 190,000; Candidate C, 200,000; Candidate D, 185,000; and Candidate E, 35,000. The total vote cast is 700,000. Only the four highest candidates may be allocated convention-delegate votes, thus Candidate E is not to receive any delegate votes from North Carolina on the first convention ballot. His 35,000 votes are then subtracted from the 700,000 cast, leaving 665,000. The percentage of this total received by each of the four qualifying candidates is then computed as follows: Candidate A, 13.5 per cent; Candidate B, 28.6 per cent; Candidate C, 30.1 per cent; and Candidate D, 27.8 per cent. Application of these percentages to the 25 convention votes allocated to North Carolina produces the following division: Candidate A, 3.36 votes; Candidate B, 7.15 votes; Candidate C, 7.53 votes; and Candidate D, 6.95 votes. The counting of fractional votes would, no doubt, be governed by convention rules.

If only four names appear on the ballot, all will share in the delegate vote if each obtains at least 15 per cent of the total vote. In such a situation, if one of the candidates (A, for example) should die or withdraw before the first convention ballot is taken, the votes allotted to him (3.35) would be uncommitted, and presumably they could be cast on the first ballot according to the decision of the North Carolina delegation.

2 Proposed Amendments

The General Assembly of 1969 proposed and the voters of the State last fall approved a revision of the Constitution of North Carolina which became effective on July 1, 1971. Any hope that the adoption of the revised Constitution would quiet for a time the interest in constitutional change has been proved vain by the experience of the 1971 session. Thirty-six bills for state constitutional amendments were introduced. Discounting duplicate bills, twenty-seven distinct proposals for constitutional change were considered by the session, only one less than the 1969 session received. Five were approved by the required three-fifths of the members of both houses and will be voted on by the people of the state on November 7, 1972.

Amendments Approved

Two of the amendments originated with the Courts Commission and affect judicial officeholding. Ch. 451 (S 63) directs the General Assembly to prescribe maximum age limits for service as a justice or judge of the General Court of Justice. A companion bill, S 64, enacted as Ch. 508, will carry out that direction if the amendment is approved by the voters. Ch. 560 (H 86) directs the General Assembly to prescribe a new procedure for removing justices and judges of the General Court of Justice on grounds of misconduct, failure to perform their duties, or permanent mental or physical incapacity. Ch. 590 (H 87) creates a Judicial Standards Commission and establishes its procedures, effective on the voters' ratification of the amendment. Both of these amendments are discussed at greater length in the article on courts in this issue.

The amendment that is popularly identified as the "environmental bill of rights" underwent frequent amendment before emerging as Ch. 630 (S 96). In its final form, the amendment declares a public policy of conserving and protecting the natural resources of the state, controlling air and water pollution, and preserving as part of the common heritage of the state "its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty." This declaration may serve as a constitutional basis for future state and local action on these subjects. The amendment also creates the "State Nature and Historic Preserve," which will consist of property acquired by the state and local governments and dedicated to conservation and recreation purposes. The admission of property to the Preserve will require a resolution of acceptance enacted by a vote of three-fifths of the members of both houses of the General Assembly; application of Preserve property to other uses than those for which dedicated or its disposal will require legislative authorization adopted by a three-fifths vote of both houses. (As introduced, the bill provided for much simpler admission of property to the Preserve, but would have required action by two successive regular sessions of the General Assembly to remove it.)

Experience and anticipated problems arising when new municipalities incorporate near existing towns, thus blocking the normal growth patterns of the latter and proliferating local governments, led to Ch. 857 (H 1181). It proposes an amendment prohibiting the creation of new cities and towns within prescribed distances of existing municipalities (the prohibited distance varying directly with the size of the existing municipality, according to a constitutional schedule) unless an incorporation bill is enacted by a vote of three-fifths of the members of both houses of the General Assembly.

The amendment posed by Ch. 201 (H 2) could have been highly significant, since it undertook to lower the voting age from 21 to 18. The ratification

ISSUES TO BE SUBMITTED TO STATEWIDE VOTE

The 1971 General Assembly made provisions for referenda on five proposed amendments to the North Carolina Constitution and on two bond issues. The propositions and referenda dates are set out below.

1. Constitutional amendment (Art. VI) to allow 18-year-olds to vote but to restrict elective officeholding to persons 21 years old or older (Ch. 201—H 2; Ch. 1141—H 1595)—November 7, 1972.
2. Constitutional amendment (Art. IV) to require the General Assembly to prescribe maximum age limits for service as justices and judges (Ch. 451—S 63; Ch. 707—S 805)—next general election.
3. Constitutional amendment (Art. IV) to empower the General Assembly to prescribe procedures for the censure and removal of judges and justices (Ch. 560—H 86; Ch. 707—S 805)—next general election.
4. Constitutional amendment (Art. XIV) to add a statement of policy with regard to the conservation and protection of natural resources (Ch. 630—S 96)—next general election.
5. Constitutional amendment (Art. VII) to limit the authority of the General Assembly with regard to the incorporation of cities and towns within close proximity of existing municipalities (Ch. 857—H 1181)—next general election.
6. To authorize the issuance of $150 million in state bonds to finance waste-water treatment works, waste-water collection systems, and water supply systems (Ch. 909—S 758)—on a date not later than May 2, 1972, to be fixed by the Governor.
7. To authorize the issuance of $2 million in state bonds to finance a zoological park (Ch. 953—H 1414)—a general election to be held on a date in 1971 or 1972 to be fixed by the Governor.

of the twenty-sixth amendment to the Constitution of the United States, which lowered the voting age to 18 nationwide in all elections, made the state amendment largely a formality, except that the amendment will restore the former requirement that one must be 21 years old in order to qualify for a popularly elective office.

These five amendments will be voted on at the time of the general election on November 7, 1972. (The initial plan to hold a general election in November of 1971 in order to act on the 18-year-old voting amendment before 1972 was canceled after the federal voting age amendment became effective.)

In addition to its actions on state constitutional amendments, the General Assembly approved two amendments to the federal Constitution—women's suffrage (Ch. 327—H 501), albeit 40 years too late to matter, and 18-year-old voting (Ch. 725—H 736), which North Carolina was the thirty-seventh state to ratify.

Amendments Defeated

The twenty-two amendment propositions that failed of adoption will be summarized briefly below. Except as noted, these bills all were reported unfavorably or not reported by the committee to which referred in their house of origin.

The court system was the subject of seven unsuccessful amendment proposals: to require that all judges be licensed lawyers (H 1168), which failed on second reading in the House; to permit civil juries to number from six to twelve, in the discretion of the General Assembly (H 1221), which failed on second reading in the Senate; to permit juries in misdemeanor cases to number from six to twelve (S 811); to reduce the grand jury from 18 to 12 members (S 198); to provide for the appointment of judges and justices (S 59, H 84); to change the title of "solicitor" to "district attorney" (H 1029); and to allow the defendant in a criminal case to accept trial by a jury of less than 12 but not less than six people (S 180, H 306).

Six rejected amendments would have affected the state legislative institution and processes. Two called for annual legislative sessions (H 38, S 31, and H 49), one would have required one-member legislative districts in both Senate and House (H 1024), one would have eliminated the constitutional prohibition against dividing counties in the formation of legislative districts (H 1314), one asked for an enlargement of the Senate from 50 to 60 members (half the size of the House) to facilitate legislative redistricting and representation (S 977), and one would have provided for the initiative and referendum (H 1372).

The executive branch drew four amendment proposals, none of which reached the floor of either house for debate. Governor Scott proposed that the ban on two successive terms for the governor be removed, but the matter was not pressed and the bill to accomplish it received an unfavorable committee report (H 809). A proposal for a legislative veto for the Governor (not sponsored by Governor Scott) also was reported unfavorably (S 153). A proposal designed to enhance the Lieutenant Governor's office and increase his pay (S 174) failed, as did a proposal to repeal the executive

reorganization amendment approved by the voters last fall (S 885).

The controversy over the organization of public higher education led to H 1179, greatly strengthening the supervisory powers of the Board of Higher Education over the institutions, and S 765, providing for a Board of Regents for public higher education.

Taxation also was the subject of two amendment proposals. H 961 would have enabled the General Assembly to adopt future federal definitions of income for state income tax purposes; it passed the House but not the Senate. H 1348, which would have authorized the counties to exempt intangible property therein from taxation, got an unfavorable report in the House.

A final amendment proposed to reduce the period of residence in the state required for voting from one year to 90 days (H 929). Amended before House passage to raise the residence period to six months, the bill was reported unfavorably in the Senate. On June 16, the United States District Court for the Middle District of North Carolina held violative of the United States Constitution the one-year residence requirement as it applies to *local* elections, and indicated that in a proper case it will reach the same decision with respect to the one-year residence requirement for voting in *state* elections. *Andrews v. Cody*, 327 F. Supp. 793 (M.D.N.C., 1971). In that event, and assuming that the United States Supreme Court will not reverse the district court's decisions, there will be *no* voter residence requirement except that of 30 days' residence in the precinct.

—John L. Sanders

3 Study Commissions

One of the major advantages asserted by the proponents of the biennial legislature, with its long recess periods separating the sessions, is the opportunity to conduct in-depth studies of complicated or controversial governmental problems. Since the studies can be conducted without the pressure and activity of legislative sessions, those involved, particularly the members who are legislators or state agency officials, are able to devote more of their limited time and attention to them. Also, more staff work and research can be put into the studies. The 1971 General Assembly availed itself fully of this device, creating thirteen special study commissions. This follows the trend toward gradual growth of the number of commissions created during the last four sessions (the 1965, 1967, and 1969 General Assemblies created eleven, eleven, and twelve special study commissions respectively). The 1971 legislature also assigned nine other studies to the Legislative Research Commission and two to other existing agencies.

The study commissions created this year range in size from six to twenty-six members, eleven being the most common number. The recent trend toward commissions with members that are chosen in part by the Governor, in part by the President of the Senate, and in part by the Speaker of the House of Representatives continued. The memberships of seven commissions are to be so selected. The Governor appoints all the members of three commissions, while the Attorney General appoints all members of one commission and the President of the Senate and the Speaker of the House each appoints all members of two commissions without participation of the Gov-

ernor. The Governor will select the chairmen of five commissions and their fellow commission members will select six chairmen.

For all eight commissions for which compensation is provided, the pay is $7 per diem and travel expenses are paid up to $25 a day. Eight commissions are to be financed from the Contingency and Emergency Fund, while the Commission for the Study of University of North Carolina Utilities will be financed from utility funds and the Criminal Code Commission's expenses from the fund allocated by the Committee on Law and Order.

The majority of the commission reports (eleven) will be directed to the 1973 General Assembly; one went to the 1971 session. Three reports will go to the General Assembly solely, six to the General Assembly and the Governor, and one to the General Assembly and the Attorney General. The Governor will receive one of the two remaining reports (on automobile insurance and rates and pork pricing) and the Board of Trustees of the University of North Carolina the other (on University utilities).

Commissions Approved

The following is a brief summary of the organization and assignment of each of the study commissions that will be active between now and the 1973 General Assembly:

● *Governor's Study Commission on Auto Insurance.*—The 1971 General Assembly reflected the growing national concern with automobile insurance rates and the interest in experimentation with different systems of insurance. Although no great change took place, the Governor's Study Commission on Automobile Insurance (H 1551, ratified as Res. 122) was created with the directive to make a comprehensive study of all aspects of automobile insurance. While this commission is similar to the one created by the 1969 General Assembly, the areas of study are more comprehensive and clearly delineated. The following subjects are included on the exhaustive list of areas specifically enumerated for scrutiny: "no-fault" automobile insurance; motor vehicle laws as they relate to automobile insurance; rate-making considerations, profits and any other relevant aspects of insurance companies; cancellation and nonrenewal procedures and practices of companies; placement on assigned risk and the feasibility of one centralized facility to write all policies for assigned risk and a reinsurance pool as a method of insuring all assigned risk. The Governor appoints all eleven members of the Commission, including seven who represent the interest of the insurance-buying public (six of these members must have legislative experience) and three who represent various aspects of the insurance industry.

● *Tax Study Commission.*—As usual, taxation was a prominent subject during this legislative session. The Tax Study Commission (S 926, ratified as Ch. 1219) is a permanent successor of commissions created by the 1965, 1967, and 1969 General Assemblies. The 1971 Commission is directed to review state and local taxes generally to seek a stable and equitable revenue system. The area of tax exemptions, which was included in the assignment for the 1969 Tax Commission was omitted, however, since a separate commission was created for that purpose (H 1383, ratified as Res. 111). A specific attempt to withdraw the exemption field from the purview of the 1969 Tax Commission was not adopted (S 925). The Governor will appoint five members of the 1971 Tax Commission, and the President of the Senate and the Speaker of the House will each appoint three. The Commission will make an interim report to the 1973 General Assembly and a full report to the Governor in 1974 for transmittal to the Advisory Budget Commission and the 1975 General Assembly.

● *Commission for the Study of Property Tax Exemptions and Classifications.*—The history of, policy behind, and practices relating to property tax exemptions and classifications will be the general subject of study of the Commission for the Study of Property Tax Exemptions and Classifications. Recognizing the discretion resting in it in granting exemption, the General Assembly seeks a statement of public policy from the Commission to guide the future exercise of this discretion. The Commission's report will go to the 1973 session. The Governor and the presiding officers of the two legislative houses each appoint three members of the Commission.

● *Criminal Code Commission.*—The Criminal Code Commission (S 37, ratified as Res. 24), already appointed by the Attorney General upon the recommendation of the Criminal Code Revision Committee, received legislative endorsement by the 1971 General Assembly. The Commission, with twenty-six members, is conducting a thorough study of criminal law and procedure in North Carolina and, before the 1973 session, is to submit a written report of its findings, recommendations, and all legislation required to implement these recommendations.

● *North Carolina Pork Pricing Study Commission.*—The North Carolina Pork Pricing Study Commission (Ch. 1098—S 655) is to make a comprehensive study of pork prices and the disparity between low prices paid to the producers and high prices paid by the consumers, and to recommend policies and programs which the state should adopt to deal with the problems found. The commission will have eleven members, one appointed by the President of the Senate and one by the Speaker of the House from their respective branches, and the Governor appoints nine (of which four are to be producers, two involved in

selling, one consumer, one member of the Department of Agriculture, and one member of the North Carolina State University faculty).

• *North Carolina Commercial Fisheries Study Commission.*—The North Carolina commercial fishing industry will also be surveyed before the next session. The North Carolina Commercial Fisheries Study Commission (S 876, ratified as Res. 103) has been given a mandate to examine the services rendered to and the needs of the individuals involved in the industry and the industry as a whole. The Lieutenant Governor is to appoint three senators; the Speaker of the House is to appoint three representatives; and the Governor is to appoint the remaining five members—including one each knowledgeable in finance, marketing, and marine insurance and one the president of the North Carolina Fisheries Association.

• *North Carolina State Fair Study Commission.*—Dissatisfaction over the way the State Fair has been operated during the past few years led to the creation of the North Carolina State Fair Study Commission (S 936, ratified as Res. 123). Its assignment is to study whether the needs of the Fair and people of the state can best be served by continued operation of the Fair by the Department of Agriculture or by some other manner of operation. The commission will have eight members; the legislature's presiding officers will each appoint two members of their houses and two other members. None of the latter four members may be currently employed by the state or be members of any other state board or commission; two must have industrial backgrounds and the other two agricultural experience.

• *Commission on Elections and Voting Abuses.*—The Commission on Elections and Voting Abuses (H 735, ratified as Res. 61) was established to study registration and voting procedures with special emphasis on the act of voting and the possibilities of fraud, abuse of voters, or attempts to influence voters with offers of payment. The seven members are to be appointed by the Governor, including no more than four members from the same political party. The report of the Commission is to be made to the Governor for transmission to the 1973 General Assembly.

• *Local Government Study Commission.*—The Local Government Study Commission created in 1967 (Resolution 76) and continued in 1969 (Resolution 111) was again renewed by the 1971 General Assembly (Ch. 1298, ratified as Res. 110). The assignment is broad enough to encompass the whole range of local governmental structure, powers, finance, and relationships within the state. The membership will be six representatives appointed by the Speaker of the House, three senators appointed by the President of the Senate, and six other persons chosen by the Governor.

• *Southern States Regional Planning Study Commission.*—Planning on the regional level is emerging in importance with the realization that growth is often blind to state lines. The Study Commission to Determine the Feasibility of Creating by Compact a Joint Effort Among Southern States to Influence Growth Patterns in the South was created in recognition of the need for region-wide planning. Its assignment, as its name implies, is to join with other southern states to determine whether they can by point planning provide for orderly growth of the region. This could be a matter of great significance. Since many parts of the South are yet relatively underdeveloped, planned development can help avoid built-in problems afflicting areas that grew haphazardly before planning was undertaken. Of the seven members of the Commission, two are to be appointed by the President of the Senate, two by the Governor, and three by the Speaker of the House. The Commission report is to be presented to the Governor for transmittal to the 1973 General Assembly.

• *Study Commission on Public Health Services.*—To seek solutions to the problems of providing public health services the 1971 General Assembly created the Legislative Study Commission on Organization and Delivery of Public Health Services in North Carolina (H 1291, ratified as Res. 116). The Commission is to make a comprehensive study of current state-local relationships and responsibilities, with particular emphasis on financing public health systems. Of the fifteen-member Commission, the Lieutenant Governor appoints two senators and the Speaker of the House two representatives; the Governor appoints the remaining eleven, who are to include a local health director; one chairman of a board of county commissioners; one State Board of Health staff member; one local board of health chairman; one consumer of local public health services; one physician in private practice; and one member to be chosen at the discretion of the Governor.

• *Commission for the Study of University of North Carolina Utilities.*—The University of North Carolina at Chapel Hill owns and operates the electric power, water, and telephone systems serving Chapel Hill, Carrboro, and vicinity. This Commission will study whether the University should retain operation of the utilities or dispose of them and if so by what means. The Governor appoints the chairman and not more than fifteen members to constitute the Commission. The membership is to include at least two members of the Board of Trustees of the University of North Carolina, the State Director of Administration, two or more persons with expert knowledge of each type of utility involved, the mayor or a member of the Board of Alderman of Carrboro, the mayor or a member of the Board of Aldermen of Chapel Hill, and a member of the Board of County Commissioners of Orange County in an effort to encompass as many

divergent viewpoints as possible. The Commission is to make its report to the Board of Trustees within six months unless granted an extension by the Governor.

● *Legislative Electronic Voting Study Commission.*— The efficiency of the legislative process again came under scrutiny with the creation of the Legislative Electronic Voting Study Commission (H 237, ratified as Res. 87). Having installed a progressive computer terminal system in the legislative building to expedite legislative information inquiries, the General Assembly of 1971 authorized a study of the need for, advisability of, and practical problems (such as rule changes) involved in installing electronic voting units. The Commission consists of three senators and three representatives appointed by the Lieutenant Governor and Speaker of the House respectively. Its report was submitted to the 1971 General Assembly and recommended the installation of electronic voting equipment by 1973.

Legislative Research Commission Assignments

The Legislative Research Commission received a substantial and varied group of study assignments to be undertaken in anticipation of the 1973 session, including:

—A study of the availability of emergency care in the state and of the possibility of creating a statewide system (S 827);

—An examination of the Department of Mental Health and all programs related to the care of the mentally ill, mentally retarded, alcoholics, and drug addicts of the state (S 871);

—A study of a wide range of environmental problems and regulations with respect to air, water, and land (S 961);

—A study of the motor vehicle law to the end that such laws can be made more cohesive, more easily understandable to the public, and more easily administered by the enforcement authorities (S 964);

—A study of the "geographical unit" concept within the state system of mental hospitals (H 715, ratified as Res. 66);

—A study of the current lawful role of nurses in providing comprehensive health care and the areas where their use can be increased (H 1339, ratified as Res. 97);

—A study of professional regulation of teacher licensing and practices by a board comprised of members of the education profession (H 1429, ratified as Res. 99);

—A study of the tobacco industry to determine whether a tobacco advisory board should be created to provide assistance to the tobacco industry (H 1524).

Also, fourteen more members have been added to the Legislative Research Commission to help in the study of progress reports on the reorganization of state government. The Speaker of the House and the President Pro Tempore of the Senate are each to appoint from the current committee chairmen in their respective branches seven additional nonvoting members to the Legislative Research Commission. These members shall meet with the Commission whenever it considers state reorganization reports (S 973, ratified as Res. 114).

Studies by Other Existing Agencies

Two departmental studies were authorized by the 1971 General Assembly:

Ch. 103 (H 33) provides for a continuation of the 1969 study by the Commissioner of Commercial and Sports Fisheries of the state's estuaries as a basis for developing a comprehensive plan for their conservation.

The Department of Social Services is to conduct a study of the funding of private child-care institutions by the state and develop a formula for distributing future grants (H 1012, ratified as Res. 91).

Departments and other state agency study proposals that were *not* adopted would have called for a study of the feasibility of a four-lane highway for the eastern and western sections of the state by the State Highway Commission (S 910); a study of retirement and survivor benefits for judges by the North Carolina Courts Commission (S 955); a study of simplified state tax returns by the Department of Tax Research, Department of Revenue, and the Tax Study Commission jointly (H 721); a study of the problems of visually handicapped preschool children by the State Commission for the Blind (H 1045); a study to be continued for determining the need for a school of veterinary medicine in North Carolina by the Board of Higher Education (H 1139); a study of the accounting procedures of the State Highway Commission by a private auditing firm (H 1234); a study of sedimentation pollution problems by the North Carolina Board of Water and Air Resources (H 1275); and a study of the use of consultants and consultant firms by the Department of Administration (H 1547).

Commissions Rejected

Ten special study commissions were proposed but failed to receive legislative approval in the 1971 General Assembly. The controversy over the reorganization of public higher education inspired the largest number, with four commissions dealing with this subject (S 820, S 821, H 1261, H 1591) left pending at the end of the session (see the article on higher education). Others would have provided for commission inquiries into rapid transit in the Piedmont Crescent (S 130), tax incentives to encourage export facilities and export of North Carolina goods (S 939), a twelve-month school year (H 510), the use of prison labor in competition with private enterprise (H 799),

and professional negotiations between professional employee associations and school boards (H 1457). The General Assembly failed to adopt resolutions that would have continued commission studies of the Uniform Commercial Code (S 106) and the taxation of banks.

Thirteen proposals for Legislative Research Commission studies also did not obtain legislative approval. These included studies of such diverse topics as ethics for heads of state government and members of the General Assembly (S 818), sanitary land fills (S 920), age of majority (S 972), motor vehicle taxes (S 979), standing to sue pollutors (H 788), marketability of title to real property (H 1326), the workings of the General Assembly (H 1340), record-keeping and forms (H 1485), payroll deductions (H 1509), governmental immunity (H 1515), the State Textbook Commission (H 1544), teacher salaries (H 1563), and student- teacher classroom ratios (H 1573).

—Michael Meeker

4

LEGISLATION THAT IS OF INTEREST TO Municipalities

The 1971 legislature will probably be remembered by city governments as the recodifying General Assembly. Much else happened in the recently concluded regular session that affects cities, and at times other city matters clearly held the spotlight, but in recollection it is the recodifications that dominate. Four major bills recodified a great deal of law pertaining to cities: Ch. 698 (H 153) rewrote large portions of Ch. 160 of the General Statutes, the first such rewrite since 1917; Ch. 835 (H 59) placed in the law, for the first time, a complete and uniform municipal election law; Ch. 780 (H 610) brought together in a new Ch. 159 of the General Statutes all provisions dealing with the Local Government Commission, with city, county, and special district budgeting and fiscal control, and with local government borrowing; and Ch. 806 (H 169)—The Machinery Act of 1971—rewrote and updated the basic law dealing with property tax administration. The first three of the recodifying acts were the product of the Local Government Study Commission, which enjoyed its second session of major accomplishment in 1971. Late in the session Res. 110 (H 1298) was enacted, continuing the Commission for another biennium of work.

Of course recodification was not the only story of the 1971 session. Among several principal legislative subjects, one other stands out prominently: the environment. The 1971 General Assembly was active in dealing with environmental problems, and many of its enactments in the environmental field apply to cities and affect their abilities to deal with matters of environmental concern.

Chapter 160A: A New Basic Law For Cities

Without doubt the most significant achievement of the 1971 General Assembly in municipal affairs was the passage of Ch. 698. In recent years each session has seen acts to "consolidate, revise and amend" the charters of various North Carolina cities. This year it was the turn of the general law itself. Just as the

passage of time makes some local provisions obsolete and the work of many hands tends to mar the original organization of city charters, so it has been with G.S. Ch. 160. Revision was necessary, and Ch. 698 fills the need admirably.

For an understanding of Ch. 698, it will be helpful to be clear about what it does not do. First, it does not repeal all of existing G.S. Ch. 160. Subchapters III through VIII (having to do with finance, annexation, redevelopment, and parking facilities) are not touched. In addition Articles 8 (libraries) and 12B (rural recreation) are merely transferred, without change, to G.S. Ch. 153. Subchapters IX, X, and XI (reproduction of records, electric service in urban areas, and railroad assessments), although repealed, are re-enacted in the new law without substantive change. That leaves only Subchapters I and II (G.S. 160–1 through –366), and they have been extensively revised. (Incidentally, the new chapter is to be codified as 160A because of the nonrepeal of the finance provisions. They begin with G.S. 160–367, and the new act has almost 500 sections. Thus to avoid overlap a new G.S. chapter was necessary.) Second, with only five apparent exceptions, Ch. 698 does not repeal any provision of any city charter or other local act. New G.S. 160A–2 provides that the new law does not repeal any charter or local act unless it "shall clearly show a legislative intent to repeal or supersede all local acts" to the contrary. Such an intent is apparently shown in five sections, G.S. 160A–64, –77, –79, –222, and –298, where the language "all charter provisions . . . are repealed" appears. (These sections repeal local acts and charters setting compensation of city officials, dealing with codes of ordinances, dealing with pleading and proving ordinances, dealing with assessment of railway property, and dividing costs on railway crossings.) Only five sections have such language.

So much for what is not done. What about what is done? Although principally a recodification, Ch. 698 does effect changes in the law, and although most are quite small, they are numerous. An article of this length cannot detail each one, (the Institute of Government and the League of Municipalities will cosponsor a series of meetings in the late fall on the details of the changes), but it should be helpful at least to highlight some of the more important changes effected by Ch. 698.

1. A new assessment procedure has been included, based on the present county water and sewer procedure. Among the effects of this change are: (a) cities may assess on an area basis, a value-added basis, and a lot basis, as well as a front-foot basis; (b) a public hearing must be held before any improvement project is begun; and (c) the interest rate on assessments may be set at any amount up to 8 per cent.

2. A new eminent domain procedure, in addition to that found in Chapter 40, has been added. Under this procedure, the city and the landowner will each appoint an appraiser; the two appraisers together will appoint a third. When this board of appraisers reaches a decision as to proper compensation, it reports the amount to the city. The city can then adopt a resolution, the effect of which is to vest in it title to the property. The city can take possession on payment in full to the owner, or, if he appeals, upon deposit of the full amount in court.

3. The means available to cities to dispose of property have been expanded. Personal property with a value less than $5,000 may be sold by private negotiation and sale. All real and personal property may be sold by one of three other methods: sealed bids after advertisement; public auction; or private negotiation and upset bids.

4. The mechanisms available for enforcing city ordinances have been expanded. Besides the misdemeanor and the civil penalty, a city council may provide for enforcement by appropriate equitable remedies, such as injunctions; and, for ordinances making "unlawful a condition existing upon or use made of real property," by injunction and judicial orders of abatement, under which, if the property owner ignores the injunction, the city may proceed to remedy the violation itself and charge the costs thereof against the property.

5. Planning and development functions have been brought together in a single article, with uniform extraterritorial jurisdiction for all of the functions: zoning, subdivision regulation, housing code, open space, and building inspection. Each city is to define, by ordinance, its extraterritorial jurisdiction, based on officially adopted plans for that jurisdiction's development. All cities may go out to one mile beyond their limits, while larger cities may go out to two or three miles, with the approval of the county commissioners.

6. Cities are authorized to include in their subdivision regulations requirements of dedication or reservation of neighborhood park areas and reservation of school sites.

7. The general tax rate limit has been effectively raised for almost all cities. The rate limit remains $1.50, but instead of being stated in terms of assessed valuation, it is stated in terms of appraised valuation. Thus the county assessment ratio will no longer affect the legal limit on a city's tax rate.

8. There is expanded authority for cooperation between local governments. In addition to the existing function-by-function authority, the new law contains an authorization and procedure for cooperation on all "administrative and governmental" functions.

9. On personnel matters, the law requires all cities to adopt pay plans and provides that all local retire-

ment systems, into which local funds are appropriated, must be certified as actuarially sound.

10. By July 1, 1974, each city with a population over 5,000 is required to have and maintain a code of ordinances, while by July 1, 1973, each city of whatever size is required to have and maintain an up-to-date ordinance book, with all ordinances filed and indexed therein.

11. The law grants all cities extraterritorial police jurisdiction of one mile.

Organization and Structure of Municipal Governments

Incorporation, Dissolution, and Consolidation

The General Assembly incorporated nine new cities in 1971. Six of these—Leland (Brunswick), Patterson Springs (Cleveland), Polkville (Cleveland), West End (Moore), Woodfin (Buncombe), and Yanceyville (Caswell)—were incorporated subject to a favorable vote by their residents, while the other three—Mesic (Pamlico), Minnesott Beach (Pamlico), and Mint Hill (Mecklenburg)— were incorporated directly by the legislature. Votes already have been held in Woodfin, Polksville, and Leland; the vote was favorable in Woodfin and Polksville, but Leland's voters rejected incorporation.

A bill (Ch. 740—H 687) seeking to abolish all inactive municipalities led to a few "re-incorporations." When the bill was introduced, a letter was sent to each of the towns listed in it, asking whether the town was indeed inactive. Most of the towns were, but some asked not to have their charters repealed; when they found that they had a "town" in existence, the citizens wanted to try again. And three Cleveland County communities—Fallston, Earl Station, and Casar—secured legislation reactivating their town governments. After wending its way through both houses and being amended several times, Ch. 740 finally repealed the charters of ninety-five one-time towns, including four that dated from the eighteenth century. At the very end of the session, the charter of another town, Fletcher in Henderson County, was also repealed.

