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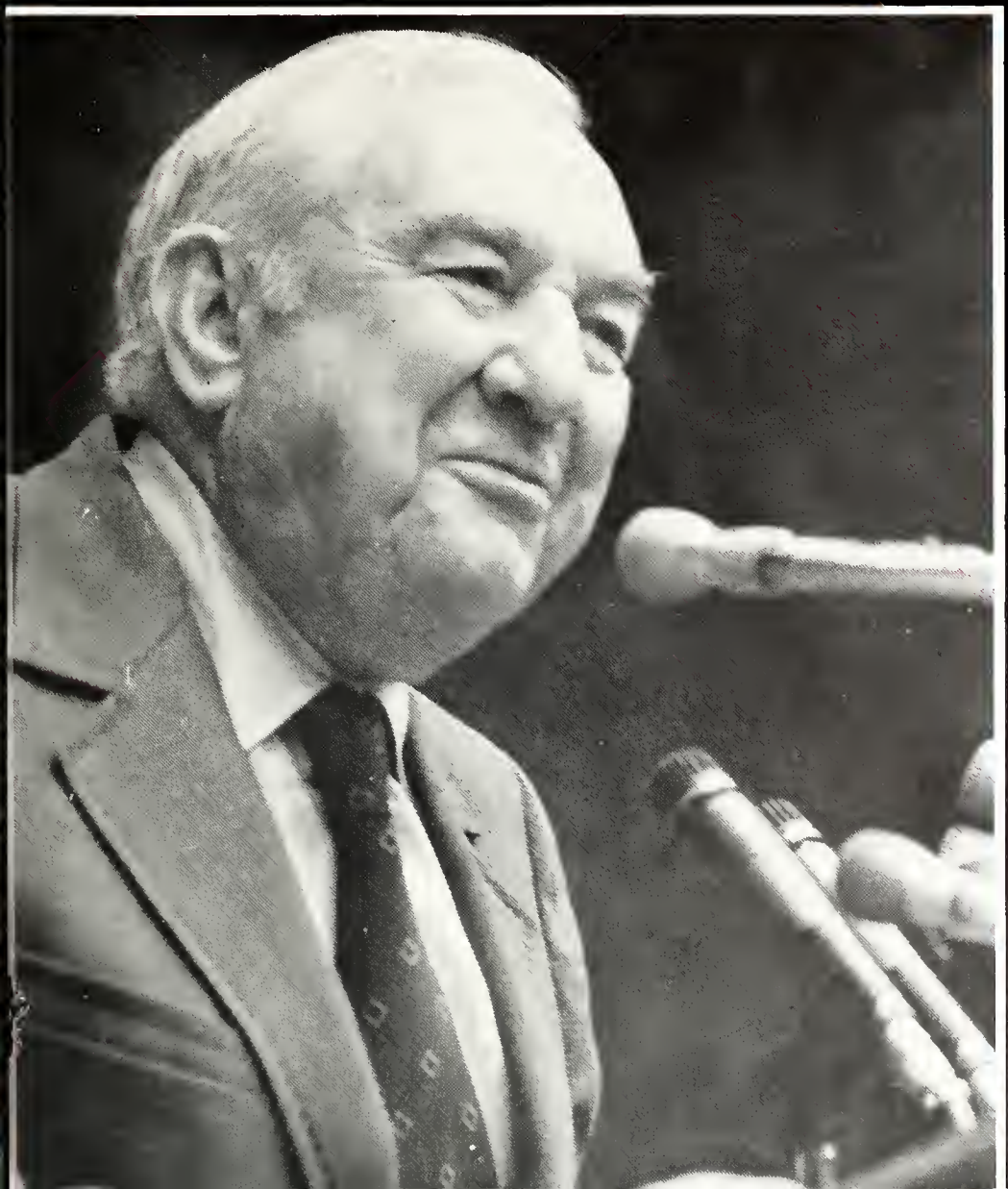

This month

The Legislative Issue

Part II

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Senator Sam J. Ervin, Jr., speaks to an audience of College students. (Courtesy of the Daily Tar Heel.)

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ABC LAWS

Ben F. Loeb, Jr.

Some twenty bills affecting General Statutes Chapter 18A were enacted by the 1973 General Assembly, but only one of these—the act authorizing the liquor-by-the-drink referendum—is of significant interest to the general public. Several of the other acts, however, are of considerable importance to law enforcement officers, members of local boards of alcoholic control, and to those who own or manage establishments with retail malt beverage or wine permits.

Liquor by the Drink

Ch. 316 (H 9) provides for a statewide referendum on November 6, 1973, to determine whether mixed drinks may be sold in North Carolina on a local-option basis. If a majority of the vote is for "sale and consumption of mixed beverages," then any county having at least one county or municipal A.B.C. store located within its boundaries may subsequently authorize liquor-by-the-drink sales within the county.

The statute provides two methods for authorizing countywide sales of mixed beverages. The first, and simplest, is by petition from a board of county commissioners to the State Board of Alcoholic Control. Upon receipt of such a petition, the State Board is required to provide for liquor-by-the-drink sales within 90 days. The other method is by a special election on the question within the county. An election is called by the county board of elections upon written request by the county commissioners or upon a petition signed by at least 20 per cent of the registered voters.

If liquor by the drink is authorized by state and local action, then several types of establishments may qualify for a mixed-beverages permit issued by the State A.B.C. Board. Eligible premises include restaurants, social establishments (such as country clubs or veterans' organizations), and special-occasion establishments (such as auditoriums, convention centers, or national guard armories). However, no restaurant or social establishment may qualify for both a "mixed-beverages" permit and a regular "brown-bagging" permit.

Mixed-beverage permittees are required to purchase their liquor from an A.B.C. store located within the same county as the licensed premises; and "purchase transportation" permits must be secured before each such transaction. These permits are valid for only one purchase and expire at 6:00 p.m. on the date shown on the face of the permit.

The fees (or taxes) for those selling mixed drinks are steep. The application fee alone is $300; and an additional $300 to $1,000 (depending on the establishment's size) must be paid when the permit is issued. All permits expire on April 30 of each year, and the annual renewal fee is 50 per cent of the original fee. In addition to the above, an extra $5.00 per gallon must be paid on all alcoholic beverages purchased for resale by the drink. The funds derived from this $5.00 per gallon surcharge go into the gen-

eral fund of the county in which the beverages were purchased.

Criminal Law Changes

Several changes were made in the criminal law sections of Chapter 18A. Ch. 27 (S 104), for example, amended G.S. 18A–8(b) to delete "school identification card" from a list of documents that can be used to establish age for purposes of purchasing malt beverages or unfortified wine. While proof of age is not specifically required in order to make a purchase, a sale without asking for such proof can subject the vendor to criminal penalties if the purchaser is under 18.

Two of the ratified bills are concerned solely with prohibiting certain actions on the premises of retail licensees. Ch. 56 (S 115) added a new subsection (c) to G.S. 18A–33 to make it unlawful to consume beer or wine on any premises having only an "off-premises" permit for the type of beverage being consumed. This act was directed primarily at those who buy beer or wine at a drive-in type of market and then remain to consume the beverages on the premises. The second act, Ch. 30 (S 116), rewrote G.S. 18A–34(a)(1) to make it a misdemeanor for a retail licensee knowingly to permit the on-premises consumption of any kind of liquor not allowed to be consumed on the premises. Thus a licensee with only an on-premises beer permit would violate the law by allowing a patron to consume whiskey on the premises.

G.S. 18A–22, the section dealing with the seizure of distilleries, was completely rewritten by Ch. 80 (S 112). Under the old act only sheriffs and municipal police were expressly authorized to search for and seize illegal stills; and the statute required that the seized property be turned over to the board of county commissioners for destruction or other disposition. The new act permits state and local A.B.C. officers and other peace officers, as well as sheriffs and police, to seize distilleries. Any confiscated equipment or materials must be disposed of by court order, except that any liquor, non-salable equipment, or perishable materials (not needed for evidence) may be destroyed by the officers.

The jurisdiction of local law enforcement officers was further extended by the provisions of Ch. 29 (S 111) which added "rural police and other local law enforcement officers" to a list of peace officers authorized to inspect licensed premises pursuant to G.S. 18A–20(b).

Only one of the 1973 criminal law changes pertaining to liquor directly affects the general public. Ch. 819 (H 713) amended G.S. 18A–28, which concerns the transportation of liquor, to make its provisions applicable statewide. Under the statute, as amended, permits authorizing the purchase and transportation of up to five gallons of hard liquor may be obtained from any city or county A.B.C. board. (Before the amendment, G.S. 18A–28 applied to less than half the counties in the state.) These permits are good for only one purchase on one day and expire at 6:00 p.m. They allow the alcoholic beverages to be transported from a county or municipal A.B.C. store to a named destination within the county.

Administrative Amendments

There were three amendments to G.S. 18A–15, the section setting forth the powers and authority of the State Board of Alcoholic Control. Subdivision (3) was amended by Ch. 473 (H 102) so that the five cents per bottle surcharge on all alcoholic beverages sold in A.B.C. stores is to be remitted to the county commissioners of the county where the sale was made, rather than being placed in the State General Fund. These funds may be spent only for: (1) the "construction, maintenance and operation of facilities for education, research, treatment, or rehabilitation of alcoholics"; or (2) "education and research on problems of alcoholism and the treatment and rehabilitation of alcoholics."

Ch. 28 (S 106) amended G.S. 18A–15(10) to raise from 15 per cent to 20 per cent the minimum percentage of qualified voters who must sign a petition requesting the location of A.B.C. stores in a previously dry town or community. Upon receipt of such a petition, the State A.B.C. Board conducts an investigation to determine whether a majority of the qualified voters in the area favor the establishment of liquor stores. If the finding is affirmative, then the State Board may authorize the location of a store or stores in the town or community.

The final amendment to G.S. 18A–15, Ch. 606 (H 712), added a sentence to subsection (12) requiring the State A.B.C. Board to notify certain listed local officials upon the issuance of any beer, wine, or other permit. Among those who must be notified are the sheriff, county tax collector, and county A.B.C. officer. If the licensed premises are located inside a city, then the police chief and city tax collector must also receive notice.

G.S. 18A–17, which deals with the powers and duties of local A.B.C. boards, was amended in two particulars. Subdivision (14) was amended by Ch. 185 (H 438) to raise the sum that may be spent annually on law enforcement from 10 per cent of total profits to 15 per cent. Ch. 85 (H 134) added a new subdivision to G.S. 18A–17 authorizing local A.B.C. boards to invest funds "temporarily held" in obligations of the United States, shares of any building and loan association or federal savings and loan association, or certificates of deposit or savings accounts in any bank or trust company authorized to do business in North Carolina. These investments are limited to periods of ninety days or less.

Ch. 153 (H 138) amended the statute dealing with Sunday sales of malt beverages and wine, as con-

tained in G.S. 18A–33(b). Under the old act, local ordinances prohibiting Sunday sales were ineffective with respect to *any* establishment having a brown-bagging permit. The 1973 amendment tightened this exemption somewhat by requiring that the permit be either for a restaurant or a social establishment as defined in G.S. 18A–30(2) or (4). Those establishments with only a special-occasion brown-bagging permit, as defined in G.S. 18A–30(3), may no longer sell beer or wine on Sundays if a city or county ordinance has been adopted prohibiting such sales. In any event, the subject may be moot in light of a recent North Carolina Court of Appeals opinion holding that after a "no-sales-on-Sunday" ordinance has been adopted, beer or wine sales are illegal regardless of the type of permit possessed [*Hursey v. Town of Gibsonville,* 18 N.C. App. 581 (1973)].

A new G.S. 18A–36.1 was enacted by Ch. 511 (H 311). This act purports to authorize the establishment of commercial wineries that may manufacture and sell fortified and unfortified wines after securing the appropriate permits from the State A.B.C. Board. The State Board, however, already had the authority to issue permits for the manufacture of wine under the provisions of Article 4 of G.S. Chapter 18A. It would appear that the only significant differences in the old act and the new relate to taxation. Before the enactment of Ch. 511, the tax on unfortified wine was $.60 per gallon. Under the new act, the tax is only $.05 per gallon if the wine is manufactured in North Carolina and composed principally of fruits or berries grown in this state. Also, under the old law the tax on fortified wine was $.70 per gallon, while under the new act it is only $.05 per gallon.

Ch. 758 (S 837) made important changes in G.S. 110–7 and G.S. 18A–39 relative to the minimum age required by law to be an employee or manager of an establishment with a retail permit issued by the State A.B.C. Board. Before the 1973 amendment, the Child Labor Law prohibited the employment of a person under 18 in any establishment where "alcoholic liquors" were sold. Ch. 758 added a provision to G.S. 110–7 to allow a minor who is at least 16 to work in a restaurant that has a grade A rating and has a beer, wine, or liquor permit, as long as the minor does not personally serve or dispense the beverages. Subdivision (6) of G.S. 18A–39 was amended by this same act to authorize an 18-year-old to be the manager of an establishment having only an off-premises permit for the sale of malt beverages or wine. Before the amendment there was some doubt about whether a person under 21 could be the manager of a grocery store or curb market selling beer or wine.

Another Study Commission

Resolution 114 (H 1336) created yet another commission for the study of laws pertaining to the sale, possession, and consumption of intoxicating liquor. This commission will be composed of 11 members, to be chosen as follows:

(1) Four to be appointed by the Speaker of the House. Two of these must be members of the House of Representatives and another must be a member of the State A.B.C. Board or a designee of the Board's chairman.

(2) Four to be appointed by the President of the Senate. Two of these must be members of the Senate and at least one must be on the staff of the State Attorney General.

(3) The remaining three members are to be appointed by the Governor. The study commission chairman will be designated jointly by the Speaker of the House and the President of the Senate.

The resolution directs that the commission study the rules and regulations of the State A.B.C. Board, as well as the statutes, with a view to recommending changes to the General Assembly. Reports are to be submitted in January of both 1974 and 1975. The mandate for this study commission is somewhat unusual in that it directs a study of administrative rules in addition to the law.

Past study commissions have tended to recommend liberalizing changes in the North Carolina liquor laws. It will be interesting to see whether this pattern develops again.

THE CITIES

David M. Lawrence

Most major legislation of the 1973 General Assembly of interest to city officials was the product of interim study commissions. The Local Government Study Commission completed six years of work by sponsoring legislation implementing the new finance article of the State Constitution, recodifying the basic law of county government, and making numerous minor amendments and corrections to G.S. Chapters 159 and 160A.

Two other commissions sponsored legislation important to city government. The Legislative Research Commission initiated several significant pieces of environmental legislation, and the Commission for the Study of Property Tax Exemptions and Classifications recommended extensive legislation regarding the subject matter indicated in its title. The statutes resulting from these studies are discussed in detail in the article on property taxation in this issue of *Popular Government*.

In 1971 the number of local bills affecting cities declined markedly, and this trend continued in 1973. Table 1 on page 9 demonstrates the trend and indicates that this session's decline was largely attributable to the important recodification work of the 1971 General Assembly: new G.S. Chapter 160A; the uniform municipal election law (G.S. Chapter 163, Subchapter IX); and the Machinery Act of 1971. Indeed, many of the local acts that were introduced simply conformed charter provisions to the 1971 legislation.

IMPLEMENTATION OF NEW ARTICLE V

On July 1, 1973, a new Article V of the State Constitution, dealing with state and local government finance, became effective. Several changes from previous constitutional doctrine are effected by the new article, the most notable of which is the major revision of the necessary expense doctrine. Acting upon the initiative of the Local Government Study Commission, the 1973 General Assembly enacted several bills implementing the new provisions of the Constitution.

The Necessary Expense Revision

Since 1868 the North Carolina Constitution has permitted proceeds of locally levied and collected taxes to be spent only for necessary expenses, unless the tax had been approved by the voters; the courts ultimately decided which functions were "necessary" and which were not. New Article V revises the necessary expense doctrine in three aspects:

(1) The General Assembly, rather than the courts, is to decide for which functions taxes may be levied without a vote.

(2) The notion of "necessary" and "nonnecessary" expenses is eliminated. The General Assembly will simply decide for which functions a vote is unnecessary and implement this decision through enactment of statewide laws.

(3) The constitutional limitation affects only property taxes, rather than (as previously) all locally levied and collected taxes. Thus there will be no constitutional restrictions on use of the sales tax, privilege license taxes, animal taxes, or the motor vehicle tax.

The General Assembly implemented the new constitutional provisions in Ch. 803 (H 333). As introduced and passed by the House, the bill would have permitted cities to levy taxes without a vote for any public purpose, although most purposes were subject to a total rate limitation. The Senate, however, was unwilling to discard completely the patterns of a century and insisted that for a number of functions no property tax could be levied without a vote.

Thus, as finally enacted, Ch. 803 divides the functions of city government into three groups, with differing powers of property taxation applicable to each group. For functions in Group One, property taxes may be levied without a vote and with no restriction as to rate or amount. For functions in Group Two, property taxes may be levied without a vote, but the taxes are subject to an over-all rate limitation. For functions in Group Three, property taxes may be levied only after having been approved by a vote of the people.

Group One includes the following functions: debt service, funding of deficits, and meeting the costs of civil disorders.

Group Two includes most city government functions, including the former nonnecessary expenses of airports, hospitals, libraries, recreation, ambulance services, auditoriums and coliseums, and historic preservation. As noted, no vote is required in order to levy taxes for these functions, but the total tax for all functions in Group Two is limited to $1.50 per $100 of *appraised* valuation. (If the assessment ratio applicable to your city is less than 100 per cent, the actual rate limitation may be ascertained by dividing $1.50 by the assessment ratio expressed as a decimal. For example, if the assessment ratio is 60 per cent, divide 1.50 by .60, which results in an actual rate limitation of $2.50.) The $1.50 limitation may be modified in two ways. Any city may conduct a referendum to raise the $1.50 limitation itself. Or, a city may conduct a special tax referendum for any of the functions in Group Two; any tax levied pursuant to such a referendum does not count toward the $1.50 limit. (Referenda conducted before July 1 on functions included in Group Two will no longer be valid, however. Taxes for such functions must be included in the general Group Two levy.)

Group Three functions, unlike functions in the other two groups, are not listed in the act. Rather, this group comprises all functions for which cities may appropriate money that *are not* included in Groups One or Two. Among the functions clearly in this group are those removed by the General Assembly from Group Two: armories, bus and mass transit, cable television, cultural activities, economic development, housing, and urban redevelopment. In order to levy property taxes for any of these purposes, a city must have the approval of its voters. In contrast to Group Two functions, however, prior tax referenda on any functions in Group Three remain valid after July 1, and may be the basis of property tax levies for those functions.

The Service District Acts

Existing constitutional doctrine has required that city or county taxes be levied at a uniform rate throughout the city or county; it has not been possible to levy taxes at a higher rate in a designated area of the city or county in order to provide special services to that area. New Article V modifies this doctrine. Under new Article V, section 2(4), the General Assembly may authorize local governments to establish taxing districts and levy taxes in those districts in order to provide services additional to or at a higher level than those provided unitwide. Ch. 655 (H 331), entitled "The Municipal Service District Act of 1973," implements this provision of the new Article for cities.

Cities may establish service districts in order to provide the following facilities or services: off-street parking facilities; downtown revitalization (which is broadly defined to include a variety of downtown improvement projects); beach erosion control and flood and hurricane protection works; and drainage projects. A city may establish such a district for one or several of these functions, and districts may overlap.

A district is established by simple action of the governing board; no petition is required, nor a referendum. Before the board may act, however, it must cause a plan for providing services in the district to be prepared; must hold a public hearing in the district, with mailed notice to all property owners in the district; and must find that there is a demonstrable need for the services proposed for the district. Following establishment of the district, the appropriate facilities or services must be provided within "a reasonable time, not to exceed one year" from the effective date of the district. Districts may be extended, consolidated, or abolished, and the procedures for these actions are comparable with those required for establishment.

A city may levy property taxes in the district and may issue bonds for district projects. If taxes are levied, the district rate, when added to the citywide rate for Group Two functions (as discussed above in the necessary expense section), may not exceed the Group Two rate limitation. If bonds are issued for the district and voter approval is required, the bonds must be approved by city voters as a whole as well as voters within the district. Double approval is required because the bonds will be general obligations

of the entire city but will be retired only from district revenues.

Another bill, enacted as Ch. 537 (H 332), establishes comparable machinery for the creation of "urban service districts" by a consolidated city-county. North Carolina, of course, has no such governments at present, but interest continues strong in several communities, and this legislation will be available if such a consolidation does occur.

CHAPTER 160A REVISIONS

In 1971 the General Assembly enacted G.S. Chapter 160A, replacing much of former G.S. Chapter 160. One of the tasks of the Local Government Study Commission during the past biennium was to review Chapter 160A and develop legislation making any corrections or additions thought necessary. This review resulted in Ch. 426 (H 334), which in nearly eighty sections makes numerous minor amendments to G.S. 160A. While many of the amendments are of a corrective or clarifying nature, others do effect substantive changes, although often of a quite minor character. The amendments affect the entire length of the G.S. chapter, and, rather than discuss them severally in the subject-matter sections of this article, the more important ones are listed below as a group.

1. *Leases.* A new G.S. 160A–19 authorizes cities to enter into leases, as lessee, of real or personal property, with or without an option to purchase, for any public purpose.

2. *Council vacancies.* Cities with partisan elections are required to fill council vacancies with a person of the same party as the person causing the vacancy.

3. *Compensation.* The council may set its and the mayor's salaries simply by including them in the annual budget ordinance.

4. *Pleading ordinances.* A rewritten G.S. 160A–79 requires that ordinances be pleaded by section number and caption, or by caption alone if the ordinances have not been codified.

5. *Modification of form of government.* Several amendments are made to Part 4 of Article 5, including a prohibition on establishing multimember electoral districts.

6. *Extraterritorial ordinances.* An ordinance is to apply to city-owned property and right-of-way outside the city only if the ordinance explicitly so provides. (Present G.S. 160A–176 makes ordinances automatically apply to such property unless they provide otherwise.)

7. *Regulation of trains.* Authority to regulate the speed of trains through the city is restored.

8. *Special assessments.* The priority of special assessment liens is clarified and authority to hold assessments in abeyance is added.

9. *Eminent domain.* Explicit authority to condemn property outside corporate limits is provided, recordation of the preliminary condemnation resolution (under G.S. 160A–247) is required, and the period of possible appeal from the final condemnation resolution is set at thirty days.

10. *Sale of property.* Cities may exchange both real and personal property by private negotiation, the public auction procedures for personal property are simplified, and authority to sell stocks, bonds, and other securities in recognized security markets is added.

11. *Off-street parking.* Cities may make it unlawful to park in a city-owned parking facility without having paid the fees established for use of the facility.

12. *Abandoned cars.* Junked motor vehicles are now defined as abandoned vehicles worth less than $100 (as opposed to the prior cutoff of $50).

13. *Recreation.* Explicit authority to operate recreational facilities outside the corporate limits is restored.

14. *Planning powers.* Several amendments are made to Article 19, including adding clear and flexible authority for joint historic properties commissions, joint historic districts commissions, and joint appearance commissions; in addition the historic properties law (G.S. Chapter 157A) is transferred to Article 19.

15. *Councils of governments.* Membership is explicitly limited to cities and counties, and new members may be added by majority vote of existing member governments (rather than by unanimous vote).

16. *Animal shelters.* Authority to operate or support animal shelters is added.

17. *Transfers from G.S. Chapter 160.* The annexation laws and the redevelopment laws are transferred from G.S. Chapter 160 to Chapter 160A, leaving only the parking authority law (Subchapter VIII) in Chapter 160.

INCORPORATION AND STRUCTURE OF CITY GOVERNMENT

Incorporation, Dissolution, and Consolidation

The General Assembly incorporated seven new cities in 1973, two directly and five subject to a referendum. The two direct incorporations were Indian Beach (Carteret) and Calabash (Brunswick), while the other five were Harrisburg (Cabarrus), High Shoals (Gaston), Locust (Stanly), Patterson Springs (Cleveland), and Pine Knoll Shores (Carteret). The citizens of Patterson Springs and Harrisburg have already voted to incorporate; the other elections are later this summer. In addition to the seven new incorporations, the Haw River Sanitary District (Alamance) received authority to vote on whether to become a city, and in late May its voters approved the change in status.

This was the first General Assembly subject to a constitutional restriction on new corporations. Last November the state's voters placed in the Constitution a prohibition on incorporation of new towns

within specified distances of existing cities and towns of 5,000 population or more, except by a two-thirds vote of each house of the legislature. At least two of the incorporations approved in 1973 were subject to the restriction, but no special consideration of these incorporations by the General Assembly was apparent.

Another constitutional change affecting this General Assembly was the prohibition on local acts regarding voter registration, which became effective July 1, 1971. This change made unconstitutional the common practice of providing in an act of incorporation for a new registration of voters in the area to be incorporated. Ch. 551 (H 666) addressed this problem by directing the county board of elections to provide for the registration of voters in the area of any proposed town.

One new law, applying to counties, may reduce the demand for incorporation in future years. This is "The County Service District Act of 1973" (Ch. 489, H 330), an act parallel to the city service district act discussed above. Among the services that a county may provide within a service district are water and sewer facilities, fire protection, and solid waste collection and disposal. The need for each of these services is often an impetus to incorporation, and if the new act facilitates county provision of the services, the need for separate incorporation may lessen.

This session also witnessed some activity regarding governmental consolidation. Glen Alpine and Morganton were authorized to conduct a referendum on merging Glen Alpine into Morganton, along with some unincorporated area between the two cities. Despite the defeat, during the session, of the consolidation proposal in New Hanover County, Roxboro and Person County received authority to establish a commission to study city-county consolidation, and the life of the Durham consolidation commission was extended until next year. This was the last session in which local legislation was necessary to establish studies such as these. Among the provisions of new G.S. Chapter 153, as enacted by Ch. 822 (H 329), is an article authorizing local governments to establish commissions to study functional and governmental consolidation. This authority will become effective February 1, 1974.

One final local act might be mentioned. Littleton, like several North Carolina cities and towns, lies in two counties—in Littleton's case, Warren and Halifax. Under Ch. 601 (H 1283), Littleton voters decided in August they wished to be in only one county; they will decide in November which county it is to be.

Elections

The 1971 General Assembly enacted a uniform municipal election law, now found in Subchapter IX of G.S. Chapter 163. As Table 1 suggests, that enactment apparently has substantially reduced the need for local acts dealing with election procedures. Three acts of the 1973 session, however, did amend the uniform law. Two of these—Ch. 793 (H 913), which made numerous technical amendments to all of G.S. Chapter 163, including a number to Subchapter IX and Ch. 171 (H 613), which allows cities lying in more than one county to conduct their own elections—are discussed in detail in the article on election laws in the May issue of *Popular Government*.

The third act is concerned with the transition between former municipal election laws and the uniform law. Under the former laws, most cities and towns held their elections sometime in the spring, usually in odd-numbered years. The new law requires that all municipal elections be held in the fall of odd-numbered years. To dovetail the old with the new, the 1971 act provided for the extension or reduction of terms of most city officials elected under the former laws. These provisions, however, turned out to be incomplete. Ch. 470 (S 616) completes the transition by shortening the terms of officials elected to four-year terms in 1970 and 1972 so that their successors will be elected at the 1973 and 1975 municipal elections, respectively.

Ch. 609 (H 729) enacts a new G.S. 160A–59, which makes it clear that if a city is divided into council electoral districts, each council member must reside in the district he represents. If such a councilman should move from that district during his term of office, his seat becomes "ipso facto" vacant.

The uniform municipal election law does not direct the time at which newly elected city officers are to take office. Rather it relies on G.S. 160A–68, which has provided that the organizational meeting of the council is to be the first regular meeting after the election. Because some boards meet more frequently than others, this time will differ from city to city; in some cases, the first meeting might occur before the results have been certified. To avoid any confusion, Ch. 607 (H 716) amends G.S. 160A–68 to provide that the organizational meeting is to be the first regular meeting of the council in December.

Personnel Matters

Legislation relating to personnel matters is discussed in detail in the article on personnel. Most of the general legislation concerns the various retirement and death-benefit acts. One act worth mention here is Ch. 763 (S 859), which provides that local elected officials are to be included under the workmen's compensation laws. Previously, they were included only if the local government adopted a resolution including them.

Most local legislation in the personnel field involved firemen's retirement funds. Seven more cities established such funds, while another seven modified funds already existing.

Comprehensive Charter Revision

Fifteen cities had their charters revised and consolidated by the 1973 General Assembly: Carolina Beach, East Spencer, Emerald Isle, Fairmont, Faison, Goldsboro, Leggets, Madison, Mayodan, Mebane, Pittsboro, Raeford, Troutman, Wake Forest, and Zebulon.

FINANCE

Revenue Sources

Property Taxes. In addition to the legislation implementing new Article V of the Constitution, discussed above, significant legislation was enacted involving property tax exemptions and classifications. Ch. 695 (S 147) was the principal bill of the special commission studying exemptions and classifications, while Ch. 709 (S 416), which deals with farm land exemptions, and Ch. 448 (S 387), which deals with property tax relief for the elderly, are also of particular note. Each of these acts, as well as a number of others dealing with the Machinery Act, is discussed in the article on property taxation.

One change included in Ch. 695 deserves mention in this article. Effective January 1, 1974, property must be *assessed* at the same value at which it is *appraised*. That is, beginning with taxes levied for the 1974–75 fiscal year, the use of an assessment ratio will be prohibited.

Sales Tax. Since use of the local sales tax is no longer subject to constitutional restrictions as of July 1, 1973, Ch. 302 (H 341) removed the language in the Local Government Sales and Use Tax Act that restricted use of the proceeds of a nonvoted sales tax to necessary expenses. Thus, as of July 1, all sales tax proceeds may be used for any public purpose.

A second act concerns the formula for distribution of the local sales between a county and any cities in the county. Under the sales tax legislation, the boards of county commissioners choose between two distribution formulas when they levy the tax. The two formulas are (1) per capita and (2) proportion of total ad valorem tax levy. Formerly, there was no machinery for changing this decision once made. Ch. 752 (S 732), however, will permit the county commissioners to reconsider this decision each year, in April. If no change is made, the proceeds will continue to be distributed as before. Since the decision must be made in April, and since the legislation was not enacted until May 23, the first fiscal year to which it is applicable will be 1974–75.

Privilege License Taxes. Ch. 794 (H 1069) makes a number of changes in G.S. 105–42, the section of Schedule B dealing with private detectives, including adding a prohibition on city privilege license taxation of such persons.

Ch. 205 (H 47) amends G.S. 105–98. That section levies a state privilege license tax on chain stores and permits cities to levy a tax of $50 on those chain stores on which the state levies its tax. Chapter 205 prohibits cities from levying this tax against stores deemed "chain stores" "merely because the manner in which they are operated, or the kinds, character or brands of merchandise sold therein are controlled by lease or by contract." It is not clear, however, whether the act intends to exempt such stores from the city's general power to levy privilege license taxes under G.S. 160A–211. If that is intended, it is not certain that this result has been accomplished.

State-shared Taxes. Several of the state revenues shared with local governments are shared on the basis of local population: a portion of Powell Bill funds, a portion of the intangibles tax, and all of the beer and wine crown tax. In each case the appropriate statute has provided that the population to be used will be that shown in the most recent federal decennial census. Therefore, annexations that occur between censuses have not been counted until the next census. Ch. 500 (S 615) corrects this problem by requiring that the population used for distributing each of these taxes be the most recent annual estimates of population made by the North Carolina Department of Administration.

Ch. 193 (H 511) effects two minor changes in the Powell Bill statute. First, it permits interest earned on such funds to be used only as the principal may be used. This was probably implicitly required in any event. Second, it provides that if a city accumulates Powell Bill funds totaling more than the sum of the ten most recent Powell Bill allocations to it, its next allocation shall be reduced by the amount of the excess over the ten-year sum.

Clean Water Bond Proceeds. Two acts amended the Clean Water Bond Act of 1971. Ch. 232 (H 525) made a series of technical amendments to the 1971 act, largely having to do with the grant application process. The second act, Ch. 510 (H 1166), is more substantial. Under the terms of the 1971 Act, $50 million of the proceeds were for matching federal grants for waste-water treatment works, with the result that the required local share was significantly reduced. Since 1971, however, changes in federal law have made the 1971 restrictions on use of this $50 million inapplicable, and the money is in effect unspendable. Thus Ch. 510 directs the Governor to call a statewide referendum sometime before December of this year (most likely at the time of the city elections in November) on whether to amend the 1971 act and remove the restrictions on the money.

Bonds

Ch. 491 (H 710) makes a series of technical amendments to the bond provisions of new G.S. Chapter 159, mainly of a clarifying or corrective nature. However, the bill was amended in the Senate, in the wake of that body's discussion of the necessary expense bill, to modify the rules regarding referendum ap-

Table 1

Local Legislation Affecting Cities and Towns

	Number of New Laws							
	1961	1963	1965	1967	1969	1971	1973 Passed	1973 Not Passed
Structure and Organization								
Incorporation and Dissolution	6	9	8	12	17	14	11	1
Form of City Government	30	27	34	38	30	17	18	2
Election Procedures	34	35	34	27	27	15	4	0
Compensation of Officers	11	12	17	31	13	1	1	0
Qualification, Appointment	4	11	7	4	6	4	6	0
Retirement, Civil Service	11	22	31	15	28	23	16	0
Comprehensive Charter Revision	28	17	10	13	13	10	15	0
	124	133	141	140	134	84	71	3
Finance								
Taxation and Revenue	14	9	2	8	8	10	1	1
Expenditures	9	15	4	5	4	8	4	0
Tax Collection	8	13	2	11	8	6	1	0
Special Assessments	6	12	8	4	8	9	7	1
	37	49	16	28	28	33	13	2
Planning, Zoning and Extension of Limits								
Planning and Zoning	21	24	32	22	18	5	11	1
Annexation	15	14	21	21	23	15	25	7
	36	38	53	43	41	20	36	8
Powers and Functions								
Streets, Traffic, and Parking	1	4	3	9	6	3	4	2
Regulatory Powers, Other	5	3	7	8	10	6	1	4
Police Jurisdiction	14	6	12	1	7	9	0	0
Local Courts	12	25	14	6	5	1	0	0
Beer, Wine, and Liquor	14	19	36	27	30	37	5	5
Other Functions	18	14	15	19	20	13	8	3
Purchasing	–	–	2	7	11	1	7	2
Sale of Property	19	23	17	27	16	14	10	0
Miscellaneous	4	3	10	16	29	9	16	3
	87	97	132	128	134	93	51	19
Grand Total	284	317	326	331	337	230	171	32

Note: The tabulation for the 1973 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 1973 session's tabulation of 203 entries actually represents 200 separate bills. The decline in bills is probably largely due to the enactment in 1971 of three pieces of legislation—new G.S. Chapter 160A, the new municipal election law, and the Machinery Act of 1971. Not all the bills in the "not passed" category were killed; 15 of them remain in committee available for action during 1974.

proval of bonds. Under G.S. Chapter 159 as enacted in 1971, no bond purposes were singled out as always requiring referendum approval; rather all purposes were subject to the Constitution's two-thirds limitation. (This, of course, was a modification of former constitutional doctrine, which required that all bonds issued for nonnecessary expenses be approved by the voters.) As introduced, House Bill 710 made no change in the 1971 policy. However, the Senate amended the bill, and thus G.S. Chapter 159, to require that any bonds issued for the following purposes first be approved by the voters: (1) auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, etc.; (2) art galleries, museums, historic preservation; (3) urban renewal; (4) bus lines and mass transit; and (5) cable television.

A second act, Ch. 786 (H 1302), adds a new financing device to the bond laws. Basically, it permits revenue bonds to be issued for airport or hospital purposes and to be secured not only by a pledge of revenues but also by a pledge of the taxing power. That is, a city or county would agree to levy a tax to

make up any difference between project revenues on the one hand and operating costs and debt service requirements on the other. If the bonds were issued by a city or county, the issuing city or county would ordinarily make the additional pledge of taxing power, although it may be possible for the county in which an issuing city is located to make such a pledge. If the bonds were issued by some kind of special government, such as an airport authority, hospital authority, or hospital district, the additional pledge would be made by a city or county having a connection with the special government or the project. Before such a pledge could be made, the voters of the city or county making the pledge would have to approve the proposed tax.

Normally general obligation bonds must be issued within five years after the bond order takes effect. Ch. 499 (S 518) permits any general obligation bonds authorized by bond orders taking effect between July 1, 1968, and December 31, 1969, to be issued within *seven* years after the effective date of the order. This act was apparently necessitated by a particular situation and was made a general law because of constitutional mandate.

Two resolutions, ratified the same day, place the General Assembly on record as opposing the removal by Congress of the tax-exempt status of state and local government bonds. The two resolutions are Res. 83 (SJR 278) and Res. 85 (HJR 353).

Budgeting

Two acts that amended the Local Government Budget and Fiscal Control Act were enacted in 1971 and became effective July 1, 1973. The first act (Ch. 86, H 336) made it clear that the new Budget and Fiscal Control Act was to be used in preparing 1973–74 budgets. The second made a series of amendments to the Budget and Fiscal Control Act itself, many of them technical but some of a substantive nature. The more important substantive amendments are as follows:

1. All local acts conflicting with the budget and fiscal control parts of the act (except local acts regarding the distribution of prior years' taxes) are repealed.

2. Multi-unit agencies, such as councils of governments, are made subject to the act.

3. All moneys spent by a unit during a fiscal year must be appropriated in the annual budget ordinance.

4. The minimum period between the day the budget officer submits his budget to the board and the day the board adopts the budget ordinance is reduced from twenty to ten days.

5. The governing board of a unit or authority is permitted to waive the requirement of G.S. 159–25 that two signatures appear on each check, if the board is otherwise satisfied with internal control procedures.

6. Special provisions are added for hospitals, partially exempting them from the act.

7. A city or county may, by governing board resolution, take over the budgeting and accounting functions of a housing authority or redevelopment commission.

ANNEXATION

Although annexation matters received a fair share of attention in the 1973 session, no major changes were effected in the general law. Rather, the number of cities with satellite annexation authority increased, while the number of cities exempted from the 1959 annexation statutes was reduced.

Satellite annexation. In 1967 Raleigh received authority to annex areas not contiguous with existing city limits. In 1969 and 1971, Fayetteville and Benson received similar authority. By 1973 the idea of satellite annexation was obviously catching on, as nine more cities submitted bills seeking the authority. As a result, a bill was introduced to provide statewide authority for the practice; it passed the House without incident but ended the session in a Senate committee. In the end, seven of the local acts were enacted, adding the following cities to the list of those authorized to annex noncontiguous territory: Carolina Beach, Jacksonville, Kure Beach, Nashville, Rocky Mount, Selma, and Wilmington. All the bills require a 100 per cent petition from the owners of property in the area to be annexed, but the acts do vary in their procedural detail.

The 1959 legislation. The cities of Halifax County have always been excluded from the 1959 annexation legislation. This situation was modified somewhat by Ch. 335 (H 708), which placed Scotland Neck under the 1959 laws, and Ch. 368 (S 453), which authorized a referendum in Roanoke Rapids Township on whether Roanoke Rapids should be placed under the laws. In addition, the exclusion of Franklin County cities was ended by enactment of Ch. 278 (S 377).

There was one attempt at legislation in the other direction, as S 459 sought to modify the 1959 law as to cities in Rowan County. This bill, precipitated by an annexation to Salisbury, passed the Senate but was killed by the House calendar committee.

REGIONALISM

The notion of regionalism did not fare especially well in the 1973 General Assembly. The Advisory Budget Commission had recommended that the state provide $10,000 annually to each of the seventeen multi-county planning regions, but this proposal was deleted from the budget bill by the Appropriations Committees. More foreboding was the Senate's action in attempting to prohibit cities and counties from using property tax proceeds to fund councils of government without referendum approval. The House refused to go along with this amendment of House

Bill 338 (Ch. 803, discussed above), however, and local governments retain authority to appropriate tax money to councils of governments without need of voter approval.

A series of bills were introduced to give the lead regional organization a more secure position in law and to provide greater state assistance to such organizations (S 290, S 291, and S 295, and the identical H 362, H 361, and H 369). A Senate committee substitute for S 290 was on the Senate calendar when the Senate acted to restrict funding of councils of governments, and, sensing the direction of the wind, its sponsor moved that it be returned to committee.

However, there was one statutory recognition of regionalism during the session. Ch. 698 (S 681), which makes a series of amendments to Article 21 of G.S. Chapter 143, requires the Board of Water and Air Resources to develop plans to improve and maintain the state's water quality. The Governor may direct that local or regional planning organizations be permitted to prepare plans within the framework of the state plan.

MISCELLANEOUS

Planning and Environmental Matters

A substantial amount of legislation was adopted in 1973 dealing with the environment and with various elements of planning and regulating development. This legislation will be discussed at length in the article on planning in the May issue of *Popular Government*. Among the acts that might be merely noted here (and this is by no means an inclusive list) are Ch. 119 (S 23), which extends until September 1, 1977, the "Environmental Policy Act of 1971," including its authorization to local governments to adopt ordinances requiring environmental impact statements; Ch. 392 (S 244), which establishes a partnership of state and local government in regulating soil erosion and sedimentation; Ch. 621 (H 1143), which amends the floodway regulation law adopted in 1971 to provide that if a local government has not acted to delineate a floodway, the Board of Water and Air Resources may do so and require the local government to enforce the attendant floodway regulations; and Ch. 443 (H 272), which establishes a State Nature and Historic Preserve (in conformity with the environmental amendment to the Constitution adopted in 1972), including a procedure for local governments to place properties owned by them into the Preserve.

Law Enforcement

The 1973 General Assembly continued legislative efforts begun in 1971 to improve the quality of local law enforcement. Two acts, the Law Enforcement Officers Minimum Salary Act and its accompanying appropriation act, set minimum salary schedules for local law enforcement officers and appropriate state funds to supplement existing local funds in order to meet the minimums. A third act establishes a framework for potential increased state-level participation in the training of local law enforcement officers.

The salary act. Ch. 766 (S 18) establishes minimum salary levels for local law enforcement officers, and directs that the state provide whatever funds are necessary to meet the minimums through October 1, 1975. Ch. 767 (S 28) appropriates $2 million to meet these costs for the 1973–74 fiscal year. The minimum salaries are shown in Table 2.

Table 2

Minimum Salary Schedule for Law Enforcement Officers

	City Population			
Position	Less than 5,000	5,000–10,000	10,000–20,000	More than 20,000
Department head	$7,500	$9,500	$12,000	$14,000
Ass't dep't head	6,000	7,500	9,500	12,000
Middle management	6,000	6,000	7,500	9,500
First-level supervisory	6,000	6,000	6,000	7,500
Officer	6,000	6,000	6,000	6,000

The policy of the salary act seems to be that local governments will continue to pay the salaries they were paying on January 1, 1973, and that the state will make up the difference, if any, between that sum and the statutory minimums. However, the act nowhere requires local governments to maintain those salaries, and it is unclear what the effect would be if a local government lowered its own salary support of law enforcement. In addition, it is not clear from the definitions in the act just how broad its coverage is to be; in some, but not all, portions of the act, judicial personnel seem to be included. Presumably these questions will be answered by the Criminal Justice Training and Standards Council, which is given responsibility for administering the act.

Training system. The North Carolina Criminal Justice Education and Training Council is established by Ch. 749 (S 677), which also directs the Department of Justice to establish a Criminal Justice Education and Training System. Although the framework established in the act is elaborate, only criminal justice personnel within the Department of Justice are required to use the training system. Local law enforcement personnel, however, may use it if they wish.

Water and Sewer Services

In many states, city-owned utility services offered beyond the corporate limits are subject to regulation by a state agency, usually some kind of utilities commission. In North Carolina this is not the case. However, that situation is apparently due for some legislative review. Res. 97 (HJR 1184), which is primarily concerned with an interim study of small water and sewer systems, also directs the interim study of "regu-

lation of municipal water and sewer services and rate changes into areas outside municipalities with reference to level of services and cost justification and related matters." The exact scope of this study and any possible results are vague, but it clearly bears some watching.

Chapter 512 (H 514) expands the authority to create metropolitan sewerage districts by permitting local governments and citizens in more than one county to join in their creation.

Solid Waste

Among the bills proposed by the Local Government Study Commission was one designed to protect purchasers of property that was once the site of a sanitary landfill. Ch. 444 (H 337) requires that any person or corporation (including a local government) seeking to operate a landfill to record in the office of the register of deeds a copy of the order of the State Board of Health approving the operation of the landfill. This order is required to contain a description of the site sufficient as a description of land in an instrument of conveyance.

During the past year, the North Carolina Court of Appeals decided that the existing authority of counties to regulate the collection of "garbage" did not include the authority to regulate collection of "trash." Ch. 535 (H 390) is primarily intended to respond to that decision by authorizing counties to regulate the collection and disposal of all solid wastes. In addition, however, it adds a proviso to the law to the effect that if a county levies a county-wide tax for solid waste disposal facilities, the county may not then charge any city in the county a fee to use the disposal facilities paid for by the tax. (If taxes are not used for a county landfill, presumably this proviso does not apply.)

Miscellaneous

Airport assistance. Since 1967 the state has been providing financial aid to small, *noncarrier* airports, under G.S. Chapter 113, Article 1B. Ch. 579 (H 518) appropriates $1 million for the coming fiscal year to aid *carrier* airports, the maximum grant to any one airport to be $100,000. However, as the act does not amend Article 1B of G.S. Chapter 113 to include carrier airports, there is no guarantee that this aid will continue after the coming year.

Library organization. Ch. 822 (H 329) rewrites all of G.S. Chapter 153, effective February 1, 1974. Most of the rewrite pertains only to county government, but the Chapter does contain the basic enabling law for local libraries. This law has been modified to increase the flexibility of cities and counties in providing library services. A city or county may operate a library either as a line department or with a board of trustees, and the trustees may be delegated any of a series of powers. In addition, if a board of trustees is established, its composition is largely in the discretion of the governing board rather than set by statute. Finally, if a city or county library is operated under a local act mandating some organizational form, the governing board is authorized to proceed under the general law regardless of the local act.

Social services. Ch. 608 (H 728) authorizes cities to provide prevention and treatment programs in drug abuse, while Ch. 641 (H 715) authorizes cities to engage in community action and manpower development programs.

ABC matters. Under Ch. 606 (H 712), the State ABC Board, upon granting any kind of permit under the ABC laws, is required to notify the sheriff and tax collector of the county in which the premises are located; if the premises are located within a city, then the police chief and tax collector of the city must also be notified.

Mass transit study. Resolution 111 (SJR 568) directs the state Department of Transportation to make a one-year study of the "mass transit needs and alternatives for rapid inter-city travel" in North Carolina, reporting to the General Assembly through the Governor by May 23, 1974 (one year from ratification).

Closing alleys. Ch. 555 (S 504) amends G.S. 153–9(17) to permit cities to close alleys, as well as streets, under that subsection. This change in G.S. 153–9(17) will be repealed on February 1, 1974, the effective date of revised G.S. Chapter 153, but the power granted by the act seems to be included in G.S. 160A–299 in any event.

Common carrier regulation. Until 1971, common carriers in intrastate commerce were exempt from Utility Commission regulation when transporting passengers or property for or under the control of the state or any political subdivision. The exemption was removed in 1971, but Ch. 175 (H 773) reinstated it.

Corporate stamp. Ch. 170 (H 610) permits cities to use a corporate stamp in lieu of their corporate seals.

Ocean-activities ordinances. Under Ch. 539 (H 520) cities in the eight counties abutting the Atlantic Ocean are authorized to regulate and control swimming, surfing, and littering in the ocean.

Abandoned vehicles. Ch. 720 (H 878) provides a mechanism for the state to remove abandoned vehicles from public property and from private property if the property owner does not object and sell the vehicles for recycling of the metal. The procedures involved are somewhat simpler than in the comparable authorization for city action (G.S. 160A–303), and this may lessen the need for city ordinances on this subject.

Condemnation. Ch. 149 (H 351) amends Rule 38 of the Rules of Civil Procedure to make clear the right to trial by jury on the question of just compensation in an eminent domain proceeding.

Controlled Substances Act

William B. Crumpler

The 1973 General Assembly effected a number of changes in the Controlled Substances Act (CSA). Most could be considered technical, but the major penal provisions of the Act were substantially revamped. This revamping will be discussed in detail, and the other changes briefly cited.

Changes in Penal Provisions

Ch. 654 (H 274) of the 1973 Session Laws completely rewrote G.S. 90–95, the penal section of the CSA. The act contains a savings clause. Thus the statutes in effect before January 1, 1974, the date the new law becomes effective, are still applicable to offenses occurring before that date regardless of the trial date. The substance of Ch. 654 is noted below.

Violations

The wording but not the thrust of G.S. 90–95(a) was altered. (Material in brackets is deleted, and material in italics is new.)

> G.S. 90–95(a). Except as authorized by this Article, it [shall be] *is* unlawful for any person:
>
> (1) To manufacture, [distribute or dispense] *sell or deliver*, or possess with intent to [distribute] *manufacture, sell or deliver,* a controlled substance [listed in any schedule of this Article];
>
> (2) To create, [distribute] *sell or deliver,* or possess with intent to [distribute] *sell or deliver,* a counterfeit controlled substance [included in any schedule of this Article];
>
> (3) To possess a controlled substance [included in any schedule of this Article].

The term "deliver" goes more to the point than "distribute" (both are defined in G.S. 90–87), but this change is really in form rather than substance. "Sell" is included in the meaning of "deliver," but setting it out separately has a more forceful connotation that solicitors may find useful for jury argument.

Including possession with the intent to manufacture as an offense in (a)(1) will cover cases in which an intent to manufacture is apparent though actual manufacturing may not have commenced. For example, a defendant may have a large quantity of marihuana in brick form in his possession, plus a set of scales and numerous "baggies" or other containers often used for packaging smaller quantities for individual sale; but he may not yet have begun the repackaging process that would constitute manufacturing as the term is defined in G.S. 90–87. Under these facts, the evidence should be sufficient to go to the jury on a charge of possession with intent to manufacture though it could not be shown that any actual manufacturing took place.

"Dispense" was deleted from (a)(1) because of its peculiar definition, set forth in G.S. 90–87(8).

No special comment is needed concerning the changes in (a)(2). The definition of "counterfeit substance" in G.S. 90–87(6) is so restrictive that few prosecutions under this provision are likely to occur.

The change in (a)(3) was merely the deletion of superfluous language.

Basic Punishment

G.S. 90–95(b) sets forth the basic punishment for trafficking offenses described in G.S. 90–95(a)(1). Any offense under (a)(1) is a felony, but the punishment depends on which schedule the substance is in. If the drug is a Schedule I or II controlled substance, the offense is punishable by up to ten years in prison and or up to a $10,000 fine. This is double the former punishment level.

For substances in Schedules III through VI, the punishment is up to five years' imprisonment and or up to a $5,000 fine. G.S. 90–95(b) states, however, that the transfer of less than five grams of marihuana for no remuneration shall not be a delivery in violation of G.S. 90–95(a)(1). This provision would not generally affect dealing in marihuana but would preclude a technical delivery violation from arising when two or more persons are sharing a "joint" and passing it back and forth to each other; nevertheless, each person smoking or otherwise handling the marihuana would be guilty of the crime of simple possession. The federal law, which is tracked in part by the North Carolina Act, contains a similar provision.

G.S. 90–95(c) retains the punitive level set for counterfeiting violations under G.S. 90–95(a)(2), that is, the standard five-year $5,000 felony offense.

The basic punishment for simple possession of a controlled substance in violation of G.S. 90–95(a)(3) is significantly affected under Ch. 654. G.S. 90–95(d)(1) carries over the felonious aspect (five-years $5,000 fine) of the original CSA in regard to mere possession of a Schedule I controlled substance, but possession of Schedule II substances generally is made a misdemeanor punishable the same as for possession of Schedule III or IV substances—two years $2,000 under G.S. 90–95(d)(2). (Originally, penalties with respect to Schedule II possession paralleled Schedule I possession.) However, if the quantity of the Schedule II, III, or IV controlled substance (or combination of substances) exceeds 100 tablets, capsules, or other dosage units, or equivalent quantity, the violation becomes a felony punishable by up to five years' imprisonment and or up to a $5,000 fine.

Under the original CSA, the basic punishment for simple possession of controlled substances in Schedules III and IV was at the two-year, $2,000 level regardless of the quantity involved; but former G.S. 90–95(1) established a presumption of the intent to distribute if the quantity of III or IV substance possessed was more than 25 tablets, capsules, or other dosage forms. This statutory presumption was eliminated in the revision, and the quantitative level distinguishing misdemeanor possession from felonious possession for Schedule II, III, and IV reflects a probable distinction between persons who are likely to be casual users and persons likely to be dealers or heavy users. The latter group was thought to deserve more stringent sanctions than casual users do. Notwithstanding this quantitative cutoff between felony and misdemeanor possession, a defendant could still be charged with possession with intent to sell or deliver regardless of quantity if there is evidence of such intent; a large quantity of a controlled substance can be evidence in itself of the intent to sell or deliver.

Similarily, possession of marihuana (Schedule VI) basically remains a misdemeanor punishable at the six-month $500 level; but if the quantity possessed exceeds one ounce of marihuana or one-tenth ounce of hashish, or if the matter consists of any quantity of tetrahydrocannabinols, the offense of simple possession becomes a felony at the five-year $5,000 level. Again, the cutoff point represents a level beyond which the possessor likely would be a dealer or heavy user. The statutory presumption of the intent to distribute at certain quantitative levels, as with Schedule III and IV substances, was deleted in the rewrite. Independent evidence of an intent to sell or deliver may warrant a charge of possession with such intent if less than the quantitative cutoff is possessed; since felonious possession of Schedule VI substances is punishable the same as possession with intent to sell or deliver, there would be no particular advantage to charging the latter offense if the quantity possessed clearly exceeded the cutoff point.

As under the original CSA, possession of Schedule V controlled substances is punished as a misdemeanor at the six-month $500 level. Since these substances can be purchased without prescription, prosecutions for unlawful possession will no doubt be rare.

Increasing Basic Punishment

Subsection (e) of G.S. 90–95 sets forth certain conditions that allow increases in punishment for violations of the CSA. In particular, G.S. 90–95(e) permits a much broader use of prior drug convictions to increase punishment. Read literally and construed strictly, former G.S. 90–95 authorized only a very narrow use of previous offenses.

The new law doubles the penalty for a felony if the defendant has been previously convicted in any jurisdiction of any offense that would be punishable *as a felony* under the CSA, and it prescribes imprisonment for not less than ten years nor more than thirty years if he has been convicted of two or more offenses that are punishable as felonies under the CSA. Prior convictions for crimes that would be punished only as misdemeanors under the CSA would not affect the penalty for a current felony prosecution. It is important to note that how the earlier crime would be punished under the CSA is the controlling factor, not how the crime was punished under the earlier law. For example, a prior conviction for simple possession of less than one ounce of marihuana would not apply to a pending felony prosecution since that offense is only a misdemeanor under the revised CSA; this holds

true even though that offense was a felony at the time it was tried.

If the defendant is being prosecuted for a two-year misdemeanor, any prior conviction for a misdemeanor or felony under the CSA would raise the degree of the current offense to a felony at the five-year/$5,000 level. This penalty would remain the same no matter how many previous convictions existed. In the same vein, any prior offense or offenses punishable to any degree under the CSA raises the punishment for a six-month misdemeanor to a two-year misdemeanor (and no further).

Even though prior misdemeanors do not increase punishment in felony prosecutions, it may still be appropriate to allege and offer proof of a previous misdemeanor if the pending felony offense carries a lesser included misdemeanor. For instance, if the pending prosecution is for possession of more than one ounce of marihuana but there is a question as to the quantity involved so that the jury could conceivably return a verdict of misdemeanor possession (i.e., possession of one ounce or less), then prior offenses punishable as misdemeanors under the CSA would be pertinent since they affect the punishment for the lesser included offense. [The quantitative distinction between felony and misdemeanor possession is a feature of the basic punishment and is not one of the conditions in G.S. 90–95(e).] Given the confusion that could result under these circumstances, as well as the potential prejudice to the defendant with respect to the felony charge, it usually may be preferable not to go too fully into previous misdemeanors in such a situation.

For the purposes of G.S. 90–95(e), prior convictions are counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial. As required by G.S. 15–147, the date and place of any previous offense must be alleged in the warrant or indictment; and proof of the earlier conviction, consisting of a certified transcript of the record of the previous offense (or, generally, a certified copy of the judgment in the case, obtained from the clerk of superior court in the county where the trial was held), must be offered.

One final condition affecting basic punishment lies in G.S. 90–95(e)(5). That provision sets a term of imprisonment of not less than five years nor more than thirty years for any person 18 or over who violates G.S. 90–95(a)(1) by delivering a controlled substance to a person under 16. Only one condition in G.S. 90–95(e) can be applied to one charge; therefore, prior convictions could not be used for a charge of delivering if this condition was alleged. Nevertheless, a possession charge might be brought in addition to the delivery charge to take advantage of previous offenses if the age condition was used with respect to the charge of delivery.

Special Probation

The possible usefulness of special probation is broadened under G.S. 90–95(f), and several ambiguities in the application of a split sentence are clarified. To begin with, special probation is made available any time upon imposition of an active sentence that is less than the maximum term that could have been imposed; there is no limitation to first offenses, nor is special probation omitted with respect to simple possession of Schedule V and VI substances as under the former law. G.S. 90–95(f) spells out that the administration of special probation will generally be the same as for regular probation and that special probation would take effect in place of parole if parole is granted.

As with probation, special probation carries a maximum possible term, and would be revoked in the same way as probation. Upon revocation, the original term of imprisonment may be increased by more time than allowed under the original provisions; that is, imprisonment can be increased by the difference between the active term actually served and the maximum active term that could have been imposed rather than by just the amount of the special probation term.

Laboratory Reports

G.S. 90–95(g) provides a measure of relief for the demands on the time of laboratory technicians with the State Bureau of Investigation and the Charlotte Police Department. It declares that reports of chemical analyses of controlled substances from either of those agencies can be admitted as evidence in *all* proceedings in the *district court* division of the General Court of Justice. Thus, in misdemeanor trials as well as in preliminary hearings in the district courts, the identity, nature, and quantity of matter determined to be a controlled substance by chemical analysis can be proved simply by introducing a report of the analysis certified to upon a form approved by the Attorney General.

In practice, there is usually no real contest in drug trials as to the analysis of a controlled substance, especially in district court; indeed, stipulations as to the results of the analysis of the substance concerned are commonplace. But, obviously, only one hearing in a remote part of the state could divert an SBI chemist from his laboratory duties for a full day. The new evidentiary provision is simply a matter of practicality, and the right to confrontation, as with the right to jury trial in misdemeanor cases, is preserved through the right to a trial de novo in superior court.

In those few cases in which there is a genuine question about the identity or nature of the substance, the defendant could possibly subpoena the chemist who made the analysis for examination. In fact, under the recent case of *Chambers v. Mississippi*, 93 S. Ct. 1038 (1973), the defendant could probably

treat the chemist as adverse and cross-examine him even though he called him as a witness.

Conditional Discharge

Ch. 654 (H 274) also amended the conditional discharge provisions of G.S. 90–96 to correlate them with the changes in possession offenses in G.S. 90–95 by specifying that the provisions of G.S. 90–96 apply to *misdemeanor* offenses arising from the possession of a controlled substance in Schedule III through VI. A slip occurred in this regard, however. The original bill had retained felony punishment for possession of any quantity of Schedule II substances, but the General Assembly amended the bill to make possession of Schedule II offenses under the quantitative cutoff only a misdemeanor. This change in the bill, however, was not reflected in the part concerning G.S. 90–96. For the sake of consistency, G.S. 90–96 should in 1974 be amended further to read ". . . within Schedules II through VI . . ." rather than "III through VI."

Another amendment to G.S. 90–96 resolves an ambiguity concerning whether a defendant can appeal for trial de novo from a judgment entered in district court for violation of a condition of probation when judgment was initially deferred under the terms of G.S. 90–96. A provision was added to the section stating that disposition of a case under the section in district court will be final for the purpose of appeal. Hence, a defendant will be required to appeal within the ten-day limit. He will not be able to enjoy the conditional discharge arrangement obtained in district court knowing that he can appeal later for a complete trial de novo if he is caught violating his probation and conditional discharge is revoked, though it is not clear that this possibility actually existed with respect to the law before amendment.

Immunity from Prosecution

A section creating a new G.S. 90–96.1 was added to Ch. 654 (H 274) in the final moments before its enactment. The new provision allows judges to grant immunity from prosecution to any person less than 18 with no prior drug offenses when the person is accused of violating G.S. 90–95(a) if the person identifies who furnished him with the controlled substance. The court can grant immunity only upon recommendation of the solicitor. Exactly what effect this new section will have on normal plea bargaining is not clear.

Changes in Other Provisions

Forfeiture of Conveyances

Ch. 447 (S 218) amended G.S. 90–112(a)(4)(c) effective January 1, 1974 to permit forfeiture of conveyances involved in *any* felony violation under the CSA rather than just violations encompassed by G.S. 90–95(a)(1) and (a)(2). The original bill tightened the requirements for secured parties to protect their security interest in a conveyance subject to forfeiture, but that was deleted before the passage.

Ch. 542 (H 394), effective May 17, 1973, established that the procedure for forfeiture of conveyances would be the same as for forfeiture under the liquor laws, G.S. Chapter 18A.

Technical Amendments

Ch. 540 (H 275), effective May 17, 1973, made a number of technical amendments concerning controlled substances. Among these were clarifications of the definitions of "manufacture" and "practitioner" and the rescheduling of amphetamines and similar stimulants from Schedule III to Schedule II. This latter action merely codified the rescheduling accomplished by the State Board of Health on March 23, 1972.

State Board of Health

Ch. 524 (H 392), effective May 16, 1973, changed from 30 to 180 days the period of time under G.S. 90–88(d) during which the State Board of Health must object to rescheduling of a controlled substance before rescheduling automatically corresponds to that done by the federal government. Ch. 541 (H 393) further amended G.S. 90–88 to correlate certain actions by the State Board of Health with those by the Federal Bureau of Narcotics and Dangerous Drugs in regard to exempting described substances from the CSA.

Drug Education Program and Drug Abuse Appropriations

Ch. 587 (H 853), effective July 1, 1973, sets forth requirements for the North Carolina Drug Authority with respect to a statewide drug education program centered largely on the public school system, and Ch. 588 (H 854) requires coordination of money for drug abuse programs to be accomplished through the Drug Authority. This act, also effective July 1, 1973, is codified as new G.S. 143–475.1.

Action on Related Bills

Several other drug bills introduced in the 1973 General Assembly may be of interest even though they were defeated or are still pending.

Increased Penalties

Most interest by far in drug law revision centered on providing stiff penalties for persons dealing in controlled substances. Seven different bills were introduced to increase the punishment for trafficking in Schedule I, and sometimes Schedule II, substances. Two bills proposed life sentences for violating G.S. 90–95(a)(1) with respect to Schedule I, and several set mandatory or perhaps minimum active terms. Most of these bills were killed with the enactment of

Ch. 654 (H 274), discussed earlier. Only three remain technically alive in committee, one of them being identical to Ch. 654, and they no doubt will be disposed of when the General Assembly reconvenes in 1974.

Drug Law Enforcement

H 277, which is identical to S 215, passed the House and is in the Calendar Committee of the Senate. The major significance of the bill is that it elaborates on how law enforcement agencies may assist each other in enforcing the CSA, such as providing undercover officers from one jurisdiction to another. Presently, it is not clear how far one agency may go to provide assistance to another agency or how much authority, or protection, an officer has when working outside his territorial jurisdiction even at the request of another agency.

Fraudulent Drug Transactions

The purpose of S 217 and H 278 was to prohibit an activity that frequently occurs, and sometimes with serious complications; but this activity is not expressly barred by any particular law. It consists of selling some substance falsely represented to be a controlled substance. An example of this activity would be selling oregano upon the representation that it is marihuana.

H 278 made it through the House easily enough and is now in the Senate Judiciary I Committee. S 217 squeaked out of that committee but met opposition (largely derisive) on the floor and was referred back to the committee. Branded as the "Consumer Protection Bill," S 217 or its House counterpart may yet survive, but the prospect does not look good in the Senate.

Forfeiture

S 811, now resting in the House Calendar Committee, would bar forfeiture of a vehicle under G.S. 90–112 if the owner had no knowledge or reason to believe that his vehicle was being illegally used in regard to controlled substances.

Transportation Offense

H 440 prohibited using a vehicle, vessel, or aircraft to transport or conceal a controlled substance or to facilitate trafficking in controlled substances. The punishment for such activity would be the same as for possession of the substance involved. This bill met its demise with an unfavorable committee report.

Special Probation Conditions

H 1152 authorizes trial judges to impose unique conditions on drug offenders who are on special probation under G.S. 90-95. The conditions include a requirement for the probationer to carry for the period ordered by the judge (not more than five years) an identification card with photograph attached and a statement of the crime for which he has been convicted; a designated law enforcement agency would be furnished two such cards of the individual. Other possible conditions include that the probationer not enter designated areas of the county and that he pay a $25 to $100 fine to be used for law enforcement purposes in the county. The bill is now in the house Judiciary II Committee.

The Counties

Joseph S. Ferrell

The 1973 General Assembly's legislation with respect to county government was unusually extensive and significant. During this session, the Local Government Study Commission presented its final legislative program, which included proposals for recodification and revision of the laws regulating local governments and implementation of the constitutional amendments sponsored by the Commission in the 1969 session. Several bills in the Commission's package affect only city governments and are discussed in the article on cities elsewhere in this issue of *Popular Government*. The 1973 legislation in specialized fields such as law enforcement, personnel, the property tax, and planning and regulation of development is also discussed in the May and June issues of *Popular Government*.

REVISION OF G.S. CHAPTER 153

In its report to the 1969 General Assembly, the Local Government Study Commission recommended that "the General Statutes relating to local government should be revised and recodified." During the next biennium the Commission began work on this task and recommended to the 1971 General Assembly a new G.S. Chapter 159, which would revise the laws regulating local government finance, and a new G.S. Chapter 160A, which would revise the basic law for city government. Both of these recommendations were enacted into law. In 1973 the Commission recommended to the General Assembly a revision of G.S. Chapter 153, the basic law for county government. This recommendation was enacted into law as Ch. 822 (H 329), with an effective date of February 1, 1974.