Since 1969 the only method of incorporating towns has been by action of the General Assembly. However, some dissatisfaction with the General Assembly's capacity for investigating opposing claims in contested incorporations developed from 1971 experiences, and, at least in partial response to this dissatisfaction, Ch. 921 (H 1058), reviving the Municipal Board of Control, was enacted. The original Board, created in 1917, was abolished by the 1969 General Assembly. The new Board has a different membership from the old; the five members will be the Secretary of the Local Government Commission, the chairmen of the House and Senate Local Government Committees, and an elected county official and an elected city official appointed by the Governor. In addition, the new Board will work within standards established by law and have the discretion to reject an incorporation it finds not to be in the public interest. The principal standards a new town must meet are that it have a minimum population of 500 residents (or 1,000 seasonal); that it be of an urban character; and that, if it is within three miles of an existing city, that city not object.

A second statewide law also might affect future municipal incorporations. Ch. 857 (H 1181) proposes a constitutional amendment restricting new incorporations within defined distances from existing cities. These distances are: within one mile of a city of 5,000 to 9,999; three miles of a city of 10,000 to 24,999; four miles of a city of 25,000 to 49,999; and five miles of a city of 50,000 or more. Within the territory defined by these distances, a city may be incorporated *only* upon the vote of three-fifths of the entire membership of each house of the General Assembly. The amendment will be voted on at the next general election, and passage would necessitate some conforming adjustments to the duties of the new Municipal Board of Control.

A final word on the consolidation front. The Charlotte-Mecklenburg effort, authorized by the 1969 General Assembly, failed. But that failure has not extinguished the idea of consolidation in North Carolina; legislation was secured in 1971 for efforts in Wilmington and New Hanover County and in Durham City and County.

Municipal Elections

● *The Uniform Municipal Election Law.*—As noted above, Ch. 835 (H 59) now provides a complete and uniform election law for municipal elections. The revised Constitution, which took effect on July 1, requires that voter registration be conducted under uniform state laws. Faced with this requirement, the Local Government Study Commission decided to recommend a statewide municipal election law covering not only registration but also the conduct of elections. Unlike Ch. 698, Ch. 835 explicitly repeals all local and general laws that are either contrary to its provisions or superseded by them. The one general exception to this repeal allows cities scheduled to hold regular municipal elections in 1972 to hold those elections pursuant to the provisions of their charters. (Any person elected at such an election will serve until the statewide municipal elections in 1973.)

The highlights of the new election law are:

(1) All elections for municipal officers will be held in the fall of odd-numbered years. Persons elected in earlier years to terms otherwise expiring in the spring of 1973 continue in office until the persons elected in the fall of 1973 take office. The primary purpose of this change was to coordinate more effectively the election timetable with the budget timetable. Under

present law most cities hold their elections in May. Thus the new officers must adopt a budget immediately upon taking office, a budget they can affect only at the final stages of its preparation. With elections in the fall, the new officers will take office in time to influence the entire budget process.

(2) Cities may conduct their elections under one of four methods:

a. Partisan election, with the election on the Tuesday after the first Monday in November and the primary on the *sixth* Tuesday before that. If a second primary is necessary, it will be on the *third* Tuesday before the election.

b. Nonpartisan election, decided by a plurality. The election will be held on the Tuesday after the first Monday in November.

c. Nonpartisan election, with a primary. The election again will be held on the Tuesday after the first Monday in November, with the primary on the *fourth* Tuesday before that. There is no primary unless more than two persons have filed for the office to be filled, and never a second primary.

d. Nonpartisan election, with a run-off. The election will be held on the *fourth* Tuesday before the Tuesday after the first Monday in November, and the run-off, if necessary, will be on the latter date. Any candidate receiving a majority of the votes cast in the election is elected. If no candidate receives a majority, a run-off, only if demanded by the second-highest vote-getter, shall be held; otherwise the top vote-getter is elected.

Cities presently conducting partisan elections must continue to do so until their charters are changed. Cities presently conducting nonpartisan elections by resolution may select any of the three nonpartisan methods (methods b, c, and d), except that cities presently holding nonpartisan primaries (method c) may not select the plurality method (method b) without amendment of their charter. Each nonpartisan city must notify the State Election Board of its selection by January 31, 1972. If a city does not select a method and notify the State Board by January 31, the act selects the method for it: cities with a population under 5,000 must use the plurality method (method b), and cities with a population of 5,000 or more must use the election and run-off method (method d). [Although a city now using method c (nonpartisan primary) may not affirmatively select method b (plurality), if it has a population under 5,000, it can apparently achieve the same result by merely making no selection at all.]

(3) City councils may no longer conduct municipal elections. In cities with partisan elections, they will be conducted by the county board of elections. In nonpartisan cities the council may establish and appoint a three-member municipal election board, or may request the county board of elections to conduct municipal elections. Unless instructed by the State Board of Elections to decline (a route apparently to be little taken), the county board must conduct the municipal elections, with payment to be agreed upon by the county board and the city. All municipal elections, however conducted, will be under the supervision of the State Board of Elections.

(4) Voter registration may be conducted pursuant to one of five options. If the county board of elections is conducting municipal elections, the county registration records will be used for municipal elections. In cities with their own election boards, four methods are available:

a. A permanent, full-time registration office, in the city, under the direction of the city elections board.

b. The city and the county board of elections may contract for the county board to prepare and deliver two extra sets of registration forms for each city resident registering with the county board;

c. The county elections board may permit the city to copy the county's records;

d. The county elections board may deliver the county books to the city for the conduct of its elections.

The State Board of Elections must approve the method selected.

Two other acts affected municipal elections. Ch. 416 (S 433) extends by one hour the closing time for polls on election days. Thus polls must be open in all elections from 6:30 a.m. until 7:30 p.m. The optional closing hour in counties with voting machines is extended to 8:30 p.m. Ch. 183 (H 226) provides that if an elected candidate dies before qualifying for office, or otherwise does not qualify, the office shall be declared vacant and filled in the manner provided by law.

Personnel and Retirement

Equal employment opportunity, double officeholding, employee retirement, firemen pensions, and employer-employee relations were the principal local personnel topics considered by the 1971 General Assembly. Legislation was enacted on each of the first four. Bills permitting firemen to bargain collectively, prohibiting public employees to strike, and requiring governmental units to receive employee complaints and establish procedures for processing employee suggestions received unfavorable reports.

• *Equal Employment Opportunity.*—The federal Civil Rights Act of 1964 prohibited discrimination because of race or national origin in private industry and in governmental programs receiving federal financial assistance. North Carolina's first state legislation in this area, Ch. 823 (H 56), is modeled after earlier acts in other states. However, Ch. 823 does not mention age, and no agency is responsible for enforcing

the new guarantees. The act provides that "all State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment, without regard to race, religion, color, creed, national origin or sex to all persons otherwise qualified."

● *Double Officeholding.*—Local officials have for decades been confused by the question of double officeholding as interpreted in North Carolina. Ch. 697 (S 302) implements the new provisions of the North Carolina Constitution. Three forms of double officeholding are now authorized. First, a state or local government appointive officer may hold concurrently one other appointive office in either state or local government. Second, a state or local elective officer may hold concurrently one appointive office in state or local government. Third, any person who holds an office or a position in the federal postal system may hold concurrently one position in state or local government.

● *Local Governmental Employees' Retirement System.*—With two minor exceptions, all retirement recommendations of the Teachers' and State Employees' Benefits Study Commission were enacted into law. Ch. 325 (S 380) and Ch. 326 (S 381) revised the Local Governmental Employees' Retirement System to make it essentially identical with the revised Teachers' and State Employees' Retirement System. The 1971 amendments, the most extensive since 1965, improve the benefits provided by the plan to make it one of the most attractive, actuarially sound local governmental retirement plans in the region and superior to many plans in other parts of the nation. Briefly, the principal amendments:

1. Increases monthly allowances of personnel retired before July 1, 1965, by 20 per cent and of personnel retired between July 1, 1965, and July 1, 1967, by 5 per cent.

2. Raises from 3 per cent to 4 per cent the maximum annual cost-of-living increase for retired personnel. The higher rate will apply whenever the cost of living rises 3.5 per cent or more in a calendar year, provided that funds are available.

3. Reduces from twelve to five the number of years of service required for a member to become eligible for a vested deferred allowance.

4. Discontinues the closing of accounts because of absence from service and permits members whose accounts were previously closed because of inactivity due to absence from service to reclaim this service, on completing an additional period of service of five years, by returning the refunded money to the system with appropriate interest. This provision does not authorize the repayment of contributions voluntarily withdrawn.

5. Reduces from ten to five the number of years of service required for eligibility for disability retirement.

6. Liberalizes the disability benefit by providing for it to be equal to a regular service retirement allowance calculated on the basis of the years of service the member would have had at age 65.

7. Authorizes full 4 per cent interest on all refunds (formerly 2 per cent).

8. Changes the definition of "average final compensation" to provide for use of average compensation for highest five consecutive years in whole career rather than highest five consecutive years in the last ten years before retirement.

9. Provides for the amount a retired person 62 or older may earn without a reduction in his allowance, to be measured by the difference between his annual retirement allowance and his average final compensation.

10. Permits a member to qualify for "early" retirement at age 50 or over, if he has 20 or more years of creditable service, regardless of whether he is "in service" at age 50.

11. Extends the coverage of the death benefit for 90 days after the last day of actual service.

12. Provides that when any member who is 55 or over or has 30 years of service dies in service, his beneficiary may choose a return of contribution plus interest or the monthly benefits to which the member would have been entitled under Option 2 had he been retired when he died.

13. Allows transfer of service credits and contributions from the State Retirement System to the Local Governmental system as now permitted from the Local System to the State System.

● *Law Enforcement Officers' Benefit and Retirement Fund.*—Legislative changes in 1969 and 1971 undoubtedly stimulated the following three changes in the law enforcement officers' act. Ch. 80 (H 183) reduced the minimum service requirement for retirement from 20 to 15 years for members of the Law Enforcement Officers' Benefit and Retirement Fund. Ch. 960 (S 274) increased the death benefits for law enforcement officers killed in line of duty from $5,000 to $10,000 effective July 19, 1971. Ch. 1235 (H 182) permits state and local governments employing law enforcement officers to pay into the Law Enforcement Officers' Fund a sum not over 10 per cent of gross salary that would have been paid to the retiring officer had he been compensated for all accumulated sick leave at the time of retirement.

● *Firemen's Pension and Death Benefit.*—Ch. 336 (S 89) reduces from 30 to 20 years the service required of firemen to qualify for the $50-a-month pension at age 60 or a reduced pension after age 55.

Ch. 914 (S 87) provides for a $5,000 payment to the widow or surviving dependent child or parent of firemen killed in the discharge of his duties or who

dies as the result of activity in the scope of his official duties. Funds are to be paid by the Industrial Commission from the Contingency and Emergency Fund.

Open Meetings

After a tortuous and much amended trip through the General Assembly H 51 was enacted as Ch. 638. It states the public policy of North Carolina to be that "the hearings, deliberations and actions" of the "commissions, committees, boards, councils, and other governing and governmental bodies" of the state and its subdivisions shall "be conducted openly." The act requires that in implementing this policy all "official" meetings of "governing and governmental bodies" of (among others) cities be open to the public. An official meeting is stated to take place whenever a majority of the members of a governing or governmental body gather together to transact public business, although social meetings "or informal assemblies" of the members explicitly do not constitute official meetings.

After this broad statement of policy and general requirement, the act goes on to make two types of exceptions. The first type is a list of subjects that a governing body may discuss in executive session. They are: (1) acquisition, lease, or alienation of property; (2) employee negotiations; (3) matters dealing with patients, employees, or members of the medical staff of a hospital or medical clinic; (4) matters coming within privileged relationships; (5) deliberations on litigation to which the city is a party; (6) personnel matters; and (7) responses to riots or other public disorders. The second type of exceptions is a list of agencies and types of agencies that are partially or completely excluded from the act. The only one of these of concern to cities is "all law enforcement agencies," which are completely excluded.

The act allows any citizen denied access to a meeting required to be open to seek injunctive relief in court. Finally, the act provides that a person who disrupts an open meeting and then refuses to leave after being asked to do so by the presiding officer is guilty of a misdemeanor and may be punished by imprisonment up to six months, a fine of $250, or both.

Finance

Taxes and Other Revenues

● *The Sales Tax.*—The Supreme Court exploded a bombshell over the General Assembly just as it was getting started in January. It overturned the 1969 local-option sales tax, which had been approved in twenty-five counties in an election in November of 1969. Although the largest problem was how to reinstate the tax constitutionally, the initial problem was how to mend the damage caused in the twenty-five counties suddenly without expected revenues. The solution to this problem was the Emergency Finance Act of 1971 (Ch. 108—H 73). The act authorized amendments to and interfund transfers within local budgets in order to balance them, and if that proved insufficient, the issuance of bonds and notes to supply the "casual deficit" created by loss of the sales tax revenues. A second mending measure was Ch. 23 (S 129), which provided for distributing sales tax proceeds then in the hands of the Commissioner of Revenue.

The larger problem, again, was to reinstate the local-option sales tax in a manner that would satisfy the apparent constitutional objections that troubled the Court. The solution, Ch. 77 (S 81), basically allows the board of commissioners of any county to levy a local one-cent sales tax, with or without a vote of the county's citizens. In addition, the voters of a county may petition for a sales tax referendum. All of the proceeds are returned to the county of collection, with the commissioners having the duty of determining whether they will be allocated among the county and the cities and towns therein on a population basis or in proportion to the ad valorem tax levies of each unit. The act provides that if no vote is held, the proceeds may be used only for necessary expenses; if the tax is levied after a favorable vote, the proceeds may be used for any public purpose.

● *The Property Tax.*—Through enactment of Ch. 806 (H 169) the General Assembly recodified the statutes dealing with property tax administration for the first time since 1939. The article concerned with legislation of interest to county officials contains a full treatment of this legislation and should be consulted by municipal readers (see page 36). The following two changes in the property tax law are of major concern to cities and towns and are not covered in the article mentioned:

(1) Each year, within ten days after adopting an assessment ratio, the board of county commissioners must give notice of the percentage selected to each city and town within the county.

(2) Full listing and assessing provisions have been provided for cities that are situated in more than one county.

● *The Poll Tax.*—Anticipating by one year the constitutional prohibition that will take effect on July 1, 1973, Ch. 806 (H 169) repeals, as of July 1, *1972*, the authorization for cities and towns to levy a poll tax. For fiscal 1971–72, however, that authority remains intact.

● *Privilege License Taxes.*—Ch. 1130 (S 532) reduced the maximum privilege license tax that cities might levy on emigrant and employment agencies, under G.S. 105–90, to $100. (Previously it had been limited to what the state could levy, which ranged from $100 to $500, depending on the city's population.)

Chapter 578 (H 1020) levies a state privilege license tax of $25 on operators of campgrounds, trailer parks, and tent camping areas. Cities may levy a like tax not over half of the state tax.

• *Powell Bill.*—Chapter 182 (S 299) increased from one-half to one cent per gallon the amount of state gasoline tax that is distributed to cities and towns for use in street construction and maintenance. All of the additional one-half cent will be distributed on a per capita basis, so that one-quarter of the total funds will now be distributed by street mileage and three-quarters by population. Another bill (H 299) would have allowed Powell Bill funds to be used for sidewalk construction, but it died in a House committee.

• *Hospital Facilities Finance Act.*—Ch. 597 (H 959) authorizes the Medical Care Commission to issue, through the Local Government Commission, revenue bonds and notes and use the proceeds to provide hospital facilities. The Commission may then lease the facilities to local governments and nonprofit agencies, which may operate them. The rents from these leases may be used to pay off the bonds.

The Local Government Finance Act

Ch. 780 (H 610) completely rewrites the laws governing adoption and execution of budgets and issuance of bonds by all units of local government, including cities. *The new law is not effective until July 1, 1973.* Among the major changes of particular interest to cities are the following:

1. The annual budget process is moved back by almost 30 days so that the deadline for budget adoption is July 1 rather than July 28.

2. The budget amendment authorization has been made more flexible.

3. All cities will be required to have an annual independent audit performed under audit specifications and procedures approved by the Local Government Commission. Almost all cities now voluntarily have annual independent audits, but audit standards and procedures are not uniform throughout the state.

4. All semi-independent agencies of city government, such as local park or airport boards, will be required to operate under the budget act.

5. The city debt limit is changed to 8 per cent of *appraised* value for all purposes. This moves the basis of the debt limitation from assessed to appraised value.

6. A new capital reserve fund article conforms the city law to what has been the county capital reserve fund law.

7. A new article regulating long-term financing agreements that do not involve issuance of bonds is added to the law. In general, the new procedure treats such agreements as if they were bond issues by requiring that they be approved by the Local Government Commission and that the sums committed thereby will count against the legal debt limit.

This important legislation, which will appear in the General Statutes as a completely rewritten Ch. 159, should be read in detail by all city officials involved in any way with finance matters. According to Representative Samuel H. Johnson of Wake County, chief sponsor of the legislation, the effective date was delayed until July 1, 1973, in order that local officials might have the opportunity to become completely familiar with the new law before having to apply it in practice.

Purchasing and Contracting

Competitive Bid Requirements

Before this session of the General Assembly, G.S. 143–131 required local governments to secure informal bids on all public contracts of $500 or more but less than the lower limits for formal contracts. Ch. 593 (H 342) amended the statute to make the lower limit $1,000. Thus cities and towns may make purchases and enter into contracts involving less than $1,000 in the discretion of the governing board without securing informal bids.

G.S. 143–129, the formal bidding statute, was also amended (Ch. 847—H 1167). This statute now requires use of the formal bidding procedures when the expenditure is $10,000 or more (up from $7,500) for construction and repair contracts and when the expected expenditure is $2,500 or more (up from $2,000) for purchases of apparatus, supplies, materials, or equipment. Ch. 847 also amended G.S. 143–129 to require newspaper advertisement for all formal contracts. Previously, small formal contracts could be advertised by posting as well as through a newspaper.

Ch. 587 (S 475) revised the statutes regulating purchasing and contracting by the state government. Significant in the changed responsibilities was express authority for the state to extend its purchasing services to counties, cities, towns, and other of its subdivisions. Legislation that would have amended the competitive bidding statute to permit counties and cities to buy through the state (without securing competitive bids) was, however, not introduced or adopted.

Acquisition of Real Property

Federal legislation enacted in late 1970—the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646)—establishes a uniform policy for treating persons who are displaced or have their property taken for federal and federally assisted projects. That act applies directly to federal agencies and requires, as a condition of federal aid, that state and local agencies follow the same policies in federally assisted projects. Two bills

were enacted in 1971 to facilitate North Carolina compliance with these federal requirements.

Ch. 1107 (S 667) authorizes the state and its local governments to provide relocation assistance comparable with that afforded by federal policies. Taking effect January 1, 1972, the act sets out the standards that must be met by state and local agencies in helping to relocate home-owners, tenants, businesses, and farm operators displaced by appropriate projects. The act is not mandatory; rather it is to apply to any project to which "the [state or local] agency makes this Article applicable." Thus a city might invoke it only for federally assisted projects or use it also to assist persons displaced by nonfederal projects.

Ch. 1137 (S 703) conforms the eminent domain law pertaining to cities to the requirements of the federal law. First, the act requires the court, in any condemnation action brought by a city or one of its agencies in which the condemnor is unsuccessful or abandons the suit, to award to the property owner his attorney, appraisal, and engineering costs. Second, it authorizes cities and their agencies to acquire an entire parcel of land when condemnation would leave to the property owner only an uneconomic remnant. (Ch. 698—new G.S. Ch. 160A—authorizes cities, when condemning for street or highway purposes, to *condemn* a remnant in comparable situations.) Third, the act apparently intended to require that successful plaintiffs in inverse condemnation actions be awarded their attorney, appraisal, and engineering costs as part of their award. However, because of an oversight in the drafting, the act does not appear to have this effect.

Planning and Development of the Environment

The 1971 General Assembly, as the introduction to this article noted, took important steps toward a better environment. Besides the legislation mentioned in this part, planning and environmental protection legislation is discussed in the part on water and sewer services and in the highlighting of the changes effected by new G.S. Chapter 160A.

Community Appearance and Historic Preservation

Although much existing legislation already has the effect of indirectly doing so, three acts passed this session make it possible for cities (and counties) to enter directly into the arena of aesthetics and cultural preservation and to take at least indirect steps to improve the appearance of cities and towns.

Two of these acts, Ch. 884 and Ch. 885, greatly enlarge the basic powers of cities and counties to preserve historic buildings and sites. Ch. 884 (H 1028) extends to all cities and counties the authority to create "historic districts," within which, under a local zoning ordinance, approval of any new contruction or any remodeling or moving of existing buildings must be obtained from a historic district commission before the project may be begun. Existing buildings within such a district may not be demolished without giving ninety days' notice to the Commission; and, for the first time, the Department of Archives and History, either upon its own initiative or the request of the local historic district commission, is to have an opportunity to review, comment on, and make recommendations upon the substance and effect of any local application for building project approval.

These approaches to preservation are widely used in other states to protect the visual character and architectural fabric of older areas. In North Carolina, however, before the passage of Ch. 884, only eight cities had authority to impose such controls. There are many potential historic districts throughout the state, and the new act permits cities and counties to protect them by negotiation without going back, one by one, to the General Assembly for special enabling legislation.

A second historic preservation act passed this year is Ch. 885 (H 1059). It deals not with concentrations of historic buildings within an identifiable "district," but with the individually important building standing more or less in isolation from others of its kind. To protect such buildings, Ch. 885 authorizes cities and counties to appoint a historic properties commission of five to ten members to conduct surveys and build public support for preservation through educational and promotional programs. More directly, however, it also authorizes the city or county governing board to adopt an ordinance or ordinances officially designating the most important buildings and sites, whether public or private (they must be of sufficient quality to qualify for the National Register of Historic Places), as historic properties of the city or county. After the ordinance is adopted, no action may be taken by a designated building's owner to demolish, materially alter, or remove it without first giving ninety days' notice to the historic properties commission. In addition to these protective regulations, the historic properties commission is authorized to acquire and restore historic properties, and local units of government are enabled to participate in the federal matching fund program set up by Congress under the National Historic Preservation Act of 1966. Certain new preservation techniques, such as the acquisition of less-than-fee interests to protect façades and the areas surrounding historic buildings, also are provided for.

The third 1971 act dealing with the visual environment is Ch. 1058 (S 428), and its impact will fall primarily upon new development. It authorizes cities and counties to create local appearance commissions to deal with a wide range of aesthetic problems—to conduct surveys and prepare plans for im-

proving the appearance of cities and rural areas, to provide leadership and guidance in design matters to public and private projects of all kinds. The essential purpose of the bill appears to be to provide a strong local element of community design leadership and coordination, not unlike the leadership and coordinating functions that local planning boards generally provide with respect to land use, public facilities, zoning, and related matters.

Annexation

Little activity occurred on the annexation front this last session. No county was taken out or placed under the 1959 laws, although a vote will be held this year in Cumberland County on whether to place that county under the laws (Ch. 620—H 146). In addition Benson, in Johnston County, became the third North Carolina city to be authorized to annex noncontiguous areas (Ch. 623—H 955).

Building Inspection

Although 1971 legislation with reference to building inspection was not so extensive as that in 1969, a number of significant acts were passed. One bill makes changes in the law having to do with the State Building Code, which is now the major law enforced by local inspectors. Ch. 1100 (S 657), which becomes effective on January 1, 1972, provides that in the future the State Building Code will automatically apply to one- and two-family dwellings, without the necessity for a resolution by a local governing board. It also makes clear that "structures" (other than those of public utilities), and not merely "buildings," are subject to the code.

The state's pioneering law for regulating mobile homes adopted in 1969 (Article 9A of G.S. Ch. 143) came through its first biennium with flying colors. At the initiative of North Carolina mobile home manufacturers, this law was expanded in its coverage and strengthened by Ch. 1172 (S 723) so as to provide that no mobile home manufactured after September 1, 1971, may be sold after that date without a label or certificate of compliance issued by either an approved independent testing laboratory or an approved local inspection department. A further tool for enforcement will deny electricity to an unapproved unit. Ch. 1099 (S 656) permits the Building Code Council, through provisions of the State Building Code, to apply essentially the same regulatory technique to all buildings, structures, or components manufactured off the site on which they are to be erected. The council is granted authority to specify the procedures for licensing independent testing laboratories to deal with such units. Units bearing a seal of approval will require no further inspections.

Two other pieces of legislation will have minor interest to local departments. Ch. 563 (S 526) amends the laws applying to inspection of state buildings by local inspectors to (a) exempt such buildings from inspections by county as well as municipal inspectors, (b) specify that local departments wishing to inspect plans of these buildings must apply to the State Department of Administration, and (c) provide that any services requested of local inspectors may be compensated only when there has been prior written approval by that department. Ch. 323 (S 374) adds a "licensed electrical contractor" to the State Building Code Council.

Housing and Urban Renewal

Only minor changes were made in the laws relating to public housing and urban renewal. Of prime importance was Ch. 87 (H 256), which eliminated the ceiling of 6 per cent on interest payable on obligations of housing authorities and redevelopment commissions (the operations of these agencies had almost come to a halt when interest rates soared in 1969 and 1970). The act also ratified and validated contracts made with the federal government to pay greater interest, authorized the assumption by housing authorities or redevelopment commissions of any obligations entered into by municipalities for payment of excess interest under such contracts, and authorized reimbursement of municipalities for expenditures made under these contracts.

Several changes were made to give greater flexibility in the organization of housing and renewal activities. Ch. 362 (H 793), as amended by Ch. 599 (H 976), allows municipal housing authorities and redevelopment commissions to have from five to nine members (rather than five), with the local governing board free to vary the number from time to time within these limits. Ch. 116 (S 250) provides that when a municipal governing body abolishes a redevelopment commission, it may designate a housing authority to perform its duties, and vice versa. Ch. 431 (H 102) allows a regional housing authority's jurisdiction to be expanded to include a county with a housing authority without the necessity for written consent from all bondholders of the county authority.

Ch. 1160 (H 1293) adds "bonds which may be issued . . . by a not for profit corporate agency of a housing authority secured by rentals payable pursuant to Section 23 of the United States Housing Act of 1937, as amended" to the list of housing authority obligations that are permissible investments for fiduciaries, public bodies, and the like.

Ch. 1060 (S 514), which authorizes redevelopment commissions to dispose of property at private sale under special circumstances and under strict procedural safeguards, was amended before passage to apply only to commissions in Durham, Lee, Mecklenburg, Robeson, Sampson, and Wayne counties.

Miscellaneous

• *The State Nature and Historic Preserve.*—The proposed constitutional amendment labeled the Enrivonmental Bill of Rights states protection of the environment to be the public policy, and thus perhaps provides a basis for future state and local actions. More concretely, it creates a State Nature and Historic Preserve. The state and all local governments are authorized to acquire, by purchase or gift, properties or interests therein, which can then be dedicated by the General Assembly to the Preserve. A vote of three-fifths of the members of each House will be necessary to place a piece of property in the Preserve, and a like vote will be needed to take it out.

• *Sediment Control.*—Concern over both stream pollution and general degradation of the landscape has brought interest in recent years in sediment control and preventing soil erosion in urban areas. Two local acts relating to sediment control deserve mention, as they constitute the first direct legislative grant of authority in this area. One act applies to Forsyth County and its municipalities (Ch. 501—H 857), the other to Wake County and Raleigh (Ch. 1210—H 1513). Essentially identical, the acts authorize the appropriate governing boards to enact ordinances regulating sediment erosion at the site of construction projects that alter "the natural structure of the land mass."

In addition, S Res. 961 directs the Legislative Research Commission to study the prevention and abatement of pollution of the state's waters by sedimentation and siltation, particularly that occurring from run-off of surface waters and from erosion.

• *Urban Growth.*—Much of the environmental distress nationally comes from the tremendous urban growth and concentration of the last generation. To some extent North Carolina has avoided this kind of urban concentration, but some projections picture the Piedmont as a small megalopolis by the year 2000. This General Assembly took note of these projections and created the "Commission to Determine the Feasibility of Creating by Compact a Joint Effort Among the Southern States to Influence Growth Patterns in the South." This seven-member group, appointed by the Speaker, Lieutenant Governor, and Governor, is to make the study suggested by its title, with the ultimate purposes of avoiding urban blight, preserving open space, protecting the environment, planning transportation, and otherwise providing for orderly growth in the region. It is to report to the 1973 General Assembly.

Water and Sewer Services

The 1971 General Assembly, reflecting the widespread interest in the environment and extensive work by the Legislative Research Commission during the past two years, enacted a number of measures relating to the provision of water and sewer services by local governments in North Carolina.

• *Environmental Policy Act.*—The Environmental Policy Act of 1971 (Ch. 1203—H 649) contains a declaration of state environmental policy and establishes procedures and requirements for state-level action. The act also authorizes the governing bodies of all counties, cities, and towns to require any special-purpose unit of government or any private developer of a major project within their jurisdiction to submit detailed statements on the environmental impact of their project for review and consideration. This is a major new power for local governments. Under this authority developers of shopping centers, subdivisions and other housing developments, and industrial and commercial projects involving tracts of more than two acres could be required by cities and counties to prepare environmental impact statements. A major thrust of this action is to protect the water resources of the state. When this local power is added to that newly acquired by the state and to previous requirements of federal statutes and regulations, it appears possible that in the future all major construction projects will be the subjects of preliminary review and environmental impact statements.

• *Floodways.*—Ch. 1167 (S 432) amends Article 21 of G.S. 143 to authorize cities and counties to designate floodways within their respective zoning jurisdictions. Once floodways have been designated, the placement of any artificial obstruction within the floodway is prohibited unless a permit has been issued by the responsible local government. Although the act anticipates that local action will result in designating all streams in the state, no deadline for action by local government is given.

• *Waste Discharge Reporting.*—The Water and Air Quality Reporting Act of 1971 is also a part of Ch. 1167. Under this act, cities (and other public and private institutions, industries, persons, and corporations) that are currently discharging wastes into the waters of the state or into the air under permits issued by the Board of Water and Air Resources are required to file monthly reports with the Board on the characteristics of wastes being discharged. In order to make the report adequate monitoring systems or procedures must be established. These, too, are subject to approval by the Board.