In general, the organization of the new G.S. Chapter 153 follows that of G.S. Chapter 160A. Thus, a person familiar with either of the new chapters should be able to find his way through the other. Although the new G.S. Chapter 153 is largely a recodification of existing law, it does include a number of significant new provisions. The primary thrust of the new provisions is to grant to counties the same basic powers that are available to cities.

It is not feasible, within the confines of this article, to discuss in detail each of the new substantive provisions of an act as long and complex as the new G.S. Chapter 153; the ratified act runs to 155 pages. The following discussion will only point out the most significant changes from present law and indicate the over-all organization of the new chapter. References to G.S. section numbers refer to new Chapter 153, not the present law.

This abbreviated table of contents for new G.S. Chapter 153 will be used to outline the discussion of the new statute.

Chapter 153. Counties

Article 1. Definitions and Statutory Construction.
Article 2. Corporate Powers.
Article 3. Boundaries.
Article 4. Form of Government.
Part 1. General Provisions.
Part 2. Structure of the Board of Commissioners.
Part 3. Organization and Procedures of the Board of Commissioners.
Part 4. Modification in the Structure of the Board of Commissioners.
Article 5. Administration.
Part 1. Organization and Reorganization of County Government.
Part 2. Administration in Counties Having Managers.
Part 3. Administration in Counties Not Having Managers.
Part 4. Personnel.
Part 5. Board of Commissioners and other Offices, Boards, Departments, and Agencies of the County.
Part 6. Clerk to the Board of Commissioners.
Part 7. County Attorney.
Article 6. Delegation and Exercise of the General Police Power.
Article 7. Taxation.
Article 8. County Property.
Part 1. Acquisition of Property.
Part 2. Use of County Property.
Part 3. Disposition of County Property.
Article 9. Special Assessments.
Article 10. Law Enforcement and Confinement Facilities.
Part 1. Law Enforcement.
Part 2. Local Confinement Facilities.
Article 11. Fire Protection.
Article 12. Roads and Bridges.
Article 13. Health and Social Services.
Part 1. Health Services.
Part 2. Social Service Provisions.
Article 14. Libraries.
Article 15. Public Enterprises.
Part 1. General Provisions.
Part 2. Special Provisions for Water and Sewer Services.
Part 3. Special Provisions for Solid Waste Collection and Disposal.
[Article 16. Reserved for codification of Ch. 489, HB 330]
[Article 17. Reserved for future codification]
Article 18. Planning and Regulation of Development.
Part 1. General Provisions.
Part 2. Subdivision Regulation.
Part 3. Zoning.
Part 4. Building Inspection.
Article 19. Regional Planning Commissions.
Article 20. Consolidation and Governmental Study Commissions.
[Article 21. Reserved for future codification]
[Article 22. Reserved for future codification]
Article 23. Miscellaneous Provisions.

Effective date. As originally introduced, H 329 carried an effective date of January 1, 1974. While it was under consideration in the Senate, the bill was amended to delay the effective date to February 1, 1974. The House concurred in this amendment and thus Ch. 822 (H 329) carries the latter effective date. An effective date of February 1 will cause some problems in interpreting the new statute, since several of its provisions assume an effective date of January 1. For example, the new statute provides that it does not affect ordinances adopted, contracts made, or litigation pending as of December 31, 1973, and that no local act in effect as of January 1, 1974, is repealed. These portions of the statute should be amended by the General Assembly in its 1974 session. If they are not amended, counties seeking local legislation in the 1974 session should take care that their bills are not ratified before February 1. Otherwise, any local bill enacted between January 1, 1974, and February 1, 1974, may be repealed by Ch. 822 (H 329) if it conflicts with any portion of new Chapter 153.

Article 1. Definitions and Statutory Construction. New G.S. Chapter 153 opens with a list of definitions that apply throughout the chapter and four sections concerning the effect of the new chapter on existing laws. G.S. 153–2 makes it clear that the new chapter does not require the re-enactment of any county ordinance adopted before December 31, 1973, nor does it affect the validity of any acts taken under prior law, so long as the ordinances or prior acts are authorized by provisions appearing in the new chapter. Also, the new chapter will not affect any civil litigation or criminal prosecution pending on December 31, 1973.

G.S. 153–3 provides that no local act is repealed by the new law unless the new law expressly provides for that repeal. The only portion of the new law so providing concerns local acts relating to the dog tax. G.S. 153–3 also contains rules for supplementing local act procedures with comparable procedures from the general law when a local act and the general law both provide a procedure for performing or executing the same power or function. Finally, this section provides that if a county is subject to a local act that expressly denies or limits some power, right, duty, function, privilege, or immunity conferred or imposed on counties generally by the new law, the local act is superseded and the county will operate under the general law.

G.S. 153–4 directs that the new law be broadly interpreted.

Article 2. Corporate Powers. The new law contains a list of the 100 counties of North Carolina, found in G.S. 153–10. Each county is made a body politic and corporate by G.S. 153–11 and is given the powers usually possessed by public corporations. G.S. 153–12 provides that all corporate powers of the county are exercised by the board of county commissioners except to the extent that other boards, agencies, or officers are expressly empowered or directed to take certain actions. This section also provides that the board of commissioners will determine how to implement or execute any power of the county to the extent that the enabling statute is silent on particular administrative details.

Article 3. Boundaries. The procedure for resolving boundary disputes between counties is restated and made somewhat easier to operate, and the form-

ula for dividing the cost of boundary surveys is modified. If the disputing counties agree on a method of dividing costs, that will be followed; if no agreement can be reached, the costs will be equally divided unless the court finds that an equal portion would be unjust, in which case the court will determine the division.

Under present law, counties are required to establish townships. The new law authorizes townships but does not require them. The current boundaries of townships must be shown on a map, written description, or combined map and description, which must be filed in the office of the clerk to the board of commissioners. This requirement is new to the law and will require any county that desires to retain its townships to prepare and file such a map or description.

Many counties are divided into districts for the purpose of nominating or electing members of the board of commissioners. G.S. 153–20 requires that the boundaries of these districts be shown on a map or description available for public inspection in the office of the clerk to the board. A copy of the local act establishing the districts would comply with this section, as would a certified copy of any resolution adopted under the county reapportionment statutes.

Article 4. Form of Government. Part 1. General Provisions. G.S. 153–25 expressly authorizes the board of commissioners to fix qualifications for any appointive office, including a requirement that a person serving in such an office reside within the county. However, the board may not waive qualifications fixed by law.

G.S. 153–26 continues present law with respect to the oath of office taken by all county officers, but resolves a problem that sometimes arises as to when newly elected officers may take the oath. Under the new law, persons elected to office shall assemble "at the regular meeting place of the board of commissioners" on the first Monday in December to take the oath, rather than at the first meeting of the board of commissioners in December as at present. The change eliminates problems caused by a regular meeting date other than first Mondays, and a failure or refusal of an outgoing board to convene a meeting at which the oaths can be taken. The new law also expressly provides that an officer not present at the regular oath ceremony may take and subscribe the oath at a later time.

The statute on filling vacancies in the board of commissioners has been significantly amended in two respects. First, if the member being replaced was elected to a four- or six-year term, and if the vacancy occurs at any time before the last two years of the term, the person appointed to fill the vacancy will serve only until the next general election, at which time someone will be elected to serve out the remainder of the term. Second, special provisions are included for filling vacancies in the board when the number of vacancies is such that a quorum of the board cannot be obtained.

G.S. 153–29 authorizes blanket fidelity and faithful-performance bonding for county employees for the first time. However, tax collectors, finance officers, sheriffs, and registers of deeds may not be covered under the blanket bond.

Part 2. Structure of the Board of Commissioners. As originally introduced, H 329 contained a section setting out the composition and manner of election of the board of commissioners of each county. This section was eliminated in the House, and a new one was inserted providing that "the structure and manner of election of the board of commissioners in each county shall remain as it is on the effective date of this act, until changed in accordance with law." Thus, no local act concerning the composition and manner of election of the board is modified in any way. A few counties still operate wholly or partially under the old general law, which provided for a three-member board elected at large for two-year terms. While this provision no longer appears in the law, it is clear from various portions of the new law that there will be no change in these counties by virtue of its enactment.

Part 3. Organization and Procedures of the Board of Commissioners. Under present law, the selection of a vice-chairman by the board of commissioners is optional. G.S. 153–39 requires a vice-chairman, who is to be selected at the same time as the chairman. The new law also states that the presiding officer has the *duty* to vote on all matters before the board, not just the *right* to vote as now provided.

Occasionally, use of the courthouse or other regularly designated meeting place of the board of commissioners may be impossible, inconvenient, or unwise because of repairs to the building, power failures, or similar unusual but temporary circumstances. G.S. 153–40 recognizes these possibilities and permits a temporary change of meeting place without following the formal procedures required for a permanent change. The meeting place may be temporarily changed by simply posting a notice at or near the regular meeting place and taking reasonable steps to inform the public.

The procedures for calling special meetings are essentially unchanged, except for permission to hold special meetings to deal with emergencies without following the normal procedure.

Following comparable provisions in G.S. Chapter 160A, G.S. 153–44 provides that if a member of the board of commissioners present at a meeting leaves without being excused by majority vote of those remaining, he is to be counted as present for quorum purposes. Thus, a member cannot prevent the board from taking action by leaving the meeting if the remaining members wish to proceed to a conclusion of

matters then before the board. As introduced, H 329 contained provisions to the effect that a member leaving a meeting without being excused would be counted as voting in the affirmative on all motions occurring after he left. These provisions were eliminated from Ch. 822 as enacted.

G.S. 153–45 continues the present law's provision that an ordinance may not be adopted on the date of introduction unless it receives the unanimous vote of the entire board membership. Present law is unclear, however, on how long an ordinance can retain its vitality if it receives a majority vote but less than a unanimous vote on its first reading. Under G.S. 153–45, such an ordinance could be considered again at any time within 100 days of its introduction. If more than 100 days have passed since introduction, the ordinance must be reintroduced.

Present law contains no special provisions with respect to granting franchises by counties. G.S. 153–46 follows the city law in providing that franchise ordinances must be passed at two regular meetings of the board, without regard to whether the first vote was unanimous.

G.S. 153–47 specifically permits counties to adopt by reference published technical codes or standards or regulations promulgated by public agencies.

G.S. 153–49 authorizes a county to adopt and issue a code of ordinances, and G.S. 153–50 provides that the rules for pleading and proving county ordinances in court will follow G.S. 160A–77.

G.S. 153–52 authorizes the board of commissioners to adopt reasonable rules governing the conduct of public hearings and to continue a public hearing without further advertisement, and provides that a scheduled public hearing is automatically rescheduled for the next regular meeting of the board when a quorum of the board is not present on the originally advertised date.

Part 4. Modification in the Structure of the Board of Commissioners. The new law makes no substantial change in the 1969 "home rule" statute except to permit propositions for altering the structure of the board of commissioners to be submitted at some time other than a general election. This permits implementation of an approved change much sooner than under the present law.

Article 5. Administration. Part 1. Organization and Reorganization of County Government. G.S. 153–76 permits the board of commissioners to create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the county government and to impose the duties of more than one office on a single officer ex officio. It also allows the commissioners to change the composition and manner of selection of county boards, commissions, and agencies and generally to organize the county government, subject only to four limitations: (1) the board may not abolish an office, etc., established or required by law; (2) the board may not combine offices when such action is specifically forbidden by law; (3) the board may not discontinue or assign elsewhere a function assigned by law to a particular office, etc., and (4) the board may not change the composition or manner of selection of the boards of education, social services, health, elections, or alcoholic beverage control. A comparable statute in G.S. Chapter 160A has been very broadly interpreted by the Attorney General to permit city councils to alter the terms of office of certain agencies established by local act.

Parts 2, 3, 4, and 5 of this Article, concerning administration in counties with and without managers, personnel matters, and the relationship of the board of commissioners with other county agencies are discussed in the article on personnel elsewhere in this issue of *Popular Government*.

Parts 6 and 7 of this Article, concerning the clerk to the board of commissioners and the county attorney, make no change in present law.

Article 6. Delegation and Exercise of the General Police Power. The present law conferring ordinance-making power on counties was enacted as part of the "home rule" package of the Local Government Study Commission in the 1969 session of the General Assembly. The General Assembly moved cautiously at first in granting this new power to counties, but as the power has been responsibly exercised, this initial reluctance has abated. The ordinance-making procedure was greatly simplified in 1971, and now the scope of the power has been greatly expanded in new G.S. Chapter 153. The new article on county ordinances is modeled directly on the comparable article in G.S. 160A.

The first significant change from present law granted express authority to enact ordinances applicable to less than the entire area of the county outside city limits.

The second, and most significant, change greatly expanded the section on enforcement of county ordinances found in G.S. 153–123. This section is taken almost verbatim from the city law and authorizes counties to enforce their ordinances by criminal prosecution, imposition of civil penalties, equitable remedies through the courts, or injunction and order of abatement.

Finally, the article contains several sections conferring regulatory power on counties with respect to specific problem areas. These are: regulation of solicitation campaigns and itinerant merchants; regulation of begging; abuse of animals; regulation of explosive, corrosive, inflammable, or radioactive substances; regulation of the discharge of firearms; regulation of pellet guns; possession or harboring of wild animals; removal and disposal of abandoned and junked motor

vehicles; noise regulation; regulation and licensing of businesses, trades, etc.; regulation of places of amusement; regulation of solid waste disposal; and granting cable television franchises.

The last item in this list, cable television franchises, grants to counties the same powers in territory outside municipalities as cities now possess inside their corporate limits.

Article 7. Taxation. This article makes two changes in the types of taxes available to counties. First, in keeping with their grant of power to franchise cable television, counties have an explicit grant of power to tax such a franchise. Second, there is a grant of power to levy animal taxes, instead of the dog tax. All existing general laws and local acts relating to the dog tax are repealed by Ch. 822 (H 329), and counties are given general power to levy an annual license tax on the privilege of keeping dogs and other pets.

On the administrative level, the statute follows the city law in explicitly permitting a county to provide penalties and interest for taxes where the enabling statute does not make such provisions, and in permitting the use of levy and sale and attachment and garnishment for collection of nonproperty taxes.

The most important change in the law respecting taxation was made by Ch. 803 (H 333), which is discussed later in this article.

Finally, G.S. 153–150 makes substantial changes in the procedures for establishing a reappraisal reserve fund. This portion of Ch. 822 (H 329) is discussed in the article on property taxation elsewhere in this issue of *Popular Government*.

Article 8. County Property. Part 1. Acquisition of Property. G.S. 153–159 confers the power of eminent domain on counties for all purposes now authorized, and also for solid waste collection and disposal facilities (primarily sanitary landfills) and county office buildings. In addition, counties are authorized to employ the condemnation procedure available to cities under G.S. Chapter 160A, Article 11.

Part 2. Use of County Property. The present restriction on moving the site of the county courthouse more than one mile from the existing site is eliminated from the law. Under G.S. 153–169, the commissioners may redesignate the site of the courthouse without restriction, except that the board "shall cause notice of its intention to do so to be published once at least four weeks before the meeting at which the redesignation is made."

Part 3. Disposition of County Property. This part is the only portion of new G.S. Chapter 153 that could be said to impose additional restrictions on counties beyond the present law. Under the present law, counties may dispose of surplus property in any manner that the board of commissioners deems advisable. Under G.S. 153–176, counties will be limited to the procedures set forth in G.S. Chapter 160A, Article 12.

Article 9. Special Assessments. There are only minor substantive changes in this article. It combines two articles of the present law, which had parallel provisions, into one article. Generally, the substantive changes streamline the procedure and conform the article to the city special-assessment statute.

Article 10. Law Enforcement and Confinement Facilities. This article continues, without substantive change, existing provisions permitting counties to establish and support training programs for law enforcement officers and provisions concerning minimum standards for local confinement facilities. Most of the provisions of law concerning the sheriff are in G.S. Chapter 162; therefore, the portions of old Chapter 153 pertaining to county prisoners have been transferred to Chapter 162.

Article 11. Fire Protection. This article simply groups three existing statutes into one article.

Article 12. Roads and Bridges. This article groups a number of provisions in the present law that provide for county actions regarding roads and bridges.

Article 13. Health and Social Services. This article, like the previous two, brings together a number of assorted sections scattered about the present law. Most of the law dealing with health and social services is found in other portions of the General Statutes, and these are noted by a cross-reference section. The only substantive change of note revises the law on "legal settlement" for public assistance purposes, and is discussed in the article on social services in the May issue of *Popular Government*.

Article 14. Libraries. This article has been considerably shortened from the present law, and one significant substantive change has been made. Under the existing statutes, a library must be administered by a board of trustees, and the structure of the board is set out in detail in the law. New Chapter 153 permits a county or city either to establish a library as a line department or to continue using a board of trustees. In addition, the powers of the board of trustees may be varied. Rather than impose a mass of statutory detail, the new statute leaves the structure and method of selecting the board of trustees, if one is used, to local discretion.

Article 15. Public Enterprises. This article provides a common source of powers to provide for and regulate a number of public enterprises. They are water, sewer, solid waste collection and disposal, airports, and off-street parking. Only the last is new, and its inclusion recognizes that some counties have included parking garages in governmental building complexes. The powers necessary to operate public

enterprises are essentially continued from the present law, although they have not been heretofore grouped in a single article.

Article 18. Planning and Regulation of Development. Articles 16 and 17 having been reserved to make room for future additions to the chapter, the next articles in sequence are Articles 18 and 19. These articles generally conform the county planning laws to those of cities. Specific changes from prior law are discussed in the article on planning development, and land-use regulation in the May issue of *Popular Government*.

Article 20. Consolidation and Governmental Study Commission. In recent years there has been much interest across the state in consolidating city and county governments. Full-scale studies and proposals have been made for Charlotte and Mecklenburg County, Durham and Durham County, and Wilmington and New Hanover County. Some interest has developed in Winston-Salem and Forsyth County, Fayetteville and Cumberland County, and Roxboro and Person County. Each time a proposal was developed, it was necessary to secure a local act authorizing establishment of a study commission, permitting the participating governments to finance the cost of the study, and calling for an election on whether to consolidate. Article 20 of new Chapter 153 obviates this necessity. Under this article, a governmental study commission may be created to study and propose methods for consolidating two or more contiguous counties, two or more contiguous cities, or a county and one or more cities within the county. The participating units of government are authorized to share the cost and to submit any consolidation proposals to a vote of the people. If the voters should approve, it would then be necessary to secure a local act of the General Assembly actually consolidating the governments and providing the new unit with its own charter.

Article 23. Miscellaneous Provisions. This article includes sections on liability insurance, photographic reproduction of county records, assistance to historical organizations, beach erosion control and flood and hurricane protection works, support of agricultural extension programs, promotion of soil and water conservation work, the county surveyor, authority to establish animal shelters, authority to designate the site of the "courthouse door," and several sections giving cross-references to county powers found in Chapter 160A of the General Statutes, such as parks and recreation programs. Only the sections concerning animal shelters and the courthouse door are new.

While many counties have established and are now operating animal shelters as a part of the dog warden's responsibilities, there has not heretofore been express statutory authority for such an operation. G.S. 153–442 gives express statutory sanction to county-operated animal shelters.

Throughout the law, certain judicial and administrative acts are required to be done at the "courthouse," the "courthouse door," the "courthouse bulletin board," or the "courthouse steps." In several counties, all county offices have been moved from the courthouse to a county office building that may be several blocks away from the old courthouse, which now houses only court rooms and court-related offices. This may make it inconvenient to conduct such acts as the property tax lien sale at the old courthouse door. Also, when the courthouse building is under repair, it may be physically impossible or unsafe to do these acts at the mandated location. G.S. 153–443 permits the county commissioners to determine whether the traditional location of the courthouse door, etc., has become inappropriate or inconvenient for purposes of performing official acts or posting legal notices and to designate some appropriate or more convenient site for these purposes. An ordinance making the change must be published in a newspaper and posted for sixty days at the traditional location.

LEVY AND USE OF THE PROPERTY TAX

Article V, section 2(5) of the North Carolina Constitution, effective July 1, 1973, reads:

> The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

This paragraph replaces the old "necessary expense" limitation and authorizes the General Assembly to decide for what purposes the property tax may be levied without a vote of the people. Under the terms of the Constitution, unless the General Assembly takes affirmative action to permit the levy of property taxes without a vote for a specified purpose, no property taxes may be levied for that purpose without an approving vote of the people of the taxing unit.

Ch. 803 (H 333) regulates the levy of property taxes by both counties and cities. The portion of the act concerning counties will be codified in the General Statutes as G.S. 153–65 until February 1, 1974, when the statute will be transferred to G.S. 153–149 in the newly revised Chapter 153 of the General Statutes enacted by Ch. 822 (H 329). The portion of the act concerning cities is discussed in the article on cities elsewhere in this issue of *Popular Government*.

The act groups the functions that counties are authorized by general law to undertake or perform into three categories. The first category contains those functions for which property taxes may be levied without a vote and without any restriction as to rate or amount. The second category includes functions

for which property taxes may be levied without a vote up to a maximum rate. The third category comprises functions for which property taxes may not be levied without an approving vote of the people.

Group One: No Vote, No Rate Limitation. The purposes for which counties may levy property taxes without a vote and without limitation as to rate or amount are shown in Table I.

Group Two: No Vote, Rate Limitation. Most of the functions that counties undertake fall into Group Two. For the purposes included in this category, counties may levy property taxes up to a maximum rate of $1.50 per $100 *appraised* value of property subject to taxation. In other words, the rate limitation of $1.50 assumes an assessment ratio of 100 per cent. In units with assessment ratios of less than 100 per cent, the actual rate limit is correspondingly increased. To find the rate limitation applicable to a particular county, divide $1.50 by the assessment ratio expressed as a decimal fraction of 100. For example, if the county assessment ratio is 60 per cent, the actual rate limitation is found by dividing $1.50 by .60, which gives an answer of $2.50. Under the provisions of Chapter 695 (S 147), the 1973–74 fiscal year will be the last for which an assessment ratio of less than 100 per cent may be used. Therefore, beginning with the 1974–75 fiscal year and thereafter, the actual rate limitation for the functions in this group will be $1.50.

The purposes for which counties may levy property taxes without a vote but within the $1.50 rate limitation are shown in Table II.

The act authorizes any county to hold a referendum to specially approve the levy of property taxes for any function that the unit is authorized to undertake, whether listed in Table II or not. If such a referendum is held and the tax is approved by the voters, the tax does not count against the $1.50 rate limitation. In addition, a county may hold a referendum on raising the $1.50 rate limitation to some higher limit.

While the act makes counties subject to a general rate limitation for the first time, the limitation is not likely to cause problems in any county for the foreseeable future. According to a rate survey done by the Local Government Study Commission for the 1971–72 fiscal year, the median effective tax rate for purposes subject to the rate limitation was $.2595, and the highest was $.5358.

Group Three: Vote Required. All functions not listed in either Group One or Group Two fall into Group Three, and property taxes may not be levied for these functions without an approving vote of the people. The act does not contain a list of these functions, but the most important of them are shown in Table III.

Without an approving vote of the people, no property taxes may be appropriated to any of the

Table I

Courts
Debt Service[1]
Deficits[2]
Elections[3]
Jails
Schools[4]
Social Services[5]
Joint Undertakings[6]

1. The amount required for payment of principal of, interest on, and fiscal agency fees for general-obligation boods and notes, not including payments related to revenue bonds.

2. Including only deficits caused by unintended and unforeseeable failure of revenue collections to meet budgeted revenue estimates, except revenues associated with public service enterprises such as water and electric systems, but not including deficits caused by overspending appropriatioos.

3. Including all national, state, district, and county elections, bond elections, and other county referendums.

4. Including the entire public school system from kindergarten through the community college system.

5. Including *only* the federal and state-mandated "categorical programs" and social services administration. All other social services programs are included in Group Two.

6. Including only joint undertakings with respect to any of the functions listed in Table I.

Table II

General administration
Agricultural extension
Air pollution control
Airports
Ambulance service
Animal protection and control
Beach erosion and natural disasters
Cemeteries
Civil defense
Debts and judgments[1]
Fire protection
Forest management and protection
Health
Historic preservation
Human relations programs
Hospitals
Jails
Law enforcement or sheriff's department
Libraries
Mapping
Medical examiner or coroner
Mental health
Parking
Open space
Recreation
Planning
Ports and Harbors and cooperative programs with N.C. Ports Authority
Register of deeds
Sewage collection and treatment
Social services[2]
Solid waste collection and disposal
Surveyor
Veterans Service
Water supply and distribution
Water resources projects
Watershed improvement projects
Joint undertakings of any of the above

1. This includes debts not evidenced by general obligation bonds or notes and judgments for sums of money rendered against the unit by a State or federal court. It does *not* include revenue bonds or judgments not reduced to a sum of money.

2. This includes all social services programs other than the "categorical" progtams.

functions listed in Table III or to any other function of the county that is not found in either Table I or Table II. If a referendum is held and passes, any property tax approved for functions in Group Three does not count against the $1.50 rate limitation.

Table III

Armories
Cultural activities[1]
Economic development[2]
Public housing
Urban redevelopment

1. This includes support for art galleries, museums, the North Carolina Symphony Society and similar activities in support of the arts.
2. This includes contributions to Chambers of Commerce, "industry hunting" activities, and similar efforts at economic development.

Status of referendums held before July 1, 1973. Many counties have held tax referendums in the past to levy property taxes for purposes that were not "necessary expenses" under the old Constitution. If the purpose for which the referendum was held is listed in Table II, the referendum is no longer valid for any purpose. The county is not subject to the old voted rate limitation for that particular purpose, and taxes levied for that purpose are not excepted from the general rate limitation. If the purpose for which the referendum was held is listed in Table III or does not appear in any of the tables, the referendum is still valid and the county may continue to levy taxes pursuant to the referendum. These taxes do not count against the rate limitation. Finally, the act has no effect whatever on voted school supplemental taxes.

Effect on other locally levied taxes. The old "necessary expense" limitation applied to all locally levied and collected taxes, which included the property tax, the local sales tax, dog taxes, privilege license taxes, the intangibles tax and arguably the excise stamp tax on deeds. The new constitutional provision (Art. V, § 2(5)) applies only to the property tax and, unless the Supreme Court reverses its decision in *Yokley v. Clark,* 262 N.C. 218, to the intangibles tax. The 1973 General Assembly has not placed any restrictions on the use of locally levied taxes other than the property tax, and therefore under the new Constitution, all of these taxes (except the dog tax) may be used for any public purpose. Language in the local-option sales tax act that formerly restricted its use to "necessary expenses" when the tax was instituted without a vote of the people has been repealed by Ch. 302 (H 341). Finally, all restrictions on use of the dog tax will be repealed on February 1, 1974, by Ch. 822 (H 329).

COUNTY SERVICE DISTRICT ACT

Article V, section 2(4), of the Constitution, effective July 1, 1973, reads as follows:

> (4) *Special tax areas.* Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

Before insertion of this provision into the Constitution, the Supreme Court had ruled that the property tax had to be levied at the same rate uniformly throughout the geographic extent of the taxing unit. As counties have begun to move more and more into public enterprises like water systems and solid waste collection and disposal, it has become apparent that there is often a need in portions of the county's area for a county-operated service that is not needed at all or to a lesser degree in other areas. If a county, under the old Constitution, wanted to provide solid waste collection and disposal services, for example, even countywide, there remained the problem of equitable treatment for those citizens of the county who lived within cities and towns that provided the same service.

Chapter 489 (H 330) implements the new constitutional provision quoted above which solves the problem of providing county services on less than a countywide basis. This act, which will be codified as Article 16 of the new G.S. 153, authorizes the board of commissioners to define service districts for the purpose of providing one or more of the following services: beach erosion control and flood and hurricane protection, fire protection, recreation, sewage collection and disposal, solid waste collection and disposal, and water supply and distribution.

The procedure for establishing these districts is fairly simple. In the first step, the commissioners are to determine the boundaries of a proposed district. The board is then to determine whether the proposed district meets the standards set out in the act. Those standards are: (1) whether there is a demonstrable need for the service within the district; (2) whether it is feasible to provide the service countywide; (3) whether the service can be provided in the district without unreasonable or burdensome tax levies; and (4) whether there is a demonstrable demand for the service by those residing in the district. In reaching a conclusion on these standards, the commissioners are to consider the following factors: (1) the resident and seasonal population and population density of the district; (2) the appraised value of property in the district; (3) the existing county and city tax rates applicable to the district; (4) the ability of the district to sustain additional taxes necessary to provide the service; (5) in the case of water, sewer, or solid waste services, the probable net revenues of the project and the extent to which the service will be

self-supporting; and (6) any other matters relevant to the question of establishing the district.

Having reached a tentative decision as to the boundaries of the district and whether these standards can be met, the board must then prepare a report containing a map of the district, a statement showing that the district meets the standards discussed above, and a plan for providing services in the district. This report is then filed for public inspection, and a copy is mailed by first-class mail to all persons owning property in the district as shown by the county tax records. The latter requirement may make it difficult to establish districts under the act in counties without tax maps.

After the report has been published and mailed, a public hearing is held on establishment of the district; after the hearing the commissioners may proceed to establish it.

Once the district is established, the services proposed for it must be provided, or contracts let for the service, within one year. Property taxes may be levied within the district to finance the services provided therein. If bonds must be issued for the district, they must be concurrently approved by both a county-wide vote and a vote within the district; however, taxes necessary to meet debt service payments on such bonds would normally be levied only in the district.

While it is much too early to predict what use will be made of it, this statute has enormous potential significance for local government in North Carolina. With its enactment, counties are now equipped to provide a full range of governmental services, with the single major exception of streets and street lighting, to urbanized areas within the county. It is no longer necessary to incorporate a new city or to establish a special district to provide water and sewer, garbage and trash collection, and fire protection to such an area. When these powers are added to the county's existing authority to undertake land-use regulation and to enact general criminal ordinances, one is hard put to suggest any compelling reason to incorporate new cities in North Carolina, assuming that the board of county commissioners is willing to undertake a new role as a municipal governing board for portions of the county.

CONSOLIDATED CITY-COUNTY ACT

Chapter 537 (H 332) sets up machinery for operating a consolidated city-county if one is created by local act of the General Assembly. This act is discussed more fully in the article on cities elsewhere in this issue of *Popular Government*.

SANITARY LANDFILL SITE RECORDATION

Chapter 444 (H 337) requires that the certificate of approval issued by the State Board of Health for a sanitary landfill must contain a description of the land that would be sufficient in a deed of conveyance and that this certificate be recorded in the office of the register of deeds of the county in which the land lies and indexed in the grantor index under the names of the original owners. The purpose of the statute is to put subsequent purchasers of the property on notice that it has been used as a landfill at some time in the past. Landfill sites may be used for many purposes once they are exhausted for solid waste disposal purposes, but some kinds of construction cannot be safely erected on such property for many years.

FINANCE ACT AMENDMENTS

The Local Government Finance Act, Chapter 159 of the General Statutes, takes effect on July 1, 1973, and governs the adoption and administration of local government budgets and the issuance of local government bonds after that date. The effective date of this statute was purposely delayed by the 1971 General Assembly to afford county and city finance officers and bond attorneys an opportunity to scrutinize the new law in order that defects could be remedied before it actually went into effect. During the eighteen months between adjournment of the 1971 General Assembly and the convening of the 1973 General Assembly, the Local Government Study Commission supervised an intense study of Chapter 159 of the General Statutes and recommended many amendments to the statute. Most of these amendments were of a technical or clarifying nature and will not be discussed here. However, there were significant substantive changes in the law that will be briefly summarized.

Chapter 474 (H 335) amended the Local Government Budget and Fiscal Control Act in the following particulars:

1. All local acts in conflict with the budgeting and fiscal control portions of the LGBFCA are repealed except local acts regarding the distribution among funds of the proceeds of delinquent tax collections. This includes all local acts providing for the election of county auditors or accountants and local acts providing any method of appointment of the finance officer (auditor or accountant) other than appointment by the board of commissioners or county manager. Thus, as of July 1, 1973, all county finance officers hold office at the pleasure of the board or manager without regard to the provisions of local acts, except that local acts providing for appointment of the finance officer directly by the board of commissioners rather than the manager are not repealed.

2. The definition of "public authority" in the LGBFCA has been expanded to include various regional and joint agencies. In addition to agencies covered by the original definition of public authority, the act now covers any

[l]ocal governmental authority, board, commission, council, or agency that (a) is not a municipal corporation, (b) is not subject to the Executive Budget Act, and (c) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

Agencies now within the definition of "public authority" include regional councils of government, district health departments, and area mental health boards. In addition, some types of cooperative organizations such as city-county planning boards and regional libraries may become "public authorities" for the purposes of the LGBFCA if they are not carried as a part of the budgeting and accounting systems of one of the sponsor governments.

3. Clarifying amendments make it absolutely clear that no money, regardless of source, may be disbursed by a county unless an appropriation therefore appears in its budget ordinance.

4. The mandatory waiting period between submission of the budget and adoption of the budget ordinance has been reduced from 20 days to 10 days.

5. The requirement of a capital project fund has been modified to permit accounting for more than one bond order in the fund, so long as the proceeds of each bond order are segregated by appropriate accounting techniques.

6. There is a new requirement to maintain a separate reappraisal reserve fund, which should accord with current practice in most instances.

7. Three new directions and limitations have been added to G.S. 159–13(b). They are: (1) moneys required by continuing contracts entered into in prior years must be appropriated; (2) each fund must be balanced (as well as the entire budget ordinance); and (3) moneys may not be transferred from the reappraisal reserve fund for any purpose other than paying for the octennial reappraisal. These additions merely make explicit what was previously implied.