• *Withdrawal Rights.*—Protection for water supplies developed by local governments (and by others) is afforded by enactment of Ch. 111 (S 113). This act provides that "one who impounds water for the purpose of withdrawal shall have a right of withdrawal of excess volume of water attributable to the impoundment." The act also establishes the right of persons to assign or transfer withdrawal rights.

• *Regional Water and Sewer Systems.*—The promotion of regional water and sewage disposal systems was a major thrust of 1971 legislation. The Regional Water Supply Planning Act (Ch. 892—S 168) and the Regional Sewage Disposal Systems Act (Ch. 870—S 802) express the need to develop regional approaches to water and sewer services. They direct the State Board of Health and the Department of Water and Air Resources to undertake studies and provide aid to local governments in promoting regional systems. The General Assembly established a Regional Water Supply Planning Revolving Fund (Ch. 842—S 168) and a Regional Sewage Disposal Planning Revolving Fund (Ch. 1044—H 1070), both in the Department of Administration, to provide loans to local units to undertake preliminary planning and engineering work or regional systems. Advances from these funds by the Department of Administration are to be made after applications are reviewed by the State Board of Health and the Department of Water and Air Resources as appropriate. The Water Fund received an appropriation of $100,000 for the biennium (Ch. 1024—H 273), and the Sewage Fund $200,000 (Ch. 1045—H 1071).

• *Clean Water Bond Act.*—The North Carolina Clean Water Bond Act of 1971 (Ch. 909—S 758) authorizes, subject to a vote of the people, the issuance of $150 million in bonds to provide funds for state aid in developing water and sewerage services in the state. The Governor is to set the date of the election, which may not be later than May 6, 1972.

Half of the bond proceeds—$75 million—is allocated to a Pollution Control Account and is to be used in making grants to local units for constructing, improving, or expanding waste-water treatment works and waste-water collection systems. Of this amount, $50 million is to be used exclusively to provide the state matching share of grant funds to enable local units to receive a larger federal grant. The remaining $25 million in the Pollution Control Account is to be allocated to the various counties of the state in proportion to their 1970 populations. The act sets forth standards and priorities under which local governmental units in each county may apply for grants from the amount allocated to each county.

A similar approach is used with respect to the bond proceeds to be used for water. A total of $70 million is set aside for water. Of this amount, $50 million is to be allocated among the various counties according to population and distributed on the basis of applications and criteria set forth in the act. The remaining $20 million is to be used to provide grants generally and not upon a county-allocation basis.

The remaining $5 million of the bond proceeds is to be placed into a Contingency Account. The funds in this account are to be reserved to meet administrative expenses and to make grants to local governments for any water and sewerage purposes when there are "compelling reasons" to honor the applications but for some reason the applications cannot otherwise be honored by state and federal authorities.

The maximum grant that any local unit may receive from the state for a particular project is normally 25 per cent of the total construction cost of the projects unless special conditions are found to exist. If these conditions exist, grants of up to 30 per cent of the total cost of any project may be made.

At least $750,000 will be available for water and sewerage grants to local governments. This sum was appropriated by the General Assembly (Ch. 1077—H 1430) to meet debt service on the Clean Water Bonds. The act provides, however, that any amount not needed for debt service, or the total amount in case the bonds are not issued, is to be made available for the purposes of the bond act and allocated in accordance with the procedures outlined in it.

• *Reducing the Number of Small Water Systems.*—Ch. 343 (S 131) broadens the powers of the State Board of Health with respect to small water systems. The legislative history of this act suggests that its major purpose is to reduce the growth rate of small water systems. It authorizes the Board to adopt standards and criteria for the design and construction of public water supply systems. The Board is also authorized to require (1) that public water-supply systems be disinfected under given conditions; (2) that systems be designed to provide adequate and reliable supplies and in a manner that would permit interconnection at a later time with expanding municipal, county, or regional systems; (3) that plans and specifications be prepared by licensed engineers and approved by the Board; and (4) that developers or owners of privately owned systems submit with their plans evidence that adequate arrangements are being made for the continued operation and service of their proposed systems. This act takes effect on January 1, 1972.

• *Metropolitan Water Districts.*—Ch. 815 (S 743) authorizes the creation of metropolitan water districts by two or more local units. The act is modeled on the Metropolitan Sewerage District Act of 1961 and, like the Metropolitan Sewerage Act, grew out of needs in Buncombe County. The organizational procedures, financing arrangements, bonding procedures, and other aspects are, in general, parallel to those of the Sewerage Act.

• *Beach Erosion and Hurricane Flood Protection.*—The authority of cities and counties to deal with beach erosion and hurricane flood protection was broadened by Ch. 1159 (H 705). Express authorization was given to cities to levy taxes and appropriate nontax funds for these purposes, which in turn authorizes them to issue general obligation bonds. County authority [G.S. 153-9(56)] was broadened to make it clear that county

governments may levy taxes and appropriate funds for maintenance as well as for the initial construction of protective works and to remove the 10-cent tax limit for this purpose.

The act also created within the North Carolina Board of Water and Air Resources a Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund. Loans to cities and counties may be made from this Fund for the purposes of planning and preliminary construction pending the issuance of bonds and the receipt of grants from other agencies. Appropriations to the fund for the coming biennium were $250,000 (Ch. 1043—H 1069). The same act also authorizes the Board to use up to $500,000 of funds previously appropriated to it for this purpose. Thus $750,000 could be made available in advances to local units during the next two years.

Miscellaneous

Public Transit

The increasing urbanization of the state, with the attendant need for public transportation facilities, was the subject of three successful bills in the 1971 General Assembly. Two of these embody the hope that, by having their tax burden reduced, private bus companies can continue to operate in North Carolina cities and thus save local governments from themselves having to fill this need. Ch. 833 (S 670) lowers the franchise tax levied by the state on city bus companies to $25 a year and completely prohibits local franchise or privilege license taxes on such companies. Until this session the state franchise tax had been 1½ per cent of gross receipts. Ch. 1221 (S 669), a companion bill, provides for a gasoline tax refund to such bus companies.

The third bill, Res. 74 (S 511), directs that the state make a study of its total transportation needs, including railway systems, airways and airports, highways and streets, public transit systems, and waterways and ports. Special attention is to be given to the need for the feasibility of a rapid interurban transportation system. The study is to be completed and filed with the Governor by November 15, 1972, for transmittal to the next General Assembly.

Regulation of Municipal Gas Systems

Municipal gas distribution systems were brought under the regulation, of the Utilities Commission, for purposes only of providing and enforcing gas safety standards, by Ch. 1145 (H 1432). This act was necessitated by provisions in the Natural Gas Pipeline Safety Act of 1968 which would have brought such systems under federal safety supervision if they were not under state supervision.

Another bill (S 857) sought to place all municipally owned gas, electric, and telephone systems under full regulatory control of the Utilities Commission. It came out of committee applying only to gas systems and was narrowly defeated on the Senate floor.

Interlocal Cooperation

• *Jails.*—Ch. 341 (H 466) added clarifying language to the regional jail authorization (G.S. 153–53.7), largely to facilitate the planned tri-county jail in the Elizabeth City area.

• *Auxiliary Police.*—In 1969 the General Assembly authorized local governments to establish auxiliary police forces. This General Assembly carried the authorization a step further by allowing cities and counties to establish joint auxiliary police forces (Ch. 607 —H 1041).

Alcoholic Beverage Control

Ch. 872 (S 107) rewrote entirely the ABC laws of North Carolina. Three of the changes made by this rewrite may be of particular interest to municipalities:

(1) Cities are expressly authorized to regulate the sale of malt beverages and wine between 1 p.m. on Sunday and 7 a.m. the next Monday, *except* that they may not make any regulation of such sales after 1 p.m. on Sunday by establishments having a brown-bag permit. This provision would seem to repeal existing ordinances having that effect by removing the authority to adopt them.

(2) Beer and wine elections may be held in cities with populations as small as 500, a reduction from 1,000 in the previous law.

(3) All ABC boards are now *required* to spend at least 7 per cent of their total profits on education and alcoholic rehabilitation, which could cut slightly into the profits distributed to local governments.

Hospital Authorities Law

Ch. 799 (H 948) rewrote the entire Hospital Authorities Law (Article 12 of G.S. Chapter 131), but the changes were in fact quite few. Primarily they were:

(1) The authorization to create an authority is now extended to all cities regardless of size and to all counties (it was limited to cities with a population in excess of 75,000);

(2) The definition of what an authority might do seemingly has been expanded to include construction and operation of all "hospital facilities" (as defined by the Hospital Facilities Finance Act) plus nursing and convalescent homes and public health centers;

(3) The size of an authority no longer need be 18 members, but rather anywhere between six and 30 members; and

(4) Authorities are explicitly authorized to lease hospital facilities to or from other agencies.

TABLE I

Local Legislation Affecting Cities and Towns

	Number of New Laws							
	1959	1961	1963	1965	1967	1969	1971 passed	1971 killed
Structure and Organization								
Incorporation and Dissolution	11	6	9	8	12	17	14	1
Form of City Government	28	30	27	34	38	30	17	0
Election Procedures	44	34	35	34	27	27	15	5
Compensation of Officers	15	11	12	17	31	13	1	0
Qualification, Appointment	6	4	11	7	4	6	4	0
Retirement, Civil Service	17	11	22	31	15	28	23	3
Comprehensive Charter Revision	13	28	17	10	13	13	10	0
	134	124	133	141	140	134	84	9
Finance								
Taxation and Revenue	14	14	9	2	8	8	10	2
Expenditures	6	9	15	4	5	4	8	0
Tax Collection	12	8	13	2	11	8	6	1
Special Assessments	7	6	12	8	4	8	9	0
	39	37	49	16	28	28	33	3
Planning, Zoning and Extension of Limits								
Planning and Zoning	19	21	24	32	22	18	5	5
Annexation	35	15	14	21	21	23	15	2
	54	36	38	53	43	41	20	7
Powers and Functions								
Streets, Traffic, and Parking	4	1	4	3	9	6	3	1
Regulatory Powers, Other	8	5	3	7	8	10	6	1
Police Jurisdiction	9	14	6	12	1	7	9	1
Local Courts	25	12	25	14	6	5	1	0
Beer, Wine, and Liquor	6	14	19	36	27	30	37	7
Other Functions	13	18	14	15	19	20	13	2
Purchasing	—	—	—	2	7	11	1	0
Sale of Property	18	19	23	17	27	16	14	2
Miscellaneous	4	4	3	10	16	29	9	0
	87	87	97	132	128	134	93	14
Grand Total	314	284	317	326	331	337	230	33

Note: The tabulation for the 1971 session shows both bills that passed and those that failed. For prior sessions only bills enacted into law are shown. Before 1965, bills falling in the "purchasing" category were tabulated under other headings. It should be noted that legislation does not always fall clearly into one category or another. When a bill seems to fall into more than one category, it is given a multiple entry. Total revisions of municipal charters are entered only under the charter-revision category even though they may contain clauses affecting multiple categories. When legislation was introduced in completely identical form in both houses of the legislature, an entry is made only for the bill that actually passed, or tabulated only once if both measures failed. The 1971 session's tabulation of 263 entries actually represents 252 separate bills. The decline in bills is probably due to the enactment of home-rule legislation in 1969 and to the expected passage, during the 1971 session, of H 153 (Ch. 698), which rewrote and modernized the basic municipal law.

Criminal Justice Training Council

Ch. 963 (S 411) establishes the Criminal Justice Training Council, a 21-member council representing sheriffs, police officers, several state agencies, and several training facilities. The Council's primary duty is to establish minimum educational and training standards for employment as criminal justice officers. (Such an officer is defined to include local police and correctional personnel, except sheriffs.) Once these standards have been established, the Council is directed to provide, by regulation, that no one may be appointed, except to a probational appointment of no longer than one year, as a criminal justice officer unless he has met the standards. Officers under permanent appointment on July 1, 1971, need not meet the standards, but all appointed after that date must. The act also allows the Council to authorize the reimbursement to local units of up to 60 per cent of the salary and expenses involved in sending persons to training facilities.

Miscellany

Ch. 937 (H 1165) authorizes cities (and counties) to contract for and accept grants-in-aid and loans from the federal and state governments for any function that the local unit is authorized to perform.

Ch. 1207 (H 1272) authorizes cities and counties to undertake and support local human relations programs, spending either tax or nontax funds therefor.

Ch. 690 (H 1066) authorizes cities and counties to enact ordinances to regulate fishing from bridges, in order to protect fishermen from passing automobiles.

—Philip P. Green, Jr.
—Donald B. Hayman
—David M. Lawrence
—Henry W. Lewis
—Robert E. Stipe
—Warren Jake Wicker

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LEGISLATION THAT IS OF INTEREST TO Counties

The 1971 General Assembly's contribution to county government came primarily in the form of new money. Several dozen new laws of interest to county officials were added to the statute books, but none of them make fundamental changes in the structure, functions, or powers of the board of county commissioners and related county agencies and officers. This article will briefly summarize 1971 legislation that, in the opinion of the Institute staff, will be of particular interest to county officials.

Finance

The North Carolina Association of County Commissioners concentrated its 1971 legislative efforts on two major subjects: State assumption of the entire nonfederal share of the Medicaid program, and reinstatement of the local-option sales tax invalidated in mid-January by the Supreme Court of North Carolina.

Sales Tax

Shortly after the General Assembly convened in January, the Supreme Court ruled that the 1969

Local Option Sales Tax Act was unconstitutional. Almost immediately the legislature began moving to restore the tax with a statute that would meet the Court's objections. To most observers, it appeared that the Court had found that the 1969 act was in reality a state tax that did not apply uniformly throughout the state. This suggested to the sponsors of the new legislation that maximum local discretion in levying the tax would be required to meet any new court test. As a result, the 1971 Local Option Sales Tax Act (Ch. 77—S 81) invests the board of county commissioners with broad discretion as to whether the tax will be levied and how it will be allocated between the county and the cities and towns therein.

Under the 1971 act the county commissioners may levy the local sales tax without voter approval, or they may submit it to a vote. In addition, the voters may petition for a vote on levy of the tax. The act provides that if the tax is levied without a vote of the people, it may be spent for necessary expenses only. After the tax levy is approved, the commissioners must then determine whether the proceeds will be allocated on a population basis or in proportion to the ad valorem tax levies of the county and its cities and towns. There are also machinery for terminating the tax either by action of the commissioners or vote of the people and restrictions on levying the tax after an unfavorable vote. In most other respects, the 1971 act is identical with the 1969 act.

The sales tax situation produced two other bills of note, both temporary in nature. Ch. 23 (S 129) directed the Department of Revenue to distribute to the taxing counties sales tax collections on hand as of the date the Court invalidated the tax after allowing all claims for refunds. Very few refund claims were established, and the counties and cities received most of the money collected through mid-January. Ch. 108 (H 73) authorized any sales tax county or city to issue bonds to fund the "casual deficit" caused by loss of sales tax revenue budgeted for the full 1970–71 fiscal year. Since nearly three-quarters of budgeted sales tax revenues were eventually received by local units before the end of the fiscal year, no unit found it necessary to take advantage of this act. It did, however, express the legislature's willingness to help local units meet an emergency situation.

Medicaid and Social Services

When the General Assembly convened in January, the counties were concerned about the increasing costs of social service programs, particularly Medicaid and Aid to Families with Dependent Children. Some counties had not budgeted enough funds to pay their share of the cost of Medicaid for fiscal 1970–71. In order to help the counties, Governor Scott proposed in his budget message to the General Assembly that state funds be appropriated to assume the entire nonfederal share of the cost of Medicaid and the Work Incentive Program for AFDC recipients (applicable only to the five counties in which WIN has been implemented). Although the Governor's budget proposal would have saved the counties some $25 million in Medicaid costs during the next two years, the increasing costs for the counties in other areas of the social services program were estimated to be some $13 million higher during the coming biennium.

The struggle to solve the financial pressures at the state and county levels arising from soaring Medicaid and other social services costs continued throughout the 1971 General Assembly. Many important decisions in this field were made during the closing hours of the session. A bill was introduced in March (S 273, H 433) to appropriate $2 million in state funds to pay the county's share of the cost of any social services program if a county's appropriations were exhausted. While this bill failed, the continuing financial squeeze at the county level caused Governor Scott to recommend an emergency appropriation of $1 million in state funds to lend a county its share of Medicaid costs for fiscal 1970–71 if the county had spent all appropriated funds for social services. This appropriation was made effective May 19 (Ch. 393—S 531) to provide loans to such counties from state funds that are to be repaid during fiscal 1971–72 before October 1. If the loan is not repaid by that date, the act provides for the amount of the loan to be deducted from state funds due the county for aid to county social services administration. Nine counties borrowed state funds from this $1 million fund for fiscal 1970–71.

As the General Assembly continued, it became clear that money was tight, and it seemed unlikely that the state would assume the entire nonfederal cost of Medicaid. The appropriations bill enacted June 30 (Ch. 708—S 33) reduced Medicaid coverage in an effort to cut state and county costs, then appropriated $51,853,170 in state funds for the biennium to pay 90 per cent of the nonfederal share of Medicaid costs, leaving the counties to pay the remaining 10 per cent. This bill limited inpatient hospital coverage to ten days per illness for public assistance recipients and medically needy persons and would have required the counties to pay 100 per cent of the cost of hospital care for needy persons beyond the ten-day limit (estimated to cost some $11 million for the 1971–73 biennium). Reductions in coverage and services provided by Medicaid included limiting skilled nursing-home care to categorical public assistance recipients at rates up to $14 per day. This change came as a shock to medically needy persons in nursing homes who had previously been included and to nursing home operators who had previously been paid through the program at whatever rates they charged. On the basis of the 90 10 split in costs between the state and counties, the counties were advised by the State Department of Social Services to include 25 per cent of the 1970–71 expenditures for Medicaid in their 1971–72 budgets.

Advocates of the county position in the General Assembly were not satisfied with the 90 10 split provided by the appropriations act nor with the ten-day limit on hospitalization provided through Medicaid. In promotion of 100 per cent state financing, H 1529 was introduced to impose a tax on alcoholic beverages to pay the county's share of the cost of Medicaid; this bill was unsuccessful. The same pressures led to the enactment of additional legislation during the closing days of the General Assembly which modified certain provisions of Ch. 708, the appropriations act. Although the amount of state funds appropriated for Medicaid was unchanged, Ch. 934 (S 929), ratified July 19, eliminated the ten-day limit on inpatient hospital care under the Medicaid program and reduced the state's share of the cost from 90 per cent to 85 per cent, thereby increasing the county share of the costs to 15 per cent. This 85/15 split is to the ultimate advantage of counties, for it assures that some $11 million worth of hospital bills for needy persons will be paid with an additional investment of some $3 million in county funds. Ch. 1202 (S 994), ratified July 21 as the General Assembly adjourned, appropriated $1,700,000 in additional state funds to the State Department of Social Services for nursing-home care. The net effect of this legislation is to liberalize the eligibility requirements for skilled nursing-home care to include most medically indigent persons now in nursing homes who had been excluded from the Medicaid program under Ch. 708.

The change in the state appropriations for Medicaid during the last month of the General Assembly was reflected in confusion at the county level over how to plan and budget for the 1971–72 fiscal year. The counties have now been advised by the State Department of Social Services that the 1971–72 county appropriation for Medicaid should be approximately 35 per cent of the county's expenditures during 1970–71. The five counties participating in the WIN program will gain financially, since the General Assembly did implement Governor Scott's recommendation that the state assume 100 per cent of the nonfederal share of the cost of this program.

For more details on legislation affecting county administration and financing of social services, refer to the separate article on social services in this issue.

Industrial Development Financing

Ch. 633 (S 498) appears to be an attempt to revive the industrial development revenue bond scheme invalidated in 1968 by the Supreme Court. The new act authorizes the creation in counties of "pollution abatement and industrial facilities financing authorities." In an effort to meet the Court's objections to the 1967 act, the Department of Conservation and Development is required to make elaborate findings of fact as to the economic condition of a particular county before a financing authority may be created therein. In all other respects, the 1971 act is substantially the same as the 1967 act insofar as it concerns issuance of revenue bonds to build new industrial facilities. The 1971 act also contains provisions for the local authorities to construct pollution-abatement facilities for lease to existing industries. Of course, the new statute will require a test in the Supreme Court before any bonds are issued under it. In view of the economic findings attached to the 1971 act and the fact that the 1968 decision invalidating the former act was decided by a 4–3 vote of the Court, the 1971 act stands at least an even chance of approval.

Other Matters

Other finance legislation includes the following new acts:

Ch. 568 (H 1088) authorizes the levy of special purpose taxes for solid-waste collection and disposal systems and facilities, which include sanitary landfills and garbage collection systems. These activities formerly had to be financed within the General Fund 20-cent rate limit.

Ch. 1130 (S 532) amended G.S. 105–90 to limit the local privilege license tax on emigrant employment agencies to $100. Formerly counties and cities could levy a tax not greater than the state tax, which is graduated from $100 to $500 depending on population of the unit.

Ch. 402 (S 533) added a new subsection to G.S. 115A–20, the effect of which is to permit counties to levy taxes and appropriate nontax revenues for community college and technical institute support without a vote of the people. Before the 1971 amendment, G.S. 115A–20 required voter approval for both tax levies and appropriations of nontax revenues. The new law implements Article IX, section 2(2) of the Constitution, which became effective on July 1, 1971, and which specifically authorizes the use of local tax revenues for support of "post-secondary school programs" to the same extent that these revenues are now available for elementary and secondary education.

Ch. 1096 (S 627) expanded the purposes for which loans may be made to counties and cities from the State Literary Fund to include maintenance buildings and transportation garages. Loans were formerly available only to erect and equip school buildings.

The Local Government Finance Act—1973

Ch. 780 (H 610) completely rewrites the laws governing adoption of budgets and issuance of bonds by all units of local government, including counties. *The new law is not effective until July 1, 1973.* Among the major changes of particular interest to counties are the following:

1. The annual budget process is moved back by 30 days so that the deadline for budget adoption is July 1 rather than the first regular meeting in August.

2. All counties will be required to have an annual independent audit performed under audit specifications and procedures approved by the Local Government Commission. All counties are now voluntarily having annual independent audits, but audit standards and procedures are not uniform throughout the state.

3. All semi-independent agencies of county government, such as local ABC boards, will be required to operate under the budget act.

4. The office of county treasurer is abolished in the very few counties where it still exists, and the legal title of the county accountant is changed to "finance officer."

5. Counties will be authorized to issue general obligation bonds "for any purpose for which [the county] may levy taxes or appropriate money, except current expenses." G.S. 153–77 now lists in detail the specific projects for which bonds may be issued.

6. The county debt limit is changed to 8 per cent of *appraised* value for all purposes. This moves the basis of the debt limitation from assessed to appraised value and abolishes the distinction between school debt and general debt.

7. The new budget law contains no tax rate limit in the General Fund and no requirement for separate fund accounting for tax levies not voted by the people. Coupled with elimination of the 20-cent limitation from the Constitution effective July 1, 1973, this means that beginning with fiscal year 1973–74 counties will not be restricted as to the legal tax rate in the General Fund, and will not be required to finance many activities by separately stated special-purpose tax levies.

8. Special capital reserve funds for schools, public health, and mental health will be eliminated and consolidated into a single county capital reserve fund.

9. A new article regulating long-term financing agreements that do not involve issuance of bonds is added to the law. In general, the new procedure treats such agreements as if they were bond issues by requiring that they be approved by the Local Government Commission and that the sums committed thereby will count against the legal debt limit.

This important legislation, which will appear in the General Statutes as a completely rewritten Chapter 159, should be read in detail by all county officials involved in any way with finance matters. According to Representative Samuel H. Johnson of Wake County, chief sponsor of the legislation, the effective date was delayed until July 1, 1973, in order that local officials might have the opportunity to become completely familiar with the new law before having to apply it in practice.

The Property Tax

The New Machinery Act

This year, for the first time since 1939, the General Assembly completely recodified the statutes dealing with administration of the property tax. This was accomplished through enactment of Ch. 806 (H 169), which embodies most of the recommendations of the Commission for the Study of the Local and Ad Valorem Property Tax established by the 1969 General Assembly. Among the major changes in the new Machinery Act (which is effective as of July 1, 1971) are the following:

1. All local acts in conflict with the 1971 Machinery Act (except those relating to the selection of tax collectors and those providing for tax commissions and special boards of equalization and review) have been repealed.

2. Persons holding the office of county tax supervisor on July 1, 1971, have been declared qualified to occupy that position. Beginning in 1973, however, no one else may be appointed tax supervisor unless he has received certification from the State Board of Assessment that he is qualified for the office.

3. Each county has been authorized to modify or eliminate the list-taker system as it pleases.

4. At its own option and without special legislative authority, each county may adopt a system for accepting listings by mail.

5. The statute granting exemption to personal property used for educational purposes has been rewritten to remove the requirement that such property be "contained in buildings" and to specify that the property is not entitled to exemption unless its owner operates on a nonprofit basis.

6. The real and personal property of homes for the aged, sick, or infirm has been added to the catalogue of properties entitled to exemption.

7. Beginning in 1972, public service companies (railroad, electric power, telephone, pipeline, cable television companies, etc.) will be required to list *all* of their properties with the State Board of Assessment. After appraising the property of such a company and determining how much of it is taxable in North Carolina, the State Board will certify to each county and municipality the share of the company's *appraised* valuation that the local unit is entitled to tax. (All provisions of the law concerning the appraisal, apportionment, and allocation of public service company property have been rewritten.)

8. Beginning in 1972, motor freight carriers and bus lines and airlines, instead of listing their rolling

stock and flight equipment locally, will be required to list them with the State Board of Assessment. After appraising this property and determining how much of it is taxable in North Carolina, the State Board will certify to each county and municipality the share of each company's rolling stock or flight equipment *appraisal* that the local unit is entitled to tax. (This will make it possible for counties and municipalities to tax a fair share of such property that belongs to foreign carriers operating in this state.)

9. The definition of "discovered property" has been rephrased to specify that (in the future) the expression includes property that is substantially undervalued by its owner as well as property that is omitted from the tax list.

10. The annual due date for county and municipal property taxes has been advanced to the first day of September. This change takes effect immediately.

11. The requirement that discounts be granted for prepayment has been removed from the law. For 1971, any county or municipality that desires to retain last year's discount schedule through November 1, 1971, may do so by passing a resolution to that effect. Beginning in 1972, any local unit that desires to grant prepayment discounts may establish its own schedule, subject to State Board of Assessment approval.

12. Interest for late payment of taxes for *1971 and subsequent years* will accrue on January 1 (rather than February 2) following the due date; the interest rates will be 2 per cent if paid in January and, thereafter, an additional ¾ per cent for each month or fraction thereof that the tax remains unpaid.

13. Interest for late payment of taxes for *1970 and prior years* will accrue at ¾ per cent per month (or fraction thereof) from and after July 1, 1971.

14. Interest on taxes included in lien sales will accrue at 9 per cent per annum (¾ per cent per month) from and after July 1, 1971.

15. The garnishment procedure available to county and municipal tax collectors has been made parallel to the procedure employed by the Commissioner of Revenue in collecting state taxes.

16. The two-year restriction on using the *in rem* method of foreclosure has been removed; thus, this procedure has been made available for collecting any taxes included in a lien sale so long as the use of foreclosure is not barred by a statute of limitations.

17. The ten-year statute of limitations on the use of remedies for the enforcement of property tax claims has been made applicable to all counties and municipalities as of July 1, 1972.

The period within which claims for property tax refunds must be made has been shortened from eight to three years following the date on which the contested tax became due.

After enactment, Ch. 806 (H 169), the new Machinery Act, was amended by four acts that expand the list of property freed from taxation as noted below:

Ch. 1162 (H 1300) and Ch. 1163 (H 1336) grant exemption to the real and personal property owned by and used in the humane activities of nonprofit societies for the prevention of cruelty to animals. (The exemptions granted by these two acts are retroactive and apply to taxes for fiscal 1971–72 as well as to taxes in future years.)

Ch. 1121 (H 275) classifies and excludes from the tax base the real and personal property of nonprofit water and sewer associations or corporations.

Ch. 932 (S 120), effective January 1, 1972, classifies and excludes from the tax base the first $5,000 of the *appraised* value of real property used as the principal place of residence of its owner and spouse (1) if the owner holds the legal or equitable title thereto either individually or as a tenant by the entirety *and* is a person who (a) is 65 years of age or older, *and* (b) is not regularly engaged in income-producing activity; and (2) if *neither* the owner and spouse (if living) *nor* any other person who contributes one-half or more of the owner's income has a "disposable income" that exceeds $3,500. The term "disposable income" is defined to mean "gross income" for North Carolina income tax purposes *plus* Social Security and specified pension, retirement, and insurance benefits. Property is not to be accorded this treatment unless its owner makes annual application therefor and submits proof of his disposable income for the preceding year.

Unsuccessful Proposals Concerning the Tax Base

Efforts to remove the personal property of banks from the exempt list were unsuccessful (S 223, S 528, H 108, H 701). A proposal to grant exemption to the residences of ministers not assigned to specific congregations was enacted (Ch. 606—H 1021) and became effective on June 17 as an amendment to the *former* Machinery Act. Upon ratification of the *new* Machinery Act (Ch. 806—H 169), however, the former Machinery Act, as amended, was repealed. Thus this exemption did not survive.

A number of proposals for exemption and preferential classification that failed to win legislative approval are listed below:

—To require tax appraisers to value agricultural land without regard to its potential market value for nonagricultural uses (S 229, H 391; S 523, H 834; S 636).

—To require tax appraisers to value owner-occupied residential property without regard to its potential market value for other uses (S 799, H 1286).

—To classify and exclude from the tax base North Carolina products sold to nonresidents but held in this state for shipment outside the state—so-called "bill and hold" goods (a portion of the House Committee Substitute for H 169 that was defeated by amendment in the House).

—To classify and exclude from the tax base specially adapted housing obtained by permanently disabled veterans (H 1312, H 1313).