8. G.S. 159–22 has been amended to eliminate the veto of school boards and boards of health over withdrawals from capital reserve funds established for educational or health-related purposes.

9. The requirement in G.S. 159–25(b) that two signatures appear on each check or draft is modified to permit the board of commissioners to waive this requirement if the board is satisfied that other internal control procedures are sufficient. In addition, any suggestion that documents evidencing investments require two signatures for transfer or conversion to cash is eliminated from the statute.

10. The daily deposit law, G.S. 159–32, is modified to permit deposits to be made with the finance officer as well as in an official depository. In addition, the requirement of special clearing accounts is deleted to allow money to be deposited directly in the unit's principal account.

11. The requirement that the finance officer audit monthly all officials collecting or receiving money is modified to *authorize* such audits but not require them.

12. Special provisions have been made for public hospitals, and they need not be made a part of the county budget.

Ch. 494 (H 710) makes numerous technical and clarifying amendments to the Local Government Bond Act, the Local Government Revenue Bond Act, and the statutes concerning issuance and sale of bonds, tax and revenue anticipation notes, bond anticipation notes, and long-term financing agreements. Only two of these make substantive changes of enough general interest to merit discussion here.

Originally the Local Government Bond Act provided simply that bonds could be issued for any purpose for which the issuing unit was authorized to levy taxes, except for current operating and maintenance costs. This broad and simple language has been replaced by a detailed list of specific purposes for which bonds may be issued.

H 710 originally provided that bonds could be issued under the two-thirds limitation for any purpose. This portion of the bill was amended in the Senate to exclude from the two-thirds authorization county bonds for auditoriums, coliseums and convention centers, art galleries, museums, historic properties, and urban redevelopment, with the effect that bonds issued for those purposes will always require voter approval even though the principal amount does not exceed two-thirds of net debt reduction in the preceding fiscal year.

MISCELLANEOUS

Ch. 204 (H 36) abolishes the welfare lien prospectively but does not apply to liens created before April 16, 1973, the effective date of the act. This act is discussed more fully in the article on social services in the May issue of *Popular Government*.

Ch. 54 (H 314) makes a minor amendment in the statute on filling vacancies in the board of county commissioners to take into account a member who was elected without political party affiliation. As rewritten, G.S. 153–6 will require that a person appointed to fill a vacancy be a member of the same political party as the member being replaced only when the member being replaced was elected as the nominee of a political party. This act is effective as of March 5, 1973.

Ch. 232 (H 525) and Ch. 510 (H 1166) make technical changes in the Clean Water Bond Act. These acts are discussed in the article on environmental legislation elsewhere in this issue of *Popular Government*.

Ch. 786 (H 1302) is a complex new statute authorizing counties and cities, subject to a vote of the people, to enter into binding agreements for the levy of an annual maintenance tax for hospital and airport facilities financed by revenue bonds. The act was introduced primarily for the benefit of the Raleigh-Durham Airport Authority, but has general application. In brief, the act contemplates the issuance of revenue bonds by or on behalf of an airport or hospital with a governmental guarantee that the revenues of the enterprise will be supplemented by a property tax levy on behalf of the airport or hospital if the revenues of the facility are not sufficient to retire the revenue bonds. This act is a departure in local governmental finance in North Carolina.

Ch. 499 (S 518) is also in essence a local act, although it is of general application. It amends the Local Government Bond Act to permit the issuance of bonds authorized between July 1, 1968, and December 31, 1969, at any time within seven years of the authorization, instead of five years as is the general rule.

Ch. 766 (S 18) is one of the most significant and far-reaching of the 1973 General Assembly's acts concerning both counties and cities. It imposes a state salary scale for local law enforcement officers. The act is discussed in detail in the article on personnel elsewhere in this issue of *Popular Government*.

LOCAL LEGISLATION

North Carolina's local bill system offers local government an opportunity to experiment with innovative programs and governmental structures that could not gain enough support for enactment as statewide measures. Two items in particular in the Mecklenburg County legislative program this year clearly demonstrate the usefulness of the local bill system. Ch. 454 (H 811) authorizes the Mecklenburg County Board of Commissioners, after public hearings, to assume direct control over all programs under the supervision and control of the board of health, the board of social services, and the board of mental health. These boards would be replaced by advisory committees. This permits the Mecklenburg Board of Commissioners to reorganize all social services and health programs as line departments under the direct control of the board through the county manager.

The second Mecklenburg item of note (Ch. 428, H 815) gives the county the power of eminent domain to acquire, widen, extend, or improve streets, alleys, sidewalks, and other public rights-of-way. Since the county has no power to undertake street construction or maintenance, the apparent purpose of this act is to permit the county to act in effect as a city's agent in acquiring street rights-of-way in advance of planned annexations.

Guilford County obtained an act authorizing the establishment of law enforcement districts for the purpose of providing law enforcement services to a greater extent than those provided for the entire county (Ch. 379, H 767). Those districts would be established by the same procedures used to set up rural fire protection districts.

Guilford County also obtained a local act authorizing the board of commissioners to enact ordinances regulating sedimentation when land is stripped for development. A similar bill for Orange County (H 757) was reported unfavorably in the House, and a similar bill for New Hanover (H 1279) was pending in the Senate Calendar Committee upon adjournment.

Several boards of commissioners obtained local acts modifying the structure of the board. Union County went to staggered four-year terms (Ch. 68, S 313). Rutherford County abandoned district election of the board, but retained its districts for the purposes of nominating candidates (Ch. 365, H 1104). Yadkin (Ch. 351, H 788) and Mitchell (Ch. 347, H 758) counties moved from two-year terms to staggered four-year terms. Yadkin also instituted districts for the purpose of nominating commissioners (Ch. 157, H 493). Finally, Madison County abandoned two-year terms for straight four-year terms (Ch. 169, H 579).

The 1973 session saw an unusual surge of interest in county police departments. Mecklenburg and Gaston counties have had county police for many years, but few other counties have taken up the idea. Chapter 101 (S 464) creates a Public Safety Commission in Columbus County with authority to appoint a county police force. This measure is unusual in that it removes law enforcement from both the sheriff and the board of commissioners, vesting it in an independent commission appointed by the General Assembly (or, more accurately, by those members of the General Assembly representing Columbus County). Burke County's bill, Ch. 268 (H 754), appears to be modeled on the Mecklenburg plan. It authorizes the county commissioners to establish a police department and divests the sheriff of law enforcement responsibilities. A bill for Macon County (H 1335) passed the House but was still pending in the Senate Calendar Committee upon adjournment. Bills for Forsyth (H 552) and Catawba (H 954) Counties were reported unfavorably in the House.

Before the 1969 "home rule" legislation, the General Assembly routinely fixed the salaries and allowances of many boards of commissioners and other county officers. Since salary powers have been completely delegated to boards of commissioners pursuant to laws enacted in 1969, very few salary bills have been enacted in Raleigh. There were only three this session, not counting salary bills for boards of education and boards of social services. The Bertie commissioners obtained a local bill to set their own salaries (Ch. 180, S 467), as did Yadkin's board (Ch. 155, H 371). Ch. 397 (H 804) placed the sheriff of Tyrrell

County on a salary rather than fee basis, thus eliminating one of the state's last remaining bastions of the fee system.

Other local bills of note are discussed in various articles elsewhere in this issue of *Popular Government*.

It is highly unusual for a local bill to attract statewide opposition, but proposals for Columbus County (S 724 and S 725) did so this session. S 724 would have fixed the salary of virtually every employee of Columbus County directly supervised by the board of commissioners, and S 725 would have discharged the incumbent tax collector and replaced him with an appointee named in the bill. These bills attracted wide press coverage and provoked the North Carolina Association of County Commissioners to go on record for the first time in memory as opposing a local bill. Both bills were pending in committee in the Senate upon adjournment, but the members of the Columbus County legislative delegation publicly announced that the bills would not be reported from committee.

Criminal Law

Douglas R. Gill and Michael Crowell

HIGHLIGHTS

Three criminal justice matters dealt with by the General Assembly consumed the lion's share of public attention: legislation dealing with capital punishment, with the organizational relocation of the State Highway Patrol, and with a code of pretrial criminal procedure. The General Assembly left all three of these matters unresolved—to be dealt with after reconvening in January 1974.

Capital Punishment

When the 1973 Assembly convened in early January, it was faced with a 1972 United States Supreme Court decision, *Furman v. Georgia*, that raised doubts about the constitutionality of North Carolina's (and almost all other states') capital punishment statutes. The constitutional problem lay in allowing juries unbridled discretion to choose between life imprisonment and death for the same crime. A number of bills introduced early in the session were concerned with the death penalty. Most proposed removing the jury's option to recommend life imprisonment; and when the North Carolina Supreme Court decided *State v. Waddell* soon after the session began, this change was essentially what was accomplished. The provisions allowing the jury to reduce punishment to life were read out of the death penalty statutes, and North Carolina was left with a mandatory death penalty for first-degree murder, arson, rape, and first-degree burglary. When the legislature adjourned several months later, this remained the law; final agreement was never reached on any of the fourteen capital punishment bills that were introduced.

Of the capital punishment bills, S 157 came closest to being enacted. The two houses passed different versions of it, but the conference committee could not reach a compromise before adjournment and will report in 1974. In each version, death would be the punishment for only first-degree murder (life imprisonment, for the three other current capital offenses); however, the definitions of first-degree murder differ in the two versions—primarily, they differ on whether a killing should be considered first-degree murder because it is done while committing another felony (the felony murder rule). The two houses also disagreed about the punishment for second-degree murder—30 years (House) or life (Senate).

Two other capital punishment bills received some attention. On second reading the House defeated H 112, which would have eliminated the death penalty altogether but would have put further restrictions on parole of those sentenced to life imprisonment. The Senate passed, but House Judiciary Committee No. 2 killed, S 158, which would have redefined rape and carnal knowledge offenses and provided mandatory death for what was termed "first-degree rape."

Highway Patrol Relocation

Perhaps the bitterest partisan debate of the session was sparked by H 1334, the bill to transfer control of the State Highway Patrol from the Governor

to a new Public Safety Commission. Throughout the session, Democrats expressed concern that the new Republican administration would replace many state employees for political reasons. Most attention focused on the Department of Motor Vehicles, which has jurisdiction over the Patrol. The proposed Public Safety Commission would consist of nine members, three each appointed by the Governor, by the President of the Senate (who is the Lieutenant Governor and currently a Democrat), and by the Speaker of the House (also currently a Democrat). The only agency under the Commission's control would be the Patrol. During the debate in the House, the bill was amended to restore the Governor's authority unilaterally to direct the Patrol to suppress civil disorders and meet other emergencies. Introduced less than two weeks before adjournment and reported out of committee within two legislative days, H 1334 passed the House—but only after harsh charges had flown back and forth between Republicans and Democrats. It reached the Senate two days before adjournment, was referred originally to Judiciary No. 1, then was transferred to the State Government Committee for consideration during the interim before the Assembly reconvenes in 1974.

Code of Pretrial Criminal Procedure

An extensive revision and codification of the laws of pretrial criminal procedure was introduced in the House as H 256 and in the Senate as S 207. The bill remains in committee in both the House and Senate. Although consideration of this bill was not extensive during the 1973 session, reaction to it suggests that the bill's provisions for electronic surveillance and for entry to make searches and arrests in some circumstances without giving prior notice will be the most hotly discussed features of the bill. It also appears likely that the bill's encouragement of pretrial motion practice, which could increase paper work for solicitors and judges, and its provision extending protection to defendants in some cases beyond that required by U.S. Supreme Court decisions may become the target of intensive consideration. A more detailed description of this bill appears in an article by William Britt, chairman of the commission that drafted the bill, in the February 1973 issue of *Popular Government*. Before the General Assembly reconvenes, the Interim Senate Judiciary Committee and a House Select Committee will consider this bill.

In any event, the commission that drafted the bill will continue and likely extend its work into trial procedure and the substantive criminal law. Res. 26 extends the life of the commission until February 1, 1975 and expands the commission's membership by four, all to be State Bar members who practice criminal law.

ENACTED LEGISLATION

Although the most attention-grabbing criminal justice bills are still pending, a substantial number of bills affecting criminal justice did win final passage—bills that created new criminal offenses or modified old ones, changed punishments, changed the way a criminal case is handled, and affected the personnel and organization of criminal justice agencies.

New and Modified Offenses and Punishments

Most of the changes in offenses and punishments enacted by the 1973 General Assembly are fairly simply summarized and so appear in a table on page 32.

Modification of abortion statutes, prompted by 1971 United States Supreme Court decisions and enacted as Ch. 711 (H 615), were more complex. This bill rewrote G.S. 14–45.1 to provide that a woman may at her own discretion choose to have an abortion within the first twenty weeks of pregnancy if the operation is performed by a licensed physician in a certified facility. After the first twenty weeks, the abortion may still be performed if there is substantial risk that continued pregnancy would threaten the life or gravely impair the health of the woman. The same law provides that no doctor or facility is obliged to perform abortions. The reporting requirements for abortions have been dropped in favor of statistical sampling.

Pretrial, Trial, and Appellate Procedure

Pretrial procedure was largely untouched by bills enacted by the 1973 legislature (although the pending code of pretrial procedure, described earlier, suggests the subject was hardly ignored). The only bill ratified that treats this subject is Ch. 696 (S 497), which deals with arresting public drunks. It is intended to make clear that law enforcement officers who encounter public drunks have options other than arrest. Each year, about one-quarter of the arrests in the United States and one-third of the nontraffic arrests in North Carolina are for public drunkenness. Because of the substantial public expense involved in making these arrests and because many offenders present no public danger, there has been considerable agitation in the last few years either to repeal or to modify the drunkenness law. Ch. 696 (S 497) represents a cautious step in that direction. The drunkenness offense is not repealed but the statute now specifies an officer's options in addition to conventional arrest and jailing—taking the drunk home or taking him to a treatment facility. No guidelines state when a person should be criminally charged and when he should be handled otherwise. The bill as ratified represents a distinct change from the bill originally introduced; the original bill would have permitted the officer to transport the drunk to a jail without arresting him and the drunk could be released either

Table 1
1973 Changes in Offenses and Punishments

Ch.	*Bill No.*	*G.S. §*	*Old Offense*	*New or Revised Offense*	*Old Penalty*	*New Penalty*	*Effective Date*
229	S64	14–32	Assault with deadly weapon with intent to kill inflicting serious injury	Same	Up to 10 yrs. imprisonment, fine, or both	Up to 20 yrs. imprisonment, fine, or both	1/ 1/74
229	S64	14–32	Assault with deadly weapon inflicting serious injury	Same	Up to 5 yrs. imprisonment, fine, or both	Up to 5 yrs. imprisonment, fine, or both	1/ 1/74
229	S64	14–32	Assault with firearm with intent to kill	Assault with deadly weapon with intent to kill	Up to 5 yrs. imprisonment, fine, or both	Up to 10 yrs. imprisonment, fine, or both	1/ 1/74
229	S64	14–33	Assault attempting to inflict serious injury	Assault inflicting or attempting to inflict serious injury	Imprisonment up to 6 mos., fine up to $500, or both	Imprisonment up to 2 yrs., fine or both	1/ 1/74
229	S64	14–33	Assault by male on female	Assault by male over 18 on female	Imprisonment up to 6 mos., fine up to $500, or both	Imprisonment up to 2 yrs., fine or both	1/ 1/74
229	S64	14–33	Assault on children under 12	Same	Imprisonment up to 6 mos., fine up to $500, or both	Imprisonment up to 2 yrs., fine or both	1/ 1/74
229	S64	14–33	Assault inflicting serious injury	Assault inflicting or attempting to inflict serious injury	Imprisonment up to 2 yrs., fine, or both	Same	1/ 1/74
229	S64	14–33	Assault with intent to kill	Assault inflicting or attempting to inflict serious injury	Imprisonment up to 2 yrs., fine, or both	Imprisonment up to 2 yrs., fine, or both	1/ 1/74
235	S184	14–89.1	Safecracking	Same	10 yrs. to life imprisonment	2 to 30 yrs. imprisonment	4/19/73
238	H358	14–72	None (was embraced within general offense of larceny)	Larceny of firearm	None (except as applicable to general offense of larceny)	Up to 10 yrs. imprisonment, fine, or both	7/ 1/73
240	H275	90–113	Furnishing controlled substances to inmates	Repealed	Unclear	None	4/19/73
257	S193	14–72	None	Transferring price tags or remarking prices and presenting for purchase	None	First offense: up to 6 mos. imprisonment, $100 fine, or both; subsequent offenses: up to 2 yrs. imprisonment, fine, or both	10/ 1/73
466	H407	14–363	None	Selling baby fowl or rabbits as pets	None	Up to 30 days imprisonment up to $100 fine, or both	7/ 1/73
648	S21	14–155	Tapping telephone or telegraph wire	Tapping telephone, telegraph, or cable TV wire	Up to 10 days imprisonment and up to 10 days fine for each day of offense	Same	5/ 5/73

after 24 hours or when he asked to be released. The final version makes it clear that the public drunk is to spend time in jail only if arrested in the conventional manner.

Recent U.S. Supreme Court decisions made clear that the North Carolina statutes providing counsel to indigent defendants were constitutionally inadequate because the statutes provided counsel only when the authorized punishment exceeded six months imprisonment or a $500 fine. Thus an amendment to G.S. 7A–451 (Ch. 151, S 77) extends counsel to indigent defendants in any case in which imprisonment or a fine of $500 or more is likely to be adjudged. Similarly, recent U.S. Supreme Court decisions made clear that counsel for indigents is necessary at a hearing for revocation of probation when confinement results, so the same section was rewritten to provide counsel whenever revocation could result in imprisonment; this went beyond the former provision that allowed counsel only when the probationer had counsel at his trial or when confinement for more than six months would be possible. On the other hand, a U.S.

Supreme Court decision narrowed the requirement that counsel be provided at most pretrial identification procedures or line-ups. Ch. 151 (S 77) responded to this decision by narrowing the requirement of counsel at pretrial identifications to the minimum required by the recent Supreme Court ruling: The defendant is entitled to counsel only when the identification procedure occurs after formal charges have been preferred.

Ch. 230 (S 210) amends G.S. 9–3 to permit those who have been convicted of a felony or those who have pleaded guilty or nolo contendere to an indictment charging a felony to serve as jurors if their citizenship has been restored.

Three other bills passed by the General Assembly dealt with appeals from criminal cases. Ch. 122 (S 209) provides that a defendant who pleads guilty or nolo contendere to a criminal charge in the superior court may have his case reviewed on appeal only upon writ of certiorari, not by appeal. This places the review of cases decided by guilty plea or nolo contendere at the discretion of the appellate court. Ch. 704 (H 1158) changes G.S. 7A–27, dealing with appeals from superior courts, so that it is consistent with the limits placed on the review of cases decided by plea. By the terms of G.S. 15–179, when the state loses a criminal case, it may appeal only in limited instances. Ch. 467 (S 219) enlarges the circumstances when the state may appeal; it grants the state the right to appeal when the prosecution of the defendant has been dismissed on a claim of double jeopardy.

Sentencing procedure is affected by Ch. 44 (S 211), which creates a new Article 19A in G.S. Ch. 15. The article deals with credits toward a sentence allowed to a convicted offender when he has previously been in custody for the charge for which he is convicted. The bill repeals G.S. 15–176.2 (credit for time in confinement pending trial) and G.S. 15–186.1 (credit on sentence pending appeal) and consolidates their provisions. In addition to continuing most of the credits allowed under the old section, this new article also gives credit for time spent awaiting trial while in custody as a result of incapacity to plead (an exception that by amendment was deleted from the original bill) and expressly gives credit for time spent in custody while awaiting a hearing for parole or probation revocation hearing.

Personnel Matters

Training and benefits were the subjects of legislation relating to criminal justice personnel.

The most immediate impact of these bills probably will come from Ch. 766 (S 18), establishing a minimum salary scale for law enforcement officers. Beginning October 1, the minimum pay for any officer will be $6,000 per year. For supervisory levels, the minimums are set according to the nature of the office and the size of the governmental unit that employs the officer. For example, chiefs of police in municipalities with over 20,000 population have a minimum salary of $14,000 (the highest level on the scale) and middle-management positions in counties of 50,000 to 100,000 or municipalities of 10,000 to 20,000 have a minimum of $7,500. An appropriation of $2 million in the budget act will provide state funds to help meet minimum salaries for the next fiscal year. After two years local governments must assume full responsibility for meeting the minimum salary levels.

Of less immediate effect is Ch. 749 (S 667), authorizing a state Criminal Justice Education and Training System. The Department of Justice is to establish the system, which will have two primary components: (1) a Criminal Justice Education and Training Center for instruction of agents of the State Bureau of Investigation and any other state agency choosing to affiliate and also for preparation of instructors of local training programs; and (2) a coordinating and supervisory activity to see that adequate training is provided for both state and local law enforcement agencies. The system is to be managed by a 38-member council whose membership is set out in the act.

Retirement and death benefits for law enforcement officers were also revised by the 1973 legislature. Ch. 635 (H 97) appropriated $2.1 million for fiscal year 1973–74 to increase benefits for those in the Law Enforcement Officers' Benefit and Retirement System and to update this benefit program. The preamble to the act suggests that the program will include provisions to allow officers who are currently members of the Teachers' and State Employees' and Local Governmental Employees' retirement systems to transfer membership to the LEOBRF. The authority for that transfer is contained in Ch. 572 (H 96), which allowed the change to be made any time before June 30, 1974. Total death benefits payable to surviving spouses or dependent children of law enforcement officers were increased from $10,000 to $25,000 by enactment of Ch. 634 (H 89), and firemen and rescue squad workers were added to those groups covered by the act. (The act, however, does not amend G.S. Ch. 118A, which already provides a separate Firemen's Death Benefit Act; it is not clear which of the two laws would be applicable to a fireman killed in the line of duty.)

Miscellaneous Enacted Provisions

Ch. 748 (S 640) provides that first offenders under the age of 18 may have their records expunged if they keep a clean state for two years after the conviction. This law is discussed in greater detail in the article on courts in the May, 1973, issue of *Popular Government*.

Ch. 809 (S 751) expressly creates a civil right of action for the recovery of actual and punitive damages from anyone who knowingly has or has had possession of property stolen from the plaintiff.

Ch. 251 (H 33) alters the procedures (contained in Chapter 13 of the General Statutes) for the restoration of the citizenship of someone convicted of a felony. The new procedure calls for the automatic restoration of the offender's citizenship and places the duty on state agencies to restore the citizenship. Old Chapter 13 required that the offender himself initiate the proceedings to have his citizenship restored; then a hearing followed to determine whether that action should be taken.

Assistance to solicitors took several different forms. The general public may soon have some better idea of what the office is. Ch. 47 (S 123) provides that the term "district attorney" may be used optionally to describe the office, and if the constitutional amendment proposed by Ch. 394 (H 554) is approved by voters in November, that new terminology will become the language of the State Constitution.

Ch. 646 (H 970) authorizes additional assistant solicitors for twelve of the thirty solicitorial districts, effective July 1, 1973, and Ch. 807 (H 929) provides that each solicitor may employ one administrative assistant, who need not be an attorney, to help prepare cases and expedite the criminal docket. When a particularly difficult or time-consuming case comes up, the solicitor may now ask for the assistance of the new Special Prosecution Division, created within the Attorney General's office by Ch. 813 (H 670) and funded with nearly $83,000 for each of the next two fiscal years by Ch. 814 (H 671).

A new permanent commission will study North Carolina's system for enforcing criminal laws and review and coordinate recommendations of different agencies on legislative changes to reduce crime. The Crime Study Commission, created by Ch. 801 (S 852), will have nine members (the Governor, Lieutenant Governor and Speaker of the House each appoints three), who must be members or former members of the General Assembly. The Commission must report annually to the legislature.

Beginning July 1, 1973, those in "private protective services" are subject to licensing requirements similar to those of Article 9A of G.S. Ch. 66, which was previously applicable only to private detectives. The new law (Ch. 528, H 1020, later amended by Ch. 738, H 1347), governs such occupations as armored car personnel, providers of alarm systems, couriers, and patrol and dog guard services, as well as private detectives and investigators. Insurance adjusters, those investigating financial ratings, and attorneys and their agents are still exempted. To be licensed, a person must be at least 18 and have three years of experience in private investigative work or two years in law enforcement investigative work. The act prohibits a law enforcement officer from holding a private protective license.

Criminal law enforcement in several different counties will be affected by local acts passed in 1973. Ch. 101 (S 464) has created a county police department for Columbus County, leaving the sheriff with service of civil process and attendance on the courts. The county police will be supervised by a Public Safety Commission composed of five members chosen by the General Assembly—or more accurately, by the Columbus delegation. (The first five commissioners were set out in a local bill—Ch. 311, H 1110). The Burke county commissioners now have authority to create a county police department (Ch. 268, H 754) which, if established, will have a merit board to oversee hiring. The legislation specifies that if the county department is created, it will not affect the sheriff's jurisdiction. A county police proposal for Macon, similar to that for Columbus, passed the House but is still in the Senate Calendar Committee. The main difference between H 1335 and the Columbus legislation is that the safety commission in Macon would be chosen by the county commissioners. The only other local bill on this subject to be ratified was Ch. 297 (H 876), creating a Personnel Advisory Board to establish a merit system in the Buncombe County sheriff's department.

Also enacted was Ch. 791 (S 851), authorizing the Gaston county commissioners, if they so choose, to abolish the existing county police department.

Two bills were passed dealing with correctional programs. Ch. 161 (S 353) repeals G.S. 148–52(e), which contains a reference to the State Board of Correction and Training, an institution long since defunct.

According to Ch. 671 (H 468), in supplying laundry services, the Department of Correction is limited to servicing only state agencies and hospitals controlled and supported by a county or municipality presently being served by the Department of Correction. The laundry services that the Department of Correction can supply in such instances may not include dry cleaning. The bill would have limited the Department of Correction laundry service to laundering only flat goods and apparel owned and controlled by state agencies, but this restriction was removed by amendment before the bill was enacted.

MATTERS STILL PENDING

Like the bills dealing with the three well-publicized subjects discussed earlier (capital punishment, Highway Patrol relocation, and code of pretrial procedure), a substantial number of other criminal justice bills remained in committee at the end of the 1973 session; thus they are subject to further action when the Assembly reconvenes in 1974.

Pending Substantive Criminal Law

Identical bills were introduced to rewrite the perjury laws; both S 262 and H 320 remain in the Judiciary No. 1 committees to which they were originally referred. Modeled on the proposed Federal Criminal Code of the National Commission on Reform of Federal Criminal Laws and sponsored by the Solici-

tors' Association, the legislation would retain the current felony offense for perjury without substantial change (including the "two-witness" rule). However, a new lesser included offense of false swearing in official proceedings would be added. For that offense, a general misdemeanor, it would not be necessary that the statement be material and two witnesses would not necessarily be needed for conviction. Other new misdemeanors created by these bills would include a general falsification offense (covering falsifications—not merely direct statements—in various governmental matters) and an offense of making false reports to security officials. Materiality is defined in the proposed statute and is stated to be a question of law. Retraction would be a defense if it were made before the falsification became apparent to others and before the proceeding had been affected by the falsification.

Another portion of the criminal statutes proposed to be rewritten by 1973 legislation is that on lotteries and gambling. The bill, H 1280, remains in the House Judiciary Committee No. 1. If enacted, it would replace the current statutes with a new scheme in which punishment would be based on the extent of the gambling activity involved. The offenses under the new law would be: gambling (fine only), promoting gambling in the first degree, promoting gambling in the second degree, first-degree possession of gambling records, second-degree possession of gambling records, and possession of gambling devices. Whether an offense were second or first degree would depend on the extent of the activity; for example, to be guilty of promoting gambling in the first degree, the defendant bookmaker would have to have taken in one day more than five bets totaling more than $2,000 (but the offense could be proved in other ways as well).

A number of other less extensive bills still pending in committee, and thus subject to be acted upon when the Assembly reconvenes in January 1974, would affect the punishments for offenses or would create new or modified offenses. These include a prohibition against the possession or manufacture by inmates of the Department of Correction of any type of deadly weapon or lethal substance, upon penalty of imprisonment up to ten years (S 149); a provision making disorderly conduct that disrupts a hospital or clinic a misdemeanor (S 352); and a prohibition against the manufacture, sale, or possession of a sawed-off shotgun (S 435). One pending bill would also include an intentionally caused public disturbance disrupting the teaching of students or the peace or discipline at a school as a kind of disorderly conduct (S 639). Another pending bill would make it an offense to avoid prosecution for a crime; the offense would be treated as a misdemeanor or a felony, depending upon the classification of the crime being fled (S 674). A number of bills, discussed later, would remove from the criminal statutes any distinctions based upon the sex of the victim of or participant in the crime. (S 757–S 779). Also still under consideration is a requirement, enforced by a fine of $100 to $500, that editorials appearing in a daily newspaper be signed (S 839). One bill would create a new offense, negligent homicide, which would occur when death resulted within 90 days from an accident caused either from the operation of a motor vehicle on public streets in violation of certain motor vehicle laws or from negligent operation of a motor vehicle on private property. This latter offense would be punishable as a general misdemeanor (S 873). H 381 would double the fines that apply to littering under G.S. 14–399 and make a third conviction for violating the littering statute carry a mandatory 30-day jail term in the county jail, during which the offender would work in clearing litter from rights-of-way. H 1189 and H 1136 would make it a criminal offense for a doctor or a hospital to fail to report certain kinds of wounds, injuries, and illnesses that come to their attention.

Two bills are still pending that might affect the parole of persons convicted of existing offenses. S 35 would change from 10 to 25 years the minimum sentence a prisoner serving a life sentence must serve before he could be considered for parole. S 463, as amended in the House, would provide that an offender serving a sentence for various crimes involving the use of a deadly weapon (originally, a firearm) is ineligible for parole until he has served three-fourths of his sentence or, if the sentence is life imprisonment, after he has served 30 years.

Pending Procedural Law

Among the pending bills that could affect the law of criminal procedure is S 38. This bill would make a preliminary hearing for a felony mandatory unless waived by the defendant and would make clear that the state could take the case before the grand jury even though no probable cause was found at the preliminary hearing. This latter point is currently a matter of some controversy. Furthermore, the bill would specifically permit the use of testimony recorded at any preliminary examination to be used in the preliminary hearing. S 63, also still alive, deals with the same general subject matter. It would introduce an all-new Article 9A in G.S. Ch. 15, dealing with preliminary hearings. It would generally clarify the need for a preliminary hearing, unless waived, in felony cases and would specifically entitle felony defendants to counsel during a preliminary hearing.

One of the better-publicized bills dealing with trial procedure was S 122, intended to increase privacy in rape cases. Currently the trial judge may use his discretion in excluding bystanders when the alleged victim testifies during a rape case. This bill, as originally introduced, would have made exclusion of bystanders mandatory in rape cases, although leaving the issue within the discretion of the judge during the trial of cases of assault with intent to com-

mit rape. Similar provisions would have applied to preliminary hearings, and public officials would be subject to fine if they revealed the name or identity of the alleged victim in a rape case.

The bill originally introduced has been supplanted by a Senate committee substitute that requires a privacy order attached to each rape warrant, subject to expiration if not renewed at a hearing 10 days after issuance. Breaching the privacy called for by the order is an offense. This bill is scheduled for immediate consideration by the Senate when the General Assembly reconvenes in January.

S 192 would amend the provisions of G.S. 122–91 to include misdemeanants subject to sentences greater than six months as well as felons among those who may be committed to a state hospital to determine whether they are competent to stand trial. Currently, when a grand jury returns a flawed indictment, the state's only recourse is to submit a new indictment to the grand jury to replace the flawed one. S 872 would permit the state to amend the indictment at the discretion of the court, either before or after the introduction of evidence, except when that amendment would change the nature of the charge or would prejudice the defendants.

The questions of the promptness with which defendants are tried has received considerable attention lately. H 346, if enacted, would deal with this. It would generally require a judge to set trial within 60 days of the defendant's being charged. Failure to try the defendant within the designated period would result in absolute discharge of the charges. Furthermore, it would penalize both defense and prosecution for a delay of the trial—with fines of up to 25 per cent of the defense counsel's fee, a denial to defense counsel of the right to practice before the court for 90 days, and the filing of disciplinary reports. Computation of the period of delay would exclude time devoted to competency determinations and various other collateral pretrial proceedings. This bill deals with a subject also dealt with in the code of pretrial criminal procedure described earlier. The major differences are that this bill gives less discretion to the trial judge and that the provisions in the code of pretrial criminal procedure do not deal with delay brought about by the efforts of the defendant or his counsel.

Two pending bills (each residing in a different Senate committee) deal with peace warrants. The peace warrant is an ancient but now largely unused device: it is intended to put a restraining hand on potential troublemakers by requiring them in certain circumstances to post a bond that is forfeited if they carry out a threatened assault. S 169 would repeal the article that authorizes peace warrants. S 360 would create a new procedure based upon the general idea of peace warrants. This procedure would authorize law enforcement officers to intervene in domestic fights and to carry the blameworthy party before a magistrate for the execution of a bond conditioned upon his good behavior. If the bond is not issued, the bill would permit the officer to imprison the person for four hours even though no formal arrest occurred. The same bill would authorize the officer to remain on the premises for up to twenty minutes to determine whether an assault occurred or whether there was a threatened assault.

Occasionally a problem results because an arrest for a misdemeanor without a warrant is illegal unless the arresting officer has seen the offense occur. This problem would be ameliorated in motor vehicle offenses by S 189, still pending before a judiciary committee in the Senate. This bill would permit arrests upon probable cause without warrant for offenses that could result in mandatory suspension of the driver's license. S 577, also still pending, would permit arrest without a warrant when an officer reasonably believes that a warrant is outstanding for the arrest of the suspect.

H 793 represents an attempt to extend the regulation of bail bondsmen statewide; the present provisions of the General Statutes apply to bail bondsmen in only 22 counties. A bill still pending that would affect sentencing procedures is S 39, which would prohibit the use of hearsay by the judge in determining a sentence following a conviction or plea of nolo contendere.

Pending Correctional Matters

A number of the bills that received no final disposition deal with the organization of the correctional department. The central bill is probably S 533, the Executive Reorganization Act of 1973. Among the many parts of this bill that the legislature did not attempt to tackle during the 1973 session is the section that deals with the correctional agencies. The proposed reorganization bill would change the name of the present department of Social Rehabilitation and Control to the Department of Correction. The department would assume responsibility for juvenile probation and aftercare (now the responsibility of the Administrative Office of the Courts) as well as juvenile detention and adult probation, imprisonment, and parole. The initial organization of the department would include divisions for adult imprisonment, adult probation and parole, juvenile detention, and juvenile probation and aftercare. The present Correction Commission (dealing with adult imprisonment) and Probation Commission would be abolished. A new Board of Correction would generally advise the secretary of the department.

The board would be composed of the secretary, a psychiatrist, a psychologist, an attorney, and five at-large members. It would initially include in its membership the chairmen of the present Probation Commission, Correction Commission, and Board of Youth Development. The Parole Board (redesignated the Parole Commission) would become a quasi-judicial

commission that makes decisions on work release, indeterminate sentence release, and youthful offender release. It would grant, terminate, revoke, and suspend parole, but lose its role in the administration of the parole agency.

A number of other pending bills also deal with the organization of correctional agencies. S 753 would remove the Probation Commission from the Department of Social Rehabilitation and Control and place it under the direction and supervision of the Administrative Office of the Courts, although the statutory powers of the commission would be exercised independently of the Administrative Office of the Courts. S 835 would remove the Department of Correction from the Department of Social Rehabilitation and Control and place it within the Attorney General's office. H 465 would increase the membership of the Board of Paroles from three to five.

Various other bills that may still be considered in 1974 would also deal with correction and correctional agencies. S 354, now before a House committee after passing the Senate, would make the Department of Correction, rather than the county, bear the cost of keeping defendants in custody while they appeal their cases, and an amendment to the bill adopted in the Senate would forbid judges from releasing on bail those appealing from cases in which they received life imprisonment in a capital case. S 903 sets out procedures for hearings for persons on parole or probation in North Carolina as a result of conviction in another state. These hearings would be required before a North Carolina parole or probation officer could recommend to the other state that the parolee or probationer be imprisoned. This bill would represent an accommodation to recent Supreme Court decisions calling for hearings before the revocation of probation or parole. S 904, passed by the House and pending in the Senate, would eliminate the present requirement that probation terms of less than three years be reviewed automatically after one year of that term but would retain the requirement that probation terms greater than three years be reviewed after three years. H 34 would provide that prisoners in the custody of the Department of Correction be paid for their work at the minimum wage established by North Carolina law; H 34 also makes various related provisions on how the Department of Correction is to handle the payments involved. H 1056 apparently seeks to assure that records that may benefit prison inmates are kept accurately and completely. It requires that an employee in each unit of the prison system be delegated to keep a record of each offender in the unit, including any commendations that the offender might receive and the vocational and educational programs he has completed. The superintendent of a prison unit who fails to designate such an employee is subject to immediate dismissal. Likewise, the designated employee who fails to maintain the records or who deletes any information from them is subject to dismissal. The series of pending bills that would repeal or modify various criminal offenses that are dependent upon the sex of the offender or his victim were joined by a number of bills (S 804–S 806) that would remove the references to the sex of inmates in statutes dealing with correctional matters.

Miscellaneous Pending Matters

During the debate on the Equal Rights Amendment, Senator Mullins of Mecklenburg expressed concern about leaving enforcement of sexual equality to the federal government and its courts. Consequently, he voted against ratification. In mid-April he illustrated his belief that the state should take the lead in enforcing equal rights when he introduced fifty-one separate bills to remove unequal treatment of men and women under the state's laws. In addition to proposing a state equal rights amendment, equal working hours, removal of the husband's responsibility for support, and repeal of the limitations on a wife's power to contract, the senator introduced a number of bills that would affect the criminal statutes. For example, among the laws repealed would be assault on a female (S 760), seduction of an innocent woman under promise of marriage (S 763), lewd women within three miles of a college or boarding school (S 766), and obtaining carnal knowledge of a virtuous female between 12 and 16 years of age (S 759). The peeping-tom statute would be applicable to women if S 767 were enacted. Limitations on women prisoners working in chain gangs (S 770), on their places of commitment (S 806), and on road work (S 804) would also be eliminated. None of the bills was ever reported out of the Judiciary Committee No. 2.

Still in the House Judiciary Committee No. 2 is H 620, which would require the appointment of auxiliary school police. Each sheriff and chief of police would be required to appoint and train special deputies for each of the junior and senior high schools within his jurisdiction, unless the local school board by resolution prohibited such appointments. The special deputies would be teachers or administrators and would have general law-enforcement powers on the school grounds during regular school hours.

BILLS THAT FAILED

A number of bills introduced dealing with criminal justice matters received dispositions that suggest that they will not become law. Although it is conceivable that some of the actions that killed these bills could be reconsidered, the practical likelihood of their receiving any further consideration is slim. These failed bills are simply listed here with a very brief description of what each would have provided.

S 182—prohibiting the picketing of a court.

S 187—raising punishment for certain assaults with a deadly weapon.

S 817—expanding the definition of prostitution to include "hand relief for compensation."

H 44—prohibiting possession of or dealing in radio "scramblers."

H 228—imposing mandatory prison terms on persons who commit offenses with firearms.

H 431—enlarging defense of person or property as a defense to criminal prosecution.

H 650—making easier the proof of a worthless-check offense.

H 875—raising penalties for giving false fire alarms.

H 1051—punishing the use of a state motor vehicle for transportation home.

S 161—authorizing judges to establish longer minimum terms to be served on sentence before parole eligibility.

H 622—requiring service of one-third, rather than one-fourth, of sentence to obtain parole eligibility.

H 1120—exempting policemen from jury duty.

H 317—exempting people over 65 years from jury duty.

H 164—elaborating on period for which merchants may detain shoplifting suspects.

H 35—authorizing absentee voting by incarcerated misdemeanants.

H 492—imposing on the state the costs of transporting and maintaining prisoners transferred because of jail inadequacy and of maintaining offenders awaiting hearings.

H 466—requiring unanimous Parole Board approval for parole of someone with a commuted sentence or against whom parole objections were filed.

H 425—requiring broadcasters to certify that X- or R-rated movies shown on TV are not harmful to minors.

S 160—giving newsmen a privilege against testifying about the identity of confidential informers. (Other bills, of which H 413 is the most tightly drawn, deal with the same subject and remain in committee, eligible for further action; but the defeat of S 160 seems to have effectively killed these other bills as well.)

Interim Studies

Michael Crowell

The table below shows the studies that the 1973 General Assembly has directed to be made in the interim between the 1973 and 1974 sessions. In some instances, as is indicated, the commission created to make the study is to continue beyond the 1974 session. This list does not include those studies authorized during the 1973 session that were to have been completed before adjournment.

Bill Number	*Nature of Study*	*Organization Conducting Study*	*Report Due*	*Other Comment*
		Studies to be made by the Legislative Research Commission:		
Res. 91 (H 726)	Whether Teachers' and State Employees' and Local Gov't Employees' retirement systems should give credit toward retirement for military service, allow reclaiming years of service by repaying previously withdrawn benefits, and give credit for service performed outside N.C.	Legislative Research Commission	To Gen'l Assembly by Feb. 1, 1974	
		Studies to be made by Senate committees:		
S 286 (Adopted by Senate March 29)	Consider and propose remedial action for problem of student unrest and discipline in public schools.	Appropriate Senate committee	Feb. 1974	
S 887 (Adopted by Senate May 2)	How to provide seat space for all children who ride public school buses.	Appropriate Senate committee	To Gen'l Assembly by Jan. 1, 1974	
		Studies to be made by House committees:		
H 1103 (Adopted by House May 3)	Consider State Tort Claims Act and how well it works, and whether State might become self-insurer where it now purchases insurance.	House Judiciary Committee 1	To House by Feb. 1, 1974	
H 1345 (Adopted by House May 22)	Consider insurance rate structure, authority of Insurance Comm'r to set auto insurance rates, and methods of dividing commissions.	House Insurance Committee	To House by Jan. 31, 1974	

Bill Number	*Nature of Study*	*Organization Conducting Study*	*Report Due*	*Other Comment*
		Studies to be made by joint Senate and House committees:		
Res. 93 (H 1106)	Medical facility and personnel needs; what necessary to provide adequate medical care to all N.C. citizens.	Appropriate committees of House and Senate	To presiding officers by Dec. 1, 1973	
Res. 97 (H 1184)	Consider small water and sewer systems not covered by municipal or county services, including how to protect public buying lots in such areas.	Interim committee to be selected by presiding officers	To Gen'l Assembly in Jan. 1974	To be aided by Utilities Comm'n, Board of Health, Office Water & Air Resources, Dep't Justice, local gov'ts, sanitary districts, planning regions
Res. 100 (H 1244)	Need for and possible means of reviewing or regulating hospital charges and rates.	Public Health committees	To presiding officers by Dec. 1, 1973; written report for '74 session	
		Studies to be made by study commissions:		
Ch. 727 (H 1091)	Consider advisability of maintaining N.C. Housing Corp.; to study proper role of state in housing.	2 senators app'ted by Lt. Gov.; 2 representatives app'ted by Speaker; State Treasurer; Atty Gen'l; Sec'y of Human Resources; 6 others to be chosen by those and to include 1 each from N.C. mortgage bankers, N.C. Ass'n of Realtors, N.C. Home Builders Ass'n, N.C. Manufactured Housing Institute, an administrator of nonprofit housing agency, a housing specialist with professional experience in housing needs and policy	To 1974 session	
Ch. 801 (S 852)	Consider legislation designed to reduce crime; unify and consolidate recommendations of other agencies on crime legislation.	Crime Study Comm'n: 9 members, all to be members or former members of Gen'l Assembly; Governor, Lt. Gov., Speaker each to appt. 3.	To Gen'l Assembly by Feb. 1, 1974; annually thereafter	Ch. 804 (S 853) appropriates $25,000 to comm'n for 1973–'74
Res. 26 (S 17)	Continue study of N.C. criminal law and procedure and recommend legislation.	Criminal Code Comm'n (created by Res. 24 of 1971 session); 4 more members added (total now 30), all to be criminal defense lawyers app'ted by Attorney General	Biennial reports	Life of comm'n extended to Feb. 1, 1975
Res. 80 (S 702)	Study and evaluate system of providing care for mental illness, mental retardation, alcoholism, and related problems; make recommendations for improvements.	New study comm'n as follows: 5 members app'ted by Governor; 3 senators app'ted by Lt. Gov. (including Mental Health chairman); 3 representatives app'ted by Speaker (including Mental Health chairman); Sec'y of Human Resources and all other members of Mental Health committees to be ex officio members—Governor to choose chairman. Amended by Ch. 806 (S 940) to specify that ex officio members not to have vote.	To Governor, Lt. Gov., and Speaker by Jan. 15, 1974; comm'n can extend deadline	Funding from Dep't of Mental Health appropriations

Bill Number	*Nature of Study*	*Organization Conducting Study*	*Report Due*	*Other Comment*
Res. 101 (H 1254)	Propose legislation regulating relations between school boards and associations of professional school employees.	New study comm'n of 17 members: 2 senators app'ted by Lt. Gov.; 2 representatives app'ted by Speaker; 6 app'ted by Governor from nominees of NCAE, 1 each from following categories: teacher of kindergarten through grade 3, teacher of grades 4–9, teacher of grades 10–12, principal, supervisor, superintendent; plus 7 app'ted by Governor, 2 from N.C. School Boards Ass'n, 1 representing community colleges, 1 from State Dep't of Public Instruction, 1 parent of elementary school child, 1 parent of high school student. Comm'n to select chairman.	To Governor by Jan. 15, 1974, to be transmitted transmitted to 1974 session	
Res. 106 (H 1337)	Study question of legislative pay.	Citizens Comm., 22 members, one app'ted by each of the following N.C. organizations: Farm Bureau Federation, State Grange, Ass'n of Educators, AFL/CIO, Bankers' Ass'n, Merchants Ass'n, Medical Society, Ass'n of Chamber of Commerce Executives, Professional Engineers, American Institute of Architects, Society of Accountants, State Bar, State Nurses Ass'n, League of Women Voters, Federation of Business and Professional Women's Clubs, American Ass'n of University Women, Secretaries Ass'n, Citizens Ass'n, Federation of Negro Women's Clubs, Press Ass'n, Ass'n of Insurance Agents, Ass'n of Broadcasters	To Legislative Services Comm'n by Jan. 15, 1974, to be transmitted to 1974 session	Legis. Services Comm'n to provide staff and make app'tments if not made by group by Sept. 1, 1973
Res. 108 (S 868)	Consider apparent shortage of fuels and what might be done about problem.	New Energy Crisis Study Comm'n of 12 members: 3 app'ted by Lt. Gov.; 3 app'ted by Speaker; 6 app'ted by Governor, including 1 representative each of liquid petroleum industry, natural gas industry, and electric power industry. Governor designates chairman.	To Gen'l Assembly by Jan. 30, 1974	Comm'n to terminate when report is filed
Res. 114 (H 1336)	Study liquor laws and recommend changes to make them more cohesive and understandable; to study rules and regulations of State ABC Board to same end.	New comm'n of 11 members: 3 app'ted by Governor; 4 app'ted by Lt. Gov. (including 2 senators and 1 from Atty Gen'l's staff); 4 app'ted by Speaker (including 2 representatives and 1 member ABC Board or staff). Lt. Gov. and Speaker jointly designate chairman.	To presiding officers in Jan. 1974 and Jan. 1975, to be transmitted to Gen'l Assembly	Expenses paid from Dep't of Commerce funds
Res. 115 (H 1133)	Study all reports relating to state's medical manpower needs, including that of consultants employed by UNC Board of Governors; to hold public hearings throughout state; to make specific legislative proposals.	New Joint Legislative Commission on Medical Manpower, consisting of 4 senators app'ted by Lt. Gov. and 4 representatives app'ted by Speaker	To Gen'l Assembly in Jan. 1974	
		Studies to be made by state agencies:		
Ch. 596 (H 1045)	Advisory Committee created by act is to review statutes affecting archaeological programs, advise Dep't of Art, Culture, and History, and make recommendations to Gen'l Assembly.	Archaeological Advisory Committee consisting of: State Historian (Chmn.), 1 senator app'ted by Lt. Gov., 1 representative app'ted by Speaker, 1 American Indian app'ted by Tribal Council of Eastern Band of Cherokees, 1 American Indian app'ted by Executive Director of N.C. State Comm'n on Indian Affairs, and 1 archaeologist app'ted by N.C. Archaeological Advisory Council	No specific date set	

Bill Number	*Nature of Study*	*Organization Conducting Study*	*Report Due*	*Other Comment*
Ch. 765 (S 898)	Conduct one-year survey of animal-waste problem in N.C.; advisory committee to also recommend animal-waste standards to be considered by Board and legislative solutions.	Board of Water and Air Resources with aid of Comm'r of Agriculture and Agricultural Extension Service and Advisory Committee to consist of 5 permanent members (Chmn. of Board of Water and Air Resources, Comm'r of Agriculture, State Health Director, Chmn. of Soil and Water Conservation Committee, Chmn. of Wildlife Resources Comm'n, or their designees); 4 employees of School of Agriculture and Life Sciences at NCSU, to be app'ted by Dean; and 6 members to be app'ted by Governor (1 in commercial poultry production, 1 in commercial swine production, 1 in commercial dairy production, 1 in commercial beef production, 2 professionally trained in ecology of natural resource conservation and not engaged in animal or poultry production). Committee to choose chairman.	Survey to be completed by July 1, 1974	Act expires Sept. 1, 1975
Res. 98 (H 1233)	Try to reduce time spent on paperwork in connection with Aid to Families with Dependent Children and Work Incentive Program.	Dep't of Social Services and Employment Security Comm'n	To make progress report to Gen'l Assembly in Jan. 1974	
Res. 111 (S 568)	To study and appraise the mass transit needs and alternatives for rapid intercity travel in N.C.	Dep't of Transportation and Highway Safety	To Governor by May 23, 1974, to be transmitted to Gen'l Assembly	
H 997 (Adopted by House April 12)	Feasibility of developing program to provide for titling motorboats subject to N.C. Boating Safety Act.	Wildlife Resources Comm'n	To Speaker by Feb. 1, 1974	
H 1077 (Adopted by House April 26)	Study current cost of living to assess actual cost of living on minimum subsistence level.	State Board of Social Services	To Joint Appropriations Committee and House Social Services Committee in Jan. 1974	May use resources of Office of Budget

Motor Vehicles and Highway Safety

Ben F. Loeb, Jr.

Approximately 150 bills concerning Motor Vehicle Law or traffic safety were introduced during the 1973 session of the North Carolina General Assembly, of which about a third were enacted into law. Many others are still in committee and will be acted on in 1974. The more significant of the new statutes are summarized below. These acts were all effective upon ratification, except as otherwise indicated.

RECIPROCAL AGREEMENTS

A completely new Article 1B, as contained in G.S. 20–4.13 through 20–4.15, was added to the North Carolina Motor Vehicle Law by Ch. 736 (H 1327). This act permits a nonresident traffic violator to be given a citation or traffic ticket, rather than being placed under arrest, if the state of his residence accords the same privilege to North Carolina drivers. Should the defendant not appear in court or otherwise fail to comply with the terms of the citation, the North Carolina Department of Motor Vehicles will so notify the appropriate agency of his state of residence. When the violator's home state receives a "Report of Non-compliance," it suspends his driving license until he furnishes proof of compliance with the terms of the North Carolina citation.

More than half the states have now enacted similar statutes, which are generally known as "Reciprocal Acts As to the Arrest of Nonresidents." A North Carolina resident who commits a traffic violation in a reciprocating state would be subject to the same privileges and procedures as outlined above for nonresidents traveling through North Carolina. A nonresident retains the right to be arrested and post bond if he so desires. A violator cannot be released on his personal recognizance if the offense is one that could result in the suspension or revocation of his license under the laws of North Carolina.

DRIVER'S LICENSE LAW

(1) G.S. 20–6 was amended by the addition of a sentence making it clear that any person operating a "school activity bus" must have either a school bus driver's certificate or a chauffer's license as required by G.S. 20–218 (Ch. 125, S 174). The new act clarifies but does not change existing law, and became effective July 1, 1973.

(2) G.S. 20–7(a) was amended to give a new resident of this state 30 days in which to acquire a North Carolina driver's license. The old law provided no grace period (Ch. 73, H 251). This act, which became effective July 1, 1973, does not alter the provisions of G.S. 20–6 creating a presumption of residence after six months in the state.

(3) G.S. 20–7(n) was amended by the addition of a proviso exempting certain license applicants from the requirement of a photograph if taking the photograph violates the applicant's religious convictions (Ch. 705, H 1175).

(4) G.S. 20–9(b) was rewritten by Ch. 441 (H 253) to provide that, effective July 1, 1973, a new license cannot be issued to any person whose previous license is in a state of suspension or revocation. Under the old law, a new license could not be issued for a period of one year after a revocation, even though the period of the revocation was for less than a year.

(5) A new subsection (i) was added to G.S. 20–9 to require an applicant for a North Carolina's driver's license to surrender any out-of-state license that he has been issued, if the license is still in force (Ch. 135, S 252). The purpose of this act is to prevent a violator from presenting an out-of-state license at the time of his arrest or trial and thereby avoid points against, or revocation of, his North Carolina license. The act was effective July 1, 1973.

(6) G.S. 20–11(b) was rewritten to provide for a "limited learner's permit" that can be issued to minors between 15 and 16 years of age. The application for the permit must be signed by a parent, guardian, or some other responsible adult (approved by the Department) with whom the applicant resides. It is valid only when the minor is accompanied in the vehicle by a parent, guardian, or other person approved by the Department of Motor Vehicles (Ch. 664, S 140). The old law provided for a "temporary learner's permit" that required a parent or guardian's signature, and was valid only when the minor was accompanied by a parent or guardian. In addition, the minor had to be 15½ years old to qualify for a permit under the former law.

(7) G.S. 20–13(a), concerning the suspension of licenses of provisional licensees (persons under 18), was amended to redefine "moving violation" by eliminating "equipment violations" from the definition. Under the new act, having defective lights, brakes, or steering would not constitute a moving violation that would result in a license suspension under G.S. 20-13. Even under the new act, however, points would continue to be assessed under G.S. 20–16 (Ch. 439, H 201). This act is effective from July 1, 1973.

(8) G.S. 20–16(a)(9) was amended to provide for license suspensions if a driver acquires two convictions (within a 12-month period) of speeding at more than 55 mph and not more than 80 mph or if he is convicted of reckless driving and speeding at more than 55 mph and not more than 80 mph (Ch. 16, H 203). Under the old law, a loophole had developed that permitted a person to be convicted of traveling 76 to 80 mph in a 70-mph zone any number of times without having his license suspended under the provisions of G.S. 20–16(a). The act became effective July 1.

(9) G.S. 20–16(c) and (d) were amended to provide that, when a license is subject to suspension, a probation period not to exceed the suspension period may be substituted for the suspension (Ch. 17, H 204). Under the old law, if probation were to be substituted for the suspension, it had to be for a year, even if the suspension was only for a month or two. Since a violation during probation resulted in a suspension for the remainder of the probation period (one year), rather than the suspension period, licensees were reluctant to take probation. This act was also effective on July 1.

(10) G.S. 20–16.2, which concerns license revocation for failure to take a chemical test to determine blood-alcohol level, was completely rewritten by Ch. 206 (S 86). Under the new act, *the person who is to administer the chemical test* must inform the defendant both verbally and in writing that: (1) he has a right to refuse to take the test; but (2) such refusal will result in a license revocation for six months; and (3) he may have an additional test administered by a physician or other qualified person of his own choosing; and (4) he has a right to call an attorney and select a witness to view the testing procedures. (Since this warning must be given by whoever gives the test, some problems may arise if a blood test, rather than a breath test, is administered.) A provision of the old law requiring that the license be restored if the defendant was acquitted (of driving under the influence) was not included in the new act. Also, under former G.S. 20–16.2, the revocation period was only 60 days, rather than six months. The effective date of this act was June 1, 1973.

(11) A new G.S. 20–16.3 was added by Ch. 312 (S 85). This act provides for a preliminary (or roadside) breath test that may be administered by any law enforcement officer with reasonable grounds to believe that a person has been driving a vehicle while under the influence of intoxicating liquor. The test is given without placing the driver under arrest, and the results thereof are not admissible in evidence by either the state or the defendant. A driver may refuse, without penalty, to take the preliminary breath test. Also, a subsequent chemical test to determine blood-alcohol level may be required pursuant to G.S. 20–16.2, regardless of whether the driver passes the roadside test. The act was effective on June 1, 1973.

(12) G.S. 20–17(8) and G.S. 20–30, pertaining to the misuse of a driver's license or the giving of false information in securing a license, were amended to make the sections applicable to learners' permits also (Ch. 18, H 205). The act became effective on July 1, 1973.

(13) G.S. 20–28(b), which makes it unlawful for a person to drive if his license has been permanently revoked, was amended by Ch. 71 (H 208) to make the section applicable as well to those whose licenses have been permanently suspended. Under the new act, any person driving a motor vehicle on a highway while his license is permanently revoked or suspended is subject to imprisonment for not less than one year.

(14) G.S. 20–32 was rewritten to make it unlawful for any person to cause or "knowingly permit" any unlicensed minor under the age of 18 to drive a motor vehicle upon a street or highway. The intent of the new act is probably to hold parents criminally responsible if they permit a child who is not licensed to operate a minibike or go-cart on a public street (Ch. 684, H 1039). A parent convicted of violating G.S. 20–32 would be punished pursuant to G.S. 20–35 and could receive a $500 fine or imprisonment for up to six months.

REGISTRATION LAW

(1) G.S. 20–37.6, which provides for special license plates for handicapped drivers, was amended by Ch. 126 (S 213) to allow disabled veterans to secure the plates free of charge. This plate permits disabled persons to park for unlimited periods in parking zones otherwise restricted as to time. The act became effective July 1.

(2) G.S. 20–51(6) was amended by Ch. 478 (S 317) to add trailers and semitrailers drawn by a licensed motor vehicle when used by a farmer in transporting "cucumbers" to a list of vehicles that are statutorily exempt from the requirements of registration and certificate of title.

(3) A new subsection (8) was added to G.S. 20–51 to exempt from the registration law any vehicle moved across a highway when the property on both sides of the road is owned or leased by the vehicle owner or lessee (Ch. 757, S 749). This statute is of such limited application that it might have been preferable to have enacted it as local legislation, rather than as an amendment to G.S. Chapter 20.

(4) G.S. 20–57(b) was amended by Ch. 72 (H 211) to eliminate surplus wording relative to the contents on the reverse side of a registration card. This wording is not relevant because there is no longer any statutory requirement to complete the reverse side of the card.

(5) G.S. 20–63(h), relative to commission contracts for issuance of registration plates, was amended to provide that the payment of compensation would be at a rate "per registration plate" as set by the General Assembly (Ch. 629, H 1319). Under the old act, the contract price was $.30 per plate.

ABANDONED VEHICLES

A new Part 4A, contained in G.S. 20–78.1 through 20–78.9, was added to Article 3 of G.S. Chapter 20 by the provisions of Ch. 720 (H 878). The new act, which is entitled "Abandoned and Derelict Motor Vehicles," pertains to the disposal of abandoned vehicles left on public or private property, and was effective September 3, 1973.

Title to all vehicles sold or disposed of in accordance with this part vests in the state, with sale proceeds going into the highway fund established for the purpose of administering the act. This statute does not necessarily apply to vehicles left on the right-of-way of a street or highway that may still be disposed of as provided in G.S. 20–161. The Secretary of Transportation is authorized to contract with federal, state, or local governmental agencies or private enterprise to carry out the tagging, collection, storage, and transportation of the vehicles to be disposed of pursuant to Part 4A.

SIZE, WEIGHT, AND EQUIPMENT

(1) G.S. 20–116(g), which requires vehicles to be loaded in a manner that will prevent any load from leaking or otherwise escaping therefrom, was amended to exempt "silage or other feed grain used in the feeding of poultry or livestock" from the requirements of the section (Ch. 546, H 490).

(2) G.S. 20–29(c) and (d) were amended by Ch. 531 (H 292) to make the use of motorcycle headlights and taillights mandatory at all times when the vehicle is being operated on a street, highway, or public vehicular area. Before this amendment, motorcyclists, like other drivers, usually were required to use their lights only at night. The intent of the new act is to help automobile drivers see the motorcycles and thereby prevent collisions. The act was effective October 1, 1973.

MISCELLANEOUS PROVISIONS

(1) A new G.S. 20–179.1 was added by Ch. 612 (H 785). This statute provides that, upon a first or subsequent conviction of driving under the influence of intoxicating liquor, the trial judge may request a presentence investigation to determine whether the defendant would benefit from the type of treatment given persons who are habitual users of alcohol. The court may then order suitable treatment as a condition for a suspended sentence.

(2) G.S. 20–185(1) was amended, effective July 1, by the addition of a provision making driver license examiners injured while giving road tests eligible for the same type of disability benefits now provided for state highway patrolmen (Ch. 59, H 248).

(3) A new paragraph was added to G.S. 20–188 prohibiting a state highway patrolman who has initiated an investigation of an accident from relinquishing responsibility, even if he does not have territorial jurisdiction, without clear assurance that another law enforcement officer or agency has undertaken to complete the investigation (Ch. 689, H 1061). This act was also effective July 1.

(4) G.S. 20–279.1 and several other sections of the Financial Responsibility Act of 1953 were amended by Ch. 745 (S 612). The effect of these amendments is to require, as of January 1, 1974, minimum liability insurance coverage of $15,000 per person and $30,000 per accident in the event of bodily injury or death. The present law requires coverage of only $10,000 per person and $20,000 per accident. The required property damage coverage of $5,000 was not changed by the new act.

(5) A new Article 15, entitled "Vehicle Mileage Act," was added to G.S. Ch. 20 by the provisions of Ch. 679 (H 1003). This act provides state remedies, both civil and criminal, for the unauthorized alteration of the mileage shown on an odometer. Section 20–404 of the new act provides that "it is unlawful for any person . . . to disconnect, reset, or alter the odometer of any motor vehicle with the intent to change the number of miles indicated thereon." The effective date of this act was September 1, 1973.

TRANSPORTATION OF INTOXICATING LIQUORS

G.S. 18A–28, which authorizes the transportation of up to five gallons of alcoholic beverages with a per-

mit, was amended to make its provisions statewide in application. Before this amendment, the section applied to less than half the counties of the state. The five-gallon permit may be obtained only from a member of a local ABC board or the board's general manager. It is good for only one trip on one day and expires at 6:00 p.m. G.S. 18A–28 applies only to alcoholic beverages—that is, beverages containing over 14 per cent of alcohol by volume. Provisions for transporting malt beverages and unfortified wine were not changed. The act was effective July 1 (Ch. 819, H 713).

BILLS STILL IN COMMITTEE

Many motor vehicle bills are still in various committees, and their fate awaits the return of the General Assembly in January of 1974. Among those still to be considered is H 328, a comprehensive rewrite of the rules of the road that, if enacted without substantial amendment, would change every rule—from the speed limits to how one makes a left turn. This bill was referred to the House Highway Safety Committee upon introduction and was not reported out.

Another very important proposal, S 89, was passed by the Senate and awaits action by a House Judiciary Committee. This bill, if enacted into law, would make it unlawful to operate a motor vehicle with a blood-alcohol level of .10 per cent or more, even if the driver is not actually under the influence at the time. The present law makes it illegal to drive "under the influence" and creates a presumption of guilt if the blood-alcohol level has reached .10 per cent. Many persons with much higher blood-alcohol levels are able to rebut the presumption and thus are acquitted. Enactment of S 89 might well eliminate much of the litigation that now results from the defendant's attempt to overcome the presumption created by G.S. 20–139.1.

Other bills still in committee include: (1) H 54, which would reduce the speed limit in residential districts from 35 mph to 25 mph; (2) S 51, which would eliminate the test now required for renewal of a driver's license for those persons with a good driving record for the previous four years; and (3) H 321, which would make it a felony to exceed the speed limit by 25 mph or more if attempting to flee apprehension by a law enforcement officer.

PROPOSALS THAT WERE DEFEATED

A multitude of bills affecting motor vehicles or traffic safety were reported unfavorably or postponed indefinitely or failed passage after floor debate or were otherwise defeated. Among these bills were several that would either have expanded, restricted, or eliminated the "limited driving privilege" that is now available for those who have been convicted for the first time of driving under the influence of intoxicating liquor. H 52, for example, would have repealed the limited driving privilege now authorized by G.S. 20–179(b), but would have authorized the Department of Motor Vehicles to grant a new license after 60 days. H 162, an even stronger proposal, would have provided for a six-month revocation for any driver charged with DUI who plead guilty to any other offense (such as reckless driving). Both of these proposals were reported unfavorably in the House.

Other bills that were killed include: (1) H 505, which would have provided for a mandatory jail sentence for any person convicted of driving under the influence, which sentence could not be suspended by the court; (2) H 202, which would have required persons who change their address to acquire a new driver's license indicating the change; (3) H 246, which would have required a special triangular emblem to be placed on the rear of farm tractors and other slow-moving vehicles; (4) H 252, which would have provided for a $1.00 fee for a learner's permit; and (5) H 452, which would have exempted golf carts from the registration law.

In addition, H 1102, which would have tightened up the requirements for mufflers, failed second reading in the House; and S 87, which would have required seizure of the vehicle if the operator was driving with a revoked or suspended license, was reported unfavorably in the Senate.

SUMMARY AND CONCLUSIONS

Highway safety is an idea whose time has not quite come in North Carolina or, for that matter, anywhere in the United States. While the statistics in this state, as elsewhere, indicate that most traffic deaths are caused by speed, alcohol, or a combination of the two, no real effort is being made to reduce the speed limits, or to completely remove the drunken driver from the road. Even the adoption of all the proposed DUI legislation introduced in 1973, for example, would not necessarily make it unlawful for a person to drive as long as his blood-alcohol level did not reach .10 per cent. (Thus a 160-pound man could still have five one-ounce highballs over a very short period and drive without having his blood-alcohol level reach the presumptive limit.)