Commission to Study Exemptions

The biennial ferment on the subject of exemptions and preferential classifications in 1969 seems to have been responsible for the instructions given to the Tax Study Commission created that year to study exemptions (particularly their economic impact) and make recommendations to the 1973 General Assembly. An effort to repeal that instruction failed this year (S 925). Furthermore, a wholly new Commission for the Study of Property Tax Exemptions and Classifications was established with a directive to report by December 1, 1972 (Res. 111—H 1383). The new commission's task is to consider constitutional and policy issues rather than economic impact; thus it would be possible for the two commissions to make independent and worthwhile inquiries and recommendations.

Open Meetings

Members of county boards of equalization and review will be interested in the provisions of Ch. 638 (H 51) defining a state policy favoring open "hearings, deliberations, and actions" of state and local governmental bodies. In the absence of judicial interpretation, it is impossible to state with certainty whether the sessions of boards of equalization and review held for the purpose of making decisions on valuations are exempted from the open-door requirement.

State Board of Assessment

Under the Executive Organization Act of 1971 (Ch. 864—H 863), the State Board of Assessment is transferred "intact" to the Department of Revenue by what is called a "Type II" transfer. Under such a move, the State Board will continue to "exercise all of its prescribed statutory powers independently," but its "management functions"—"planning, organizing, staffing, directing, coordinating, reporting and budgeting"—are to be carried out "under the supervision and direction" of the head of the department to which the agency is transferred.

The Poll Tax

Anticipating by one year the constitutional provision that will take effect on July 1, 1973, Ch. 806 (H 169) repeals the mandatory imposition of a poll tax as of July 1, *1972*. For fiscal 1971–72, however, counties are still required to impose the $2 poll tax. Ch. 1231 (H 1580) modifies G.S. 105–341(a)—kept alive for the current fiscal year, as just noted—to enlarge the class of males liable to poll tax to include those between eighteen and twenty-one. This, however, runs counter to the provision of the North Carolina Constitution [Art. V, § 1(1)] concerning imposition of a poll tax and probably cannot be put into effect.

The Board of County Commissioners

Ch. 638 (H 51) (to be codified as G.S. 143–318.1 through 143–318.7) requires all meetings of governmental agencies, including boards of county commissioners, to be open to the public. The new statute applies not only to meetings of the board of commissioners but also to any committees thereof and to any informal gatherings of a majority of the members of the board held for the purpose of transacting any public business. The statute also applies to social meetings if they are held for the purpose of evading the open-meetings law. Violation of the statute is not made a misdemeanor, nor are actions taken at a secret meeting invalid (both provisions having been eliminated from the original bill before enactment), but members of the public excluded from any public meeting are entitled to injunctive relief from the courts.

The new open-meetings law specifically permits closed sessions for consideration of the following subjects: (1) acquisition of property; (2) negotiations with employee groups; (3) matters dealing with patients, employees, or members of the medical staff of hospitals or clinics; (4) conferences with legal counsel; (5) any matter constituting a privileged communication; and (6) appointment, discipline, or dismissal of personnel. As to the last-listed item, however, final action on the discharge of an employee must be taken in open session.

The statute makes it a misdemeanor for any person to disrupt any public meeting by interrupting, disrupting, or disturbing the meeting and refusing to leave when directed to do so. Violation subjects the offender to a $250 fine or six months imprisonment, or both, in the discretion of the court.

Ch. 702 (H 772) revises G.S. 153–9(55) to streamline the complex procedure required in 1969 for enactment of county ordinances. As amended, a county ordinance may be adopted at any regular meeting of the board of commissioners without prior advertisement and without a public hearing if the ordinance receives the unanimous vote of all the members of the board (not including the chairman if he does not participate in the vote). If the ordinance does not receive a unanimous vote, or if all the board members are not present, it must be voted upon again at

the next regular meeting. If it is then adopted by a simple majority, it takes effect upon being entered in the ordinance book. There are no publication or public-hearing requirements in the new statute. The revised statute also (1) makes it clear that ordinances adopted under authority of other portions of the statutes (for example, zoning and subdivision control ordinances) must be recorded in the ordinance book; and (2) prohibits county ordinances "relating to the regulation or control of vehicular or pedestrian traffic" on highways, highway rights-of-way, or the rights-of-way of public utilities, electric membership corporations, or public agencies of the state. Thus, as amended, G.S. 153–9(55) seems to permit county ordinances regulating acts taking place on public highways so long as the regulations do not relate to traffic control. As interpreted by the Attorney General, the 1969 statute did not permit any local regulation of the use of highways and did not permit such ordinances as those making it unlawful to discharge firearms from highways or to abandon domestic animals on highways.

Under G.S. 153–6, vacancies in the board of county commissioners are filled by the remaining members of the board. Ch. 743 (H 699) remedies the problem that occurs when the board is equally divided upon an appointment and can therefore take no action. As amended, G.S. 153–6 provides that when the remaining members of the board are unable to fill a vacancy within 60 days, the appointment is to be made by the clerk of superior court.

As part of the 1969 "home rule" legislation, the General Assembly amended G.S. 153–13 to permit county commissioners to fix their own salaries. However, salary adjustments could not take effect until after the next general election, and there were complex time limitations and publication requirements attached to the exercise of the new power. Ch. 1125 (H 1425) removes all of these limitations and permits the board of county commissioners to fix its own compensation with only one limitation: the action must be taken in the annual budget resolution.

Ch. 595 (H 484) authorizes the board of county commissioners to close and remove from dedication all easements, except those lying within city limits, that have been dedicated to the public by any legal means. Removal of easements is to be done in the same manner as closing roads. The new power does not extend to easements for roads and highways that are a part of the state highway system.

Purchasing and Contracting

Before this session of the General Assembly, G.S. 143–131 required local governments to secure informal bids on all public contracts up to $500 or more but less than the lower limits for formal contracts. Ch. 593 (H 342) amended the statute to make the lower limit $1,000. Thus counties may make purchases and enter into contracts involving less than $1,000 in the discretion of the board of commissioners and without securing informal bids.

G.S. 143–129, the formal bidding statute, was also amended (Ch. 847—H 1167). This statute now requires use of the formal bidding procedures when the expenditure is $10,000 or more (up from $7,500) for construction and repair contracts and when the expected expenditure is $2,500 or more (up from $2,000) for purchases of apparatus, supplies, materials, or equipment. Ch. 847 also amended G.S. 143–129 to require newspaper advertisement for all formal contracts. Previously, small formal contracts could be advertised by posting as well as through a newspaper.

Ch. 587 (S 475) revised the statutes regulating purchasing and contracting by the state government. Significant in the changed responsibilities was express authority for the state to extend its purchasing services to counties, cities, towns, and other subdivisions of the state. Legislation that would have amended the competitive bidding statute to permit counties and cities to buy through the state (without securing competitive bids) was, however, not introduced or adopted.

Personnel and Retirement

Legislation affecting counties and their employees enacted by the 1971 General Assembly regarding equal employment opportunity, double officeholding, and employee retirement appears in the section on personnel in the article on municipalities in this issue.

Health

While little health legislation that directly affects local government was enacted, a joint resolution (Res. 116—H 1294) may have a considerable impact. It creates a study commission to "make a comprehensive and thorough study of current State-local relationships and responsibilities for the protection of the public health of the citizens of North Carolina, including State and local financing of public health services."

• *Money.*—Despite somewhat increased state support ($987,895) to the State Board of Health for local distribution during the biennium, the directive for the study of the public health system study stems from the chronic problem of finding enough local funds to support the standard local public health program recommended by the State Board of Health.

Another health services funding problem for local governments, in addition to Medicaid (discussed elsewhere in this issue), derives from the impending tightening up of federal Hill-Burton moneys for construction of health facilities. This problem has been met with a dramatic new scheme for state financing—

the Hospital Facilities Finance Act, Ch. 597 (H 959). The act provides for the Medical Care Commission to issue revenue bonds for the cost of local health facilities, with the local government or nonprofit agency operating the hospital, clinic, or other health structure as a lessee of the Commission. While the New York bond attorneys require a court test of all such legislation before any bonds are sold, the act promises to relieve some of the burden of local financing limitations. A related act, Ch. 1164 (H 1398), requires a "determination of need" to be made before construction, expansion, or conversion of any hospital, nursing home, intermediate-care facility, or mental hospital licensed by the state. In addition to the Medical Care Commission and other state licensing agencies (State Board of Health and Department of Mental Health), local areawide comprehensive health planning councils are involved in the determination, giving a boost to those new regional groups.

• *Regions and Districts.*—More regionalism is promoted by Ch. 470 (S 606), which authorizes the Department of Mental Health to establish a limited number of area mental health programs as joint undertakings in various parts of the state. This act intends to test new budgeting procedures for combining local and state funding for support of state/local mental health services. Interestingly, a feature of the area concept, the geographic unit system in the state mental hospitals whereby patients from the same counties are grouped together, will be under critical review by the Legislative Research Commission by Res. 66 (H 715). One other regional-type bill, Ch. 858 (H 1374), provides a means for dissolving a district health department.

• *Public Health.*—Local boards of health are directly affected by three pieces of new legislation: Ch. 638 (H 51) requires board meetings to be open to the public; Ch. 175 (H 408) permits designees to serve on the board in place of a mayor or county commissioner chairman; and Ch. 940 (H 1197) raises the $8 per diem rate to a $20 maximum ($25 for the board chairman), as set by the county commissioners.

• *Mental Health.*—A half-million dollars was made available for establishing community-based drug-abuse programs in some local mental health authorities. The Department of Mental Health will select areas where local needs are great and local matching funds available (Ch. 1123—H 1351).

In 1969 authority was given to clerks of court to send mental patients and alcoholics to local facilities for outpatient treatment; under new G.S. 122-65.10 these people may now be committed to local inpatient facilities rather than solely to state hospitals (Ch. 471—S 607). G.S. 122-61 was revised by Ch. 1193 (S 855) to prohibit, without the previous "emergency" loophole, detention of alleged mental patients or inebriates in penal facilities without a criminal charge. The act is not in effect until July 1, 1972, giving the Department of Mental Health lead-time to make services and transportation available to the clerks of court.

• *Medical Examiners and Coroners.*—The dual homicide investigation system remained unchanged, although a strong attempt was made to give each county the discretionary power to abolish its office of coroner at the end of the incumbent's term. It failed after a number of counties were exempted from the bill (H 347). This bill was argued by some counties as being premature since medical examiners have not yet been named for every county. For medical examiners, the only change was made by Ch. 444 (H 448), which excepted normal but early fetal deaths (less than 24 hours) from the requirement for medical examiner investigation.

Local health directors, medical examiners, and coroners should note that the new dual-officeholding act, Ch. 697 (S 302), permits any elected or appointed official to hold one other appointive position. This solves the problem left by an unsuccessful 1969 bill that would have specifically permitted a physician-coroner to hold the medical examiner office ex officio.

The Office of Chief Medical Examiner received $130,000 for additional personnel and equipment to increase its services to the counties.

• *Hospitals.*—The most significant legislation for hospitals besides the Finance Act and "certificate of need" statute was the elimination of warranty liability (but not tort or negligence liability) for defective blood or other tissues supplied to patients (Ch. 836—H 245). A rewrite of the Hospital Authorities Law, Ch. 799 (H 948), permits a city or county of any size to create an authority. Previously only cities over 75,000 could do so, and only Charlotte had used this authority mechanism to operate hospitals.

The Legislative Research Commission uncovered the fact that there is no legal duty for hospitals or physicians to report wounded patients to law officials. Several bills were introduced to remedy this, but enactment of just two of the bills means that only hospitals and physicians in Alamance and New Hanover now have that duty.

• *Medical Care.* Several bills relating to medical care and the health professions should be particularly noted by practitioners and hospital officials. By reason of both the general age-of-majority bill (Ch. 585—S 4) and two other bills, any competent person who is 18 years of age or older is legally capable of giving full authorization for any medical procedure for himself or his child (Ch. 35—H 163), including abortions (Ch. 585—S 4), sterilizations (Ch. 1231—H 1580), and donation of blood (Ch. 10—H 15). The attempt (H 5) to liberalize the abortion law to elimi-

nate the necessity for medical justification narrowly failed. The abortion law was revised by another bill, Ch. 383 (H 626), to re-establish a 30-day residency requirement (the previous four-month residency provision was invalidated by a federal court decision in February), reduce the number of necessary consultants from two to one other physician, and provide a statistical, confidential reporting procedure on forms to be prescribed by the State Board of Health.

A certified embalmer may enucleate eyes from cadavers for purposes of the Anatomical Gift Act (Ch. 873—S 502). Physician's assistants are now statutorily recognized and may be registered with the Board of Medical Examiners (Ch. 817—H 890). Other acts affect the various health licensure laws, the most significant of which permits the licensing of physicians who have taken the National Boards rather than the North Carolina examination (Ch. 1150—H 1397).

Education

Legislation affecting public schools, technical institutes, and community colleges is discussed in the articles on education in this issue. Among the topics discussed that will be of interest to county officials are the following:

- *Financing Community Colleges and Technical Institutes.*—Boards of county commissioners may finance institutions in the community college system by appropriating nontax or tax revenues without voter approval.

- *Personnel Terms.*—In the second year of the biennium, the employment term for school supervisors, teachers, and principals will be extended. Consequently, the cost of nonstate teachers paid from local funds will be greater.

- *Transportation.*—The state appropriated $4.3 million in new funds to transport all children living more than 1½ miles from school. This will reduce local costs in systems that had transported these students before the state assumed responsibility. New busing requirements to achieve school desegregation, however, will offset many of these savings, particularly in the urban areas.

- *Kindergartens.* — New appropriations will fund thirty-five new kindergarten centers during the first year of the biennium and approximately twenty more centers the second year of the biennium.

- *Compensation for School Board Members.*—Eight counties had local acts authorizing increases in compensation paid to local school board members. These increases are to be paid from local funds.

- *Bonding School Employees.*—Commissioners have new authority to approve the amount of the bond fixed by school boards for school employees who receive school funds. Heretofore, bonding amounts were determined solely by the local boards of education.

Law Enforcement

Ch. 607 (H 1041) authorizes counties and cities to establish auxiliary police forces jointly. The auxiliary force may be called into service by the mayor, the chief of police, the chairman of the board of commissioners, or the sheriff.

H 60 would have re-established the office of township constable. It was reported unfavorably in the House.

Jails

Ch. 341 (H 466) amended G.S. 153–53.7 (district confinement facilities) to make it clear that counties participating in a regional jail agreement may levy taxes and issue bonds to support the facility, to spell out the authority of regional jail custodial personnel to receive prisoners from other counties, and to confer on law enforcement officials authority to transport prisoners to and from the regional jail.

H 390 would have shifted to the state from the county the cost of maintaining prisoners transferred to the jail of an adjoining county for security purposes. The bill was reported unfavorably in the House.

Regulation of Development

Although a number of proposals were submitted, no statewide changes in the county zoning or subdivision-regulation acts were passed other than the granting of authority to counties to designate historic districts under Ch. 884 (H 1028).

Ch. 698 (H 153) made significant changes in the respective jurisdiction of municipalities and counties with respect to zoning, subdivision regulation, building inspection, housing inspection, and acquisition of open space. The new provisions are described at greater length in the article on legislation of interest to municipalities.

Several modifications were made in the statutes relating to the State Building Code. Ch. 1100 (S 657), which takes effect on January 1, 1972, makes the code apply automatically to one- and two-family residences, without the necessity for a resolution by the county commissioners. It also makes clear that the code can regulate "structures" (other than those of public utilities), as well as "buildings." However, it preserves farm buildings' current immunity from regulation.

Ch. 1099 (S 656) authorizes the State Building Code to include regulation of manufactured homes, modular units, and components in essentially the same manner as mobile homes have been regulated since 1969; that is, through the use of independent

testing laboratories whose labels would negate the necessity for any local inspection other than of connections, foundations, and compliance with zoning ordinances.

Ch. 1172 (S 723) amplifies and strengthens the provisions of the 1969 mobile home law (Article 9A of G.S. Ch. 143). It now prohibits the sale of mobile homes manufactured after September 1, 1971, which do not bear a label or certificate of compliance from either a testing laboratory or a local inspection department that has been approved by the State Building Code Council.

Ch. 563 (S 526) broadened the law exempting state buildings from local inspection to include county as well as municipal inspection departments. When inspections are made at the request of a state agency, they may be paid for only with prior written approval from the State Department of Administration.

Housing and Urban Renewal

Since 1969 the laws relating to housing and urban renewal at the county level have been essentially the same as those at the municipal level. A digest of changes in these laws appears in the article on legislation of interest to municipalities in this issue.

Community Appearance and Historic Preservation

Several acts authorize counties to take initial steps toward improving the appearance of rural areas and to adopt regulations to protect and preserve historic buildings and areas.

Ch. 1058 (S 428) permits the creation of county appearance commissions to provide advisory, leadership, and coordinating services in matters of rural area design and beautification; and Ch. 884 (H 1028) and Ch. 885 (H 1054) authorize the adoption of regulations aimed at preserving historic buildings and areas in public and private ownership.

These acts are described in the article on legislation of interest to municipalities.

County Water and Sewer Services

The 1971 General Assembly enacted a number of measures relating to the provision of water and sewer services by counties and other local governments in the state. Among these were acts to promote regional water supply systems and regional sewage disposal systems, new regulatory authority with respect to the establishment of private water systems, a proposed plan for state grants to local governments for water and sewerage purposes to be financed from a state bond issue, new requirements for environmental protection, and new organizational and taxing authority.

In almost every case the new legislation applies to municipalities as well as to counties. The article on legislation of interest to municipalities contains a full report of these measures.

Primary and General Elections

The scope of this discussion is restricted to acts that expanded the electorate to include persons between the ages of 18 and 21, changed the date of the primary election, transferred the State Board of Elections to the Department of the Secretary of State, modified the party loyalty pledge required of primary candidates, simplified the procedure for obtaining absentee ballot applications, and made other procedural changes in the primary and general election laws.

Discussions of three additional pieces of legislation that deal with the administration of elections will be found on the pages indicated:

Presidential preference primary—13.

Congressional and state legislative redistricting and the numbering of legislative seats—3.

Uniform municipal election law—22.

Eighteen-Year-Old Voters and Officeholders

On July 5, 1971, the United States Administrator of General Services certified that the Twenty-Sixth Amendment to the United States Constitution had been ratified by the legislatures of at least three-fourths of the states and had become effective. [North Carolina ratified this amendment on July 1 in Ch. 725 (H 736).] That amendment lowered the minimum voting age in all elections to 18 and, thereby, made ineffective the portion of the North Carolina Constitution that fixes the voting age at 21.

With regard to the right to hold office, the Constitution of this state provides that any qualified voter is entitled to hold any elective office except governor, lieutenant governor, and state senator. To be governor or lieutenant governor, one must be 30 years old; to be a state senator, he must be 25. (The United States Constitution requires that one be 30 to serve as a United States senator.) Thus, with the exceptions just noted, ratification of the Twenty-Sixth Amendment to the United States Constitution opened to *registered* voters between the ages of 18 and 21 the right to hold office in North Carolina.

On the first day of the legislative session a bill (Ch. 201—H 2) was introduced that proposed a 1971 referendum in which the issue would be whether the North Carolina Constitution should be amended to lower the voting age to 18 but restrict elective office-holding to persons 21 years old or older. As amended by Ch. 1141 (H 1195), this act calls for the referendum to be held on November 7, 1972. The eligibility of eighteen-year-olds to vote having been determined,

the live issue at the 1972 referendum will be whether to take the right to hold office from registered voters between the ages of 18 and 21.

State Board of Elections

Under the Executive Organization Act of 1971 (Ch. 864—H 863), the State Board of Elections is transferred to the Department of the Secretary of State by what is called a "Type II" transfer. A move of this kind keeps the State Board intact except for management functions—that is, "planning, organizing, staffing, directing, coordinating, reporting and budgeting"—which must be "performed under the direction" of the head of the principal department to which the transferred agency is assigned.

Primary Date and Voting Hours

Two acts appear to have been legislative response to citizen concern for encouraging registered voters to vote: Ch. 416 (S 433) requires the polls to be kept open 13 (rather than 12) hours at all places on primary and election days and permits county boards of elections to authorize the polls to be kept open where voting machines are used for 14 (rather than 13) hours. Ch. 170 (H 304) changes the date of the statewide primary from the first Saturday in May to the Tuesday following the first Monday in May preceding a general election.

Primary Participation by Candidates

In the future a candidate seeking a particular party's nomination for a given office will not be required to swear that he will "support in the next general election *all* candidates nominated" by his party. Ch. 675 (H 967) changes the italicized word "all" to "only."

Under Ch. 798 (H 935) individuals who change from one political party to another will be required to maintain affiliation with their new party for at least three months before they will be eligible to file as candidates for office in that party's primary.

Absentee Ballot Law

Two somewhat rigid provisions of the absentee ballot law have been relaxed by Ch. 947 (H 1178). "Where proper request has been made"—an unexplained phrase—the chairman of the county board of elections is permitted to deliver an absentee ballot application form to a given applicant for his or her spouse as well as one for himself. (Heretofore, an application form could not be delivered to one other than the applicant.) In addition, one making application for absentee ballots (except in one limited situation) has heretofore been required to swear to the application and have the completed form attested. This requirement has been deleted.

Voting Procedures—Commission to Study Abuses

The processes of voting on primary and election days were the subject of three significant pieces of legislation. Ch. 746 (H 940) regularizes a custom practiced in a large number of precincts. Upon making proper affidavit as to his inability to enter the voting place without physical assistance, a registered voter who is able to travel to the voting place is permitted to vote in the vehicle in which he traveled or in the "immediate proximity" of the voting place. (Where voting machines are used, paper ballots must be made available for such voters.) An assistant to the precinct officials (not a registrar or judge) is required to take the affidavit form and ballots to the voter, administer the required oath, then deliver the voter's marked ballots to one judge and his completed affidavit to another. Voting in this way is restricted to the hours of 9 a.m. to 5 p.m.

Ch. 537 (H 727) attempts to reduce the problems that arise from the varied physical facilities used as voting places. It rewrites the statute prohibiting loitering and electioneering within fifty feet of the voting place to provide that the distance is to be measured "in any direction of the entrance or entrances to the building in which the voting place is located" or—if the voting place is located in a large building—from the entrance within the building specified by the precinct officials. The act also defines the prohibited conduct to include congregating and distributing campaign materials.

Most significant, however, was the adoption of Res. 61 (H 735), which established a seven-member Commission on Election and Voting Abuses in North Carolina. The members of this commssion, who are to be named by the Governor, are required to study specified statutes concerned with registration and voting procedures and to "explore all possibilities of fraud, abuse of voters or attempts to influence voters with offers of payment." The commission will submit its report and recommendations for statutory changes to the 1973 General Assembly.

Tie Votes

Ch. 219 (H 121) relieves the General Assembly of having to settle a tie vote for any national, state, or district office that is canvassed by the State Board of Elections. In the event of a tie for such an office, the State Board is required to order a new election.

County and Precinct Election Officials—Executive Secretary

Ch. 604 (H 1015) and Ch. 1166 (H 1559) leave no doubt that all counties are bound by the following minimum pay standards established by the election laws for county boards of elections and precinct officials:

Member of county board of elections—$15 per day for the time he is actually engaged in the discharge of his duties, plus reimbursement for necessary expenditures (Ch. 1166—H 1559).

Registrar—$25 for the day of any primary or election; $20 for canvass day and for any day he is required to register voters at the voting place; $15 for any day on which he is required to attend instruction sessions sponsored by the county board of elections.

Judge of elections—$20 for the day of any primary or election; $15 for the day on which he is required to attend the county canvass.

Assistant—$15 for the day of any primary or election (Ch. 604—H 1015).

It is now made plain that any county board of elections is authorized to employ an executive secretary (Ch. 1166—H 1559).

Filling Vacancies Following Election

Ch. 183 (H 226) fills a gap in the law. It provides that when a person has been elected to public office and refuses or cannot qualify—because he has either died or become disqualified—the office "shall be declared vacant," and the vacancy is to be filled by the specified appointing authority unless another statute requires a different procedure—typically a new election.

Other Matters of Interest

Ch. 327 (H 501) ratified the Nineteenth Amendment to the United States Constitution allowing women to vote, a belated gesture.

Ch. 1166 (H 1559) reduced from sixty to thirty days the period of state residence required of persons seeking to vote in presidential elections, an action to conform North Carolina law to federal court decisions.

Ch. 798 (H 935) made uniform the deadline for filing notices of candidacy for all offices in a primary —Monday before the tenth Tuesday before the primary, regardless of whether the candidate must file with a county board of elections or with the State Board.

—Philip P. Green, Jr.
—Donald B. Hayman
—Henry W. Lewis
—Robert E. Stipe
—Mason P. Thomas, Jr.
—David G. Warren
—Warren J. Wicker

6 Courts

The year 1970 closed a decade of court reform in North Carolina. It is not surprising, then, that the 1971 General Assembly, compared with its recent forerunners, enacted few new laws of major importance to the judiciary. Except for two proposed constitutional amendments affecting retirement, discipline, and removal of judges and laws lowering the age of majority to eighteen, legislation affecting the courts this session was mostly of a consolidating and clean-up nature —consolidating changes of the 1960s, and cleaning up the statutory debris left by those changes.

Mandatory Retirement of Judges; Censure and Removal of Judges

A one-sentence amendment (Ch. 451—S 63) to Article IV, section 8, of the State Constitution, if adopted by the people at the next general election, authorizes the General Assembly to prescribe maximum ages for service as a justice or judge of the General Court of Justice. Ch. 508 (S 64) implements this authority (assuming that S 63 is approved by the people) effective January 1, 1973, by requiring appellate justices and judges to retire at age 72 and trial judges at age 70. A grandfather clause allows judges over the prescribed ages on January 1, 1973, to complete the terms they are then serving. In addition, Ch. 1194 (S 859) allows superior court judges in office January 1, 1973, who at age 70 would not have enough service to qualify for retirement compensation under current laws to serve until they became so eligible. This proposal means that within a very few years no justice or judge over age 72 (70) will sit in North Carolina. Of the dozen or so judges who will probably be directly affected by these acts, none will be retired without retirement compensation. The right of retired or "emergency" judges to serve from time to time as needed is continued. This legislation is similar to laws in a majority of states that require retirement of judges at ages 70 to 72, and it compares favorably with age 65-or-under retirement standards in state employment and private industry generally.

Ch. 560 (H 86) would amend Article IV of the Constitution to empower the General Assembly to prescribe a new method of removing disabled judges and a method of censuring or removing judges guilty of certain kinds of misconduct. (Current methods of removal by impeachment or address are not affected.) The types of misconduct that would support censure or removal are willful misconduct in office, willful and persistent failure to perform the duties of the office, habitual intemperance, conviction of a crime involving moral turpitude, and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. This proposal is also to be voted on by the people at the next general election and, if approved, will be implemented January 1, 1973 by the provisions of Ch. 590 (H 87), which creates a Judicial Standards Commission. The Commission—composed of three judges appointed by the Chief Justice, two practicing attorneys appointed by the governing body of the State Bar, and two nonlawyer citizens appointed by the Governor—would receive complaints concerning a judge's conduct, and if preliminary investigation indicated that there was some justification for a complaint, would offer the judge concerned a confidential due process hearing. The Commission, with five of seven members concurring, could recommend censure or removal of the judge to the Supreme Court, which would have authority to act on the recommendation. A removed judge would receive no retirement compensation, but pending removal action by the Supreme Court, a judge would be free to retire and receive any retirement compensation to which he might be entitled under existing

retirement laws. Substantially similar legislation is now in effect in about half the states.

The mandatory retirement and censure and removal bills were recommendations of the North Carolina Courts Commission. They were adopted substantially as recommended, the vote in each House on both measures being nearly unanimous. A third major recommendation of the Courts Commission—a nonpartisan merit plan for the selection of judges—failed in committee.

Statutory Clean-Up

Pursuant to the new Judicial Article of the Constitution, adopted in 1962, the Judicial Department Act of 1965 established a General Court of Justice that replaced much of the existing court system and rendered obsolete many hundreds of sections and parts of sections of the General Statutes. Since conversion to the new system was a three-stage, four-year process, however, most of these statutes could not be repealed or amended until the switchover was completed throughout the state. This occurred in December, 1970, and it thus fell to the 1971 General Assembly to initiate the massive clean-up job.

Typical of the changes required by this statutory housekeeping were those effected in Chapter 1 of the General Statutes. Throughout the chapter were references to various duties of the justice of the peace. If the duty was one now being performed under Chapter 7A by magistrates, in most instances the section concerned was merely rewritten to refer to the magistrate. In some instances the function was either obsolete or not allocated by Chapter 7A to the magistrate, and these sections were repealed outright. In one instance —G.S. 1–386 et seq., allotment of homestead on petition of owner—the function was transferred not to the magistrate but to the clerk of superior court. The phrase "term of court," or its equivalent, was changed to "session of court," consistent with the constitutional language. The label "superior court" was, in most instances, enlarged to "superior and district court," or simply to "court" or "trial court," to reflect the mandate of G.S. 7A–193 that references in Chapter 1 to superior court are deemed generally to include district court. Notable exceptions to this are the sections (G.S. 1–393 et seq.) on special proceedings, which under G.S. 7A–246 are still properly in the superior court, and the sections on injunctions (G.S. 1–485 et seq.), which present special problems still under study by the Courts Commission. Obsolete references to "criminal courts," "mayor's courts," "inferior courts," and "constables" were also removed. Occasionally these changes required extensive reconstruction of a section or sections, but in nearly all instances the intended effect on the substantive law was nil. For this reason the changes in Chapter 1 (with rare exceptions) were made effective July 1, 1971.

The amendments to Chapter 1 typify the changes made in succeeding chapters of the General Statutes through Chapter 52A (Volume 2A). A much smaller number of similar changes will be required in Chapter 53 through Chapter 167; these chapters are currently being researched by the Courts Commission, and appropriate amendments will be readied for the 1973 session.