Other studies show conclusively that the use of the seat belt and shoulder harness is most effective in preventing serious injury or death at speeds below 60 MPH. Although all new cars come equipped with these devices, no law requires their use at any time. The yearly death toll in this country from automobile accidents exceeds our total losses in Viet Nam over a decade; but, unlike public attitude toward Viet Nam, there appears to be little public interest in taking the tough measures that would be required to prevent or reduce this tragic waste of life.

PERSONNEL

Donald B. Hayman

The availability of more state revenue than was anticipated undoubtedly influenced the personnel legislation enacted by the 1973 General Assembly. The additional funds permitted the legislature to grant salary increases to executive, judicial, and state employees ($25 million) and to public school teachers ($28 million). It also allowed the legislature to raise mileage and in-state travel allowances, to fund the new Uniform Judicial Retirement System ($565,000), to assume the entire cost of hospital insurance for each full-time employee, and to increase death-in-line-of-duty benefit payments from $10,000 to $25,000 for all law enforcement officers and from $5,000 to $25,000 (in addition to Workmen's Compensation) for firemen and rescue squad members.

The unanticipated revenue permitted the General Assembly to adopt several personnel acts that had not been proposed previously. Such new legislation includes: (1) mandated minimum salaries for local law enforcement officers and a two-year supportive grant ($2,000,000); (2) state pensions for N. C. National Guard members to supplement their federal pensions; (3) opening the Law Enforcement Officers' Benefit and Retirement System so that officers in other systems can transfer to it; (4) state subsidy of local law enforcement officers retirement allowances ($1,049,464); and (5) across-the-board longevity increases for state personnel employees ($2,661,115).

Other state personnel legislation made listing of all state job openings with the N. C. Employment Security Commission mandatory, adopted a graduated leave schedule for state employees, opened enrollment—with back credit—in the N. C. Firemen's Pension Fund, increased maximum Workmen's Compensation payments from $56 to $80 a week and death or total disability payments from $20,000 to $32,500, increased allowances to retired members of the Teachers' and State Employees' Retirement System, and allowed retirement after 30 years of service regardless of age.

STATE PERSONNEL

Equal Opportunity

Four bills were introduced to assure fair employment practices and to prevent job discrimination in public and private employment. One bill governing state employment was enacted. Ch. 715 (H 1231) provides that "it is the duty of every State agency to list every job opening occurring within the agency, along with a brief description of the duties and salary range, with the Employment Security Commission of North Carolina within ten working days after the occurrence of the opening, and to report to the Commission the filling of any such listed opening within five working days after the opening has been filled."

Compensation

State Employee Compensation

Ch. 533 (H 50), the general appropriations act, funded a one-step (approximately 5 per cent) salary increase to all teachers and state employees and an additional one-step increase to all employees earning less than $2.63 per hour.

The act also appropriated $2,661,115 for longevity increases for employees subject to the State Personnel Act. Under a revised plan subsequently adopted by the State Personnel Board, these employees will annually receive longevity payments of 2.25 per cent of base salary if they have 15 or more years of service, 3.25 per cent if 20 or more years of service, and 4.50 per cent if 25 or more years of service. Ch. 647 (H 1097) appropriated funds for extending the working period for public school teachers from 187 to 200 days a year.

Ch. 600 (H 1259) increased the salary of the Governor from the present salary of $35,000 to $45,000 in 1977. Ch. 778 (S 914) increased the salary of the Attorney General to $35,000, the salary of the Super-

intendent of Public Instruction to $33,500 and the salary of the other members of the Council of State (Secretary of State, State Auditor, State Treasurer, Commissioner of Labor and Commissioner of Insurance) to $31,000 per year as of July 1, 1973.

Ch. 533 (H 50) increased the salary of the Chief Justice of the Supreme Court to $39,000, the associate justices to $38,000, the chief judge of the Court of Appeals to $36,500, judges of the Court of Appeals to $35,500, the judges of Superior Court to $30,500, solicitors and public defenders to $27,000, chief judge of District Court to $24,500 and judges of District Court to $23,500.

Minimum Salary for Police

Ch. 766 (S 18), the Law Enforcement Officers Minimum Salary Act, became the first state act to mandate the salaries of local officials outside the federal-state merit system. It established minimum salaries to be paid law enforcement officers beginning October 1, 1973. Ch. 767 (S 28) appropriated $2,000,000 to the Criminal Justice Training and Standards Council to pay the difference between the minimum salaries set out in the act and the salaries paid officers as of January 1, 1973. Ch. 767 provides that the appropriation is for the 1973 fiscal year, and Ch. 766 provides that the appropriation will continue until October 1, 1975. (Ch. 766 also provides that the 1970 federal census shall be used to determine the population of governmental units.)

The act sets the minimum salary schedule listed below.

The act will require cities and counties to raise the salaries paid policemen to the minimums established and will subsidize the governmental unit until October 1975. The Council will quarterly pay to the governmental unit or to the officer the difference between the employee's average salary for the year and the minimum, plus 15 per cent to cover fringe benefits.

Travel and Subsistence

Ch. 595 (H 969) increased the mileage allowance paid state employees for the use of privately owned automobiles from ten to eleven cents per mile. The maximum in-state subsistence allowance was increased from $17.50 to $19.00 per day.

Maximum Working Hours

Ch. 549 (H 570) makes it illegal for an employee in any mental hospital or correctional institution to be required to work more than 72 hours during any week except in case of a declared emergency.

Fringe Benefits

Annual Leave

Ch. 697 (S 543) permits the State Personnel Board to adopt a graduated scale of annual leave earned by employees hired after July 1, 1973. Formerly, all employees earned 15 days of annual leave a year. Under the new scale, employees completing 2 years of service earn 10 days, 2-5 years 12 days, 5-10 years 15 days, 10-15 years 18 days, 15-20 years 21 days, 20 or more years 24 days. Maximum accumulation continues to be 30 days.

Hospital Insurance

The General Assembly increased the appropriation for hospital insurance from $10 to $13 a month per full-time employee. This will cover the entire cost of the employee's low-option hospital, surgical, and major medical insurance.

Holiday

Ch. 53 (H 195) provides that Veterans Day shall be observed as a holiday on November 11 rather than on the fourth Monday in October.

Sick Leave

Ch. 795 (H 1346) amended G. S. 7A–102.1 to permit employees of the clerks of superior court to accumulate an unlimited amount of sick leave. Service credit may be given at retirement for accumulated unused sick leave. This brings the leave policy into conformity with State Personnel Board policies.

State Retirement and Pensions

Legislators

Ch. 816 (S 737) permits members or officers of the General Assembly to secure membership credit and death-benefit coverage from either the Teachers' and State Employees' Retirement System or the Local

MINIMUM SALARIES FOR POLICE
October 1, 1973–October 1, 1975

Population of Governmental Units		*Positions*				
Municipalities	*Counties*	*Dept. Head*	*Asst. Dept. Head*	*Middle Management*	*First Level Supv.*	*Law Enforcement Officer*
Under 5,000	Under 25,000	7,500	6,000	6,000	6,000	6,000
5,001–10,000	25,001–50,000	9,500	7,500	6,000	6,000	6,000
10,001–20,000	50,001–100,000	12,000	9,500	7,500	6,000	6,000
Over 20,000	Over 100,000	14,000	12,000	9,500	7,500	6,000

Governmental Employees' Retirement System by transferring the member's contributions from the Legislative Retirement Fund to the fund to which they belong.

Judicial

Ch. 640 (H 640), the Uniform Judicial Retirement Act that increased the retirement compensation for appellate and superior court judges and provided death and survivor benefits, has been described in the article on the courts that appeared in the May issue of *Popular Government*.

National Guard

Ch. 625 (H 1194) provides pensions of $50 to $100 a month for North Carolina National Guard members 60 years old who have completed 20 to 30 years of military service, including 15 years in the North Carolina National Guard.

Law Enforcement Officers

Ch. 572 (H 96) allows law enforcement officers to transfer membership in the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System to the Law Enforcement Officers' Benefit and Retirement Fund. The 2,700 officers in those funds have until June 30, 1974, to transfer. Following the application for transfer, the employee's and employer's contributions will be shifted to the law enforcement officers fund. If the officer's prior service liability has not been fully funded in the former funds, the officer must pay a lump sum, by December 31, 1974, of 5 per cent of the unfunded prior service salary. Although many officers may find it advantageous to transfer their membership, other officers may find it wise not to transfer because (1) they would have to make a sizeable lump sum "prior service payment" or (2) the minimum of 15 years of service required for service retirement might prevent them from qualifying for retirement. The teachers and state employees and the local retirement systems have no required minimum years of service to qualify for retirement; credit will vest after five years of service.

Ch. 635 (H 97) appropriated $2,098,929 from the General and Highway Funds for the 1973 fiscal year to meet the difference between earnings from court costs and the cost of benefits and liability for benefits to officers. This is the first time that General Fund money has been spent to subsidize the retirement benefits of local law enforcement officers.

Ch. 634 (H 89) rewrote portions of Article 12A of Chapter 143, the Law Enforcement Officers' Death Benefit Act, which provided that the state will pay $10,000 to the survivors of an officer killed in the line of duty. The revised act, entitled the Law Enforcement Officers', Firemen's and Rescue Squad Workers' Death Benefit Act, provides that the state will pay $25,000 to the survivors of law enforcement officers, firemen, or rescue squad workers killed while discharging their official duties. A payment of $10,000 will be made at the time of death and three annual $5,000 payments will be made thereafter.

The General Assembly apparently did not repeal Ch. 118A (the Fireman's Death Benefit Act) or Ch. 118B (the Rescue Squad Benefit Act), both enacted in 1971. These acts are identical to the rewritten act except that the total payment to firemen and rescue squad members' beneficiaries is $5,000 instead of $25,000. Because of this apparent oversight there is a question whether survivors of firemen and rescue squad members killed in the line of duty can qualify for two death benefits.

Teachers and State Employees

Ch. 242 (H 497) made several changes in the benefits provided by the Teachers' and State Employees' Retirement System. These amendments, coupled with the substantial changes in 1971 and the Social Security coverage, make the system one of the most generous state retirement systems in the nation.

This act permits members to retire on full service retirement benefits after 30 years of service regardless of age. The act previously provided that an employee with 30 years of service and less than 62 years of age would have his allowance reduced by one-fourth of 1 per cent for each month his retirement date preceded his sixty-second birthday.

A survivor's alternate benefit may now be paid to survivors of members dying after July 1, 1973 who were at least 50 and had completed at least 20 years of service. Such benefits were previously reserved for survivors of members who were at least 55 or had completed at least 30 years of service.

Also, according to this amendment, members of the Teachers' and State Employees' Retirement System who were employed between June 30, 1947, and July 1, 1955 (when a 90-day waiting period was in effect), can receive credit for that service by contributing 5 per cent of their compensation during those months plus regular interest. The payment must be made before retirement.

Recent amendments authorizing post-retirement increases in allowances in keeping with the cost of living and inflation are unusual for public employee retirement systems. In 1969 a cost-of-living adjustment was authorized. In 1971 the cost-of-living adjustment was increased to a maximum of 4 per cent a year, and benefits for those who retired before 1963 were increased 20 per cent and for those who retired before 1967 by 5 per cent. The 1973 act provides retirees and their survivors an additional graduated scale of increased benefits ranging from 1 per cent for those who retired in 1969 to 22 per cent for all who retired before 1959.

Ch. 667 (S 545) provides that persons whose membership in the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System ceased because of absence

from service but who subsequently became members of the same system for five years may repay the lump-sum amount withdrawn plus regular interest from the date of withdrawal and receive credit for their previous service.

Ch. 737 (H 1340) amended the Teachers' and State Employees' Retirement System to permit increased retirement benefits for teachers and state employees who retired before July 1, 1965, if they had service before July 1, 1941 (when the retirement system was started), but had not previously received credit for such service when they retired.

The act also provides a minimum retirement allowance of $75 a month, before the application of any optional benefit, to all employees who retired after 60 with 15 or more years of creditable service.

Ch. 241 (H 496) contains twelve minor amendments to the Teachers' and State Employees' Retirement System. These amendments (1) permit any former employees with at least 20 years of creditable service in the retirement system to receive an early, reduced-retirement allowance at 50; (2) provide that the cost-of-living increases for retired members be equal to the percentage increase in the Consumer Price Index (subject to a maximum of 4 per cent) instead of approximating the increase; (3) authorize that the Board of Trustees establish a separate reserve fund to provide death benefits, if investigation shows it to be desirable; (4) increase the portion of the total retirement fund that may be invested in common and preferred stocks from 15 per cent to 25 per cent; (5) permit the funds to be invested in corporate securities that bear one of the three highest ratings of at least one (formerly two) nationally recognized rating service; and (6) permit members of either the Teachers' and State Employees' Retirement System or the Local Governmental Employees' System who are employed by a department or governmental unit subject to the other retirement system to transfer their active retirement accounts to the other system.

Workmen's Compensation

Ch. 515 (H 819) amended the Workmen's Compensation Act to increase the maximum weekly benefit from $56 to $80 and the maximum death or disability benefit from $20,000 to $32,500. Maximum benefits for facial or bodily disfigurement was increased from $5,000 to $7,500.

N.C. Firemen's Pension Fund

Ch. 578 (H 486) opened the North Carolina Firemen's Pension Fund to active firemen, as of May 18, 1973, who were not members and to member firemen who had not received credit for previous service. A firemen has until June 30, 1974, to apply for membership and to make a lump-sum payment of $5.00 per month retroactively to the time he first became eligible to be a member, plus interest at an annual rate of 4 per cent for each year of his retroactive payments.

LOCAL PERSONNEL

County Personnel Enabling Act.

Ch. 822 (H 329) revised the General Statutes relating to counties and granted the boards of county commissioners authority to establish a modern system of personnel administration. G.S. 153–92 to 153–104 as rewritten is very similar to the authority given to city councils in 1971.

The most significant sections pertaining to personnel administration are G.S. 153–82 and G.S. 153–92 to –95. In counties with a county manager, the manager shall appoint (with the approval of the board of commissioners), suspend, or remove all county officers and employees except those elected by the people or whose appointment is otherwise provided for by law. The manager is responsible for preparing position classification and pay plans.

In counties without a manager, the commissioners shall appoint, suspend, and remove all county officers and employees except those who are elected or whose appointment is otherwise provided for by law. However, the board may delegate to any county department head the power to appoint, suspend, or remove employees. In counties without a manager, the commissioners must appoint or designate a personnel officer to be responsible for administering the pay and classification plan.

The act authorized boards of county commissioners to adopt personnel rules governing annual, sick, workmen's compensation leave; office hours, holidays, service award and incentive award programs; and other measures that promote the hiring and retention of capable, diligent, and honest career employees. The county may also purchase life and health insurance and provide other fringe benefits for county employees. The commissioners are authorized to establish a personnel board for employees subject to the authority of the commissioners. The personnel board may administer tests, conduct hearings for employees who have been suspended, demoted, or discharged, and hear grievances.

The most significant prohibition is in G.S. 153–93(b), which bars payment of funds to a local retirement system or plan unless the system is certified to be actuarially sound by a qualified actuary.

Civil Service and Personnel Boards

Ch. 297 (H 876) created a three-member Buncombe County Personnel Advisory Board to be appointed for staggered three-year terms by the senior regular resident superior court judge. The board is to have advisory and investigative duties respecting personnel administration in the sheriff's department. The board is empowered to hear appeals, receive evidence, determine facts, and make recommenda-

tions to the sheriff in case of employee suspension, demotion, and dismissal appeals. The act also provides that all appointments and promotions in the sheriff's department shall be solely on the basis of merit and fitness, and no employee shall (1) engage in any political activity while on duty, (2) be required to contribute funds for political purpose, (3) solicit, or act as custodian of, funds for political purpose, (4) coerce contributions for political purpose by any other county employee, or (5) use any county supplies or equipment for political purposes.

Ch. 398 (H 814) rewrote the Mecklenburg County Civil Service Act to give residents of Charlotte greater representation and to change the civil service board from a police commission to a more typical civil service board. The amendment repealed the requirement that two members of the board must reside outside Charlotte. The amendment took from the civil service board and gave the board of county commissioners authority (1) to fix qualifications of applicants, (2) to set rules and regulations governing the police department, (3) to appoint and remove the chief, and (4) to approve a pay plan. Authority to appoint new patrolmen was transferred from the board to the chief of police.

Following the unionization of members of the Rural Police Department of Gaston County, the General Assembly passed Ch. 791 (S 851), which authorized the Board of Commissioners, on a favorable vote, to abolish the rural police department.

Ch. 214 (H 653) increased the Statesville Civil Service Board from three to five members.

Local Firemen Pension Funds

The embarrassing accumulation of insurance premiums in the local firemen's relief funds has bothered firemen for many years. The relief funds met an urgent need before the days of Social Security, public retirement systems, city-paid group health and life insurance and state death benefits. In 1941 High Point firemen secured legislation diverting the balance over $10,000 in the local firemen's relief fund to a supplemental retirement fund. The interest earned by the supplemental fund is divided annually among the retired firemen. Many cities have followed this lead.

The 1973 General Assembly adopted acts establishing supplementary retirement funds for local firemen or liberalized eligibility or retirement allowance for firemen in the following thirteen cities: Cherryville, Clinton, Durham, Elizabeth City, Kannapolis, Lincolnton, Morehead City, Mt. Airy, Reidsville, Salisbury, Statesville, Tarboro, and Winston-Salem. The 1973 acts vary as to (1) the amount left in the local relief fund, (2) whether volunteers are eligible, (3) whether 30 or 20 years of service are required for a fireman to receive a pension, and (4) the amount of the pension.

The Charlotte Firemen's Retirement Fund was amended by Ch. 267 (H 752) to raise the limit on common and preferred stock from 45 per cent to 60 per cent of total invested funds.

Local Governmental Employees' Retirement System

Ch. 244 (H 499) increased the benefits paid by the Local Governmental Employees' Retirement System. With two exceptions, the amendments are similar to changes made by Ch. 242 (H 497) in the Teachers' and State Employees' Retirement System as previously described. The exceptions are that (1) the local program still has a 90-day waiting period and so past credit is not allowed, for its waiting period, and (2) the benefits of members who retired between 1946 and 1958 were increased 25 per cent and the benefits of members who retired between 1959 and 1968 were increased 10 per cent.

Ch. 243 (H 498) made the same minor changes in the Local Governmental Employees' Retirement System as made by Ch. 241 (H 496) in the Teachers' and State Employees' Retirement System.

The minor amendments in the administration of the Local Governmental Employees' Retirement System were included in Ch. 243 (H 498) and are identical to its amendments described in Ch. 241 (H 496) affecting the teachers' and state employees' fund.

Property Taxation

William A. Campbell and Henry W. Lewis

STATE ADMINISTRATION OF THE PROPERTY TAX

Under the Executive Organization Act of 1971 (codified as Chapter 143A of the General Statutes), the State Board of Assessment was transferred "intact" to the Department of Revenue by what was termed a "Type II" transfer. Under such a move, the State Board was to continue to "exercise all of its prescribed statutory powers independently," but its "management functions"—"planning, organizing, staffing, directing, coordinating, reporting and budgeting"—were to be carried out "under the supervision and direction" of the Commissioner of Revenue. It was apparent that this was merely the first step in a more drastic reordering of the state agency charged with property tax functions. Ch. 476 (H 1127)—in particular sections 184 through 194 of that act—complete the process. The principal changes produced by that act, which became effective on July 1, 1973, are outlined below.

State Board of Assessment Abolished

As of July 1, 1973, the State Board of Assessment as it has been known in the past ceased to exist. A new agency called the Property Tax Commission succeeded to some of the functions heretofore assigned to the State Board, and the Department of Revenue (under a "Secretary of Revenue" rather than a Commissioner) took on the remaining work of the old Board [Ch. 476 (H 1127)].

Role of Property Tax Commission

Ch. 476 (H 1127) makes two statements with regard to the duties of the Property Tax Commission:

(1) The Commission is constituted as the State Board of Equalization and Review for the valuation and taxation of property in this State.

(2) The Commission shall hear appeals from the appraisal and assessment of the property of public service companies as defined in G.S. 105–333.

The first of these duties parallels a major responsibility of the old State Board of Assessment set out in G.S. 105–288(a)(3). The second, however, is a major departure from the former law. Taxpayers whose property has been subject to initial appraisal by the State Board of Assessment (public service companies) have had to content themselves with a review of that appraisal by the agency that valued it in the first place. Under Ch. 476 (H 1127), as noted below, the Department of Revenue rather than the Commission will appraise the property of public service companies, and the Commission will hear appeals from appraisal decisions of the Department under G.S. 105–342.

Commission Staff and Financing. The Property Tax Commission members will be paid per diem and necessary travel and subsistence expenses in accordance with general law (G.S. 138–5). Its expenses, as heretofore, will be paid with funds appropriated out of intangibles tax revenues.

The "clerical and other services required by the Commission" will not be performed by a separate Commission staff but will "be supplied by the Secretary of Revenue." Furthermore, effective July 1, 1973, both G.S. 105–288(d) and G.S. 105–293 were repealed;

thus the position known as "Administrative Officer of the State Board of Assessment" and the statutory provisions dealing with his selection and duty assignments are of no effect. A further comment on this change appears in the discussion of the new role of the Department of Revenue below [Ch. 476 (H 1127)].

Property Tax Role of the Department of Revenue

Having assigned the new Property Tax Commission only appellate duties, Ch. 476 (H 1127), in effect, assigns to the Department of Revenue all other property tax duties heretofore lodged in the State Board of Assessment. Specifically, rewritten G.S. 105–288 opens with the following statement:

> (a) Duties of the Department of Revenue:
>
> (1) The Department shall exercise general and specific supervision over the valuation and taxation of property by counties and municipalities throughout the State.
>
> (2) The Department is responsible for appraising the property of public service companies as defined in G.S. 105–333.

One familiar with the language of G.S. 105–288 as revised in 1971 recognizes these two statements as essentially equivalent to that statute's description of the State Board of Assessment's nonappellate responsibilities.

Thus, under the guise of "state reorganization," Ch. 476 (H 1127) relieves the State Board of Assessment (and its successor, the Property Tax Commission) of the duty to appraise railroads, telephone companies, electric power companies, and bus and truckline property, as well as all other public utilities. This responsibility is reassigned to the Department of Revenue, which will presumably handle the job through its newly created Ad Valorem Tax Division, to which technical personnel formerly attached to the State Board of Assessment will, no doubt, be assigned. The new Property Tax Commission will have no hand in either appraisal policy or administration; instead, it will be limited to hearing appeals—including those that utility companies take from valuation decisions of the Department of Revenue. This is not a mere organizational shift; it represents a major change in appraisal jurisdiction and policy. Oddly, county and municipal governments, whose intangible tax revenues will in the future support not only the Property Tax Commission but also the utility appraisal and property tax supervisory work of the Department of Revenue, seem not to have been interested in these significant moves.

Terminology. In view of the fact that Ch. 476 (H 1127) abolishes the State Board of Assessment, use of that agency's title is now both obsolete and inaccurate. Thus, throughout this article the term Property Tax Commission or Department of Revenue, as appropriate, is employed.

Appraisal Jurisdiction of State Department of Revenue. As noted earlier in this article, the original appraisal responsibilities of the State Board of Assessment are now transferred to the Department of Revenue by Ch. 476 (H 1127). In addition, however, other 1973 legislation restricts the categories of property that are to be initially appraised by the state agency, thereby adding to the categories that must be listed and appraised locally. Those changes are noted below.

Cable Television Companies. When the Machinery Act was rewritten in 1971, care was taken to add cable television to the list of businesses included within the meaning of the term "public service company" so as to ensure that the properties of such companies would be appraised by the State Board of Assessment rather than by county officials. Ch. 198 (S 351), ratified on April 16, amends G.S. 105–333(14) to reverse that action. Later in the session, Ch. 783 (H 1208) repeated that change; thus radio and television broadcasting companies are *excluded* from the definition of "public service company."

Radio Common Carrier Companies. Ch. 783 (H 1208) amends G.S. 105–333(14) to *exclude* radio common-carrier companies from the definition of "public service company."

Water Companies. As enacted in 1971, G.S. 105–333(2) contained a definition of the term "water company," but the list of "public service companies" whose property is to be appraised at the state level [G.S. 105–333(14)] did not include water companies, and, furthermore, the property of *nonprofit* water companies was classified and excluded from all taxation by G.S. 105–275(5). The result was confusion: Were the theoretically profit-making water companies, as defined in G.S. 105–333(20), to be listed and appraised by the State Board of Assessment? That issue is settled by Ch. 783 (H 1208), which repeals G.S. 105–333(20) and categorically states that water companies are *not* to be treated as public service companies.

North Carolina Motor Freight Carriers Operating Intrastate. As drafted in 1971, G.S. 105–333(10) placed under the State Board of Assessment's appraisal jurisdiction any "intrastate motor freight carrier engaged in the business of transporting property by tractor trailer or tandem type vehicle, whether or not the carrier is regulated by the North Carolina Utilities Commission." Ch. 783 (H 1208) drops the quoted language from the statute and, in its place, inserts the following statement in the definition of "motor freight carrier" found in G.S. 105–333(10): "With respect to intrastate carriers, this definition shall apply only to those motor freight carriers which are engaged in the business of transporting property by tractor trailer *to or from two or more terminals owned or leased by the carrier in this State,* whether or not the carrier is regulated by the North Carolina Utilities Commission." For county and municipal tax

authorities, this means that, beginning in 1974, intrastate carriers that do not operate between two or more terminals in this state must list their property locally, and it must be appraised by the county tax supervisor.

Passenger Cars and Service Vehicles of Bus Lines and Motor Freight Carriers. As enacted in 1971, G.S. 105–333(9) and (16) defined "locally assigned rolling stock" and "rolling stock" to include passenger cars and service vehicles as well as other rolling stock of bus lines and motor freight carriers, thereby requiring that such vehicles be appraised by the State Board of Assessment. Ch. 783 (H 1208) amends G.S. 105–333(9) and (16) to *exclude* passenger cars and service vehicles of bus lines and motor freight carriers from the appraisal jurisdiction of the Board's successor, the Department of Revenue.

Express Companies. Heretofore G.S. 105–333(6) has carried a definition of the specific type of "public service company" called "express company" separate and apart from the definition of "motor freight carrier company" found in G.S. 105–333(10). In addition, "express company" has been listed in G.S. 105–333(14) as an example of "public service company." Ch. 783 (H 1208) deletes the reference to "express company" in G.S. 105–333(14) and repeals G.S. 105–333(6), and thereby removes from the Machinery Act any separate definition of "express company." Thus, such companies will be dealt with like other motor freight carriers.

Appraisal Instructions. *System Property of Public Service Companies Other Than Bus, Motor Freight Carrier, and Airline Companies.* As amended by Ch. 783 (H 1208), G.S. 105–335(b)(1), as of January 1, 1974, will be altered so that, rather than having to appraise all system property—both that owned by and that leased by a public service company—the Department of Revenue will appraise only that system property actually *used* by the company, including that which is leased, if necessary to obtain a full value figure.

LISTING, APPRAISING, AND ASSESSING

Listing

Place of Listing Personal Property. Ch. 735 (H 1211) spells out with precision a matter that administrators and lawyers have long assumed; but by making the statute specific, a number of questions may be answered before they are raised. As of January 1, 1974, G.S. 105–285 will state that the "*place of taxation* of personal property, both tangible and intangible, shall be determined as of January 1." The one exception to that general rule is discussed under the heading "Listing Business Inventories," below.

Listing Business Inventories. Ch. 735 (H 1211) defines the term "inventories" to mean "goods held for sale in the regular course of business, raw materials, and goods in process of manufacture or processing," and also to mean "other goods and materials that are used or consumed in manufacture or processing or that accompany and are sold with the goods manufactured or processed."

Having enacted this definition, as of January 1, 1974, Ch. 735 (H 1211) will make important clarifying changes in the listing provisions of G.S. 105–285 as they affect inventories. In 1974, as has been true since 1971, "The value, ownership, and place of taxation of inventories held and used in connection with the mercantile, manufacturing, processing, or producing business enterprise of a taxpayer having a place of business in this State, whose fiscal year closes at a date other than December 31, shall be determined annually as of the ending date of the taxpayer's latest completed fiscal year." Under this rule, so-called "business inventories" owned by a resident fiscal-year taxpayer (as distinguished from a calendar-year taxpayer) are to be taxed at the place, at the value, and to the individual or firm that owned them on the closing date of that owner's last completed fiscal year. Nonresident business firms that operate on fiscal years other than the calendar year are required to report their inventories as of January 1. But what of resident fiscal-year firms that have not completed a fiscal year by a particular January 1? And what of separate businesses owned by a resident fiscal-year taxpayer? On these points, Ch. 735 (H 1211) provides definite instructions:

> . . . [I]f with respect to any business enterprise or any new or additional business location a taxpayer has not completed a fiscal year as of January 1, the value, ownership, and place of taxation of inventories held and used in connection with the taxpayer's new business enterprise or new or additional business location shall be determined as of January 1.

Information from Register of Deeds. If a board of county commissioners desires to do so, G.S. 105–303(a)(1) authorizes it to require the register of deeds to certify certain information to the tax supervisor whenever "any conveyance of real property (other than a deed of trust or mortgage) is recorded. . . ." One of the items heretofore found in that list was "The name of the person to whom the property is conveyed." Ch. 789 (H 1309) has rewritten that item to read as follows: "The name *and address* of the person to whom the property is *being* conveyed." In counties that use this system, the addition of the grantee's address should prove useful in identifying real property for tax purposes.

Extensions of Time for Listing. G.S. 105–307 sets the annual tax-listing period from "the first business day" in January through the following thirty days. In any year, the board of county commissioners may extend the period for an additional thirty days; and in octennial revaluation years, the board may extend

the period for an additional sixty days. All such extensions apply to all taxpayers.

Heretofore, despite varying local practice, neither boards of county commissioners nor tax supervisors have had authority to grant extensions to individual taxpayers on an individual basis. Ch. 141 (H 29) as amended by Ch. 706 (H 1178) adds to G.S. 105–307 a provision empowering boards of county commissioners to grant extensions of listing time to individual taxpayers. However, this authority is strictly limited:

1. The taxpayer must make written request for the extension.
2. The request must be filed with the board at least seven days before the regular listing period ends.
3. The taxpayer must show "good cause" for the extension.
4. No extension may be allowed to run later than March 31, a date that precedes the first meeting of the board of equalization and review.

The statute is silent on how boards of county commissioners are to deal with these applications. Presumably, they must be acted on during regular board meetings, and presumably the minutes of the board—or attachments to the minutes—will record board decisions on each request. Tax supervisors remain powerless to grant extensions of time for listing.

Appraisal

Uniform Appraisal Standard. As rewritten in 1971, the opening portion of the statement of the property tax appraisal standard reads as follows:

> All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. (The intent of this section is to have all property appraised at its true and actual value in money, in such manner as such property is usually sold, but not by forced sale.) [G.S. 105–283]

The sentence in parentheses was, in effect, a hangover from the prior law. The 1971 statute then continued as follows:

> Thus, when used in this Subchapter, the words "true value" shall be interpreted as meaning market value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.

It is apparent that the latter part of the section makes the material in parentheses redundant and possibly confusing. Ch. 695 (S 147) deletes the sentence in parentheses.

Obtaining Information from Business Firms. In the following language, G.S. 105–296(h) and its predecessor acts have accorded the county tax supervisor one of his most effective means for obtaining full information on the property of business firms:

> [The tax supervisor] may require any person engaged in operating a business enterprise in the county to submit, in connection with his regular tax list, a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery or appraisal of property taxable in the county. . . .

The manner in which and the degree to which tax supervisors have exercised this authority have varied from county to county. Some have used the authority on a case-by-case method, while others have made submission of such data a *required* part of the annual listing process. Early in the 1973 session of the legislature, it was known that accountants and others professionally interested in the preparation of business income and property tax returns found the routine exercise of this power to be burdensome. Two bills designed to rewrite the quoted statute were introduced: H 633 and H 956. The measure that was finally enacted, Ch. 560, was based on H 956 but had been substantially modified before ratification. Effective January 1, 1974, the statutory provision quoted above will read as follows:

> *Only after the abstract has been carefully reviewed* can the tax supervisor require any person operating a business enterprise in the county to submit a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery or appraisal of property taxable in the county. . . .

Thus, as the italicized words show, in the future it will not be possible for a tax supervisor to require the routine submission of balance sheets and comparable information at the time the business firm submits its listing. "Only after the [submitted] abstract has been carefully reviewed" may the supervisor exercise this authority. Although the words "carefully reviewed" are not defined, the revised statute suggests that only if the abstract's contents are inadequate is the supervisor to make this additional demand. Perhaps as significant, however, is the delay that may be occasioned by the new procedure. In analyzing Ch. 560 (H 956), what it did not change as well as what it did change should be kept in mind. As reworded, G.S. 105–296(h) is less a grant of authority than a restriction on a presumed power, possibly that found in G.S. 105–309(d), especially subdivisions (1) and (2). The wording of those subdivisions should be examined with care:

> (1) Whenever the tax supervisor or list takers shall deem it necessary to obtain complete list-

ings, they may require taxpayers to submit additional information, inventories, and itemized lists of personal property [supplementary to what appears on the abstract].

(2) At the request of the tax supervisor or list taker, the taxpayer shall furnish any information he may have with respect to the true value of the personal property he is required to list.