The changes in Chapter 2 (Clerk of Superior Court) extended far beyond mere housekeeping, and hence require special mention. Removal of matter rendered obsolete by the implementation of the new court system reduced the chapter to a remnant of unrelated and sometimes obviously outmoded statutes, both procedural and substantive. In addition, the long-range design for Chapter 7A (Judicial Department) called for location in that chapter of all statutes dealing with judicial offices and organization. The viable remnants of Chapter 2 were therefore overhauled in both terminology and substance and transferred to Chapter 7A, Subchapter III, Article 12 (Clerk of Superior Court). In this process, several significant changes in existing law were effected: (1) the clerk's powers were expanded to include closer control over nonjudicial function of the magistrate; (2) record-keeping regulations, subject to certain broad principles, were entrusted to the Administrative Office of the Courts; (3) G.S. 2–52 and G.S. 2–53, dealing with the clerk's receipt and disbursement of insurance

moneys and other funds held by him under color or by virtue of his office for certain minors and incapacitated adults, were revised. These changes in Chapter 2 (as transferred to Chapter 7A) take effect October 1, 1971 (Ch. 363—S 94).

The routine changes in Chapter 6 (Costs) were extensive, since most sections in this chapter dealt with costs in a bygone era of locally supported courts and fee-compensated court officials—arrangements entirely superseded by a state-supported court system and the uniform-costs bill of Article 28, Chapter 7A. After removal of this deadwood, the chapter was left with a small number of sections dealing primarily with liability for costs. The chapter was renamed accordingly: Liability for Court Costs. As a convenience to lawyers, clerks, and others who use them frequently, the remaining sections of the chapter, although modernized in language, were not renumbered.

Since 1969 Chapter 7 (Courts) has consisted almost solely of statutes supporting the dying remnants of the old court system and the laws governing the office of justice of the peace. Repeal of these laws by Ch. 377 (S 213), effective October 1, 1971, leaves Chapter 7, like Chapter 2, a vacant title.

General Statutes, Chapter 7A, containing the Judicial Department Act of 1965, as amended and expanded by the legislatures of 1967 and 1969, received very little legislative attention this session. A score or more "transitional" sections, used from 1966 to 1970 when the state was in the process of shifting from a local to a centralized court system were repealed, and the chapter was enlarged by adding certain sections dealing with the clerk of superior court, taken from Chapter 2, and the Judicial Council article, taken from Chapter 7, and—provisionally—new sections relating to the retirement and removal of judges, discussed above. Other than this, only a few relatively routine amendments were made in the chapter. The most important of these are reported here. G.S. 7A–61 was amended to impose responsibility on the superior court solicitor for preparing the criminal docket in district court, and a corresponding amendment to G.S. 7A–146 curtailed the chief district court judge's authority in this respect. G.S. 7A–63 was amended to authorize the solicitor to appoint assistant solicitors to serve at his pleasure rather than for the same term of office as his own. The requirement for verification of small-claims complaints was removed by an amendment to G.S. 7A–216, and another change to the same section permits an agent acting for the plaintiff to sign complaints in summary ejectment cases. An amendment to G.S. 7A–290 requires the clerk of superior court to hold in his office for ten days after entry of judgment a misdemeanor conviction as to which an appeal has been entered. During this time the appellant may withdraw his appeal without liability for superior court costs. Formerly, the clerk transferred the case upon entry of notice of appeal, with liability for costs attaching immediately. And various minor changes were made in Article 28, Costs, including a complete revision of G.S. 7A–314 (fees of witnesses).

Ch. 377 (S 213) also makes two changes in criminal procedure: G.S. 15–140 was amended to authorize the superior court to accept pleas of guilty to "related" charges in misdemeanor appeals, if the related charge is contained in an information (example: careless and reckless driving for drunk driving). And G.S. 15–200 was amended to permit district court judges to hear intercounty revocation of probation cases in the same fashion as superior court judges. The changes effected by Ch. 377 take place October 1, 1971.

Reduction in the Age of Majority

As far as clerks of superior court and attorneys are concerned, perhaps the most significant law of the 1971 session was Ch. 585 (S 4), which inserted a new Chapter 48A (Minors) in the General Statutes. This new chapter repealed the common law definition of a minor insofar as it pertained to the *age* of a minor, and further defined a minor as any person who has not reached the age of 18 years. S 4 was ratified June 17, but its effectiveness was made dependent on the ratification of either an amendment to the United States Constitution lowering the voting age to 18 in all elections or an amendment to the North Carolina Constitution lowering the voting age to 18 in state and local elections. The amendment to the federal Constitution became effective on July 5, and at that time many legislators, some of whom had had earlier doubts about the far-reaching effect of S 4, became concerned that they had created uncertainty in areas of the law that had been settled for scores of years. Their fears were not quieted by a later revelation that, while nearly 200 statutes that contain the words "majority" or "minority" had clearly been affected by S 4, half as many statutes that referred to specific ages between 18 and 21 probably had not. The statutes concerned cut across many vital areas of the law: contracts, taxation, wills, trusts, administration of estates, guardianships, alcoholic beverage control, and others.

To ease mounting concern and to complete the job that S 4 had only begun, the sponsors of S 4 on July 5 came forward with S 938, which purported to amend all sections of the law that contained references to specific ages between 18 and 21 by inserting in these sections "age 18," with the intention of doing to these statutes what S 4 had done to statutes using the terms "majority" or "minority." S 938 met with an uneasy reception in the Senate Courts and Judicial Districts Committee, the majority of whose members by now were convinced that S 4 was a bad idea and that S 938 would make a bad situation worse. The Committee postponed action on S 938 and reported

favorably a new bill (S 969) that would have repealed S 4. The Senate debated S 969 on July 15 and 16. By then S 4 had been in effect for ten days, and undoubtedly some persons between the ages of 18 and 21 had celebrated their suddenly acquired adulthood by entering into contracts or taking other legally binding steps that until July 5 only persons 21 years of age or older could have taken. This situation apparently carried considerable weight with the Senate—it defeated S 969 (thus preserving S 4) by a vote of 21 to 18.

Meanwhile, with S 938 still in committee and adjournment only two working days away, H 1580 was introduced in the House. H 1580 was substantially similar to S 938 except that it omitted any reference to the ABC laws (thus leaving the age for buying and consuming liquor at 21), and it included a rule for computing the applicability of the statute of limitations to legal relationships involving minors over 18 and under 21 who became adults by virtue of S 4 or H 1580. H 1580 was quickly passed by House and Senate, after deletion of references to tax laws, and ratified (Ch. 1231) on the last day of the session, July 21.

It is too early to assess the full effect of these two new laws, other than to speculate that the effect will indeed be far reaching and in some respects unexpected and perhaps even undesirable. The intent of the two statutes—to convert all minors over 18 and under 21, for nearly all legal purposes, into legal adults effective July 5 or July 21, 1971—is clear. The detailed effects of these changes—especially when the wording of a will, trust instrument, or judgment of a court is involved—is not clear, and will undoubtedly have to be spelled out by the courts.

Miscellaneous New Laws

Miscellaneous amendments to Chapter 7A, not included in Ch. 377, include a raise in the General Court of Justice fee in district court in criminal cases from $8 to $9, effective August 1, 1971 (Ch. 1129—S 83). This raises the total costs for a misdemeanor conviction to $16. An amendment to G.S. 7A–171 requires clerks of superior court to submit nominations for the office of magistrate not later than the second Monday in December, rather than the first Monday in October, in even-numbered years. This will assure that the office of magistrate is filled by persons who will work with the clerk who nominated them rather than by a new clerk who may have come into office after the nominations were made. To accommodate this change, terms of magistrates now in office were extended to the last day of December, 1972, and succeeding terms begin on January 1 of even-numbered years. An amendment to G.S. 7A–101 raised the salary authorizations for clerks of superior court and magistrates an average of about 10 per cent (Ch. 877—H 220); in the general appropriation bill (Ch. 708—S 33), judges, solicitors, and assistant solicitors fared somewhat better. Twenty-two solicitorial districts received an additional assistant solicitor (Ch. 997—H 914); districts 10, 18, 26, and 28 received two, and districts 13, 23, 24, and 16 received none. Additional seats of district court were authorized for Scotland Neck (Ch. 727—H 886) and Liberty (Ch. 898—S 313). An amendment to G.S. 7A–29 sends rate-making appeals from the Commissioner of Insurance directly to the Court of Appeals (Ch. 703—H 908), effective January 1, 1972.

Miscellaneous new laws, not a part of Chapter 7A, include a number of minor technical amendments to Chapter 1A, Rules of Civil Procedure, primarily of concern to attorneys, and a new G.S. 15–176.2 (Ch. 957—S 220), of interest to judges and clerks, authorizing sentence credit for time spent in confinement before trial. Clerks will also be interested in Ch. 956 (S 203), which requires the clerk to invest funds received by him when he anticipates that he will have them on hand for more than six months. This latter law, effective October 1, 1971, also amends G.S. 7A–308(a)(15) to change the method of computing the clerk's commission for administering these funds. Finally, G.S. 15–104.1 (new) provides that bail bond initially fixed in the trial court divisions, unless modified by the judge (Ch. 344—S 255).

Bills That Failed

The measure of legislative concern for matters affecting the judiciary is not solely ratified bills; proposals that failed may also indicate the scope of legislative understanding and appreciation of things judicial. A list of bills that failed would include proposals to reduce the size of the jury in civil and criminal cases, to recreate the office of constable, and to raise the "proper" jurisdiction of district court judges in civil cases (from $5,000 to $15,000) and of magistrates (from $300 to $500). Measures to reduce the size of the grand jury and to relieve it of the jail function also failed. Proposals to decriminalize the offense of public drunkenness and to permit 10 per cent bail deposits with the clerk of court attracted extensive discussion, but less than a majority of votes. Bills revising the method for preparing lists of jurors, abolishing capital punishment, requiring that judges be lawyers, and exempting or excusing legislators and persons over 65 or 70 from jury duty also failed. Finally, proposals to elect district court judges on nonpartisan ballots, to elect superior court judges by districts rather than statewide, and to select all judges by means of a nonpartisan merit plan rather than popular election were defeated. Some of these measures are new; others are hardy perennials. Many of them will probably be back in 1973.

—C. E. Hinsdale

7 Higher Education

Higher education was a subject of major controversy in every legislative session of the '60s. Nothing changed with the first session of the '70s. Without doubt, the restructure of higher education was the most controversial issue in the 1971 General Assembly. In the end it proved too delicate and difficult to resolve during the regular session. It will be the subject of further consideration when the General Assembly reconvenes on October 26, 1971.

The 1971 legislature also dealt with many other difficult issues affecting institutions of higher education including aid to private institutions, student morality, the beginning of medical education at East Carolina University, and increased fees for nonresident students. These and other subjects of legislation will be discussed in this article.

Appropriations

Financially, the 1971 General Assembly did reasonably well by higher education, although many requests went unfulfilled. Current operating appropriations of $299 million were made for the sixteen senior public institutions and the State Board of Higher Education (Ch. 708—S 33). The community colleges and technical institutes received an operating appropriation of $117 million. (Changes in the statutes governing the community college system are discussed in a separate section at the end of this article.)

Capital improvement funds were significantly increased (17 per cent) over those of the preceding biennium. The General Assembly authorized $88.5 million to construct facilities at the tax-supported senior institutions of higher education. This authorization represents a direct appropriation of $25.4 million by the state; $30.1 million from such nonstate sources as revenue bonds to be liquidated by student fees and receipts, federal funds, and private gifts; and $33 million in bonds that do not require voter approval (Ch. 72—S 3). An unexpected boost in capital improvements came in a separate act (Ch. 1199—S 904) appropriating $7.52 million for six building projects that the Joint Appropriations Committee had initially excluded from the basic Capital Improvement Act (Ch. 693—S 34). This additional money was made possible by an $8 million revenue increase resulting from quicker payment of state inheritance taxes. (For a breakdown of current operating and capital outlay appropriations by individual institutions, see the State Board of Higher Education's publication *Higher Education in North Carolina*, Vol. VI, no. 7 [August 24, 1971].)

Controlling Growth of Institutions

In an attempt to control growth in enrollments and faculty size, the 1971 General Assembly made several important and generally unprecedented changes with respect to the Current Operating Appropriations Act. Following the leadership of the Appropriations Subcommittee on Higher Education, student-teacher ratios were generally adjusted upward, thereby eliminating state money for new faculty; enrollment projections were scrutinized and changed from what the Advisory Budget Commission recommended; and new authority to transfer funds when enrollment projections are wrong was established.

● *Student-Teacher Ratios.* — The authorized operating budgets for the state's senior institutions of higher education were set at levels that anticipated a change in the student-teacher ratios at all institutions except the North Carolina School of the Arts and the UNC Health Affairs Division. The result

will be no over-all increase in faculty size from state funds. In most cases, the institutions had sought and the Advisory Budget Commission had recommended stable or lowered ratios during the second year of the 1971–73 period. At the urging of the Appropriations Subcommittee on Higher Education, ratios were generally raised. The Chapel Hill, Greensboro, and Raleigh units of the Consolidated University were given a standard ratio of 14.5 students per instructor, an increase of approximately one student per instructor for each. The other institutions were given ratios of 16 students per instructor, except for UNC at Asheville, North Carolina Central University, and Winston-Salem State University. These latter three institutions, which had enjoyed the most favorable student-instructor ratios among these 13 institutions, were given substantially higher ratios at 15 students per instructor.

• *Changing Enrollment Projections.* — Another factor modifying current operating expense allocations were adjustments in projected enrollments. Usually the legislature accepts the Advisory Budget Commission's figures with little question, but this session it reduced budget enrollment projections for East Carolina, Winston-Salem State, and N.C. A&T State and adjusted upward enrollment projections at N.C. State University and the UNC campuses at Wilmington and Asheville. The legislature demonstrated again that it intended to exercise greater control over institutional budgets, particularly as they affect enrollment.

• *Fund Transfer to Adjust Enrollments.*—Another control over operating budgets was added in the Current Operating Appropriations Act (Ch. 708—S 33). The Director of the Budget is authorized, upon the recommendation of the Board of Higher Education, to transfer operating funds appropriated to one senior institution that has an enrollment below its approved level to one or more other senior institutions that have enrollment substantially above their approved level. The act further provides that the president or chancellor of any institution substantially overenrolled during the biennium shall explain to the Board of Higher Education and to the succeeding General Assembly the reasons why his institution did not control enrollment. As the act itself says, the purpose of this new authority is to see that the approved enrollment levels for the budgets of the sixteen public senior institutions will be "adhered to as far as is practicable."

Restructuring Higher Education

Major structural changes to higher education have become common in recent sessions of the General Assembly. The 1969 General Assembly, however, topped them all by naming five new regional universities, adding two new campuses to the Consolidated University, enlarging and strengthening the Board of Higher Education, authorizing doctoral programs at regional universities, and appropriating $375,000 to East Carolina University to plan and develop a two-year school of medicine curriculum. These structural changes permanently altered the system and redirected the development of higher education in North Carolina.

Early this year Governor Scott created a 23-member committee, chaired by Lindsay C. Warren, Jr., of Goldsboro, to take a new look at higher education—to study the reorganization of the state's university system. This committee, established the week before the 1971 General Assembly convened, proposed in May a sweeping restructure of higher education. On a 13–8 vote, the committee recommended that all state-supported universities be placed under a single coordinating board of regents that would control new programs, budgets, allocations, and functions for the state's sixteen institutions of higher education. The Consolidated University system and the Board of Higher Education, as they now exist, would be abolished and replaced by the board of regents elected by the General Assembly. Separate boards of trustees, appointed by the Governor, would be retained for each regional university, and created for the six institutions now in the Consolidated University, but only to govern internal affairs. The committee's recommendations were embodied in S 721 and H 1115, except that the membership of the board of regents was reduced from 100 to 44 upon the recommendation of Governor Scott.

This report brought a flood of fourteen bills concerning restructure of higher education. They include—in addition to S 721 and H 1115, which would implement the majority report -- H 1333, which contained the recommendations of the minority report of the Governor's Study Commission. This bill would have amended the statutes affecting the Board of Higher Education to provide additional program control and budget review, but the present structure would remain the same. Other bills include the following:

S 765—would give constitutional status to the board of regents system, seeking thereby to protect it from the changing political winds of the General Assembly.

S 766—would grant new power and control to the Board of Higher Education in curriculum and budget; the board could withdraw degree program approval if the program is unproductive, excessively costly, or unnecessarily duplicative.

S 767—substantially identical to S 721—H 1115 (bills implementing majority report) except that the effective date of restructure would be January 1, 1972, and would condition the creation of the board of regents system upon passage of

a proposed constitutional amendment as set out in S 765.

S 820 and **H 1591**—would create a commission to study restructure which would report to the 1973 General Assembly; also would give the Board of Higher Education increased authority over budget and program areas, its new powers being similar to those recommended by the minority report.

SJR 821 and **HJR 1261**—almost identical bills that would create the Legislative Study Commission on Higher Education to study restructure and report its recommendations to the 1973 General Assembly.

S 893 and **H 1456**—would consolidate the sixteen public senior institutions into the University of North Carolina system. It would redesignate the UNC Board of Trustees as the board for the system (number reduced to 24), appointed by the Governor, with full control over the institutions. Each institution would have a "board of overseers" with additional powers of governance.

H 1179—would give the Board of Higher Education constitutional status with new responsibility to submit budgets for higher education.

H 1264—would strengthen the Board of Higher Education, giving it new powers over program, tuition and fees, and budgets.

All of these bills were sent to the higher education committees in their respective houses. None were reported out, as it became apparent that no action on restructuring higher education would be taken during the regular session. The chairmen of these committees announced plans to begin hearings on these bills several weeks before the legislature reconvenes on October 26.

Students

Several legislative acts directly affect students and their parents. They include the following:

• *Student Deposits.* — In an attempt to control over-enrollments and reduce vacancies resulting from students who accept at several schools but wait until September to decide which they will attend, the General Assembly amended G.S. 116–143, the tuition and fees statute for state institutions, to require each applicant accepted for admission to remit an advance deposit of not less than $100 (Ch. 1086—H 1525). The deposit is to be applied against the student's tuition and fees for the academic term for which it is accepted and must be paid within three weeks after the institution's notice of acceptance is mailed. If the deposit is not paid within that period, the applicant is assumed to have withdrawn his application. The institution may waive the deposit, however, in hardship cases. If the applicant decides not to attend the institution after remitting his deposit, he must give notice of this decision by May 1, for the fall term applications or at least one month before the term begins in the case of applications for spring or winter terms, to have the deposit refunded. Failure to give such notice results in forfeiture of the deposit unless the withdrawal is for circumstances beyond the student's control. Forfeited deposits are to be used for "scholarships."

Boards of trustees also are required to collect $50 advance deposits from each student enrolled for the regular academic year who intends to return the succeeding academic year. The fee is to be paid during the last regular term preceding the academic year for which the deposit is paid. The institution may waive the deposit in hardship cases. The deposit is to be applied against the student's tuition and fees for the fall term. If he decides not to return, he must give notice within 30 days after the last day of the term in which he made the deposit to get it refunded. However, if the institution determines that he is not eligible to return or if he withdraws for circumstances beyond his control, the deposit is to be refunded. Forfeited deposits are to be used for scholarships.

Boards of trustees also are required to charge a nonrefundable application fee of $10 to accompany each application for admission.

• *Educational Opportunities Information Center.* — Tied in with the new student deposit requirements is an Educational Opportunities Information Center to be established by the Board of Higher Education (Ch. 1086—H 1525). This center will provide information and assistance to prospective college and university students and to public and private institutions on student admissions, transfers, and enrollments. After May 1 when all state institutions will have made their initial choice of student applications, the center will act somewhat as a brokerage house between student and institution. It will find out what students are still looking for a college and what institutions are still looking for students and refer one to the other. Public institutions are required and private institutions requested to furnish nonconfidential information to the center to carry out these functions.

• *Tuition Increase for Nonresident Students.*—Tuition rates for out-of-state students at North Carolina public colleges and universities will be dramatically increased during the next biennium (Ch. 845—H 11087). The increase will be in two stages. Tuition charges will be raised $350 during 1971–72 and $500 more in 1972–73. In most instances, the second-year increase will amount to an increase of nearly 100 per cent over the 1970–71 charges. For example, tuition for undergraduate students on the six campuses of The University of North Carolina will go from $950 to $1,300 this year and to $1,800 in 1972–73. The second-year rates will make North Carolina public campuses among the most expensive in the nation for

out-of-state students, although comparable private institutions charge more.

Amendments to the original bill removed several types of students from the tuition increase. Boards of trustees are authorized by an amendment to G.S. 116-143 to set special tuition rates for students participating in SREB-approved interstate regional training programs, Appalachian Regional Commission programs, Coastal Plains Commission programs, or other limiting federally funded programs. An exception is also made for individuals solicited for a special talent and awarded a scholarship, fellowship, or assistantship.

The act also amends G.S. 116–143 to eliminate a provision that had permitted nonresident graduate students employed as teaching assistants to be given special tuition rates. (The special rate could not be lower than the North Carolina resident rate.) The amendment removes the special tuition rates for teaching assistants, or in the words of the act, "an individual serving exclusively as a faculty member on a part-time basis and is enrolled at the same time as a part-time student." The Advisory Budget Commission, however, was authorized to modify this restriction to alleviate justifiable budget difficulties during the 1971–73 biennium.

One question raised by the amendment was the effect upon teaching assistants already under contract for the 1971–72 academic year. The North Carolina Attorney General recently ruled that the law cannot be applied retroactively and that all contracts providing for a special tuition rate that were entered into prior to July 13, 1971 (ratification date of act) are valid. (N.C. Attorney General's Opinion to Cameron West, July 23, 1971.)

The act also defines an in-state resident for purposes of tuition. It provides that to qualify for in-state tuition "a resident must have maintained his domicile in North Carolina for at least the twelve months next preceding the date of first enrollment or re-enrollment in an institution of higher education in this State. Student status in an institution of higher education in this State shall not constitute eligibility for residence to qualify said student for in-state tuition."

The determination of who qualifies for in-state tuition rates heretofore has been made by the individual institutions. Institutional boards had adopted resolutions that required domicile in North Carolina for only the six months next preceding the date of first enrollment or re-enrollment in the institution. Thus the new statute increases from six to twelve months the period of domicile required to qualify for in-state tuition rates. This change raised the question whether the twelve-month requirement is applicable to students who have applied and been accepted before the effective date of the new act. The Attorney General has ruled that the new statute does not apply to any individual who had applied for admission and was accepted by a state-supported institution of higher education before July 13, 1971. Such students shall retain in-state status (N.C. Attorney General's Opinion to Cameron West, July 23, 1971).

It has been estimated that the additional charges will produce $16 million in the next biennium. This money will go into the state's General Fund to be used to meet additional budget demands for the biennium. The new tuition rates for out-of-state undergraduate and graduate students by institution are set forth in Table 1.

A change related to these new tuition increases was a reduction in the out-of-state students that can be enrolled at the senior institutions. No increases in out-of-state students were authorized and six institutions had their 1970–71 authorized number reduced. The six are Appalachian State, East Carolina, N.C. A&T, UNC at Chapel Hill, Western Carolina, and Winston-Salem State. Most of these institutions were required to reduce out-of-state admissions to make room for more in-state students.

Student Financial Aid

● *State Education Assistance Authority.* — The 1969 General Assembly established a Legislative Study Commission on Student Financial Aid. This Commission, chaired by Representative C. W. Phillips of Guilford and staffed by the Board of Higher Education, recommended major new scholarship programs and introduced implementing legislation. The General Assembly enacted only one of these recommendations: it gave considerable new authority to the State Education Assistance Authority by amending much of Article 23 of G.S. Ch. 116 (Ch. 392—S 497).

The new statutes state as public policy the establishment of a comprehensive system of financial assistance consisting of grants, loans, work-study, and other aids to enable financially needy North Carolina residents to attend public *or private colleges and universities*, including institutions in the community college system. The "statewide student assistance program" is to be established by the Authority. Grants to students, whether in a private or public institution, are to be set by the Authority upon the basis of substantially similar standards. However, grants to students enrolled in private institutions may be increased to compensate for the average annual state tuition subsidy to state institutions. The amount of the state subsidy is to be determined by the Advisory Budget Commission.

To implement the student aid program, the legislature appropriated $1 million to the Authority (Ch. 1145—H 814). This appropriation will strengthen the Authority's reserve trust fund, enabling it to sell more revenue bonds at a

Table I

Institution	Undergraduate Out-of-State Students 1971–72	Undergraduate Out-of-State Students 1972–73	Graduate Out-of-State Students 1971–72	Graduate Out-of-State Students 1972–73
University of North Carolina				
UNC at Chapel Hill				
Academic Affairs	$1,300	$1,800	$1,300	$1,800
Health Affairs				
Medicine	1,800	2,300	1,800	2,300
Dentistry	1,800	2,300	1,800	2,300
Pharmacy	1,300	1,800	1,300	1,800
Public Health	1,400	1,800	1,400	1,800
Nursing	1,300	1,800	1,300	1,800
N. C. State University	1,300	1,800	1,300	1,800
UNC at Greensboro	1,300	1,800	1,300	1,800
UNC at Asheville	1,300	1,800	—	—
UNC at Wilmington	1,300	1,800	—	—
East Carolina University	1,300	1,800	1,300	1,800
Medicine	1,800	2,300	—	—
N. C. A & T State University	1,300	1,800	1,300	1,800
Western Carolina University	1,300	1,800	1,300	1,800
Appalachian State University	1,300	1,800	1,300	1,800
Pembroke State University	1,150	1,550	—	—
Winston-Salem State University	1,150	1,550	—	—
Elizabeth City State University	1,150	1,550	—	—
Fayetteville State University	1,150	1,550	—	—
N. C. Central University	1,300	1,800	1,300	1,800
N. C. School of the Arts	1,300	1,800	—	—
Community College System	400	550	—	—

more favorable rate of interest.[1] Thus the Authority will be able to expand its student loan program and move toward the comprehensive program of student financial aid envisioned by the legislature.

The General Assembly continued appropriations to the Medical Care Commission's Student Loan Fund and the State Board of Education's Student Loan Fund for Teacher Education at the 1969 levels—$400,000 and $1,000,000 per year respectively (Ch. 708—S 33). Two technical changes were made regarding scholarships for children of veterans (Ch. 458—S 470; Ch. 458—H 868).

• *Escheats.* From 1789 to June 30, 1971, all property that accrued to the state from escheats was appropriated to The University of North Carolina. The new State Constitution, however, omitted the escheats provision to provide that after June 30, 1971, all property accruing to the state from escheats is to be used to aid worthy and needy students who are residents of the state and enrolled in any of the state's public institutions of higher education.

The constitutional amendment, Article IX, section 10(1), necessitated rewriting the statutory provisions dealing with escheats. The General Assembly rewrote G.S. 116–20 through –25 as a new Chapter 116A to conform the statutory provisions to the new constitutional provision (Ch. 1135—S 681).[2] The new chapter provides that all property escheating after June 30, 1971, will be placed in a special escheat fund administered by the State Treasurer. Each year the income from the fund will be distributed to the State Education Assistance Authority for further distribution as loans to qualified students attending North Carolina public institutions of higher education. The Authority shall set loan terms on the same basis as it does for the other loans that it administers.

Numerous technical changes were made in the escheats statutes. The length of time moneys must be held and owing before they escheat was changed (Ch. 1135—S 681). New sources of escheats revenue were added by separate acts including uncashed money orders and travelers' checks (Ch. 1135—S 681), postal savings accounts not claimed before May 1, 1971 (Ch. 1185—S 772), and personalty in the hands of clerks of the federal courts (Ch. 1113—S 682). A more thorough procedure for collection was established (Ch. 1110—S 679), and failure to comply with the reporting provisions subjects the violator to a $500 fine plus an additional $10 for each day of noncompliance (Ch. 1109—S 678). Finally, a statute of limitations of seven years was set for property that has escheated to The University of North Carolina (Ch. 1111—S 680).

State Support for Private Institutions of Higher Education

In an attempt to provide some financial relief to private institutions of higher education and to aid North Carolina students in attending them, the General Assembly enacted a plan of public financial assistance for those private institutions in North Carolina

1. The State Education Assistance Authority was created by the General Assembly in 1965. In 1967 the legislature empowered it to issue revenue bonds to support a student loan program. These bonds are not guaranteed by the state's general revenues; they are secured by the students' obligations to repay, the reinsurance of the federal government, and a reserve trust fund of the Authority administered by the State Treasurer. The ceiling on total issue was set at $12.5 million in 1967; less than $10.8 million of the authorized amount has been sold, and most of that to North Carolina investors. The total authorization for revenue bonds was increased this year to $50 million, and the maturity period of the bonds expanded from a maximum of twenty to thirty years.

2. G.S. 116–26 was retained and will apply to those funds held by The University of North Carolina. Since these funds are the property of UNC, they must remain for the use of its institutions, as the North Carolina Supreme Court made clear in *Trustees of The University of North Carolina v. Foy*, 5 N.C. 58 (1805).

that are accredited by the Southern Association of Colleges and Schools and are not a "seminary, Bible college, or similar religious institution" (Ch. 744—H 780).

The financial aid plan has two distinct parts or programs. The first part authorizes the Board of Higher Education to contract with private institutions under which the state would pay the school a fixed sum for each North Carolina resident enrolled as a full-time undergraduate for the regular academic year. In return, the school must agree to provide and administer scholarship funds for "needy" North Carolinians in an amount at least equal to the amount paid to the school that fiscal year. A total of $575,000 was appropriated for 1972 for this part of the aid program (Ch. 1017—S 732).

The first grant program is designed to provide support for the current enrollment of North Carolina students. The second program, apparently patterned on the state's present arrangement with private medical schools, provides a monetary inducement to private institutions to increase the number of North Carolinians already enrolled. The Board is authorized to contract with private schools to pay a fixed sum of money for each state resident enrolled as of October 1 of the year in which funds are available over and above the number enrolled at a base date set at October 1, 1970. As in the first aid program, the school receiving the funds must agree to provide and administer scholarship funds for "needy" North Carolinians in an amount at least equal to that received under this program for that fiscal year. Students may not be counted twice; those students who are in excess of the base date number are eligible under either section, but if they are counted under the second section the institution cannot count them under the first section.

A total of $450,000 was appropriated for the second year of the biennium to fund the incentive aid program. The legislature did not fix the sum to be paid per student as it did with the first program and no explicit authority is given to the Board to set it. Whatever the sum, unless the appropriation for the first section is exhausted, which it clearly will be with the current appropriation, the second program will provide added inducements to institutions only to the extent the payment per student exceeds the $200 figure set for the first program. The act also directs the Board to study private institutions of higher education and to evaluate the assistance afforded to them by these grant programs. The Board also is authorized to adopt regulations, institute reports, and require audits necessary for the administration of the aid programs.

Although the act contemplates that the institutions will provide a dollar of scholarship money for each state dollar paid to the institutions, the grant programs provide aid directly to the institutions. In this respect the act is unlike the G.I. bill. In fact, institutions likely will receive funds for which they need not pay out any additional scholarship money. The schools can include in the amount they are required to pay to receive state funds the value of scholarships and gifts presently paid each year to "needy" North Carolinians. This can include scholarships for academic excellence, athletic prowess, and financial need for students who are "needy."

Two other points should be made. First, as recipients of public funds, any private institution that practices racial or other forms of discrimination will violate federal constitutional law. [See *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964); *Poindexter v. Louisiana Financial Assistance Comm'n.*, 275 F. Supp. 833 (E.D. La. 1967), *aff'd*, 389 U.S. 571 (1968); *Griffin v. State Board of Education*, 296 F. Supp. 1178 (E.D. Va. 1969).]

Second, the payment of funds to a religiously affiliated school can offend the Establishment Clause of the First Amendment to the United States Constitution. The act clearly establishes a sectarian purpose and bars payment to essentially religious schools such as seminaries and Bible schools. The act, however, contains no express provision requiring the recipients to use the funds solely in connection with the secular aspects of their educational programs; it leaves open the possibility that the money will be used to finance sectarian programs or buildings. Payment of money for such a use clearly would violate the federal Constitution. [*Everson v. Board of Education*, 330 U.S. 1, 16 (1947).] However, the Supreme Court has continued to recognize the distinction between and the severability of a school's sectarian and secular programs. [*Board of Education v. Allen*, 392 U.S. 236 (1968), and *Tilton v. Richardson*, 39 Law Week 4857 (June 28, 1971).] So long as funds are used for clearly secular purposes, there is no constitutional prohibition.

Two other acts provide financial assistance to private educational institutions. The financial aid program initiated by the 1969 General Assembly for the medical schools at Duke and Bowman Gray was continued and enlarged (Ch. 1112—S 74); $1.2 million was appropriated to the Board of Higher Education for disbursement to these schools for the education of physicians. The state support was increased from $2,500 to $3,000 for each North Carolina resident enrolled in the first-, second-, and third-year classes for the first fiscal year and in all four classes for the second fiscal year. Of each $3,000, $500 (formerly $250) must be placed in a fund for tuition remission to "needy" North Carolina students. A ceiling of $1,500 per student per year is set on scholarships from this fund. The Board is to insure that the funds are used for medical instruction and not for religious or other nonpublic purposes. It also is to encourage the schools to orient students toward personal health care in North

Carolina with emphasis on family and community medicine.

A similar act appropriates $25,000 for the education of physicians and dentists at Meharry Medical College (Ch. 1006—S 149). The disbursement is $750 per North Carolina student, all of which must be credited to the student's annual tuition. The appropriation contains the same restriction against use for religious or other nonpublic purposes.

Campus Unrest and Student Control

The 1969 legislature represented a high-water mark for bills dealing with campus disruption: Over 20 bills were considered, most of which were ratified.

The 1971 legislature, however, had few bills to consider, largely because of the relative calm that prevailed on campuses across the state the past year. Of those introduced this session, the more controversial bills, which reflected legislative discontent with student activism and morality, failed. They included a bill to prohibit universities from requiring students to pay fees to support campus newspapers and other publications. (S 516), a bill prohibiting visitation in student dormitory rooms by students of the opposite sex (S 544), and a resolution expressing concern over the student challenge to existing customs and expressing concern for the moral welfare of the students (SJR 853).

Two bills that were enacted in this area include one prohibiting weapons on campus and another increasing the penalties for arson to school property.

● *Prohibiting Weapons on Campus.*—G.S. 14–269.2 is a new statute prohibiting any person from possessing specified weapons, concealed or unconcealed, on school property unless they are used solely for instructional or school-sanctioned ceremonial purposes (Ch. 241—H 499). The prohibition applies to both public and private school property owned or used by the institution, including buses and recreation areas. Several exemptions are created by the act. They include armed forces personnel acting under orders requiring them to carry arms; civil officers of the United States discharging official duties; national guard and militia called into active service; state, county, or city officers discharging official duties; and ROTC students required to carry arms. Another exception, added by special act, excludes "any private police employed by the administration or board of trustees of any public or private institution of higher education when acting in the discharge of their duties" (Ch. 1224—S 942).

● *Increased Penalties for Arson.*—The criminal statutes dealing with arson were rewritten to broaden the penalties available upon conviction (Ch. 816—H 392). G.S. 14–59, which makes burning or procuring the burning of a government building a felony, is punishable for from two to 30 years (it had been from five to 10 years). G.S. 14–60, which makes burning or procuring the burning of any schoolhouse owned, leased, or used by any public or private educational institution a felony, is now punishable by imprisonment for from two to 30 years (it had been punishable in the discretion of the court, which meant a maximum of 10 years in prison). A new "catch-all" section, G.S. 14–67.1, was added to make it a felony to burn or attempt to burn any building not covered by the other arson statutes.

Institutional Governing Boards

Much of the legislation directly affecting the institutional governing board—e.g., new legislative involvement in appropriations, restructuring the form of governance, increased tuition rates for out-of-state students—is discussed under other heads. Legislation not yet discussed that particularly affects the board of trustees includes the following:

● *Open Meetings.*—The new open-meetings act (Ch. 638—H 51) requires all hearings, deliberations, and actions of "the commissions, committees, boards, councils, and other governing and governmental bodies which administers the legislative and executive functions of this State. . . ." to be open to the public. Although the definition is in general terms and does not specifically state that boards of trustees of institutions of higher education are included, it seems clear that the legislature intended to include them. Boards of trustees are governing bodies that perform both legislative and executive functions of the state. Furthermore, if the legislature had intended them to be exempted, it would have so specified, as it did with the Council of State, Advisory Budget Commission, the Board of Paroles, and many others.

Codified as G.S. 143–318.1 through G.S. 143–318.7, the new statute applies not only to board meetings but also to meetings of its committees, to informal gatherings of a majority of the members of the board held for the purpose of transacting public business, and to social meetings if they are held for the purpose of evading the open-meetings law. Violation of the statute is not made a misdemeanor, nor are actions taken at a secret meeting invalid (such provisions were eliminated from the original bill), but members of the public excluded from any public meeting are entitled to injunctive relief.

The new open-meetings law specifically permits closed sessions to consider these subjects: (1) acquisition of property; (2) negotiations with employee groups; (3) matters dealing with patients, employees, or members of the medical staff of hospitals or clinics; (4) conferences with legal counsel and other deliberations concerning prosecution, defense, settlement, or litigation of any judicial action in

which the school board is a party or directly affected; (5) any matter constituting a privileged communication; (6) student discipline cases; and (7) appointment, discipline, or dismissal of personnel. As to the last item, however, final action on the discharge of an employee must be taken in open session. The exception for student discipline cases also applies to any committee or officer.

The statute makes it a misdemeanor for any person willfully to disrupt a public meeting and refuse to leave when directed to do so. Violation subjects the offender to a $250 fine or six months' imprisonment or both, in the discretion of the court.

● *Campus Vehicle Registration.*—G.S. 116–186 is rewritten to extend trustee authority to adopt rules and regulations governing vehicle registration and operation to all persons who regularly maintain and operate vehicles on a state-supported campus (Ch. 794—H 1007). Formerly, it had applied only to students. The $25 maximum on registration fees is also eliminated.

● *Campus Motor Vehicle Laws.*—Several ratified acts dealt with trustee authority to adopt rules and regulations respecting streets, alleyways, and driveways on their campuses. G.S. 116–44.1(b) was amended to allow the UNC board to authorize its executive committee to exercise all powers granted to the board to adopt rules and regulations regulating streets, alleys, and driveways (Ch. 361—H 774). The Pembroke State University board was given authority to regulate motor vehicles by the addition of G.S. 116–46.1B (Ch. 839—S 788), and Western Carolina University was given authority to impose penalties for traffic rules (Ch. 1132—S 591).

Technical institutes and community colleges were also given authority to establish traffic regulations on their campuses (Ch. 795—S 648).

● *Double Officeholding.* — Trustees of The University of North Carolina and the other state institutions of higher education had been considered exempt from the double-officeholding provision of the former state constitution by virtue of G.S. 116–4, which declares them to be commissioners of public charities, a position to which the constitutional prohibition did not apply. Similarly, trustees of institutions in the community college system were exempted by the declaration in G.S. 115A–10 that they are commissioners for special purposes.

The new State Constitution, which became effective on July 1, 1971, however, contains a new double-officeholding provision that makes no exceptions for commissioners of public charities or special purposes. The new provision, Article VI, section 9, prohibits a person from holding the following combinations of offices or places of trust or profit:

(1) An office under the United States or under another state government and an elective office in North Carolina;

(2) Two offices in North Carolina filled by election by the people;

(3) Two or more appointive offices or any combination of elective and appointive offices, "*except as the General Assembly shall provide by general law.*" [Emphasis added.]

The third prohibition—two or more appointive or any combination of elective and appointive offices—authorizes the General Assembly to permit exceptions by general law. This legislature authorized exceptions in G.S. 128–1.1 that permit any person who holds an appointive office in state or local government to hold concurrently one other appointive office or an elective office in either state or local government (Ch. 697—S 302). It also permits any person holding elective office in state or local government to hold concurrently one other appointive office in either state or local government. A person who holds office or a position in the federal postal system is also authorized to hold concurrently a position in state or local government. Since trustees of public higher education institutions, including the community colleges, are appointed to their position, they may hold two positions as authorized by G.S. 128–1.1.

G.S. 128–2 is rewritten to provide that a person holding any office in violation of the Constitution shall forfeit all rights and emoluments to it.

● *Student Government Presidents Added to Board of Trustees.*—The student body presidents of the six campuses of The University of North Carolina were added to the UNC Board of Trustees as ex officio voting members, which increased the size of the board to 106 plus ex officio and honorary members (Ch. 320—S 222). The student body presidents of each of the nine regional universities and the School for the Performing Arts were made ex officio voting members of their institutional boards, increasing the size of these boards to thirteen.

● *Revenue Bonds for Adult or Continuing Education Programs.*—G.S. 116–187 and G.S. 116–189 were amended to authorize boards of trustees to use revenue bonds for adult or continuing education programs (Ch. 1061—S 822).

● *UNC-CH Utilities.* — The General Assembly created a commission to study the feasibility of conveying the telephone, electric, water, and sewer systems now operated by The University of North Carolina at Chapel Hill (Ch. 723—S 622). The Commission is to report its recommendations to the UNC board, which may approve or disapprove them or approve its own modifications. Board approval constitutes authority for the board's executive committee to proceed with a conveyance. If the utilities are sold, leased, or otherwise disposed, the

net proceeds are to be deposited with the State Treasurer in a capital improvement account to be credited to UNC in accordance with the third priority set out in G.S. 146–30.

Three other bills relating to utilities operated by UNC-CH were ratified. These utilities were added to the definition of public utilities in Chapter 62 of the General Statutes, although the State Utilities Commission is given no authority with respect to rates or service charges until January 1, 1973 (Ch. 634—S 574). The other two acts authorize the extension and improvement of the utilities, including financing service and auxiliary facilities by issuing revenue bonds not to exceed $13 million (Ch. 635—S 575; Ch. 636—S 576).

University Employees

Lump-sum appropriations were made for faculty salaries to provide an average increase of 5 per cent for each year of the biennium. The increase is based on salaries in effect on June 30, 1971. Salary increases for full-time permanent employees subject to the State Personnel Act will be 5 per cent for each year of the biennium.

The General Assembly also increased travel and subsistence allowances. Mileage allowance for the use of privately owned cars was increased from 9 to 10 cents per mile. Subsistence allowances were increased from $15 to $17.50 per day for in-state and from $18 to $25 per day for out-of-state (Ch. 881—H 543).

A major change was made in the procedure for salary increases for nonclassified personnel who are exempt from the State Personnel Act. Since 1925 these salaries have been set by the Governor and the Advisory Budget Commission without the legislature's approval. This legislature amended the Executive Budget Act to add G.S. 143–34.3, which provides that salaries or salary increases for state employees who are not subject to the State Personnel Act and whose salaries are fixed by the Governor and Advisory Budget Commission shall not become effective unless first submitted to the General Assembly (Ch. 728—H 900). These personnel are to receive salary increases not to exceed 5 per cent for each year of the biennium subject to the approval of the Advisory Budget Commission within the amounts specified (Ch. 1232—H 1531). Presidents, chancellors, and staff members of institutions of higher education and the Director and Assistant Director of the Board of Higher Education were specifically excluded from this increase.

One of the most significant increases in employee benefits were changes to the teachers' and state employees' retirement system; new liberalizing provisions make North Carolina's public retirement system one of the best in the country (Ch. 117—S 232; Ch. 118—S 233). The new retirement legislation:

1. Reduces from twelve to five the number of years of service required for a member to become eligible for a vested deferred allowance, and discontinues the closing of accounts because of absence from service.

2. Equalizes monthly allowance to male and female members in cases of early retirement.

3. Reduces from ten to five years the time required for eligibility for disability retirement.

4. Liberalizes disability benefits by projecting years of service to age 65.

5. Grants 4 per cent interest on all refunds.

6. Raises the maximum annual cost-of-living increase for retired members from 3 per cent to 4 per cent.

7. Increases monthly allowances for personnel who retired before July 1, 1967.

An option to the State Retirement Plan will be available to new faculty appointed after July 1, 1971, who hold the rank of instructor or above and present faculty who have been members of the State System for less than five years and have the rank of instructor or above (Ch. 338—S 462; Ch. 916—S 824). This long-sought option will permit the qualifying faculty to participate in T.I.A.A. (Teachers Insurance and Annuity Association). Administrative employees are ineligible for the option.

Another fringe benefit was the appropriation of new funds for the second year of the biennium to provide medical, hospital, and disability insurance for all state employees (Ch. 1009—S 465). The state will pay $10 per month for hospital and $3 per month for disability insurance for each employee.

Health Education

After extensive debate and political maneuvering that dates back to the 1965 legislature, the General Assembly accepted the recommendation of the Board of Higher Education and appropriated $1,802,816 to initiate a program of first-year medical education at a new school of medicine at East Carolina University (Ch. 1053—H 1207). Under this program medical students completing their first year of study at ECU will be guaranteed admission to the UNC School of Medicine for further study. In related action, the General Assembly provided that an appointee of ECU will serve as a member of the North Carolina Board of Anatomy along with appointees of the other three medical schools in the state (Ch. 1127—H 1505).

As part of the concern about the doctor shortage, the General Assembly appropriated $500,000 to establish a Department of Family Medicine within the UNC School of Medicine (Ch. 1015—S 714) and appropriated a similar amount to be used in placing advanced UNC medical students in nonurban hospitals in order to improve medical aid to rural areas (Ch. 708—S 33). Additional funds also were appro-

priated to increase the enrollment of medical students from 100 to 110 in the 1971 entering class and from 110 to 120 in the class entering in 1972. The UNC School of Medicine also is to establish an "Institute for the Treatment and Education of Children Afflicted with Autism and Related Communications Handicaps," with regional centers in Asheville, Greenville, and Chapel Hill (Ch. 1007—S 383).

Continuing the arrangement begun in 1969, Duke and Bowman Gray medical schools will receive state financial assistance based on the number of North Carolina residents enrolled in their respective schools (Ch. 1112—S 74). Funds also were appropriated to aid state residents attending Meharry Medical College in Nashville, Tennessee (Ch. 1006—S 149).

Community Colleges

The community college system continued to receive good treatment from the General Assembly. A total of $107 million was appropriated to operate the state system of community colleges and technical institutes. This represents an increase of $30 million over the preceding biennium. In addition, $3.15 million in capital outlay funds and $9.8 million in equipment funds were appropriated.

The community college system also continues to grow in number of institutions. The legislature authorized, subject to the approval of the State Board of Education, the establishment of two new technical institutes plus a permanent branch campus of the Anson Technical Institute in Wadesboro. One of the new technical institutes will serve Mitchell, Avery, and Yancey counties and will be known as the Mayland Technical Institute (Ch. 708—S 33). The second new institute will be established in Stanly County (Ch. 1146—H 619). These two new institutes will increase the number of institutions in the community college system to 56. An instruction program in dyeing and finishing technology was also added at the North Carolina Vocational Textiles School at Belmont (Ch. 1002—H 338). This institution, however, is directly under the State Board of Education and is not a part of the Department of Community Colleges.

The most significant new legislation for the community college system was an amendment to G.S. 115A–20 implementing Article IX, section 2(2), of the new Constitution. The new constitutional provision authorizes the use of local revenues for the support of any "post-secondary school program," and the new amendment empowers boards of county commissioners, the local tax-levying authorities for the community colleges and technical institutes, to appropriate tax and nontax revenues for these institutions without voter approval (Ch. 402—S 533). Thus the items of local financial support set out in G.S. 115A–19 may be funded at the discretion of the commissioners.

The new authority granted by G.S. 115A–20 also makes it unnecessary for any institution to operate as an extension unit (contracted technical institute). Consequently, the State Board of Education approved the conversion of the following extension units (contracted technical institutes) to chartered technical institutes, effective July 1, 1971, subject to the approval of the Governor and the Advisory Budget Commission.

The institutions are Anson Technical Institute, Cleveland County Technical Institute, Edgecombe County Technical Institute, Halifax County Technical Institute, James Sprunt Institute (Duplin County), Johnston Technical Institute, McDowell Technical Institute, Montgomery Technical Institute, Nash Technical Institute, Pamlico Technical Institute, Roanoke-Chowan Technical Institute (Hertford County), Robeson Technical Institute, Sampson Technical Institute, Tri-County Technical Institute (Cherokee County), and Vance County Technical Institute.

Much of the legislation concerning colleges and universities already discussed also applies to community colleges. For example, the open-meetings act applies to their boards of trustees (Ch. 638), the act increasing tuition for out-of-state students will increase tuition for these institutions to $400 a year for 1971–72 and to $550 for the 1972–73 year (Ch. 845), and the double-officeholding exemption of G.S. 128–1.1 applies to trustees of institutional boards (Ch. 697).

—Robert E. Phay

8 Public Schools

Education commanded much time and attention from the 1971 General Assembly. The result was the enactment of a substantial amount of new law and the funding of several new programs. The more notable enactments include the extension of employment terms for principals, supervisors, and teachers, the prohibition of dangerous weapons on school property, a teacher tenure statute, an open-meetings act, and the establishment of privileged communication between students and school counselors. There also were some notable rejections of proposed legislation. They include a $200 million school construction bond issue, appropriations to increase teacher salaries to the national average, and a teacher negotiations act. These and others bills and acts affecting public education are summarized in this article.

Appropriations

The 1971 legislature appropriated $1.15 billion to operate the public schools over the 1971-72 biennium, an increase of approximately $136 million over the preceding biennium. The major areas and programs that account for the increase are the following.[1]

- *Salaries.*—All public school employees will receive a 5 per cent salary increase for the first year of the biennium and another 5 per cent increase for the second year, both increases to be computed on the salary level for 1970-71. The NCAE had requested 15 per cent increases for each year of the biennium, which would have brought North Carolina teacher salaries to the national average. The State Board of Education had requested a 9¼ per cent increase per year, part of which would have resulted from a requested extension of the employment term from nine to ten months. Over the past four years the legislature had increased salaries 10 per cent per year. This session it was willing to approve only half that amount for the next biennium because of the tremendous demands on state funds.

- *Kindergartens.*—Increased appropriations will fund 35 new kindergarten centers during the first year of the biennium and approximately 20 more centers the second year of the biennium.

- *Transportation.*—$4.3 million in new funds will provide transportation for all children living more than 1½ miles from school.

- *Food Service.*—New funds will provide supervisory services necessary to satisfy requirements for matching funds for full participation in federally funded food service programs.

- *Hospital and Disability Insurance.*—New funds in the second year of the biennium will provide medical, hospital, and disability insurance for all school employees (Ch. 1009—S 465).

- *Teachers' Term.*—Two additional working days were added for teachers in the second year of the biennium (1972–73) at a cost of $4.3 million (Ch. 1068—H 1235). The total term for teachers is now 187 working days.

- *Principals' Term.*—Principals with fifteen or more state-allotted teachers will be employed on a twelve-month calendar basis, beginning the second year of the biennium. G.S. 115–157 was amended to provide for the increased term (Ch. 1053—H 1196). The ex-

1. Most of the appropriated increases are authorized by the State Current Operations Appropriations Act (Ch. 708—S 33) and the State Capital Improvement Appropriations Act (Ch. 693—S 34). Supplemental appropriations acts are cited separately in the textual description.

tended term will apply to 1,446 school principals (518 principals will be unaffected) and will cost the state $2.8 million.

• *School Supervisors.*—The employment term for supervisors was extended from 10 to 10½ months at a cost of $200,000. This increase also will begin in the second year of the biennium (Ch. 1071—H 1291).

• *Vocational Rehabilitation Centers.*—A supplemental appropriation of $385,000 will help develop a statewide system of comprehensive vocational rehabilitation centers (Ch. 1049—H 1138).

Finance

The laws governing the adoption of budgets and issuance of bonds by local governmental units were completely rewritten by Ch. 780. So that local officials may have time to become completely familiar with the new law before having to apply it, however, the new law does not become effective until July 1, 1973. Some of the major changes in school budgeting and finance are:

(1) The annual budget process will be moved back so that the deadline for submitting the budget will be June 1 and the deadline for budget adoption July 1. The school law now provides for submission of school budgets to the board of county commissioners on or before June 15 (G.S. 115-88) and approval of the budget on or before July 10 (G.S. 115-81). Although not specifically repealed, the special school dates apparently will be superseded by the new budget dates of the new local government finance act.

(2) The county debt limit will be changed to 8 per cent of *appraised value* for all purposes. This moves the basis of the debt limitation from assessed to appraised value and abolishes the distinction between school debt and general debt.

(3) Special capital reserve funds are to be eliminated and consolidated into a single county capital reserve fund. Thus the capital reserve fund statutes for schools, G.S. 115–80.1 through –80.5, will be repealed.

(4) A new article regulating long-term financing agreements that do not involve issuance of bonds will be added to the law. In general, the new procedure treats such agreements as if they were bond issues by requiring them to be approved by the Local Government Commission and including sums committed thereby to be counted against the legal debt limit.

The property tax laws were also completely rewritten and a new property tax machinery act enacted as a new Chapter 105 of the General Statutes (Ch. 806—H 169). This new law eliminates, effective July 1, 1972, the present statutes authorizing the collection of poll taxes. Poll taxes have been a minor source of school funds, and, if they are collected, the Constitution requires that at least three-quarters be "applied to the purpose of education." The constitutional provision will be eliminated on July 1, 1973.

Two changes were made in the administration of loans from the State Literary Fund. G.S. 115-101 was amended to add authorization to use funds for "maintenance buildings and transportation garages" (Ch. 1096—S 627), and G.S. 115–102 was amended to increase the interest the State Board of Education may charge on loans from 4 to 6 per cent (Ch. 1094—S 625).

G.S. 115-85 was amended (Ch. 1095—S 626) to require the board of county commissioners' approval of the amount of the bond fixed by local boards of education for school employees who receive school funds. Before the amendment the amount of the bond was determined solely by the county or city board of education.

One local bill of interest modifies G.S. 115–117 to permit the Roanoke Rapids City Administrative unit to levy a supplemental tax of up to 65 cents on the $100 property valuation if approved by the voters (Ch. 258—S 401). G.S. 115–117 limits special supplements to a maximum of 50 cents. This local bill exempts Roanoke Rapids from the limitation.

Teacher Tenure Act

On July 1, 1972, the state's continuing-contract statute will be replaced by a teacher tenure act (Ch. 883—H 888). In my opinion, this act will have greater impact on school operations than any other piece of school legislation enacted by the 1971 General Assembly.

The tenure act begins by repealing G.S. 115–67 and G.S. 115–145, two of the three teacher dismissal statutes (G.S. 115–45, authorizing dismissal by the superintendent and board, was apparently overlooked). It also repeals the teacher resignation statute, G.S. 115–141, and increases from 30 to 45 days the time the teacher must give notice to terminate his contract. The act then rewrites the state's continuing-contract statute, G.S. 115–142, to provide that teachers who have been employed in a school system for three consecutive years attain "career" status if employed for the fourth year. A career teacher no longer is subject to the requirement of annual reappointment and cannot be dismissed or demoted by the board of education except for reasons enumerated in the statute and only then by following new dismissal procedures.

All other teachers are probationary teachers and are still subject to annual reappointment. The local board of education, as under present law, can decline to renew a probationary teacher's contract "for any cause it deems sufficient" and without a hearing. Dismissal during the school year, however, can be only for the reasons enumerated in the statute and pursuant to the procedures by which a career teacher may be dismissed. The refusal of a school board to give rea-

sons or a hearing when it decides not to renew the contract of a nontenured teacher was just upheld by the North Carolina Supreme Court in *Still v. Lance*, 279 N.C. 254, 182 S.E.2d 405 (1971).

The basis for dismissing or demoting a career teacher under the tenure statute are essentially the same as in the present law for discharging a teacher under contract.[2] However, under the new law, the superintendent must maintain a record of the complaints, commendations, and suggestions about each teacher; each entry must be signed by the person making it. The teacher must be given notice of any item being placed in the file and an opportunity to attach a denial or explanation. Furthermore, the file must be open for inspection by the teacher at all reasonable times. The teacher also must be given notice of any inadequacy in his performance and the opportunity to improve himself. The failure to give such notice "shall be conclusive evidence of satisfactory performance," thereby precluding dismissal for inadequate performance.

The dismissal procedure for career teachers begins with the superintendent's giving the teacher written notice of his intention to recommend dismissal and the grounds upon which he believes it justified. The teacher may then request a hearing before an independent hearing panel of five to review the superintendent's recommendation. The review panel, an unusual aspect of tenure law,[3] is selected from a Professional Review Committee of 121 citizens—11 from each of the state's eleven congressional districts—who are appointed for three-year terms by the State Superintendent. After a hearing, the panel submits a written report to the superintendent on whether the grounds for his recommendations are substantiated. The superintendent, regardless of the panel's findings, may recommend dismissal to the school board or drop the charges against the teacher. If dismissal is recommended, the teacher may demand a hearing before the board, which shall determine, with the panel's report as "competent evidence," whether the grounds for dismissal are true and substantiated. If the board then orders dismissal, the teacher may appeal to the courts.

Typical of new and particularly involved statutory schemes, this tenure statute presents problems of interpretation. Among these problems are the employment status of teachers immediately following the date of the act, the superintendent's right to present evidence at the board hearing when the panel report finds the dismissal recommendation true and substantiated, and the possibility of an unduly protracted procedure because of timing established by the statute. These problems will be discussed in a forthcoming Institute monograph that will recommend school board policies on implementing this tenure act.

School Disruption and Student Discipline

● *Criminal Statutes.* The problems of school disruption and student discipline were major concerns of the 1971 General Assembly. Over ten bills were introduced on the subject, most of which were ratified. One, Ch. 241 (H 499), adds G.S. 14–269.2, which prohibits any person from possessing specified weapons, concealed or unconcealed, on school property unless they are used solely for instructional or school-sanctioned ceremonial purposes. The prohibition, which applies to elementary, secondary, and higher educational institutions, applies to any public or private school building, grounds, or bus owned, used, or operated by the school's governing board. Violation of the act is a misdemeanor punishable by a fine of $500 or six months' imprisonment, or both.

The criminal statutes dealing with arson were rewritten to broaden the penalties available upon conviction (Ch. 816—H 392). G.S. 14–59, which makes burning or procuring the burning of a government building a felony, is punishable for from two to thirty years (it had been from five to ten years). G.S. 14–60, which makes burning or procuring the burning of any schoolhouse owned, leased, or used by any public or private educational institution a felony, is now punishable by imprisonment for from two to thirty years (it had been punishable in the discretion of the court, which meant a maximum of ten years imprisonment). A new catch-all section, G.S. 14–67.1, was added making it a felony to burn or attempt to burn any building not covered by the other arson statutes.

● *Suspending School in Event of Disruption.* Two acts increased state and local school boards' authority to suspend school operations. One (Ch. 90—H 11) rewrote G.S. 115–36(c) to permit the State Board of Education, or any local board with the approval of

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2. The new act states: "No career teacher shall be dismissed or demoted except for: inadequate performance; immorality; insubordination; neglect of duty; physical or mental incapacity, habitual and excessive use of alcoholic beverages or narcotic drugs; conviction of a felony or a crime involving moral turpitude; advocating the overthrow of the Government of the United States or of the State of North Carolina by force, violence, or other unlawful means; failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of this state; failure to comply with such reasonable requirements as the local board may prescribe; any cause which constitutes grounds for revocation of such career teacher's teaching certificate; or a justifiable decrease in the number of positions due to district reorganization or decreased enrollment."

Grounds under present law, G.S. 115–145, are immoral or disreputable conduct; failure to comply with the provisions of the contract; incompetency; refusal to perform duties; and neglect of duties. G.S. 115–45 adds unsatisfactory work and violation of board rules and regulations and G.S. 115–67 adds refusal to cooperate in teachers' meetings as grounds for dismissing principals and teachers.

3. Most states grant the teacher a hearing before the school board without an independent review as provided in the North Carolina Tenure Act. *See, e.g.*, Ariz. Rev. Stat. Ann. §§ 15-251 *et seq.* (1956); Conn. Gen. Stat. Ann. § 10–151 (1967); Mass. Ann. Laws § 42 (Supp. 1971). New York provides for a separate hearing panel; N.Y. Educ. Code § 3020-a (McKinney 1970).

the State Board, to suspend school operations for up to 60 days when "conditions justify." The former law authorized suspension only for low average daily attendance. The rewritten statute also reverses the former law that had prohibited paying teachers for the suspended term to authorize payment for up to fifteen days. The second act (Ch. 85—H 16) amends G.S. 115–36(a) to authorize the superintendent to suspend school before the required six hours in the event of "an emergency, act of God, *or any other conditions* requiring the termination of classes. . . ." The new act added the emphasized language.