Do these portions of the statute dealing with the contents of the abstract conflict with G.S. 105–296(h) as rewritten by Ch. 560? In other words, may a tax supervisor use one or both of these provisions to require routinely what he may not require under G.S. 105–296(h)? The answer may be debated, but it is probable that the courts would hold that they do not—that these powers are available only *after* the abstract has been submitted. In brief, G.S. 105–296(h) may operate as a brake on these powers.

The penalty for improper disclosure of information obtained under G.S. 105–296(h) is made applicable to tax office employees as well as officials.

Appraisal of Real Property. At least three acts of the 1973 General Assembly will have significant bearing on the techniques that must be used in appraising real property for taxation. Two of them are discussed below; a third, dealing with certain defined classes of farm, horticultural, and forest land, is treated in a separate section of this article.

Timber-Producing Capacity of Land. G.S. 105–317(a)(1) places upon tax appraisers the affirmative responsibility in determining the value of land ". . . to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages" as to a specified series of factors, three of which are "quality of soil," "fertility," and "quantity and quality of timber." In evaluating "fertility" and "quality of soil," a careful appraiser will attempt to measure the land's capacity to produce trees as well as row crops, but heretofore many appraisers have tended to "consider" the "fertility" and "quality" of land on which trees are growing and the "quantity and quality" of that growth as a single factor. Thus, in many instances, when timber has been cut, the value assigned the bare land has inadequately stated its true value. As the effect of Ch. 790 (S 426)—discussed under the heading "Property Classified and Excluded from the Tax Base"—spreads gradually across the state with each new revaluation, it will be necessary for appraisers to pay greater attention to measuring the true value of the land on which timber is growing or on which it might be grown. This fact led the General Assembly to amend G.S. 105–317(a)(1) to delete the requirement that appraisers consider "quantity and quality of timber" and to make specific the requirement that they consider the land's *"adaptability for . . . timber producing . . . uses . . . ."* [Ch. 695 (S 147)].

Scenic Easements. Ch. 670 (H 436), known as the North Carolina Trails System Act, in connection with the development of scenic and recreation trails, empowers the state to acquire ". . . lands in fee title, or interest[s] in land in the form of *scenic easements, cooperative agreements, easements of surface ingress and egress running with the land, leases, or less than fee estates. . . .*" Although the other interests are not defined, the act states that a "scenic easement" is one that "limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of land and activities conducted thereon, the object of such limitations and obligations being the maintenance or enhancement of the natural beauty of *the land in question* or of *areas affected by it.*" Reiterating a basic requirement of the Machinery Act, Ch. 670 (H 436) provides that "Any change in value of land resulting from the grant of an *easement* shall be taken into consideration in the assessment of the land for tax purposes."

A few comments on the property tax consequences of this legislation may be helpful. First, the Machinery Act already requires tax appraisers, in determining the true value of land, to consider "any . . . factor that may affect its value" favorably or unfavorably [G.S. 105–317(a)(1)], and the gain or loss of an "appurtenance" (which includes easements, rights of way, and similar interests) is specified as a basis for reappraising land in non-revaluation years [G.S. 105–287(b)(2) and (3)]. Thus, the statement in Ch. 670 (H 436) has only cumulative significance, and it may be misleading for two reasons: It suggests that the only affected property is that subjected to the restriction, and its mention of easements suggests that rights of way, leases, and "cooperative agreements" are not to be considered in making reappraisals. This, of course, is not correct. Second, it is wise to emphasize that the "consideration" of the granting or acquisition of an easement or right of way does not guarantee a particular "true value" result. In other words, the appraiser will seek to measure the ultimate effect of the creation of the interest, not merely the restriction it places upon the use to which the servient land may be put. In addition, in a revaluation year, it would be proper for appraisers to consider the effect of such easements, etc. on *nearby* lands as well as those legally affected.

ABOLITION OF ASSESSMENT RATIOS

Heretofore it has been possible for any county that desired to do so to tax property at its full appraisal value, and a few counties have elected to do this. Under the provisions of Ch. 695 (S 147), G.S. 105–284 has been revised to read as follows:

All property, real and personal, shall be assessed for taxation at the valuation established under G.S. 105–283, and taxes levied by all counties and

municipalities shall be levied on assessments as provided in this section.

"The valuation established under G.S. 105–283" is "true value in money," thus *beginning on January 1, 1974,* the appraised value of property must be used as its tax value. In other words, assessment ratios will be prohibited in all counties.

This fundamental alteration in valuation policy necessitated several corrective amendments in the Machinery Act, and, also educed several changes in the state franchise tax designed to ensure that railroads and certain other corporations whose base for that tax is "assessed" property value would not be penalized. (The effective dates for the franchise tax changes, unlike the Machinery Act amendments, were January 1, 1973, for railroads, and November 1, 1972, for other corporations.)

FINANCING REAL PROPERTY REVALUATION

Since 1959 the statutes that deal with county government have contained provisions intended to assure the availability of necessary funds at the time money must be spent for real property revaluations. Ch. 822 (H 329), which becomes effective on February 1, 1974, strengthens the earlier provisions to a marked degree. The revised procedure offers the tax supervisor full opportunity to furnish the county budget officer and county commissioners with information on appraisal costs.

The first step in the process outlined by new G.S. 153–150 takes place before the beginning of the fiscal year immediately following the effective date of an octennial revaluation. At that time the county budget officer is required to present the county commissioners "*an eight-year budget for financing the cost of the next octennial reappraisal.*" This budget is supposed to estimate the cost of the next revaluation and "shall propose a plan for raising the necessary funds *in eight annual installments as nearly uniform as practicable.*"

The county commissioners are to consider the budget officer's proposal, amend it if they see fit, adopt a resolution establishing a *special reserve fund* for the next revaluation, and appropriate to that fund the amount specified for that year under the plan. To take care of changes in revaluation costs that may occur during an eight-year period, the new statute requires the county commissioners and budget officer to review the original cost estimate each year, and if necessary the board must amend the plan "so that it will reflect the probable cost at that time of the reappraisal and will produce the necessary funds at the end of the eight-year period." Within ten days after the adoption of each year's budget, the county finance officer is required to report to the Ad Valorem Tax Division of the Department of Revenue "the current condition of the special reappraisal reserve fund, and the amount appropriated to the reserve fund in the current fiscal year."

Moneys placed in the special revaluation reserve fund are made unavailable for any other purpose, although they may be invested under strict statutory regulations.

DISCOVERED PROPERTY

G.S. 105–312(b) requires tax officials "to discover property, to list discovered property, [and] to appraise and assess it. . . ." When an item of property has been found to have been omitted from the tax abstract or to have been listed by its owner at "a substantial understatement of value, quantity, or other measurement," it must be listed to its owner on an abstract "signed by the tax supervisor, list taker, or other person designated by the tax supervisor"; the owner is then to be given notice and a chance to appear and be heard on the value of the property and on whether it should be listed to him. [See G.S. 105–312(a) and (d).] In essence, this has been the law for many years, and administrators had assumed that the act of listing the property was the culminating procedure demonstrating that a discovery had taken place. *In re McLean Trucking Co.*, 281 N.C. 243, 188 S.E.2d 452 (1972), cast serious doubt on this assumption. It seemed to hold that "a discovery is made when tax officials *are fully aware of the facts. . . .*" [See Note, 51 N.C.L. Rev. 531, 537 (1973).] Such an interpretation of the statute suggested that it was necessary to make "a subjective inquiry into the state of mind of tax officials" in order to determine *when* a discovery actually takes place. The serious consequences that flow from the determination of the date of discovery—the years for which the property may be "back listed" and the amount of penalty to be imposed—no doubt led the 1973 General Assembly to reiterate in plain statutory language what had formerly been assumed. This was accomplished through enactment of Ch. 787 (H 1307), which, effective May 23, 1973, rewrote the first sentence of G.S. 105–312(d) to state specifically:

> Subject to the provisions of subsection (c), above, and the presumptions established by subsection (f), below, discovered property shall be listed in the name of the person required by G.S. 105–302 or G.S. 105–306, *and the discovery shall be deemed to be made at the time such property is listed as prescribed in this subsection (d).*

It would seem that this should clarify the issue and lay to rest any problem posed by the *McLean* decision.

Effective May 23, 1973, Ch. 787 (H 1307) made still another change in the language of G.S. 105–312(d) without deleting any of the provisions of the law as it already stood. In effect, this amendment

ensures that, if the property owner and tax supervisor can agree as to the value to be assigned discovered property, the board of equalization and review or board of county commissioners need not be called upon to deal with that issue. What does not appear in the amended statute, however, is any indication as to the method by which agreement between taxpayer and supervisor is to be reached and what record of that agreement is to be made. Tax supervisors will want to be more careful than ever to follow the precise steps set out in G.S. 105–312(d) about *listing* the property and signing the abstract and about notifying the property owner of his rights. Only after those steps have been taken will the supervisor safely enter into a valuation agreement with a property owner; otherwise, the owner might later assert that he had not been given proper notice and an opportunity to be heard by the appellate board. Even when all these procedural steps have been taken and a valuation agreement has been reached between the supervisor and the taxpayer, it would be prudent to add a statement to the abstract on which the supervisor has listed the discovered property to the effect that the indicated value has been agreed to by the taxpayer and have the taxpayer sign and date that statement.

EXEMPTIONS AND PREFERENTIAL CLASSIFICATIONS

Two years ago it was already apparent that the 1973 legislature would be called upon to reconsider the multitude of exclusions, exemptions, and preferences found in the property tax laws because—having left them untouched in the general revision of the Machinery Act—the 1971 General Assembly established the Commission for the Study of Property Tax Exemptions and Classifications and charged it with developing both specific recommendations for revisions and a general policy to guide legislative exercise of the exemption and classification powers. Under the chairmanship of Senator Wesley Webster, the Commission worked diligently to comply with the mandates fixed in 1971. Comments on the Webster Commission's actions with regard to assessment ratios appear in another portion of this article. Its work with respect to exemptions and classifications is treated here.

Statement of Policy

The legislative treatment accorded S 135 (H 170) early in the session served to warn proponents of the Commission's proposals that the going would be rough. Attempting to draft the policy recommendations as charged, the members of the Commission proposed in S 135 (H 170) that the legislature resolve that:

> *In taxing property, it is the policy of this State that all property bear its fair share of the tax burden measured by the true value of the property.* In the exercise of its constitutional power to classify property for taxation and in the exercise of its constitutional power to exempt property from taxation, the General Assembly acknowledges that full taxation should be the rule and that total or partial immunity from taxation should be the exception. In granting total or partial immunity from property taxation, the legislature should be satisfied that *substantial benefit will inure to the people of the State as a whole, not merely to some locality or segment of the population;* that similar properties and property owners will be accorded uniform and consistent treatment; and that the benefits from immunity or partial immunity will be substantially greater than the revenue loss to the taxing units occasioned thereby.

The very first sentence of this proposal, taken in conjunction with the other portions of the draft that have been italicized, proved to be unacceptable to the General Assembly. The Senate discussed the resolution but recommitted it for further committee study; the House Finance Committee (to which that body's version had been assigned) never reported on the matter. Thus, although the measure is technically alive and theoretically capable of reaching the floors of the two houses for action in the January 1974 session, it is generally agreed that had it reached a vote, it would have been defeated. To a legislator who had come to Raleigh already committed to supporting legislation classifying certain property for preferential treatment (farm land, forests, open space, etc.), it was plain that a vote in favor of the Commission's resolution on legislative policy might be interpreted as inconsistent with a vote in favor of further classification. To the observer, the relatively early rejection of S 135 (H 170) was a clear signal that Commission proposals for repeal of certain existing exemptions and classifications might never win favor and, more significantly, that new proposals for exemption, exclusion, and preferential treatment might well be enacted.

General Revision of Classification and Exemption Statutes

In Ch. 695 (S 147) the Webster Commission presented its major recommendations with regard to "the continuation, addition, or deletion of specific exemptions and classifications," which will go into effect on January 1, 1974. This act rewrites and reorganizes the existing statutes exempting property from taxation and classifying property for preferential tax treatment or exclusion from the tax base. Related acts are noted where appropriate in this article. Throughout, only *substantive* alterations and *repeals* are noted and examined. Certain Commission proposals that failed to meet legislative approval are noted where relevant. References to the General Statutes that appear in this discussion are to be found in the Machinery Act of

1971; they do not reflect numbering changes effected in 1973.

Property Classified and Excluded from the Tax Base (G.S. 105–275).

Property Held for Export to a Foreign Country. Ch. 695 (S 147) redefines the exclusion now granted property held for foreign shipment, requires that it be listed for taxation, and requires the owner—to obtain tax immunity—to demonstrate that the property has actually been shipped as anticipated.

Classifications Added in 1973. The following classifications that had *not* been recommended by the Webster Commission were added in 1973:

1. *Nature preserves and parks*—Real property owned by a nonprofit agency "exclusively held and used by its owner for educational and scientific purposes as a protected natural area." The words "protected natural area" are defined as "a natural reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and study." Use of the word "preserved" in this definition suggests that the required use of the property "for educational and scientific purposes" may be passive rather than active.

2. *Motor chassis,* owned by nonresidents of this state, that "temporarily enter" North Carolina "for the purpose of having a body mounted thereon." It is interesting to speculate whether such legislation is necessary. Personal property that is "temporarily" present in the state may well be protected by the United State Constitution—either under due process standards or under the commerce clause's shelter of property in interstate commerce. Thus, at most, this seems to be a rigidly limited category.

3. *Special nuclear materials* in two situations defined in Ch. 290 (S 685) as amended by Ch. 451 (S 892):

(a) Special nuclear materials in any form being *held for or in the process of* manufacture, fabrication, or processing. . . .

(b) [S]pecial nuclear materials in any form being *held for or in the process of* delivery by the manufacturer, fabricator, or processor thereof.

No ownership requirements are established in order to bring special nuclear materials within the class. A full discussion of this act appears in Property Tax Bulletin, No. 41, published by the Institute of Government.

4. *Standing timber, pulpwood, seedlings, saplings, and other forest growth.* Under Ch. 790 (S 426), this exclusion does not become effective in every county immediately; instead, it is first to be applied in the year in which the county's next scheduled real property revaluation becomes effective. [A parallel provision in Ch. 695 (S 147) emphasizes that in appraising real property for tax purposes consideration must be given to the property's timber-producing capacity. This insertion is discussed in another section of this article.]

5. *Water and air pollution abatement property,* both real and personal. The provisions of existing law granting *exemption* to such property were not recommended for re-enactment by the Webster Commission either as an exemption or as an exclusion. In the General Assembly, however, the Commission proposal was amended so that Ch. 695 (S 147) recasts the existing exemptions as a classification and expands the category to include pollution-abatement property that "will be constructed or installed" as well as that which is in actual operation. In any case, immunity remains dependent upon the certificate of the State Board of Water and Air Resources.

6. *Vinous products.* Ch. 511 (H 311), effective January 1, 1974, classifies North Carolina "vinous products" stored for manufacturing or processing and provides for their taxation at 60 per cent of the rate applicable in general.

Exemptions in General. The Webster Commission's proposals for rewriting existing exemptions, found in Ch. 695 (S 147), are firmly grounded on the constitutional provisions on the subject:

1. Property of the state and local units of government must be granted exemption if, as decided by the courts, it is used for public or governmental purposes. [N.C. Const., Art. V, § (3); *Redevelopment Commission v. Guilford County,* 274 N.C. 585, 164 S.E.2d 476 (1968).]

2. The General Assembly may, in its discretion, grant exemption to cemeteries and property held for "educational, scientific, literary, cultural, charitable, or religious purposes." [N.C. Const., Art. V, § 2(3).]

Four comments must be made initially: First, the 1973 exemption rewrites and repeals do not go into effect until January 1, 1974. Second, as in the present law, despite the "exclusive use" requirements found in a number of the exemption grants, Ch. 695 (S 147) makes clear that if part of a property that meets the exemption requirements "is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation." Third, the legislature wrote the following rule of construction into each statute that grants exemption to privately owned property because of its use for a constitutionally exempting purpose: "The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption. . . ." Although this probably states the existing law, its insertion in the text of the exemption statutes may arouse interest in the meaning of "general public" and "material amount of business or patronage."

The fourth general comment deals with statutory arrangement. The Machinery Act of 1971, like its predecessor, provides for the exemption of real property in sections separate from those that provide for the exemption of personal property held by the same owners and used for the same purposes. Ch. 695 (S 147) merges the treatment of real and personal property but establishes separate sections for property held for constitutionally sanctioned exempting uses.

Government Property. Property of the United States government and its agencies acquires exemption by virtue of federal constitutional and statutory provisions; thus Ch. 695 (S 147) merely states that fact: "Real and personal property owned by the United States and, by virtue of federal law, not subject to state and local taxes shall be exempted from taxation." With respect to property owned by the State of North Carolina, counties, cities, towns, special districts, and authorities, Ch. 695 (S 147) spells out quite plainly that mere ownership is insufficient to warrant exemption; property owned by the state as well as that of local governments must be used for a public or governmental purpose to justify its immunity from taxation. This is legislative reiteration of what was said in the *Redevelopment Commission* case.

Property Owned by Churches. Ch. 695 (S 147) carries forward the grant of exemption to church-owned real and personal property used by the owning church for religious purposes, but it deletes the portion of the present law that has been interpreted as granting exemption to individually owned real property made available for religious uses without charge. Instead, Ch. 695 grants exemption to church-owned property that is made available without charge to another agency if the agency in possession uses the property wholly and exclusively for "religious, charitable, or nonprofit educational, literary, scientific, or cultural purposes." To assist administrators and attorneys, the act includes definitions of each of the listed constitutionally sanctioned uses. "Religious purpose" is defined to include, in addition to the predictable uses, the promotional offices and headquarters of a denomination and the residences of ministers assigned to or serving local congregations, but other church-owned residential property is specifically excluded from the definition. Church-owned personal property used for educational purposes is also exempted.

Property Owned by Private Educational Institutions. Ch. 695 (S 147) makes several clarifications in the traditional grant of exemption to the property of private educational institutions used for educational purposes, and, in one instance, broadens the grant. Here exemption is based on two requirements—ownership by a nonprofit educational institution, and use for an "educational purpose"—a term that is defined as "one that has as its objective the education or instruction of human beings" and that "comprehends the transmission of information and the training or development of the knowledge or skills of individual persons." Significantly, however, the owning educational institution need not be the using or possessing agency; the exemption is not lost if the qualifying owner makes the property available without charge to another nonprofit educational institution and that institution uses the property for nonprofit educational purposes. The qualifying real property includes buildings, improvements other than buildings, land reasonably necessary for the convenient use of exempt buildings and improvements, and land exclusive of improvements—so long as the real property is "of a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner."

Property Owned by Religious Educational Assemblies. Ch. 695 (S 147) simplifies the grant of exemption to property owned by religious educational assemblies. The only real property of such an owner that may qualify for exemption is "Buildings, the land they actually occupy, and additional adjacent land reasonably necessary for the convenient use of any such buildings *or for the religious educational programs of the owner. . . .*" Furthermore, the realty must be "of a kind commonly employed in those activities naturally and properly incident to the operation of a religious educational assembly such as the owner." Even then, however, a final and important *use* test must be met; that is, the property must be "wholly and exclusively used for religious worship or purposes of instruction in religious education." No doubt, the term "purpose of instruction in religious education" is to be interpreted broadly in the light of the other provisions of the section. Although the present statute's specific reference to recreational properties has been dropped in Ch. 695, it seems plain that, as with regard to ordinary educational institutions, recreational programs are "activities naturally and properly incident" to a religious educational assembly's work and that property used for that purpose would not be taxable so long as the recreational use could be reasonably viewed as part of the "religious educational programs of the owner."

Property Used for Charitable Purposes. Ch. 695 (S 147), as does the present law, makes two provisions for the exemption of property used for charitable purposes. For clarity, the two provisions are analyzed separately.

The section assigned the designation "§ 105–278.5" in the new law is quite broad. Regardless of type or location, any real or personal property actually held and used for charitable purposes by any one of a list of qualified owners is granted exemption from taxation. The roster of owners who may claim this exemption if they are not organized or operated for

profit and if the property is used as prescribed is composed of the following: a YMCA or similar organization; a home for the aged, sick, or infirm; an orphanage or similar home; a Society for the Prevention of Cruelty to Animals; a reformatory or correctional institution; a monastery, convent, or nunnery; or a life-saving, first-aid, or rescue-squad organization. A "charitable purpose" is defined as "one that has humane and philanthropic objectives; it is an activity that benefits humanity *or a significant rather than limited segment of the community* without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose."

The second ground for exemption on the basis of use for a charitable purpose is discussed below.

Property Used for Educational, Scientific, Literary, or Charitable Purposes. The Machinery Act section designated "§ 105–278.6" by Ch. 695 (S 147) replaces existing G.S. 105–278(6) and G.S. 105–280(6). Unlike the sections it replaces, the new section carefully bases exemption on use of the property for a constitutionally sanctioned "use" rather than on use for the purposes of a specified list of owners. Nevertheless, the new section still carries a broad list of owners who may claim this exemption if their property is of a kind that meets the statute's requirements and is used for a purpose that meets these requirements.

The roster of potentially qualified owners is comprised of the following:

(1) a charitable association or institution,
(2) an historical association or institution,
(3) a veterans' organization or association,
(4) a scientific association or institution,
(5) a literary association or institution,
(6) a benevolent association or institution, or
(7) a nonprofit community or neighborhood organization.

Persons familiar with the list found in the present law will observe that while "patriotic" associations have been deleted, three new categories of owners have been added: scientific and literary associations or institutions and "nonprofit community or neighborhood" organizations.

Another broadening of this statute is found in the fact that the owner need not be the user of the property so long as the possessor or occupant uses it for a qualifying purpose and so long as the owner makes it available to the occupant or user without charge.

Significantly, however, the new statute is quite precise in its statement of how a qualifying owner's property must be used in order to warrant its exemption: It must be "wholly and exclusively used . . . for nonprofit educational, scientific, literary, or charitable purposes." Definitions of these terms are supplied to assist those who must interpret the statute; they take the place of the controversial expression "lodge purposes" found in the existing law.

One example may be useful: Assume that a veterans' organization owns certain real property. Use of that property for "veterans' organization purposes" —whatever they may be—is not sufficient to warrant exemption, but if the owning veterans' organization itself, or any other listed agency to which the owner has made the property available without charge, uses it for a nonprofit educational, scientific, literary, or charitable purpose, it will qualify for exemption.

Property Used for Charitable Hospital Purposes. The exemption granted the real and personal property of a nonprofit charitable hospital used for hospital purposes by G.S. 105–278(10) and G.S. 105–280(11) is continued by Ch. 695 (S 147). The grant is substantially unchanged except that the new section deletes the specific reference to nurses' homes, but the new definition of "charitable hospital purposes" is broad enough to include property put to such a use.

The $300 Exemption. Article V, section 2(3), of the North Carolina Constitution authorizes the General Assembly to exempt "to a value not exceeding $300, any personal property." Heretofore, G.S. 105–280(8) has applied this $300 deduction against the appraised value of the following items: "Wearing apparel, household and kitchen furniture, the mechanical and agricultural instruments of farmers and mechanics, libraries and scientific instruments, provisions and livestock. . . ." Furthermore, only one $300 exemption has been available to a household—including a single person living alone. Ch. 695 (S 147) makes two important changes in this statute: (1) the the $300 figure is to be deducted from the total appraised value of *all personal property of the taxpayer, not merely the traditional items;* and (2) the exemption is made available to each individual person who is required to list, not merely one exemption per household. This should expand the grant and also simplify administration.

Specific Repeals. Briefly noted below are the tax-immunity and preference provisions of the 1971 Machinery Act that have been repealed by Ch. 695 (S 147), effective January 1, 1974:

1. Exemption of the real property of noncitizen Indians granted in G.S. 105–278(8). (The Webster Commission found this to be an inoperative statute because all Indians are now citizens.)

2. Exemption of the private libraries of ministers and public school teachers found in G.S. 105–280(2).

3. Exemption of mortgaged wheat in the hands of nonprocessors of wheat granted in G.S. 105–280(18).

4. Credits allowed on the tax bills of private hospitals in payment for services rendered indigent patients granted in G.S. 105–281(a).

Unsuccessful Immunity Proposals

In several prior sessions of the General Assembly, efforts had been made to remove manufacturers' inventories from the tax base. None of these efforts has

met legislative approval. The 1973 legislature saw the introduction of two separate and distinct proposals [S 201 (H 263) and H 721] that, if enacted, would have taken a different tack: They would have granted affected taxpayers a state income tax credit equal to the local taxes paid on inventories. These measures were not acted upon by the committees to which sent. Although not actually property tax exclusion or exemption proposals, their relationship to the earlier bills brings them within the purview of this discussion.

Personal Property of Banks. The Commission for the Study of Property Tax Exemptions and Classifications sponsored S 145 (H 176) which would have made the tangible and intangible personalty of both state and national banks taxable, but the bills were not reported by the committees to which they were referred. Since no final action was taken on this proposal, theoretically it might be acted on at the session that opens in January 1974. H 463, which would have had the same effect as S 145 (H 176), also failed to receive any committee action.

Property of Hospital, Medical, and Dental Service Corporations. The Webster Commission introduced S 144 (H 175), which was drafted to place on the tax books all properties of Blue Cross/Blue Shield and comparable hospital, medical, and dental service corporations. Although passed by the Senate, when considered by the House, this proposal was, through misunderstanding, referred to the Appropriations Committee, which took no action on it. Thus, as noted with regard to the bills on bank personalty, the 1974 session of the General Assembly could act on this measure.

Owner-Occupied Residential Property. An unsuccessful 1971 proposal was echoed in S 938, which would have classified owner-occupied residential property, and, so long as it was so used, assessors would have been required to ignore its potential market value for other uses in appraising it for taxes. Upon a change in use, the property would become liable for the difference between taxes based on market-value appraisal and taxes based on use-value appraisal for the four-year period preceding the change in use. The Senate Finance Committee, to which this bill was referred quite late in the session, took no action on it.

Requests for Tax Immunity or Preferential Treatment

The most far-reaching provision of Ch. 695 (S 147) requires nongovernmental property owners who believe their property is entitled to exclusion, exemption, or preferential treatment to apply for it. The Webster Commission took the position that tax immunities for all but governmental property are privileges the General Assembly is not required to grant and that, if the immunity is granted, it is not unreasonable to require owners of benefited property to record what they own and request that it be accorded the preferential treatment allowed. The new statute opens on the following note:

> An owner of property who seeks to obtain tax relief for his property (through exemption or classification) under the laws of this State has the burden of establishing that the property is entitled thereto.

The first step in this process is outlined as follows:

> In 1974, *and each year thereafter,* during the regular listing period, the owner seeking such relief shall file a request with the tax supervisor of the county in which the property, real and personal, would be subject to taxation if taxable. If the property is situated within a city or town and the owner desires relief from municipal taxation, he shall also file a request for tax relief with the person responsible for municipal tax listing.

Note that the request must be made every year. This reflects the Commission's belief that "exempt" owners change the use to which their properties are put more frequently than is generally assumed. The Department of Revenue is required to devise the required application forms.

It is anticipated that each request will be reviewed and decided by the appropriate county and municipal authorities with advice from unit attorneys. Requests that are approved must be filed in the office of the county tax supervisor and in whatever office the municipal governing body may designate. If a request is denied by either a county or a city, the supervisor or person charged with city listing must notify the applicant in time for him to appeal to the board of equalization or county commissioners or to the municipal governing body and ultimately to the Property Tax Commission.

Failure to Request Tax Relief. If the owner of potentially immune property *lists* it without making the required application, the tax authorities will proceed as at present; that is, they will assume that the property is taxable. If the owner *fails to list* and also fails to make application for relief, the county and city authorities will—when they find that the property has not been listed—treat it as they would other *unlisted* property; that is, they will make a *discovery,* list the property, notify the owner that it has been listed, and give the owner an opportunity to be heard before the governing body or board of equalization, whichever is appropriate. Decisions of those boards may be appealed to the Property Tax Commission. If the appeals agency determines that the property is entitled to immunity or some other preferential treatment, "the owner shall be permitted to submit his request for tax relief at that time" on the usual form.

Records and Reports. Both the county tax supervisor and the municipal list taker are required to prepare a roster of all property that is granted tax relief—whether through exclusion, exemption, or preferential treatment short of total immunity—setting out:

1. The name of the owner.
2. A brief description of the affected property.
3. A statement of the use to which the property is put. (This is essential in exemption cases because the use will justify the immunity.)
4. A statement of the value of the property. (The statute does not require that the property on this roster actually be appraised by the tax authorities, but if a statement of value is to be included on the roster, it is obvious that the tax authorities will have to make a bona fide attempt to obtain a reasonably accurate value figure. The owner's estimate of value might well be made a part of the required application form.)

On or before November 1, 1974, the county and municipal officials required to prepare the roster just described must send a duplicate copy of the original or initial roster to the Department of Revenue. In later years, on or before November 1, the same officials will report only *changes* to be made on the original roster.

Tax Relief for the Elderly and the Poor

The 1973 General Assembly received four proposals that were designed, in varying degrees, to give property tax relief to the property owned by or made available to the elderly and the poor. Two of these measures [S 148 (H 178) and S 387 (H 526)] proposed revised versions of G.S. 105–277.1, the 1971 statute that gave tax benefits to residential real estate. The other measures (H 911 and H 912) were concerned with the properties that nonprofit agencies erect for housing the elderly and other persons with low incomes.

The revision of G.S. 105–277.1 that was proposed by the Webster Commission [S 148 (H 178)] was quickly displaced in legislative discussions by S 387 (H 526), the bill that was enacted as Ch. 448.

Ch. 448, which becomes effective on January 1, 1974, defines and excludes from the tax base a class of property that encompasses, for a qualified elderly person, up to $5,000 in assessed (i.e., tax) value of both realty and personalty used by the owner for "personal purposes." The principal limits of the class are delineated in the statutory description of a qualifying "owner":

1. He must be a resident of North Carolina.
2. His interest in the potentially qualifying property may be either legal or equitable.
   a. With respect to real property, one may be an owner if he holds:
      (1) fee simple title,
      (2) a tenancy by the entirety,
      (3) a tenancy in common,
      (4) a joint tenancy, or
      (5) a life estate.
   b. With respect to personal property, one may be an owner if he holds title individually or jointly with others. (A life interest in personal property does not qualify one as an owner for purposes of the classification.)
3. Ordinarily, an applicant must be at least 65 years old at some time during the calendar year in which he seeks to bring his property within the class; however, if the applicant acquired the property at the death of a spouse in whose hands it had already qualified, the property will remain in the class if the surviving spouse has attained the age of 60.
4. During the year preceding his application for the benefits of the classification, the applicant's "disposable income" must not have been more than $5,000.

The qualifying property of a qualifying owner is not automatically included within the benefited class. Not later than May 1 of each year in which the owner seeks the benefits of the class, he must make application to the tax supervisor of the county in which the property is taxable. The applicant is required to make only two statements: the date of his birth and the amount of his "disposable income" for the preceding year. The statements are to be recorded on the abstract on which the property is listed for taxation so as to be included in the data the taxpayer is required to affirm. The implication of Ch. 448 (S 387) is that the applicant's statement is to be taken at face value, but it is also apparent that county tax supervisors will be expected to verify these statements as they verify other statements on tax abstracts. A fine of up to $500 may be imposed upon conviction of supplying false information in making the required statements.

"Disposable income" is defined as "adjusted gross income" (as that term is used in the North Carolina Income Tax statutes) plus a number of items not included in that category. This definition differs in two important respects from the comparable definition established in 1971: Social Security payments will not be included in determining disposable income, but in computing that figure the taxpayer may deduct the expenses he incurred in producing that income.

Ch. 448 (S 387) is, of course, not entirely new law. It is certain, however, that the 1973 revisal defines a class of property that is substantially larger than that defined by the 1971 statute. Note the following points:

1. The 1971 class was confined to residential real estate; the 1973 class encompasses both real and personal property if it is used for the owner's

"personal purposes." Thus, in 1974 mobile homes will fall squarely within the benefited class. So, also, will other items of "personally used" personal property.

2. The 1971 requirement that an owner not engage in income-producing activity does not appear in the new version.
3. Beginning in 1974, contributions that an owner receives from other persons are not to be included in computing his "disposable income."
4. As already noted, the fact that Social Security payments will not be included in determining disposable income, together with the fact that expenses incurred in producing income may be deducted in computing that figure, will necessarily reduce the disposable incomes of a substantially larger group of elderly persons and, thus, markedly increase the amount of property that may qualify for the class.
5. Unlike the 1971 act, the 1973 statute allows owners of life estates, tenancies in common, and joint tenancies to bring their property within the class.
6. The special allowance for the property of the 60-year-old surviving spouse noted earlier will also add to the property within the class.

Although the principal thrust of the 1973 revision is to enlarge the class of property entitled to the valuation exclusion, certain restrictions in Ch. 448 (S 387) should not be ignored:

1. If potentially qualifying property is owned by more than one person, the property's valuation may be excluded from taxation only to the extent of the interest of the individual owner who qualifies. For example, assume that A and B own real property as tenants in common with equal interests. Assume, also, that A is a qualified "owner" within the definition found in Ch. 448 (S 387) but B does not meet that definition. Finally, assume that the tract is assessed for taxation at $8,000. A's interest is valued at $4,000, and that is the extent of the exclusion for the particular tract; the remaining $1,000 may not be applied to B's interest, but it may be applied to any other property A owns and uses for "personal purposes."