● *Teacher Disability Benefits.* G.S. 115–159.1 is a new statute authorizing full payment of salary for any teacher disabled from "any episode of violence" during the course of his employment (Ch. 640—H 478). Salary payment is authorized for the remainder of the school year or the continuation of his disability, whichever is shorter. These benefits are in lieu of other income or disability benefits under Workmen's Compensation, but they do not limit any medical, drug, or hospital payments. Teachers injured while participating in or provoking violence, unless to defend themselves or to restore order, are specifically excluded from the statute. To receive the statutory benefits, the teacher must file a claim with the local board of education, which determines the benefits. The board's decision may be appealed to the Industrial Commission, which hears the claim de novo.

● *Student Discipline.* The basic statute setting out the responsibility of teachers for the school program and their responsibility for student discipline is G.S. 115–146. It places a duty on all teachers, including student teachers when given authority over some part of the school program, "to maintain good order and discipline." It also requires teachers and student teachers, among other things, to encourage temperance, morality, industry, and neatness and to report all violations of the compulsory attendance law.

In 1969 G.S. 115–146 was amended to add student teachers; the 1971 legislature amended it again to add "substitute teachers, voluntary teachers, teacher aides and assistants" (Ch. 434—H 813). The statute was further amended to give to these school personnel the authority to use "reasonable force and exercise lawful authority to restrain and correct pupils and maintain order."

School discipline proceedings were altered in two respects. G.S. 115–34 was amended to permit appeals to the school board to be heard by hearing panels of two school board members (Ch. 647—H 1154). The amendment will permit the two school board members to hear and act upon appeals in the name and on behalf of the board of education. This amendment was sought by a large school system that found itself inundated with appeals authorized by G.S. 115–34. Although the primary impact of this change will be in the area of student discipline, it applies to all appeals taken under G.S. 115–34.

The second modification in discipline procedure was an amendment to G.S. 115–147, the student suspension and expulsion statute. It provides that a student suspended or dismissed more than once during a single school term may be dismissed for the remainder of the school term by the principal with the approval of the superintendent (Ch. 1158—S 686). It is doubtful that this amendment gives new authority to the school administrators since they had authority to dismiss (expel) for the remainder of the school year before G.S. 115–147 was amended. It does, however, add confusion because "school term" is not defined. If school term means a school quarter or six-weeks period, the amendment may actually reduce school authority, since presumably the student is to be reinstated at the beginning of the next term.

Students

Recognizing the state's inability to train and educate adequately all children who are seriously emotionally disturbed or mentally retarded or have visual or hearing handicaps, the General Assembly established a grant program to finance their education in private or out-of-state education facilities when suitable facilities are not available in the North Carolina public schools (Ch. 946—H 1172). Codified as G.S. 115–316.7 through –316.12, the program authorizes grants up to $1,200 per child to attend private or out-of-state institutions. Grant applications are made by the parent or guardian to the local board of education. Criteria for eligibility and approval, however, are set by the State Board of Education. The General Assembly also amended G.S. 115–200 to permit special instruction for physically and mentally handicapped children under the age of six (Ch. 645—H 984).

A privileged-communication statute was enacted for students and school counselors (Ch. 943—S 790). G.S. 8–53.4 provides that no certified school counselor appointed by a school board or by a private school may testify in any action or proceeding concerning any information acquired in counseling with a student when the information was necessary to render counseling services. However, the student may waive the privilege in open court, and the judge may compel disclosure if necessary to a proper administration of justice.

The compulsory attendance law, G.S. 115–166, was amended to prohibit any person from encouraging or counseling any child to be unlawfully absent from school (Ch. 846—H 1106). G.S. 115–163 was amended to authorize superintendents to prohibit the enrollment of or to remove from school any pupil who has reached 21 years of age (Ch. 153—S 256).

The 1971 Child Abuse Reporting Law (Ch. 710—H 548), places an affirmative duty on school personnel to report suspected cases of child abuse or neglect.

While the former reporting law was voluntary, professional people defined to include the "school teacher, principal, school attendance counselor, or other professional personnel in a public or private school" are now required to report suspected cases of child abuse or neglect. Reports are to be made to the county social services director. The law gives immunity to reporters in good faith.

Consolidation and Modification of School Units

Local acts authorized referendums in four counties on whether to consolidate city and county school administrative units. These acts, which also set up the machinery for merger in the event of a favorable vote, affect school units in the following counties: Cumberland (Ch. 554), Durham (Ch. 852), Robeson (Ch. 214, Ch. 791), and Wake (Ch. 1005). If all merger votes pass, the number of administrative units will be reduced from 152 to 144.

There is also a possibility that a new school administrative unit will begin operation in the Town of Scotland Neck. In 1969 the General Assembly authorized the establishment of three new school administrative units: Scotland Neck (Ch. 31), Warrenton (Ch. 578), and Littleton-Lake Gaston (Ch. 628). These units were enjoined from operating pending judicial determination of the constitutionality of these acts. Last spring the Federal District Court for Eastern North Carolina declared all these acts to be unconstitutional on the basis that they were an attempt to avoid desegregation of schools. Recently the Fourth Circuit Court of Appeals sustained the decision as to Warrenton and Lake Gaston but reversed the Scotland Neck decision. In *U.S. v. Scotland Neck City Board of Education*, 442 F.2d 584 (4th Cir. 1971), the court held the Scotland Neck statute to be constitutional on the basis that it did not continue or establish a dual system of education. This decision has been appealed to the United States Supreme Court, but an opinion is not expected until the end of 1971. At present the Halifax County school administrative unit operates schools in Scotland Neck.

The statutory procedure for enlarging school tax districts and city administrative units, G.S. 115–77, was amended (Ch. 672) to permit areas contiguous to city administrative units to be consolidated with the city administrative units or tax district upon petition of a *majority* of the property owners and taxpayers living on the property. Before amendment, the statute had required *all* owners and *all* taxpayers to sign the petition before the county board of education could act on the petition. G.S. 115–77 still requires the State Board of Education and the city board of education or school committee that will receive the new territory to approve the transfer before it can be made.

School Employees

Much of the legislation affecting school employees —new tenure act, extended employment terms, increased salary and fringe benefits—is discussed under other headings. One important area not discussed elsewhere is the state retirement system.

Significant changes were made to the teachers' and state employees' retirement system that give school employees substantial new benefits and make North Carolina's public retirement system one of the best in the country (Ch. 117—S 232; Ch. 118— S 233). The new retirement legislation:

1. Reduces from twelve to five the number of years of service required for a member to become eligible for a vested deferred allowance, and discontinues the closing of accounts because of absence from service.

2. Equalizes monthly allowance to male and female members in cases of early retirement.

3. Reduces from ten to five years the time required for eligibility for disability retirement.

4. Liberalizes disability benefits by projecting years of service to age 65.

5. Grants 4 per cent interest on all refunds.

6. Raises maximum annual cost-of-living increase for retired members from 3 per cent to 4 per cent.

7. Increases monthly allowances for personnel who retired before July 1, 1967.

8. Amends G.S. 135–8(b)(3) to require school boards to make employer contributions for school employees paid from nonstate funds.

An amendment to G.S. 115–11(13) authorizing the State Board of Education to provide sick leave for all public school employees is also noteworthy. The statute formerly applied only to teachers and principals (Ch. 745—H 862). G.S. 115–44 also was amended to authorize boards of education, upon the superintendent's recommendation, to elect assistant or associate superintendents for one- to four-year terms. The term, however, may not exceed that of the superintendent's contract unless the superintendent has less than one year remaining on his contract; in that case it may be through the next school year. This statute also provides that assistant or associate superintendents may not be dismissed during the term of the contract except for "misconduct of such a nature as to indicate he is unfit to continue in his position, incompetence, neglect of duty, or failure or refusal to carry out validly assigned duties." Dismissal during the contract period must follow the procedures set out for "principals and teachers in G.S. 115–145." After this bill was introduced, however, the teacher tenure law (Ch. 883) repealed G.S. 115–145 effective July 1, 1972. Although it is now unclear what procedure must be followed after July 1, 1972, a dismissal procedure that gives written notice, adequate time to

prepare for a hearing if one is demanded, a fair hearing, and dismissal only if there is enough evidence to prove the charges would comply with the statute's intent and procedural due process.

Other legislation affecting school employees includes a new statute, G.S. 115–152.1, that prohibits discrimination against the blind in training and hiring teachers (Ch. 949—H 1246). Also enacted was a joint resolution directing the Legislative Research Commission to study the desirability of a commission to regulate the preparation, licensing, and practices of teachers (Res. 99—HJR 1429). The legislature was unwilling to enact H 1016, a teacher licensing and practice act, and chose instead to study the matter in anticipation of similar legislation in future sessions. Other school employee introductions—including bills dealing with teacher holidays, checkoff for teacher association dues, sick leave, pensions, longer employment, prohibiting the use of NTE scores in certification, and raising teacher salaries to the national average—were killed somewhere along the legislative process.

School Property

The most important bill introduced in the 1971 General Assembly concerning school property was H 1037 (S 672). It would have authorized the issuance of $200 million in state bonds to provide for public school facilities in the 152 school administrative units. After clearing the House with little trouble, it died in the Senate Appropriations Committee. The State School Boards Association, its chief sponsor, plans to bring it back to the 1973 General Assembly.

G.S. 115–125 was amended to give school boards authority to acquire property by condemnation for access roads, suitable for school buses, leading to school buildings (Ch. 290—H 326). G.S. 136–18(17) also was amended to authorize the State Highway Commission to construct and pave driveways leading to public school buildings and to construct and pave adequate parking facilities for school buses at those schools (Ch. 291—H 327).

Open Meetings

The new open-meetings act (Ch. 638—H 51) requires all hearings, deliberations, and actions of governmental agencies—including boards of education, school district committees, and advisory councils—to be open to the public. Codified as G.S. 143–318.1 through –318.7, the new statute applies not only to school board meetings but also to meetings of its committees. It also applies to informal gatherings of a majority of the members of the board held for the purpose of transacting public business (note that a quorum for official meetings is now statutorily set as a "majority of the members") and to social meetings if they are held for the purpose of evading the open-meetings law. Violation of the statute is not made a misdemeanor, nor are actions taken at a secret meeting invalid (such provisions were eliminated from the original bill), but members of the public excluded from any public meeting are entitled to injunctive relief.

The new open-meetings law specifically permits closed sessions to consider these subjects: (1) acquisition of property; (2) negotiations with employee groups; (3) conferences with legal counsel and other deliberations concerning prosecution, defense, settlement, or litigation of any judicial action in which the school board is a party or directly affected; (4) any matter constituting a privileged communication; (5) student discipline cases; (6) strategy for handling an existing or imminent riot or public disorder; and (7) appointment, discipline, or dismissal of personnel. As to the last item, however, final action on the discharge of an employee must be taken in open session. (The new tenure act also requires open sessions in dismissal hearings of tenured teachers when either the career teacher or the superintendent requests it.) The exception for student discipline cases also applies to any school committee or officer.

The statute makes it a misdemeanor for any person willfully to disrupt a public meeting and refuse to leave when directed to do so. Violation subjects the offender to a $250 fine or six months' imprisonment or both, in the discretion of the court.

Curriculum

G.S. 115–240 was amended to authorize boards of education to purchase up to $20,000 in materials for any one building project constructed by a vocational building class (Ch. 644—H 893). Before amendment, the statute set a $7,000 limit. The amendment also eliminates a restriction that not more than one project can be undertaken within one school year.

The State Board of Education is directed to establish a program of in-service education for social studies teachers. This in-service program implements the recommendations of a study directed by the 1969 General Assembly on the feasibility of training teachers in economics and social studies.

Double Officeholding

School board members hold an office and could hold no other office under the constitution that was replaced on July 1, 1971. The new State Constitution contains a new double-officeholding provision. Article VI, section 9, prohibits a person from holding the following combinations of offices or places of trust or profit:

(1) An office under the United States or under another state government and an elective office in North Carolina;

(2) Two offices in North Carolina filled by election by the people;

(3) Two or more appointive offices or any combination of elective and appointive offices, "*except as the General Assembly shall provide by general law.*"

The third prohibition—two or more appointive or any combination of elective and appointive offices—authorizes the General Assembly to permit exceptions by general law. This legislature authorized exceptions in G.S. 128–1.1 that permit any person who holds an appointive office in state or local government to hold concurrently one other appointive office or an elective office in either state or local governments (Ch. 697—S 302). It also permits any person holding elective office in state or local government to hold concurrently one other appointive office in either state or local government. A person who holds office or position in the federal postal system is also authorized to hold concurrently a position in state or local government. G.S. 128–2 is rewritten to provide that a person holding any offices in violation of the Constitution shall forfeit all rights and emoluments to it.

Transportation

To meet the demands for increased busing of children to desegregated schools, an appropriation of $134,000 was made to the Department of Motor Vehicles for five additional driver education representatives (Ch. 981—S 953). A bill to place mileage restrictions on the busing of children (H 1176) died in the education committee.

Two minor changes to the statutes governing school bus operation were made. G.S. 20-217 was amended to clarify the circumstances under which it is illegal to pass a stopped school bus (Ch. 245—H 449), and G.S. 20–218 was amended to provide a penalty for operating a school bus with children aboard without proper certification (Ch. 293—H 673).

Tort Claims Against School Boards

Except for school bus accidents, which are covered by the State Tort Claims Act, school boards are not liable for the negligent acts of their employees. It can defend actions against it by pleading governmental immunity, the ancient common law concept based on the proposition that the king can do no wrong. The 1971 legislature gave serious consideration to modifying or abolishing the defense of governmental immunity. Two bills were introduced on this subject. One, H 700, would have made units of local government including school boards, community colleges, and technical institutes liable for torts committed by an employee while acting within the scope of his office. This bill would have extended the Tort Claims Act to local governments. Another bill, S 490, went much further. It would have repealed the State Tort Claims Act, abolishing the defense of governmental immunity and making school boards liable for all wrongful and negligent acts and omissions of their agents, officers, or employees. Neither of these bills were successful, although H 700 passed the House. A joint resolution, H 1515, directing the Legislative Research Commission to study the issue also failed.

One change was made in this area, however. G.S. 143-291, part of the State Tort Claims Act, was amended to increase the maximum amount that can be awarded by the Industrial Commission from $15,000 to $20,000. It also amended G.S. 143–297 authorizing the Industrial Commission to require hearings in counties other than where an injury occurs. The effective date of the act is July 1, 1971; it does not apply to claims arising before that date.

Miscellaneous Bills and Acts

● *Conforming the School Statutes to the New State Constitution.*—The new Constitution that went into effect on July 1, 1971, made changes in the area of education. Fourteen statutes needed to be amended or repealed to bring the school law into conformity with it. These changes were made by Ch. 704 (H 985).

● *Collective Bargaining.*—Several bills introduced dealt with the teacher's right to engage in collective bargaining. All bills failed. H 964, a teacher negotiations act, would have established procedures for bargaining between teacher groups and school boards. A joint resolution, H 1457, creating a commission to study teacher collective bargaining and report its findings to the Governor and the 1973 General Assembly was also rejected. S 97, a bill to prohibit public employment to anyone who had participated in a strike against the state or one of its instrumentalities, also failed.

● *Local School Board Acts.*—Over 80 local acts affecting the operation of local school boards were introduced in the 1971 session; 60 were ratified into law. The bills dealt with a variety of topics. The most common subjects were election procedures and increased compensation for board members. School systems with new school board election procedures are: Avery, Beaufort, Columbus, Dare, Fairmont, Edgecombe, Greene, Guilford, Halifax, Hickory, High Point, Lenoir, Lincolnton, Martin, Maxton, Mecklenburg, Northampton, Orange, Pitt, Salisbury, Wake, Washington County, Wilson City, Wilson County, and Yancey. School systems that authorized an increase in the compensation paid to members are: Chatham, Greene, Iredell, Mecklenburg, New Hanover, Orange, and Rockingham.

—Robert E. Phay

9 Social Services and Juvenile Corrections

Social Services

The legislation proposed by the State Board of Social Services to the 1971 General Assembly seemed modest and noncontroversial, since the Board chose to avoid direct involvement in the controversy over licensing of day-care centers. The proposed legislative program consisted of sixteen bills. The nine bills adopted were designed to clarify existing programs or procedures or to assure uniformity of program as required by federal law. The most important legislation enacted was the child-abuse reporting law (Ch. 710) requiring reports of child abuse or neglect to the county director of social services. The adoption of the Interstate Compact on the Placement of Children (Ch. 453) also seems significant, since it provides new procedures for interstate placement of children for foster homes and adoption between states that are party to the compact. The bills that failed seem significant in that they reflect an unwillingness to strengthen the authority of social services at the state and county levels in significant program areas.

Child-Abuse Reporting Law

Ch. 710 (H 548) repeals the previous voluntary child-abuse reporting law (former G.S. 14–318.2 and –318.3) and provides for mandatory reporting of cases of child abuse and neglect to the county director of social services. The new law will be codified as new Article 8, G.S. Ch. 110. Professionals (defined to include doctors, nurses, hospital administrators, social workers, law enforcement officers, school teachers or principals or superintendents or attendance counselors, and others) have a higher legal duty to report than others; they must report *suspected* cases of child abuse or neglect. Other persons must report cases of child abuse when they have actual knowledge. While reports of abuse or neglect may be oral or written, the law requires any reporter to confirm his report in writing when requested by the county director of social services. Anyone reporting under the law in good faith is given immunity from criminal or civil liability. Hospitals are given new authority to retain temporary custody of abused children brought in for diagnosis or treatment in specified circumstances. The duties of the county director upon receiving a report of child abuse or neglect are specified; they include a prompt investigation, a decision concerning whether immediate removal is necessary for the protection of the child, a requirement to provide protective services (defined by statute as services to parents to prevent child abuse or neglect, to improve the quality of child care, to preserve family life, etc.); procedures to follow when removal of the child is found necessary are also specified. The law requires routine reports on child-abuse cases by the county director to the district solicitor and defines a new criminal offense of "child abuse." A Central Registry of Abuse and Neglect Cases (previously established in the State Department of Social Services as a public service) is now required, with specific requirements that counties furnish data to the Registry concerning abuse and neglect cases. The new legislation explicitly waives both the physician-patient and husband-wife evidentiary privileges to

facilitate proof of child abuse or neglect in judicial proceedings.

Uniformity and Clarification

Ch. 523 (S 265) rewrites G.S. 108–42(c) relating to the review authority of a board of county commissioners over federally supported public assistance payments approved by the county board of social services. While the review authority of the board of commissioners is continued, any changes made in the payment are subject to state-level review by the Commissioner of Social Services.

Ch. 283 (S 263) amends G.S. 108–39(c) requiring any unemployed child or parent in an AFDC family who is required to work to register with an employment service and to make efforts to secure employment. The amendment clarifies that proof of such registration or efforts must conform to the requirements of the State Board of Social Services rather than county department regulations to facilitate statewide uniformity in administration.

Ch. 435 (H 830) amends G.S. 108–60 providing for payments from the State Fund for Medical Assistance to include authority to make payments to licensed nursing homes. Ch. 643 (H 833) corrects an omission when G.S. Chapter 108 was rewritten by the 1969 General Assembly to authorize the State Board of Social Services to provide certification services to the federal government under the Social Security Act for administering the old age and survivors' insurance program in North Carolina.

Other Legislation Affecting County Administration

Ch. 124 (S 239) amends G.S. 108–14 dealing with the per diem allowance for county social services board members to authorize a board of county commissioners to set the amount without any statutory limit on the amount (previously per diem could not exceed $10 per day). Ch. 369 (H 570) amends G.S. 108–9 (dealing with appointment of county social services board members) to require that board members be bona fide residents of the county in which they serve and limits compensation for services to that provided by G.S. 108–14 (per diem and travel expenses).

Ch. 446 (H 831) amends G.S. 108–47 to provide a procedure for disposition of the public assistance check of a recipient who dies after the first of the month without endorsing the check. Such a check must now be delivered to the clerk of superior court to be administered by him under G.S. 28–68 (providing authority for administration of an intestate's assets by the clerk).

Ch. 432 (H 421) amends G.S. 7A–286(2)(c) to clarify the authority of a county department of social services in providing medical care for children in the custody of the department and to require the court to provide for support of the child in the custody order. The county department may arrange for and provide medical care as needed by the child without the necessity of parental consent. The statute now makes clear the primary obligation of the parents to provide child support. If the court finds the parents unable to pay the cost of child support, the law makes such support the legal obligation of the county department of social services holding custody (provided that the child is not living in an institution supported by public funds).

Bills That Failed

The seven bills proposed by the State Board of Social Services which failed seem worthy of mention. Even though the United States Supreme Court has found residence laws to be unconstitutional, the General Assembly refused to enact H 420 to repeal the one-year residence requirement as a condition of eligibility for federally supported categorical public assistance. Thus, this statute will continue on the books, even though the residence law cannot be implemented in administering the program.

The following bills were also rejected: H 832, authorizing the State Board of Social Services to accept and administer benefits that might be provided by pending federal legislation to enact President Nixon's Family Assistance Plan; H 1248, putting teeth in the licensing authority of the State Board of Social Services over private child-caring institutions (institutions with a plant worth $60,000 or more or operated by a religious denomination or fraternal order are now exempted), which means most private child-caring institutions); S 266, which would have authorized the State Board of Social Services to adopt rules and regulations for operating county homes (five counties now have county homes) which would be binding on boards of commissioners; H 1127, designed to strenghten the authority of the State Department of Social Services over public solicitations; H 1375, to rewrite and strengthen the Uniform Reciprocal Enforcement of Support Act which provides a civil process for securing support between participating states; and S 264, authorizing a parent to waive the right to revoke an adoption consent given to a county director of social services or licensed child-placing agency (the parent may revoke within 30 days).

Appropriations

The level of state funding for the social services programs provided by appropriations of the 1971 General Assembly is important, since it imposes an obligation on the counties to provide county funds on a matching basis to finance the program. In addition to financing of Medicaid (covered in the article on legislation of interest to counties), the appropriation bill (Ch. 708—S 33) contains both good and bad news

for counties. While funding of Aid to the Aged and Disabled (AAD) is enough to allow payments of 100 per cent of the recipient's needs under the standard public assistance budget, the proposal of the State Board of Social Services to pay 100 per cent of budgeted need in Aid to Families with Dependent Children (AFDC) was denied. Thus payments for AFDC will continue to be 86 per cent of the standard budget. Other funding requests by the State Board that were adopted included increased allowance for attendant care in homes for AAD recipients ($80 to $110), disregard of $4 of income for AAD recipients, state funds to pay 100 per cent of the nonfederal cost of the Work Incentive Program (applicable in five counties), and increase in the maximum board rate in boarding homes for children (from $60 to $80, with the state and county equally dividing the cost).

The disappointments included reduction of coverage under Medicaid, such as limiting specified medical care services to 90 per cent of allowable costs rather than the full fee charged by the provider (outpatient hospital care, physician services, chiropractic services, dental care, and optical services).

Further, the coverage for medically needy persons not receiving public assistance payments was reduced. During its closing hours, the General Assembly appropriated $413,590 to the State Department of Social Services for increased payments in aid to the aged. This appropriation was apparently intended for use in increasing payments for AAD recipients in homes for the aged.

● *Funds for Child-Care Institutions.*—The appropriations for social services (Ch. 708) also include the following appropriations to child-caring institutions for the biennium: Oxford Orphanage, $140,496; Junior Order Children's Home, $186,000; Central Orphanage of North Carolina, $317,000; Alexander Schools, Inc., $152,000; Eliada Homes, Inc., $75,000; Boys Homes of North Carolina, Inc., $30,000; and Sipe's Orchard Home, Inc., $35,186. While appropriations to private child-caring institutions are traditional, some have questioned the wisdom of these expenditures over institutions that are not required to meet any state standards.

The General Assembly noted its concern over these expenditures in adopting a joint resolution (Res. 91, H 1012) directing the State Department of Social Services to develop a formula for allocating state funds to private child-caring institutions currently receiving state grants-in-aid. The resolution states that funds to private child-caring institutions have not necessarily been granted on an equitable basis, but notes that these institutions provide for children who would otherwise be responsibilities of the counties as wards of the state. The formula must take into consideration the needs of each institution and the number of children in care who would otherwise be a public responsibility. The formula must be submitted to the Advisory Budget Commission by September 1, 1971, for its approval, after which it is to be circulated to all private child-caring institutions receiving state aid for their use in preparing future budget requests beginning July 1, 1973.

Licensing of Day-Care Centers

Proposed legislation to require licensing of day-care centers has failed in at least four previous sessions—1955, 1961, 1967, and 1969. When the 1967 General Assembly was unable to resolve the complex issues related to day-care licensing, it directed the Legislative Research Commission to study the day-care problem. The Commission's Committee on Day Care labored hard during 1968 to do a comprehensive job, including visits to 34 day-care centers, nine public hearings, a lengthy written report of its findings, and a specific bill to implement its recommendations. In the 1969 session, two day-care licensing bills failed to pass, including the study committee bill.

There were five separate day-care licensing bills introduced during the 1971 session. Each was modeled in one way or another after the bill proposed to the 1969 General Assembly by the Legislative Research Commission's Committee on Day Care. While these five bills seemed similar at first glance, they had significant differences relating to the quality of child care required for a license and the flexibility required for practical administration. These differences related to composition of the licensing board, whether controlled by day-care operators for profit, standards for a license (space requirements, staff-child ratio, etc.), authority of the licensing board to waive standards, and coordination with the voluntary licensing program administered by the State Department of Social Services.

Ch. 803 (H 100, identical to S 72 when introduced), effective January 1, 1972, creates the Child Day Care Licensing Board consisting of fifteen members, including five designated state department heads (Insurance, Social Services, Health, Public Instruction, Mental Health) and ten members appointed by the Governor who meet specified qualifications (five day-care operators for profit from centers of specified sizes, two nonprofit operators, and three citizens, two of whom must be parents of preschool children). It will be codified as new Article 7, G.S. Chapter 110, G.S. 110–85 through 110–103.

The authority of the Board includes: (1) developing policies and procedures for issuing licenses; (2) approving licenses for facilities based on inspections by and written reports from existing agencies of state and local government where available, or by personnel of the Board where services are not otherwise available; (3) developing a plan for registration of any "day-care plan" (any facility providing care to less than six children not subject to licensing) to identify day-care resources and provide a census of the number

of children receiving day care, and so that small operators can receive educational and consultation services through the Board; (4) employing the Director; (5) making rules and regulations for implementation, including procedures for issuing and revoking licenses; (6) making rules and regulations for a provisional license (limited to one year) for a facility that does not conform to the standards for a license in every respect if the Director finds and the Board concurs that the operator is making a reasonable effort to conform to the standards; (7) developing standards that reflect higher levels of day care than required by the minimal statutory standards to recognize better physical facilities, more qualified personnel, higher quality programs; (8) furnishing forms for implementation; and (9) serving as an administrative appeal body for determination of issues related to issuing, renewing, or revoking licenses.

Day-care facilities that are subject to licensing include those that provide day care for more than five children under thirteen years of age for more than four hours per day for a fee, except public and private grade schools, summer and day camps, Bible schools, and day-time care by specified relatives. The standards for the basic license (designated by law to be an A license) are spelled out in the statute and relate to medical care and sanitation, health activities for children in care, location, fire and building safety, space requirements, staff-child ratio, qualifications of staff, and records. The law mandates that "each operator or staff member shall truly and honestly show each child in his care true love, devotion and tender care." These statutory standards are lower than required by the bill proposed to the 1969 General Assembly by the Committee on Day Care of the Legislative Research Commission. If an operator chooses to comply with the standards reflecting higher levels of care (when developed by the Board), he may receive a license graded AA.

The primary responsibility of the Director will be to obtain and coordinate the services from other state departments and units of local government that are necessary to implement the licensing program. The Director must issue a license rated A to any operator whose application and supporting inspection reports shows conformity with the minimal statutory standards. He may also issue a provisional license to an operator whose application does not show conformity with all statutory standards under the policies of the Board. His authority to deny or revoke is more limited; he must notify the Board of any facility that fails to meet or maintain standards, and the Board may notify the applicant or licensee of his right to appear before the Board to show cause why the Board should not deny or revoke the license. The law imposes a duty on specified state and local officials, when requested by a day-care operator, to visit and inspect a day-care facility; these officials include local and district health departments, building inspectors, fire prevention inspectors, firemen employed by local governments, firemen having jurisdiction, etc.

In order to provide for gradual implementation of the licensing program, registration of any day-care facility subject to licensing with the Board will be valid in lieu of a license up to December 31, 1972, and the Board may extend this date to July 31, 1973, in the cases of individual facilities not licensed by January 1, 1973. Each day-care facility subject to licensing must pay an annual privilege license tax of $2.00 for each child for which the facility is licensed. Ch. 973 (S 729) appropriates $160,000 in state funds to the Child Day Care Licensing Board for the biennium; it provides that the privilege license taxes collected from licensed day-care facilities shall go to the state's general fund.

Some private day-care operators have strongly objected to certain aspects of the voluntary day-care licensing program of the State Department of Social Services and to this Department's having any authority or role in licensing. The new law specifically authorizes this Department to visit or approve a day-care facility for purchase of care with federal funds administered by the Department or for placement of children receiving services through county departments of social services. It specifically provides that the Department shall have no authority to inspect a private day-care facility that does not choose to participate in federally purchased day-care or family assistance programs financed by public or charitable funds. While the future role of the day-care personnel employed by the Department of Social Services is somewhat unclear, it is clear that this Department has no authority or responsibility in administering this state's licensing program except through the influence of the Commissioner of Social Services, who is a member of the Licensing Board.

Child Advocacy Commission

The 1969 General Assembly adopted a joint resolution creating the Study Commission on North Carolina's Emotionally Disturbed Children, which was directed to study the mental health needs of children in the State and report its findings to the Governor and the 1971 General Assembly. This nine-member commission worked for more than a year to complete its study. It established twelve task forces involving some 235 citizens across the state and wrote two reports: a summary report and a full printed report of its findings.

The major recommendation of this commission was that the General Assembly enact legislation to establish a child advocacy agency within state government to plan, facilitate, and coordinate services to children and their families. This recommendation was supported by data showing fragmentation, unmet needs, duplication, and lack of coordination in planning and providing services to children. To implement

this recommendation the Commission proposed specific legislation that was enacted with only minor changes.

Ch. 935 (H 203, identical when introduced with S 134) establishes the Governor's Advocacy Commission on Children and Youth within the Department of Administration. The commission will consist of twenty members, including four appointed by the two presiding officers of the General Assembly, eleven appointed by the Governor, and five state agency heads (Health, Social Services, Mental Health, Public Instruction, Youth Development). The Governor is directed to appoint seven adult members (persons who have an interest in and knowledge of children and youth) and four youth members (two boys, two girls, two between ages sixteen and twenty-one, two less than sixteen).

The Commission is to advocate the interests of children and youth within state and local governments and with private agencies. It is advisory to all agencies of state and local government that provide services to children and youth or their families. It is not to operate any programs providing services, since this would be incompatible with its primary role as child advocate. The Commission has power to: (1) appoint its administrator (with approval of the Governor); (2) provide assistance in developing and coordinating child advocacy systems at regional and local levels; (3) conduct a continuing review of existing programs of state government for children and youth by gathering data, studying existing services, and evaluating delivery of services; (4) identify unmet needs or needs inadequately met in existing programs and make recommendations for improvements, working cooperatively with the responsible state or local agency; (5) work with state and local agencies to help coordinate existing services more effectively, engage in joint endeavors, avoid duplication of services, promote better planning, improve programs, and make better use of available resources; (6) make reports and recommendations to the Governor and the General Assembly when the Commission accumulates data that could aid state planning or finds that a report would be helpful; (7) provide information to state and local agencies serving children and youth and to the public concerning the Commission and its findings.

Ch. 999 (H 204) appropriates $45,000 to the Department of Administration for the 1971–73 biennium for the Governor's Advocacy Commission on Children and Youth.

Change in Age of Legal Majority

Ch. 585 (S 4, made effective July 5 by Ch. 1231—H 1580) changes the legal definition of a minor (previously a person less than age twenty-one) to include anyone who has not reached eighteen years of age. Ch. 1231 (H 1580) amends specified statutory sections to make conforming changes, including Chapter 108 (dealing with Social Services), Chapter 110 (dealing with Child Welfare), and Chapter 48 (dealing with Adoptions).

G.S. 108–24 is amended to change the definition of "dependent child" in the AFDC program to one less than eighteen years of age. The definition of female "juvenile" for courts of this state to use in returning a runaway girl from North Carolina under the Interstate Compact on Juveniles is reduced from eighteen to seventeen years of age (or less) by amendment to G.S. 110-64.

Adoptions

The change in the age of majority may be the most significant legislation affecting adoptions. Ch. 1231 makes a number of conforming changes in G.S. Chapter 48, including the following: G.S. 48–2 and –4 are amended to change the definition of an adult person who is entitled to petition to adopt a child to any person age 18 or older; G.S. 48–29 (dealing with change of names in adoptions) is amended to require the consent of any adopted person age 18 or older to the change of name; and G.S. 48–36 is amended to apply the simplified adoption procedures (formerly available in adoptions of persons aged twenty-one) to the adoption of persons age 18.

Ch. 233 (S 55) amends G.S. 48–12 to broaden the venue where an adoption proceedings may be filed (formerly in the county where the petitioners reside, or where the child resides, or where the adoption agency is located). The law now allows the petition to adopt to be filed and the adoption proceedings completed in any North Carolina county unless the parent, guardian, or person having custody of the child files a written objection within 30 days after the petition is filed or within 30 days after receiving notice of the proceedings. If such an objection is filed, the allowable venue will be as prescribed above.

Ch. 395 (H 636) amends G.S. 48–1(e) (dealing with who is entitled to adopt) to authorize a minor stepparent (now a stepparent under age eighteen) to file a petition and legally adopt the stepchild without the appointment of a guardian. Ch. 157 (H 212) amends G.S. 48–2 defining an "abandoned child" who may be adopted without parental consent to delete the requirement that such a child be less than eighteen years of age. This legislation loses its significance with the passage of Ch. 585 and Ch. 1231 changing the age of majority to eighteen. It was designed to allow a child between the ages of eighteen and twenty-one to be adopted through the procedures applicable to "abandoned" children. Now any child age eighteen or older can be adopted through the simplified procedures provided for G.S. 48–36.

Ch. 1185 (S 796) makes technical amendments to G.S. 48–5(b) to delete obsolete references to children under the control of a juvenile or domestic relations court. However, the bill does more, for it deletes the

previous limitation on the authority of the court of adoptions to make a finding of abandonment where the child was under the jurisdiction and control of a juvenile or domestic relations court. It appears that the court of adoptions may now make a finding of abandonment for adoption purposes regardless of the fact that the child may be subject to the juvenile jurisdiction of the district court. Ch. 1093 (S 595) amends G.S. 48–7(b) to correct references to the Rules of Civil Procedure (now G.S. 1–A, Rule 4) dealing with service of process by publication of summons in abandonment cases where parents have not signed consent.

The General Assembly refused to enact S 194, proposed by the Association of County Directors of Social Services. This bill was designed to provide greater protection to children involved in direct adoptive placements where the natural parent selects the adoptive home. It required that when an adoptive consent was obtained directly from the natural parent, the prospective adoptive parents must give written notice of the consent within five days to the county director of social services, who was required to prepare a report on the suitability of the placement for filing with the petition for adoption. On review of this report, the court of adoptions could dismiss the petition or proceed to order further investigation.

Local Government Finance Act

Beginning July 1, 1973, county directors of social services and county social services board members will need to conform to the Local Government Finance Act (Ch. 780, H 610). This legislation rewrites G.S. Chapter 159 (dealing with local government and its financing) and requires that each county department head submit budget requests for the coming fiscal year to the county budget officer (an official, who may be the county manager, designated by the board of county commissioners) by April 30. It prescribes new budgeting procedures for county government, including a requirement that the board of county commissioners adopt the budget (called a "budget ordinance") by July 1. The new law will also require that the accounting system be organized so as to show appropriations and revenues by line items for specified funds, including "public assistance funds required by Chapter 108 of the General Statutes." The new law also provides that no appropriations may be made from a public assistance fund maintained in accordance with G.S. Chapter 108 to any other fund except as allowed by G.S. 108–57 (allowing a county to transfer county funds from one public assistance program to another with the approval of the Commissioner of Social Services).

County officials will have two years to familiarize themselves with these new requirements. The law now requires the county director to submit budget estimates for public assistance and administration to the county board of social services by March 15 for transmittal to the board of commissioners by April 1 for state-level review by the Commissioner by April 15. The State Commissioner is required to notify the board of county commissioners of the necessary amount of county funds for public assistance and administration by June 1.

State Blind Commission

Seven bills were enacted affecting Aid to the Blind (AB), which is administered under the supervision of the State Commission for the Blind through county departments of social services, or clarifying state benefits for employees of the Commission.

G.S. Chapter 111 (dealing with the authority of the State Commission for the Blind and administration of AB) reads as if this public assistance program for the needy blind is administered by the board of county commissioners at the county level. The law requires the county commissioners to receive applications, to cause an investigation to be made, to pass on the application, and to grant payments under the rules and regulations of the State Commission for the Blind. In actual practice, most boards of county commissioners delegate this authority to the county director of social services. The State Commission for the Blind has field personnel who work under the supervision of the county director. Ch. 348 (H 457) amends G.S. 111–35 to legitimize what is already happening. It authorizes a board of commissioners to delegate its authority in administering AB to the county director of social services, who is required to report on his actions to the board of commissioners for its review. Ch. 160 (H 429) amends G.S. 111–20 to require annual review of AB cases (formerly, biennially). Ch. 1215 (H 428) amends G.S. 111–15 (dealing with eligibility for AB and requiring one year's residence prior to an application) to delete the residence requirement (a step the General Assembly refused to take with reference to other federally supported categorical public assistance for the needy aged, the disabled, and dependent children). Now an applicant for AB must be living in North Carolina voluntarily with the intent to make his home here. Ch. 190 (H 460) rewrites a portion of G.S. 111–19 to clarify the procedures for continuing AB when a recipient moves from one county to another. The new law provides that a recipient who moves is entitled to receive AB in the new county, directs the board of commissioners or its agent in the county to which a recipient moves to begin payments after the recipient establishes "settlement" by continuously living there for ninety days, and requires the county from which the recipient moves to continue aid for ninety days until the recipient is entitled to receive AB in the new county. Ch. 190 also deletes a portion of G.S. 111–19 providing for appli-

cations for AB direct to the State Commission in cases where the applicant is a resident of the state but does not have legal settlement in any county, in which case the payment did not involve matching county funds. Ch. 177 (H 427) amends G.S. 111–18 (dealing with AB payments) to provide that AB payments are not subject to levy under execution, attachment, or garnishment. Ch. 1025 (H 407) abolishes the private retirement plan for employees of the North Carolina Bureau of Employment for the Blind as void because it was established without legislative authority and was actuarially unsound. It provides that blind or visually handicapped employees or vending-stand operators employed by the Bureau of Employment for the Blind of the State Commission for the Blind shall be state employees, exempt from the State Personnel Act, but members of the Teachers' and State Employees' Retirement System. The bill appropriates $145,000 to this retirement system to fund the service liability to be incurred. Ch. 349 (H 458) rewrites G.S. 111–24 and G.S. 111–25 (requiring federal cooperation and accepting federal aid) to correct obsolete references to titles of the Social Security Act or the name of the appropriate federal agency.

Juvenile Corrections

While issues affecting juvenile corrections did not attract major public attention during the General Assembly, several significant bills were introduced and some passed. S 221 would have increased the limits on the juvenile age jurisdiction of the district court from sixteen to age eighteen; this would have brought North Carolina in conformity with most other states, which extend the special protections of the juvenile court to the eighteenth birthday. This issue has been raised in several previous sessions, but it has always been defeated. The bill received a favorable report from the Senate Committee on Correctional Institutions and Law Enforcement even though several juvenile corrections professionals opposed the legislation because of inadequacies in the juvenile justice system and lack of facilities and personnel. While the bill was defeated in the Senate, the surprising support it received suggests that some future General Assembly may increase the juvenile age jurisdiction.

The entire juvenile court law was rewritten by the 1969 General Assembly based on recommendations of the Courts Commission. One section of the new law [G.S. 7A–286(4) dealing with the authority of a district court exercising juvenile jurisdiction in the case of a child adjudicated delinquent or undisciplined] has been misinterpreted by some judges, who have been improperly committing "undisciplined" children (children who commit noncriminal status offenses unique to children, such as truancy, running away, or being beyond parental control) to training schools for delinquents operated by the Board of Juvenile Correction. The 1969 law was designed to put greater emphasis on community-level treatment of children with problems through juvenile probation and other resources. Thus, the law limited commitments to training school to "delinquent" children who committed offenses that would be a crime if committed by an adult. A child adjudicated "undisciplined" could be placed on probation and, if probation was violated, the child could be adjudicated "delinquent" and committed to training schools. Judges were improperly committing "undisciplined" children to training school on their first offense without any effort on probation or otherwise at the community level. Their confusion over the meaning of the 1969 law was partly due to lack of clarity in the wording of the statute.

Ch. 1180 (S 736) was designed to clarify these matters. It rewrites portions of G.S. 7A–286 to limit clearly the authority of a district court exercising juvenile jurisdiction in committing children to training school. Only *delinquents* may be so committed. The new law also gives the judge more discretion in that it authorizes him to use any two of the alternative dispositions authorized when he finds such a plan to be in the best interest of the child. For example, he might wish to place a delinquent child on probation and also place him in the custody of the county department of social services for placement in a licensed foster home under the supervision of the agency.

• *Appointment of Juvenile Probation Officers.*—Under G.S. 110–21, the county director of social services is the chief juvenile probation officer for the district court exercising juvenile jurisdiction except in urban counties that qualify for state-supported family counselor services, as provided for by G.S. 7A–134. Ch. 830 (H 1520) reduced the population requirement for eligibility for the family counselor program from 85,000 to 84,000. Thus, a judicial district must now contain a county with a population of 84,000 in order to qualify for the family counselor program.

Several programs funded through the Division of Law and Order, Department of Local Affairs, have provided federal funds for personnel to provide juvenile probation services. One example is the Regional Court Social Work Program funded for the 30th Judicial District containing seven counties (Cherokee, Clay, Graham, Haywood, Jackson, Macon, and Swain). Several legal issues were raised after the program was funded: May the county director of social services delegate his legal responsibility as chief juvenile probation officer to the chief court social worker employed by this project? May the social workers employed in the project exercise the legal powers of juvenile probation officers? When the Attorney General ruled no to both questions in December, 1970, his ruling left this project in an awkward position. Ch. 1134 (S 677) was designed to legitimize such a project. It authorizes the chief district court judge of any district where

family counselor services are not available to appoint persons other than government employees to act as juvenile probation officers and chief juvenile probation officers. The chief judge must exercise this authority in accordance with rules of the Administrative Office of the Courts (related to qualifications and salary ranges of personnel). When so appointed, such personnel shall have the legal powers and duties of juvenile probation officers under state law.

• *Juvenile Corrections Becomes Youth Development.*—Ch. 1169 (S 486) rewrites G.S. Chapter 134 (formerly entitled *Reformatories*) under a new title, *Youth Development,* to recodify and simplify the authority of the newly named Department of Youth Development and the training schools operated under this department. This law becomes effective November 1, 1971. This statutory revision was badly needed, for each of the institutions (beginning with Stonewall Jackson Manual Training and Industrial School created in 1907, now named "Stonewall Jackson School") was established by separate legislation at various times with similar but varying authority. The separate boards of directors authorized for each institution were abolished when the Board of Juvenile Correction was established in 1943, but the conflicting statutes creating the separate institutions were not repealed.

In general, Ch. 1169 makes few substantive changes. It merely reorganizes and clarifies the law to give each institution identical legal authority. But the new law makes one major change relating to Samarkand Manor. Under former G.S. 134–29, any girl who declared herself "guilty of any offense or any wayward conduct" could voluntarily commit herself to Samarkand, a state institution for delinquent girls. Once so admitted, the child had the same legal status as if she had been judicially committed by a court exercising juvenile jurisdiction. As introduced, S 486 expanded this voluntary admission procedure to be applicable to both boys and girls and to all state juvenile correctional institutions. After passing the Senate in this form, the voluntary admission provisions were deleted in the House of Representatives. Therefore, after November 1, 1971, voluntary admissions will not be possible at any state training school.

The ratification of both Ch. 1169 (rewriting G.S. Chapter 134 and providing for the State Department of Youth Development) and Ch. 1231 (changing the age of majority from twenty-one to eighteen in specified statutes, including specific references to sections of G.S. Chapter 134 repealed by Ch. 1169) on July 21 creates some confusion concerning whether a juvenile institution operated by the Department of Youth Development may retain a child in training school beyond his eighteenth birthday. Ch. 1169 (by provision of new G.S. 134–18) provides that final discharge must be granted a child when he reaches his eighteenth birthday except as provided by G.S. 7A–286 (providing that the Board of Youth Development may keep a child in an institution beyond the eighteenth birthday if the child is engaged in a vocational training program when he becomes eighteen; the indefinite term of the child may be extended until he completes the vocational training program). Yet Ch. 1231 seems to amend sections of G.S. Chapter 134 that were repealed when it was ratified. Its general thrust is to change the definition of child to a person less than eighteen. Thus, it seems doubtful that any institution of the Department of Youth Development will have legal authority to retain any child after his eighteenth birthday, even though minors may be committed to these institutions up to the eighteenth birthday, according to new G.S. 134–11.

• *Restoration of Citizenship Rights.*—Ch. 1169 provides new protection to children between fourteen and eighteen who are tried as adults for a felony offense in superior court and committed to the Department of Youth Development, or who are transferred by the Governor from a jail or prison to one of the institutions operated by the Department as authorized by new G.S. 134–13. All citizenship rights forfeited as a result of the felony conviction or otherwise are automatically restored to the person upon his final discharge under the rules of the State Department of Youth Development, and the Commissioner of Youth Development is authorized to issue a certificate to this effect.

• *Incentive Pay for Students in Training Schools.*—Ch. 933 (S 512) authorizes compensation for children committed to institutions operated by the Department of Youth Development under rules and regulations of the Board of Youth Development at rates set by the Board not to exceed 10 cents per hour for work performed or attendance at training programs. The new law authorizes the Board of Youth Development to accept grants or gifts from public or private sources for this purpose. Ch. 966 (S 513) appropriates $60,000 for the biennium to the Board of Youth Development for this purpose.

• *Children In Prison.*—Children have been included in the population of Central Prison in Raleigh since it was established some 100 years ago. Ch. 691 (H 1101) amends G.S. 148–28 (dealing with the authority of superior court judges to sentence felony offenders to Central Prison) to provide that a child less than sixteen who is convicted of a felony may not be sentenced to or imprisoned in Central Prison unless he has been convicted of a capital felony or has previously been imprisoned in a county jail or under the authority of the Department of Correction. The new law does not limit the authority of the Commissioner of Correction to transfer a child less than sixteen to Central Prison when the Commissioner determines that the child would not benefit from confinement in separate facilities for youthful offenders or when it

has been determined that his presence would be detrimental to programs designed for the benefit of other youthful offenders. Further, the existing authority of a superior court judge or the Commissioner of Correction to commit or transfer a child under age sixteen to Central Prison for medical or psychiatric treatment is not affected by this legislation.

Court Commitment to Mental Institutions or Centers for the Retarded

Personnel in state mental institutions or centers for the retarded have sometimes felt that judges exercising juvenile jurisdiction have used their commitment authority under G.S. 7A–286(5) inappropriately to commit mentally ill or retarded children to institutions when they should be cared for in the community or in such a way as to upset the usual admission procedures and waiting lists. Ch. 1180 (S 736) renumbers this section as G.S. 7A–286(6) and rewrites the last portion to authorize the district court judge exercising juvenile jurisdiction to order the area mental health director or local mental health director to arrange an interdisciplinary evaluation of a child found by the court to be in need of an evaluation because of mental disorder, mental retardation, or other mental impairment. If the evaluation shows the child to be in need of residential care and treatment, the "court may cause the mental health director to arrange admission or commit the child to the appropriate state or local facility." The general thrust and intent of this new provision is to require the judge to consult with the area mental health director for an evaluation prior to commitment. The former authority of the judge to commit such a child to an institution if two physicians certify that institutional care is in the best interest of the child has been deleted. But the commitment authority of the judge is retained if the mental health director does not arrange admission after the interdisciplinary evaluation shows the need for institutional care.

—Mason P. Thomas, Jr.

10 Health

The General Assembly's most important actions in protecting and promoting the health of North Carolinians were the appropriations for state health agencies and special programs. No significant new health facilities were authorized, but during the session construction began on the new State Board of Health building near the Legislative Building. The State Board of Health was given a nearly $6,000,000 increase in operations appropriations, coupled with additional responsibilities. Of this increase $580,000 is for strengthening its environmental health programs; $573,000 for mass immunization against rubella and

measles; $352,000 to expand the cancer program; $1,000,000 for increased care of crippled children; and $987,000 for general distribution to assist county health departments. Another $10,000 was allotted for local public health programs for Indians and $58,000 for expansion of pesticide research and investigation programs.

The State Department of Mental Health received $500,000 to test a joint state/local mental health concept in selected parts of the state. A special bill (Ch. 1050—H 1147) gave the Department $374,000 for a neurosurgical-medical unit at Broughton Hospital in Morganton. The alcoholic rehabilitation centers at Black Mountain, Butner, and Greenville received about $4,500,000 for the biennium, indicating a continuing concern for alcoholism. Recognizing the drug-abuse problem, the legislature created (Ch. 922—H 1076; Ch. 1047—H 1077) the North Carolina Drug Authority in the Department of Administration with an $88,000 budget. The Department of Mental Health received $500,000 in additional funds to establish community-based drug-abuse programs (Ch. 1123—H 1351).

Health Money

Several bills provided special funding for health education. Continuing the program begun in 1969 to promote the training of North Carolina residents at Duke, Bowman Gray, and Meharry medical schools, $1,261,000 was appropriated (Ch. 1006—S 149; Ch. 1112—S 74) for financial assistance both to the schools and to needy students. The Medical Care Commission's loan fund for health profession students was increased to $400,000 each year. The new Department of Family Medicine at UNC was given both special legislative protection and $500,000 to expand its operations (Ch. 1015—S 714). The long-sought medical school at East Carolina University was funded as a one-year curriculum with a legislative requirement that students be guaranteed admission to the UNC medical school for further training (Ch. 1053—H 1207). The new family nurse-practitioner concept was given a push with $75,000 to the State Board of Health to contract with baccalaureate nursing schools for this postgraduate training. State support in the amount of $500,000 was given a new renal (kidney) disease care and treatment program to be administered by the State Board of Health (Ch. 1027—H 480). The new Child Day Care Licensing Board was created with a $160,000 budget and a requirement that license fees collected go into the state general fund (Ch. 1973—S 729). Another new program, the Pesticide Law of 1971, received a $30,000 appropriation for the Agricultural Extension Service to provide training in the sale, use, and application of pesticides. The largest single health item—over $50,000,000 for Medicaid—was in the news until the last day of the session. The state ended up assuming 85 per cent of the nonfederal share of this program, although the counties had sought complete state funding.

Several notable appropriations requests were not successful. The State Board of Health, with the support of the State Dental Society and the UNC dental school, had sought funding for an innovative and comprehensive statewide preventive dentistry program (S 311 and S 312). The Carolina Population Center late in the session asked for state support but failed to get funds (S 773). The UNC School of Public Health tried to obtain funds to expand its building (S 495). An imaginative health services program recommended by the Legislative Research Commission for the UNC medical school to use part of the Eastern North Carolina Sanitorium was not funded (S 322, H 514).

Perhaps more than in the past, the many governmental health services and educational programs and health interest groups were given careful attention by the legislators, and most were given at least some financial support.

Regulations

The State Board of Health was given new regulatory responsibilities over home health agencies by Ch. 539 (H 870); statistical reporting of abortions by Ch. 383 (H 626); mass gatherings staged for a profit (such as rock festivals) by Ch. 712 (H 630); construction of public water-supply systems and safety of water supplies after January 1, 1972, by Ch. 343 (S 131); regional water supply planning by Ch. 892 (S 168); and renal disease programs by Ch. 1027 (H 480). The Board's regulatory authority over the manufacture of bedding was revised by Ch. 371 (S 481). Three bills that would have given the Board clear authority to embargo spoiled shellfish (S 784), to have a specific licensing program for recuperation centers (H 1160), and to require a second certified attendant on ambulances (H 447) failed.

The Water and Air Resources Management and Pollution Control Act of 1971 (Ch. 1167—S 432) regulates numerous conservation activities and water uses and also visible emissions from motor vehicles. A Pesticides Board was created by Ch. 832 (S 445) to regulate and register pesticides. Ch. 1183 (S 757) gives the Commissioner of Agriculture new animal quarantine and inspection powers to control biological residues in animals, animal products, and feed. The statutes controlling the feeding of garbage to swine were tightened for restaurants and institutions by Ch. 566 (H 751). Ch. 474 (S 619) revises the Commissioner's bakery inspection powers. To bring the Agriculture Department's compulsory meat inspection program in line with federal requirements, Ch. 54 (H 160) was enacted early in the session, eliminating the exemption for small producers. In line with another federal program, a new compulsory poultry products inspection program in the Department of Agriculture was

enacted as Ch. 677 (H 1109). Ch. 567 (H 752) revised the State Veterinarian's powers over disposal of dead domesticated animals; and Ch. 676 (H 1036) gave him new authority to direct the destruction of diseased livestock running at large.

Health Studies

Each recent General Assembly session has brought an increase in the number of studies to be conducted on health-related matters. The number this session was not so great, but their scope and effect may prove especially significant. Res. 116 (H 1294) directs an important study on the organization, delivery, and financing of public health services. It is to be made by an independent eleven-member commission appointed by the Governor, Lieutenant Governor, and Speaker and comprised of legislators, health professionals, and consumers. The Legislative Research Commission is to make a potentially far-reaching study on the availability and effectiveness of emergency medical, hospital, and transportation services. Senate Resolution 827 requests that the Commission formulate a comprehensive statewide emergency care system for the next General Assembly's consideration. Another study the Commission is directed to undertake by Res. 97 (H 1339) is the question of the proper and lawful role of nurses in the delivery of modern comprehensive health. Recognizing that the functional role of nurses is expanding and more specialized training is being given, the study is to take account of family nurse-practitioners, nurse-anesthetists, nurse-midwives, and others. The study bill displaced a bill proposing special certification for nurse-anesthetists (H 939).

The Legislative Research Commission will have two other large health study assignments: Senate Resolution 961 lists seven separate environmental pollution problems for study and recommended action (septic tank wastes, oil spills, animal and poultry wastes, nutrients in lakes and rivers, sedimentation and siltation, recoveries against water supplies pollutors, reporting of industrial wastes, and any other environmental protection or natural resource management subjects); Senate Resolution 871 calls for an in-depth investigation of the state's mental health services, facilities, and needs. A related study bill is Res. 66 (H 715), which directs an evaluation of the "geographical unit" patient distribution plan for state mental hospitals.

Professional Liability

Several bills affecting physicians' civil and criminal liability should be noted:

• *Malpractice.*—The protection against patients' bringing malpractice suits later than three years from the date of the incident was removed in favor of a patient's new right to bring suit within three years of the time he discovers or reasonably ought to have discovered the injury. The claimant must discover the injury within ten years from the last act of the defendant giving rise to the course of action or he cannot bring suit. This "statute of limitations" accrual change follows a national trend and was backed by the North Carolina Trial Lawyers Association. The new statute applies to any civil action (not only medical suits) for bodily injury or property defect or damage (Ch. 1157—S 572).

• *Assistants.*—In the physician's assistant bill, Ch. 817 (H 890), the new exception to the requirement for a license to practice medicine means that physicians can delegate medical functions and tasks to their registered physician's assistants without fear of being presumptively liable for the mere delegation of medical practices. But both the physician and his assistant will still be liable for actual negligence in the treatment of patients.

• *Cars.*—Ch. 1214 (H 320) amends G.S. 20–130.1 to permit physicians who wish to do so to use red lights on the fronts of their cars in emergencies, just as on ambulances, wreckers, and fire trucks. The act also applies to anesthetists (presumably nurses as well as physicians). The original bill also would have permitted exceeding the speed limit.

• *Hepatitis.*—The elimination by Ch. 836 (H 245) of warranty liability to patients who contract hepatitis from blood transfusions is important for hospital staffs and boards. Most states have now enacted this limitation on patients' right of recovery, requiring patients to show actual negligence to be successful in court. The question now is whether all hospitals and blood banks should use the latest available tests (whether or not reliable or inexpensive) to detect hepatitis.

• *Blood donors.*—Since all phases of blood donor selection and blood collection, storage, processing, and transfusion must now be done under the supervision of a North Carolina licensed physician (Ch. 938—H 1185), physicians should use due care in exercising this new responsibility.

• *Child abuse.*—Physicians, as well as other professional persons, must now report to the local director of social services any case of suspected child abuse. The report may be made by phone or letter and should include an opinion as to the nature and cause of the injuries. The act, Ch. 710 (H 548) also waives the physician-patient privilege in child-abuse cases and gives immunity against civil and criminal liability for making a report.

• *Drug users.*—Under the new drug laws, Ch. 919 (H 294), G.S. 90–109.1 (effective January 1, 1972) imposes complete confidentiality on cases in which patients have voluntarily sought treatment for drug dependence: no disclosure and no use as evidence in any judicial or administrative proceedings. Previously

physicians were required to report "habitual users" to the State Board of Health, though not to local police. Now only a *statistical* report on services rendered periodically is to be sent to the new North Carolina Drug Authority.

• *Violent wounds.*—Several bills were introduced to establish for the first time a requirement that physicians and hospitals report all cases of violent or suspicious wounds to law enforcement officials (S 6, S 165, S 338, S 405, S 413). In the end, only Alamance and New Hanover counties have the requirement. Physicians do have the duty, imposed by G.S. 130-198 enacted in 1967, to report any unusual or suspicious deaths to the local medical examiner.

Health Professions

New categories of health manpower were created by legislation, and the traditional license groups again had various items of business to be acted upon by the lawmakers. The concept of the trained physician's assistant was created by Dr. Eugene Stead of Duke University and several states have already enacted legislation recognizing this new type of primary health care team member, yet only now has the North Carolina General Assembly done so (Ch. 817—H 890). Resulting from Legislative Research Commission recommendations and Medical Society push, a registration system was put into effect to protect physicians and their P.A.'s from tort liability for unlawful delegation and to provide the state a means for control over the training and utilizing of P.A.'s. Seen as another step in solving the doctor shortage (as was the qualifying of osteopaths for medical licensure in 1969), the Medical Practice Act (Ch. 1150—H 1397) was revised to permit licensure of graduates who have taken the National Boards in lieu of the North Carolina examination and to eliminate the statutory requirement for a full four years of medical curriculum. Other steps were taken by appropriations measures creating a new one-year medical curriculum at Greenville, giving financial assistance to three private medical schools and expanding the family medicine and community hospital internship program at Chapel Hill. A member of the ECU medical faculty was also put on the Board of Anatomy, to request and receive research cadavers (Ch. 1127—H 1505). One unrelated bill actually creates a need for more doctors: Ch. 938 (H 1185) requires a physician supervisor for all blood bank operations. This was the result of a 1969 legislative concern about the relatively high rate of hepatitis-carrying blood from commercial blood collection centers.

—David G. Warren

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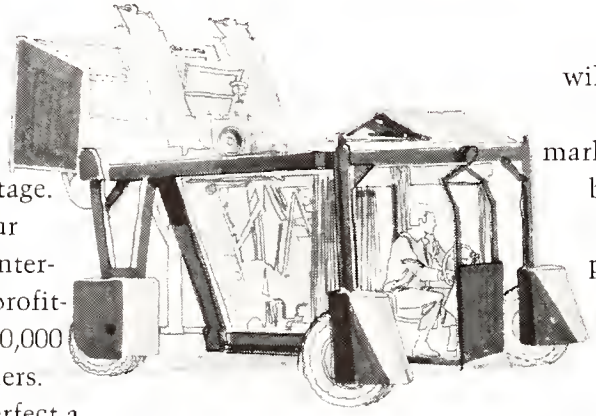

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