2. If potentially qualifying property is owned by more than one qualifying owner, the total valuation exclusion for that property is limited to $5,000. Thus, if A and B own real property assessed at $20,000 as tenants in common, as joint tenants, or as tenants by the entirety, and if both are qualifying owners, each may not get a $5,000 exclusion; only one $5,000 exclusion is permitted. The tract will be taxed at $15,000, not $10,000.

3. In defining disposable income, Ch. 448 (S 387) draws a distinction between an owner who lives alone (whether married or not) and a married owner who lives with his spouse. If the owner resides with his spouse, the owner's separate income must be increased by the spouse's separate income; the total figure is then treated as the owner's disposable income. Suppose, for example, that H has $3,000 of separate income and that W, his wife, with whom he resides, has $3,000 of separate income. Neither H nor W can be a qualifying owner because each will be treated as having a disposable income of $6,000. However, if W were unmarried or, being married, did not reside with her spouse, her disposable income would be $3,000 and, other requirements of the statute being met, her property would qualify for the exclusion.

Although it is too early to do more than speculate, it is likely that, apart from the difficulties tax supervisors will experience in verifying "disposable income" figures, the 1973 act's use of the term "personal purposes" and the distinction it draws between the disposable income of spouses living together and that of other owners will produce the strongest reactions. The expression "personal purposes" has no legal definition and may elicit administrative appeals and litigation. The distinctions with respect to "disposable income" may produce reconsideration by the legislature.

Classification of Farm, Horticultural, and Forest Land

In the 1973 General Assembly, no property tax measure excited as much interest as S 416 (H 585). As introduced, these bills would have provided for the taxation of farm, horticultural, forest, and open-space land in accordance with its "use value" rather than market or "true value," would have provided for an elaborate set of notice and record forms, and would have provided for the payment of three years' "deferred taxes" (with interest at 7 per cent) when property ceased to qualify for a preferred class. As enacted, however, the measure dropped open space from the list of classes, eliminated the proposed record-keeping system, and, in the eyes of official representatives of both local and state government, seemed to establish appraisal guides capable of being administered with some degree of uniformity. An analysis of this legislation, Ch. 709 (S 416), appears below.

Objective of the Act. The technical objective of Ch. 709 (S 416) is to require land used for commercial agricultural, horticultural, or forestry purposes to be appraised and assessed for taxation on the basis of its value for that use even though it may have a greater market or "true value." This is accomplished through definition of three classes capable of qualifying for this preferential assessment if a strict set of ownership requirements are also met. The difference between taxes that would have been payable on classified property under "true value" assessment and taxes

based on its "use value" assessment are not waived, but they are deferred. Some or all of these deferred taxes, with interest, as explained below, must be paid when a tract ceases to qualify for one of the classes.

A reading of Ch. 709 (S 416) as actually written rather than as interpreted by its proponents or detractors will demonstrate that the intention of the legislature was to make it possible for current owners of "home" or "family property" falling within the defined uses to continue to use that property as it is currently being used—regardless of location. Such an owner is protected from being taxed on the basis of his land's "potential" for "higher" uses. But it is also quite certain that the shelter afforded by Ch. 709 will not protect an owner who sells, gives his land away, or ceases to use it for a qualifying purpose. Nor will his heirs be able to escape paying deferred taxes at his death, though, as new owners, they may be able to re-establish qualification for the land in their hands.

Definition of Classes. To qualify for one of the three classes defined in Ch. 709 (S 416), land must not only meet size and use criteria but must also be held in accordance with prescribed ownership standards. Since the same ownership requirements apply to all three classes, they will be discussed before size and use criteria.

Ownership. Property may qualify for a preferred class only if it meets the following ownership standards:

1. The land must be the *residence of the owner,* or

2. It must have belonged to the owner or to members of his family *for the seven years preceding the date on which application is made for classification.* (Members of the owner's family in this context are limited to his parents and brothers and sisters.)

3. The land must be owned by *a natural person or persons,* not by a corporation. (Property owned by a partnership—as distinguished from a corporation—is, under G.S. 59–55(a), held to be owned by the partners as "tenants in partnership." Thus, this would seem to indicate that land so held is "individually owned" by natural persons and may qualify for classification.)

Tract Size and Use. If land meets the ownership requirements described above, it may qualify for one of the following three classes defined in Ch. 709 (S 416):

1. *Agricultural land.* To qualify for this class, three requirements must be fulfilled:

a. The tract or tracts must contain at least ten acres. ("Contiguous" woodland and wasteland may, however, be counted in making up the ten acres.)

b. The land must constitute what the statute calls a "farm unit" actively engaged in the commercial production or growing of crops, plants, or animals under a "sound management program."

c. Over the three years preceding a request for classification, the gross income from the sale of agricultural products produced on the land must have averaged $1,000 per year.

2. *Horticultural land.* To qualify for this class, three requirements must be fulfilled:

a. The tract or tracts must contain at least ten acres. (Even if "contiguous," woodland and wasteland may *not* be counted in making up the ten acres.)

b. The land must constitute what the statute calls a "horticultural unit" actively engaged in the commercial production or growing of fruits, vegetables, nursery, or floral products under a "sound management program."

c. Over the three years preceding a request for classification, the gross income from the sale of horticultural products produced on the land must have averaged $1,000 per year.

3. *Forest land.* To qualify for this class, only two requirements must be fulfilled:

a. The tract or tracts must contain at least twenty acres.

b. The land must constitute what the statute calls a "forest unit" actively engaged in the commercial growing of trees under a "sound management program." (Forest land contiguous to and part of a qualifying "farm unit" comes within the "agricultural land" class and need not meet the requirements of the "forest land" class to obtain preferential assessment.)

These brief class definitions make use of delimiting expressions that merit the following comments:

Note that "agricultural land," the most broadly defined category, differs from "horticultural land" and "forest land" in that "contiguous" woodland and wasteland may form a part of the qualifying "farm unit." The word "contiguous" does not necessarily mean "abutting" or "touching." It may mean "near, though not in contact" or "neighboring," so that, for example, woodland or wasteland separated from the rest of a "farm unit" by a road may still be counted as part of that unit. This leads to some analysis of the statute's use of the term "unit" in defining all three classes.

In each case, the potentially qualifying land must constitute a "unit," whether it be agricultural, horticultural, or forest. However, there is no affirmative requirement that lands used for the qualifying purpose in a "unit" be either abutting or contiguous. In brief, a geographical unit is not required. Presumably, lands will constitute qualifying "units" on the basis of the way in which they are operated or managed. If they are managed or worked as a single operation, it would appear that they would be a "unit" within the meaning of Ch. 709 (S 416). For agricultural and horticultural lands, units will not be difficult to determine, since management must be active and more or less continuous. For forest land, however, manage-

ment need not be especially active. For example, a number of small wooded tracts might, together, amount to more than twenty acres; might be treated as a "forest unit"; and might meet the definition of the "forest land" class.

In defining each of the three classes, Ch. 709 (S 416) requires the lands to be operated under a "sound management program." This expression, as defined, requires that potentially qualified property be operated to obtain the greatest net return from the land consistent with its conservation and long-term improvement. (This seems to disqualify lands that are not operated in accordance with the traditional profit motive.) It will be the tax supervisor's job to determine whether the sound management test is met. Since forest land, unlike the other two classes, may require little active management and investment, tax supervisors may find it difficult to distinguish between that which is barely tended and that which is operated under a "sound management program."

Finally, it should be observed that buildings and other improvements located on classified land are specifically excluded from the classes.

Application for Classification. Land within a defined class will not automatically receive preferential treatment. The owner must request that it be taxed on the basis of "present use value" assessment, and he must reapply for that treatment during the listing period each year. Owners who apply must demonstrate in their applications that their lands fall within one of the classes defined in Ch. 709 (S 416). The tax supervisor will pass upon each application; if the owner is dissatisfied with the supervisor's decision, he may appeal to the board of equalization and review or board of county commissioners and, ultimately, to the Property Tax Commission. The owner's duty to report the disqualifying facts is discussed in a subsequent section.

Appraisal on the Basis of Use Value. Land found qualified for one of the three classes will, upon the owner's application, be appraised according to its "present use value," but this does not relieve the tax supervisor of his duty to maintain an appraisal of property at its "true value" also. This double appraisal requirement is not stated in specific terms in Ch. 709 (S 416), but the provisions of the act dealing with the computation of deferred taxes assume that two appraisals will have been made. In making the two appraisals, the supervisor will follow the statutory directions set out in G.S. 105–283 for "true value" and a new section on "present use value," which is inserted in the Machinery Act by Ch. 709. The definition of "true value" or market value is familiar to appraisers, while the definition of "present-use value" may appear strange for, while "true value" is determined on the basis of actual facts, "present-use value" is determined on the basis of certain *assumptions* that may or may not reflect the facts with regard to a particular parcel of land. Nevertheless, the presence of the statutory definition may serve to establish some uniformity within the affected class. The new statute's emphasis on the income-producing capacity of the property "in its present use," when read in conjunction with the requirement that the property be operated to maintain the greatest net return consistent with conservation and long-term improvement, suggests that capitalization may prove to be the single best technique in appraising the present-use value of qualifying properties.

In this connection, Ch. 709 (S 416) directs each tax supervisor to prepare a schedule of land values, standards, and rules for use in making "present-use value" appraisals. The statute then states that the schedules, standards, and rules "shall be subject to all of the conditions set forth in G.S. 105–317(c), (c)(1) and (c)(2) relating to the adoption of schedules, standards and rules." In practical effect, this means that the schedule, standards, and rules devised by the supervisor must be reviewed and approved by the board of county commissioners; and that newspaper notice must be published to the effect that the approved schedule, standards, and rules are open to public inspection at the supervisor's office for a ten-day period. Furthermore, upon proper appeal, any property owner of the county may have the schedule, standards, and rules reviewed by the Property Tax Commission. "To insure reasonable uniformity among the counties of the State in making appraisals as prescribed" in Ch. 709 (S 416), "the Property Tax Commission shall prepare rules, regulations and standards for use by county taxing officials. . . ."

Suppose that a county is to have its next scheduled real property revaluation become effective as of January 1, 1974. The local tax officials will have obtained a "true value" appraisal on all the property that is potentially qualified for classification under Ch. 709 (S 416), but, if an application for classification is approved, the tax supervisor must move at once to obtain a second or "present-use value" appraisal on the qualifying property. That appraisal, like the market value appraisal, must reflect the property's value in the use to which it is being put as of January 1, 1974. In that situation, the two appraisal figures will (except as noted below) remain unchanged until the county conducts its next regular revaluation, at which date both figures will be recomputed on the basis of conditions at that time.

But, in contrast to the example set out in the preceding paragraph, consider a county that last had a real property revaluation go into effect as of January 1, 1970. If, during the 1974 listing period, application is made for the classification of qualified property, the tax supervisor of such a county would be bound to move at once under the mandate of Ch. 709:

> Upon receipt of a properly executed application, the tax supervisor shall appraise the

property at its present use value as of January 1 of the year for which the application is filed.

In this example, that would be January 1, 1974. The statute makes no provision for making a new "true value" appraisal as of January 1, 1974, in such a case; thus the "true value" appraisal already on the county's books would (except as noted below) remain unchanged until the next general revaluation. So also would the 1974 "present use value" appraisal.

Following assignment of a "present-use value" appraisal to a specific parcel of real property, suppose one or more of the following events occurs: (1) the size of the qualifying tract is increased from, for example, 100 to 150 acres; (2) a new barn is constructed on the qualifying tract; (3) the principal residence is destroyed by fire. In a non-revaluation year, what appraisal responsibilities fall upon the tax supervisor?

With respect to the "true value" appraisal, G.S. 105–287(b) would require reappraisal in each of the three instances. But, with respect to the "present-use appraisal," the supervisor would have to interpret the following statement in Ch. 709 (S 416):

> Except for valuation changes made necessary by changes in *the number of acres* qualified for classification or by changes in *the nature of the operations of a qualifying owner,* the present use appraisal established in the year of the initial application shall continue in effect until a revaluation of all property in the county is conducted under the provisions of G.S. 105–286.

Read literally, this provision seems to say that the "present-use appraisal" figure is to remain unchanged if a new barn is added to the tract or if the residence is destroyed, but that a new "present-use appraisal" is to be made in a non-revaluation year if the size of the tract is altered. Unless it is clearly understood that the classifications established by Ch. 709 (S 416) provide for the use-value appraisal of *land alone, and not improvements,* this quoted provision would appear to violate the uniformity requirements of Article V, section 2(2), of the North Carolina Constitution. But, since the statute explicitly *excludes* "buildings or other improvements" from the affected classes, the issue of uniform treatment does not arise.

If the classes do not include improvements on qualifying land, it will be immediately apparent that the benefit of classification—that is, the deferral of taxes—will not be accorded buildings and other improvements located on qualifying land. Paradoxically, however, even though improvements on qualifying land are not to be appraised at "present-use value," a special appraisal instruction found in Ch. 709 may, in specific instances, produce that result. The instruction in question is concerned with "true value" appraisals, not "present-use value" appraisals, and it speaks to the factual situation illustrated by the following example:

Suppose that in a county's last revaluation, an operating farm tract (together with the improvements thereon) had been appraised at $150,000. Suppose, further, that the market value of the tract was governed to a large extent by its location—so much so, in fact, that in computing the $150,000 figure, the appraiser had placed only a nominal value ($1,000) on the structures found on the farm because, in a realistic market, the presence of the improvements would have made little or no contribution to the price the tract would bring. Yet suppose that for farm purposes those improvements were worth $5,000.

If the tract under consideration—land, not buildings—were brought within the "farm land" classification in 1974 and were given a "present-use value" appraisal (perhaps $50,000) as required by Ch. 709, the tax supervisor would have to bear in mind that, in computing the 1974 tax liability of the taxpayer's real estate, he would have to include a figure for the buildings as well as the $50,000 for the land. How would he arrive at a proper figure for the buildings? It is to this point that the statutory instruction applies:

> In determining the amount of the deferred taxes herein provided, the tax supervisor shall use the appraised valuation established in the county's last general revaluation except any changes made under the provisions of G.S. 105–287 [that is, non-revaluation year changes]. *Such appraised valuations shall be adjusted, however, to eliminate any economic obsolescence allowed in the appraisal of improvements on the property on account of the use to which the property was put at the time it was last appraised.*

Although stated somewhat awkwardly, this appears to mean that in setting the proper valuation for the buildings to be inserted on the 1974 tax bill, the tax supervisor would increase their former "true value" appraisal to eliminate the obsolescence factor allowed them in the revaluation. Thus, the "true value" appraisal of the buildings might have to be increased from $1,000 to $5,000, so that the 1974 tax bill would be computed on $55,000—a land value of $50,000 plus an improvement figure of $5,000. This required valuation adjustment poses a question of uniformity of tax treatment for properties (including improvements) that remain in the "true value" appraisal class; it seems to establish dual appraisal standards within that class.

Computation and Billing of Taxes on Classified Properties. If it is assumed that a particular tract of land has been brought within one of the three benefited classes for a given year, and if it is also assumed that the tax supervisor has made and recorded the two required appraisals of that tract, he will be faced with having to compute and bill the tract's tax li-

ability. Two computations are required: First, the county's tax rate is applied to the tract's "present-use value" appraisal and a proper receipt for that amount is prepared. Second, the county's tax rate is applied to the tract's "true value" appraisal. From that figure is deducted the tax computed on the basis of "present-use value." The difference between the two—which is denominated "deferred taxes" by Ch. 709 (S 416)—must be recorded as such in the public records in the tax supervisor's office.

At the time tax receipts for the current year are charged to the county's tax collector, the receipt computed on the basis of "present-use value" will be assigned the collector for collection. This amount becomes due on September 1 of the year in question and is immediately payable.

Status of Deferred Taxes before They Are Payable. As noted above, tax receipts computed on the basis of "present use value" appraisals must be delivered to the tax collector for collection in any year as if they were the only tax liability of affected properties. But the second figure—the one that represents the "difference between taxes *due* on the present-use basis and the taxes that would have been *payable* in the absence of this classification"—must be computed and "carried forward in the records of the taxing unit or units as *deferred taxes*." Thus, although not yet delivered to the collector for collection and, thus, not subject to enforcement, those deferred taxes nevertheless become *due* in every other sense because they "shall be a lien on all the real property of the taxpayer as provided in G.S. 105-355(a). . . ." That is, the lien of deferred taxes as well as the lien for "payable" taxes attaches to the owner's real property as of January 1 of the calendar year in which the tax year opens. Furthermore, deferred taxes accrue interest precisely as do other unpaid taxes.

When Deferred Taxes Become Payable. According to Ch. 709 (S 416), deferred taxes "shall not be payable, unless and until the owner disposes of the property or the property loses its eligibility for the benefit of this classification for some other reason." As already noted, sale or gift of the property by its owner, transfer or "disposal" of the property by virtue of the owner's death, and use of the property for a nonqualifying purpose are all events that cause property to lose its eligibility for classification. Still another cause is obvious—that is, failure of the owner to request benefit of the classification. Upon disqualification, the deferred taxes become payable immediately.

Collecting Deferred Taxes; Limitation. It is important to examine the portion of Ch. 709 (S 416) that provides for the computation and collection of deferred taxes:

> The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding *five* fiscal years which have been deferred . . . shall immediately be *payable, together with interest thereon as provided in G.S. 105-360 for unpaid taxes which shall accrue on the deferred taxes due herein as if they had been payable on the dates on which they originally became due.*

To understand this section of the statute, it must be kept in mind that property taxes are levied for fiscal or tax years, not calendar years; that governmental fiscal years open on July 1; and that taxes for a given fiscal year become due on September 1 following the opening of the fiscal year for which the taxes are levied. In that context, observe that Ch. 709 (S 416) makes two provisions with regard to the taxes that must be paid when a formerly classified property loses its eligibility:

1. As to the taxes that will or have already become due for the fiscal year that opens in the calendar year in which disqualification occurs, the amount payable will be computed as if the property had not been entitled to classification at the time it was listed for that year.
2. Deferred taxes that became due for the *five* fiscal years that opened in calendar years immediately preceding the calendar year in which disqualification occurs (plus "interest thereon as provided in G.S. 105-360 for unpaid taxes") become payable immediately.

Suppose, for example, that a tract had been classified in the 1974 listing period and each year thereafter through and including the listing period in 1982. For the fiscal year that opened on July 1, 1974, and each fiscal year thereafter through July 1, 1981, deferred taxes had been recorded and payable taxes had been billed and paid. Further, suppose that during the month of June, 1982, after the property had been listed and classified for 1982, an event occurred that made the tract ineligible. Under Ch. 709 (S 416) a receipt for 1982 taxes should be prepared on the basis of "true value," not "present-use value," and charged to the collector for collection. If the disqualifying event did not occur until after the 1982 receipt computed on "present-use value" had been charged to the collector, it would be necessary to void that receipt and prepare a new one for 1982 based on "true value" and charge the revised receipt to the collector.

In the same example, in addition to 1982 taxes, deferred taxes (with interest) for the following fiscal years would be payable: 1977–78; 1978–79; 1979–80; 1980–81; and 1981–82. Deferred taxes for earlier fiscal years would not be payable.

The interest to be added to deferred taxes would be computed precisely as it would be computed on any other tax. Under G.S. 105-360(a), the rates appli-

cable in this example if taxes for 1982 and prior years were paid in January, 1983, would be as follows:

Deferred Taxes for Fiscal	Would Bear Interest in January 1983 at the Rate of
1977–78	47%
1978–79	38%
1979–80	29%
1980–81	20%
1981–82	11%
1982–83	2%

It will be observed that the interest to be applied to deferred taxes is computed under G.S. 105–360 rather than under G.S. 105–370 because the liens for the deferred taxes will not have been sold by January, 1983. Although Ch. 709 (S 416) is silent on the point, there would seem to be no reason why the county should not advertise and sell the liens for deferred taxes for the affected years at the same time it advertises and sells the lien for 1982 taxes if they have not been paid by that date.

Duty to Give Notice of Disqualification; Penalty. In line with the "visitational" nature of property tax administration, Ch. 709 (S 416) states:

> Not later than the close of the listing period following *a change in use* or *disposal* of property receiving the benefit of this classification, the property owner shall furnish the tax supervisor with complete information regarding such change or disposal.

The obvious objective of the statute is to ensure that taxes will not be deferred after a particular property —for whatever reason—fails to qualify for the benefited class. To put teeth into this requirement, the act imposes a penalty described in these words:

> Any property owner who fails to notify the tax supervisor of a change in use or disposal of a tract of land receiving the benefit of this classification shall be subject to a penalty of ten per cent (10%) of the *total deferred taxes and interest thereon* for each listing period for which the failure to report continues.

Those familiar with the penalty applied for failure to list property on time will recognize that the Ch. 709 (S 416) penalty is a parallel. Two points should be considered in dealing with this provision of the law: The word "disposal" is intended to include the passage of title at the owner's death as well as transfers made during his lifetime. In addition, the statute is not clear on whether the statutory penalty is to become a lien on the land and collectible as taxes, although this was probably what the draftsman intended.

Effect on Municipal Taxes. The discussion of the three new classifications has been written as if the county were the only affected unit of government for two reasons: (1) the county tax supervisor will always be the principally affected local official, and (2) a relatively small number of parcels lying within municipal boundaries will be affected by the three classifications. Nevertheless, there will be properties entitled to classification that are situated in cities and towns. Ch. 709 (S 416) makes the following provision for such cases:

> [When the county has acted favorably on a request for classification and the tax supervisor has made the two required appraisals,] If all or any part of a qualifying tract of land is located within the limits of an incorporated city or town, the tax supervisor shall furnish a copy of the property record showing *the present use appraisal* and *the valuation upon which the property would have been taxed in the absence of this classification* to the tax collector of the city or town. He shall also notify the tax collector of any *changes in the appraisals* or in the *eligibility* of the property for the benefit of this classification.

On the basis of this information, the municipal tax officials will proceed to prepare receipts based on "present-use value" and to maintain an official record of deferred taxes precisely as would a county. Similarly, when eligibility ends, municipal taxes will become payable in precisely the same manner as county taxes.

A Note to Title Examiners. Lawyers and others interested in ascertaining from the public records what taxes are liens upon particular tracts of land will in the future find it necessary to visit the office of the county tax supervisor and whatever office maintains a record of deferred taxes on property situated within a municipality. Although made liens on the owner's realty, deferred taxes, not being payable, are not charged to the unit tax collector until the property becomes ineligible. The official record of the lien of deferred taxes will be found in the offices just noted. In addition, the title examiner should be alert to the events that make property ineligible for classification under Ch. 709 (S 416) and, thereby, make deferred taxes payable with interest: death of the owner; *intervivos* transfer of title by sale or gift; owner's failure to request classification within a regular listing period; and a disqualifying change in the use to which the property is put.

TAX COLLECTION

Payment While Assessment on Appeal to Tax Commission

G.S. 105–321(d) is amended by Ch. 615 (H 869) to provide that when a property assessment has been appealed to the Property Tax Commission, no tax receipt for the property involved in the appeal shall be delivered to the tax collector until the appeal has

been finally adjudicated. The full impact of this amendment is difficult to calculate. If the tax receipt is not delivered to the collector, it is not included in his charge and he therefore has no duty to collect it. The due date of the tax is unaffected, however, as are the statutes imposing interest on unpaid taxes. Thus, while the appeal is pending, normal interest will accrue. It appears that the choice of paying the tax while the appeal is pending, thereby avoiding interest charges, is denied the taxpayer unless he makes a prepayment before September 1; otherwise, he must wait until the receipt is delivered to the collector and run the risk of becoming liable for accrued interest. The seriousness of this risk would be intensified if a court should interpret the phrase "until such appeal has been finally adjudicated" as meaning until both review by the Commission and judicial review, if any, have been completed.

Payments in Lieu of Taxes

Under the terms of Ch. 663 (H 174), one of the bills sponsored by the Webster Commission, G.S. 105–279 is amended to give all state departments and agencies an election regarding payments on timberlands in lieu of property taxes. Any state department that owns or administers state-owned timberlands may elect either of the following methods of payments in lieu of taxes: (1) the department may pay to the county in which the lands are located an amount equal to 15 per cent of the proceeds of the gross sales of timber and timber products during the calendar year; or (2) the department may pay to the county in which the lands are located an amount equal to the amount of property taxes that would be imposed on the lands, exclusive of improvements, if the lands were taxable. Each state department concerned must notify the tax supervisor of the county in which its timberlands are located of its election concerning the method of payment on or before September 1, 1973, and within thirty days of the acquisition of additional timberlands thereafter. Once an election is made with regard to a particular tract or forest, it apparently cannot be changed.

Statements of Amounts of Taxes Due

Ch. 604 (H 559) rewrites G.S. 105–361, making the following changes with regard to the furnishing of certificates of taxes and special assessments due: (1) the list of persons entitled to request a certificate is expanded to include persons and firms having contracts to purchase or lease the property and persons and firms having contracts to make loans secured by the property; (2) the collector is not required to issue a certificate covering special assessments unless the person making the request furnishes such identifying particulars about the property (such as a street address or the names of adjacent streets) as may be reasonably required by the collector; (3) the class of persons entitled to rely on the certificate has been expanded to include successors in interest (for example, heirs, transferees, and successor corporations) of the person who requested the certificate; and (4) the definition of reliance on the certificate that will cause the lien for taxes and special assessments not included therein to be released has been expanded to include (in addition to payment of the taxes or assessments) purchasing or leasing the property and lending money secured by the property.

Collectors should take special note of item (4) because the expanded definition of reliance means that reliance on the certificate is going to be much more widespread than in the past, when only payment constituted reliance. Extra care should therefore be taken in preparing a certificate, or the lien on the property may be released. Oral statements still are not binding on either the collector or the taxing unit. The act becomes effective October 1, 1973.

Fees for Outside Collection

In the Machinery Act of 1971, G.S. 105–364(c)(1) was written to emphasize the point that when a collector acts on a receipt and tax claim certified to him from another taxing unit for collection, a collection fee of 10 per cent of the amount actually collected is to be added to the taxes and retained by the collector for his personal use. Ch. 231 (H 343) amends G.S. 105–364(c)(1) to provide that on a tax claim certified from another taxing unit, the receiving collector is to add a collection fee of 10 per cent of the certified claim (rather than of the amount actually collected), that this fee is to be paid into the general fund of the taxing unit, and that *the fee is not to be retained by the collector*. This act does not become effective until January 1, 1974.

Remedies Against Personal Property

Stocks of Goods and Fixtures. Ch. 564 (S 523) makes a technical amendment in G.S. 105–366(d)(3) to make it clear that when a retail or wholesale merchant transfers his fixtures or stock of goods or goes out of business, the collector is not required to wait until thirty days after the sale or transfer before using the remedies of levy and attachment against the property of the seller. The unamended statute was susceptible of the interpretation that the thirty-day waiting period was applicable to property of the seller as well as to that of the property of the purchaser. Such an interpretation was contrary to other provisions of G.S. 105–366, thereby creating some confusion. The amendment should eliminate any confusion on the point that may have existed.

Foreclosure of Liens Against Real Property

Mortgage-Type Foreclosure (G.S. 105–374). Of considerable interest to attorneys who bring foreclosure actions is Ch. 788 (H 1308). This act amends G.S. 105–374(k) to provide that the clerk of court may render a default judgment not only in those cases in which the defendant does not file a timely answer

but also in those cases in which an answer is filed that does not seek to prevent the sale of the property. Answers falling in the second category will often be those of guardians ad litem of infant and incompetent persons, admitting the allegations of the complaint, and those of other taxing units, setting forth their tax claims. There may be a conflict between this act and G.S. 1A–1, Rule 55(b)(1), which provides that the clerk may render a default judgment only when the defendant has failed to appear and is not an infant or incompetent person.

In Rem Foreclosure (G.S. 105–375)

Notice to Lienholders. The statutory requirements of notice before the docketing of a certificate of taxes due—the action that begins the *in rem* foreclosure procedure— have been expanded considerably. Ch. 681 (H 1013) establishes a procedure whereby the private holder of a nontax lien on real property may file a request with the tax collector that he be notified of the docketing of any certificate against land upon which he has a lien. The request must be filed on a form supplied by the collector and is to include a description of the property and the name and mailing address of the lienholder. When such a request has been filed, the collector must notify the lienholder by registered or certified letter of the docketing of the certificate at least thirty days before docketing. The notice, as before, must also be sent to the last listing taxpayer at his last known address.

If, within ten days after the mailing of the notices, the collector has not received return receipts, he must publish in a newspaper of general circulation in the county a notice directed to and naming all unnotified lienholders and the listing taxpayer. The notice must contain the following items: (1) a statement that a judgment will be docketed against the taxpayer (this is misleading—the judgment is against the property, not the taxpayer); (2) the proposed date of the docketing; (3) a statement that execution on the judgment will issue as provided by law; (4) a brief description of the property; and (5) a statement that the lien may be paid off before the judgment is entered. The act became effective July 1, 1973, but does not affect litigation pending on that date or certificates docketed before that date.

Tax Judgment Records. Ch. 108 (H 64), an act making numerous changes requested by the Courts Commission and the Administrative Office of the Courts, deletes the second sentence of G.S. 105–375(b). The effect of this amendment is to remove the requirement that the clerk of court maintain separate books for the filing of the certificates of taxes due and also deletes the special indexing instructions. Presumably, the Administrative Office of the Courts must now issue to the clerks instructions concerning the filing and indexing of the certificates. The collector's duty ends when he files the certificates in the clerk's office.

Comment. The effect of the acts discussed in the two preceding sections [Ch. 681 (H 1013) and Ch. 108 (H 64)] has been to impair the legal theory of the *in rem* foreclosure as a special summary procedure, subject to special rules apart from the usual run of foreclosures and judicial proceedings. It is difficult to predict what the impact of these amendments will be. Clearly they have made the procedure less convenient; but more important, they may have weakened its constitutional foundation.

Welfare Liens. Attorneys bringing tax foreclosure actions have frequently encountered problems in clearing welfare liens against property involved in the foreclosure action. Effective April 16, 1973, Ch. 204 (H 36) repeals the statutes providing for welfare liens. On and after April 16, 1973, no applicant for welfare assistance will have his real property subjected to a lien for the amount of assistance paid. The act does not affect liens created before its effective date; they are to continue against the recipients' property.

Releases and Refunds

Taxpayer's Remedies (G.S. 105–381). G.S. 105–381 is rewritten by Ch. 564 (S 523) to make clear that the governing bodies of taxing units are authorized to make *releases* of tax claims if the tax is illegal or levied for an illegal purpose *without* first requiring that the tax be paid. When an application for a release is made and the governing body refuses to grant it, the tax must be paid when due. The taxpayer is then given the choice of proceeding either under the *refund* procedures (applying to the governing board for a refund within thirty days of payment) or—without making a demand for refund—bringing a civil action for refund of the tax.

Discretionary Refund Authority Made Mandatory (G.S. 105–382). Ch. 156 (H 467) rewrites G.S. 105–382 to make *mandatory* the refund of a tax when application for refund is made either within three months of the due date or within six months of the date of payment—whichever is later—*if* the governing board finds that the tax was illegal or levied for an illegal purpose. Previously, the refund authority granted by G.S. 105–382 was completely *discretionary* with the governing body: It could lawfully refuse to make a refund (even if it found the tax was illegal) if application had not been made within the thirty-day period established in G.S. 105–381. A taxpayer who waited more than thirty days after payment to apply for a refund was barred from proceeding under G.S. 105–381 and could only appeal to the governing body's discretion under G.S. 105–382. Now, it appears that a taxpayer may wait until three years after the due date before applying for a refund and, if the illegality is established, be guaranteed of getting his money back. In such a case, if the board fails to make the refund, the taxpayer may have to resort to the courts to compel the board to make it.

As amended, G.S. 105–382 overlaps and in some ways conflicts with the refund provisions of G.S. 105–381. It is confusing to have two refund statutes with different time limitations. This may be a situation that the 1974 General Assembly will want to correct. From the standpoint of a taxing unit concerned for the stability of tax revenues, three years seems an unreasonably long time to permit a taxpayer to wait before making request for a refund that, if illegality is demonstrated, becomes mandatory.

LICENSE TAXES

ABC Licenses. Ch. 606 (H 712) amends G.S. 18A–15(12) to require the State Board of Alcoholic Control to notify the city and county tax collectors whenever any type of ABC permit is issued in a particular city or county. This should facilitate the collection of the ABC license taxes imposed by G.S. 105–113.79 and G.S. 105–113.81.

Chain Stores. Ch. 205 (H 479) amends G.S. 105–98 *apparently* to provide that cities and towns may not levy a chain-store license tax on stores classified as chain stores solely because the manner in which they are operated or the kinds or brands of merchandise sold are controlled by contract or lease. The intent of the amendment appears to be to exclude from municipal license taxation chain stores (defined in the first paragraph of G.S. 105–98) that are not operated under the same general supervision, management, or ownership, that is, to exclude from municipal taxation all locally-owned franchised operations.

The word "apparently" is used advisedly because it is not clear whether the exception contained in the act refers to the taxation of lease- and contract-controlled stores, or only to the amount of the tax. Another *possible* interpretation of the act might be that cities and towns may tax lease- and contract-controlled chain stores, but that the $50 maximum rate is removed, and they are free to tax such stores at reasonable rates.

Private Detectives. G.S. 105–42 is amended by Ch. 794 (H 1069) to provide that, effective July 1, 1973, cities and towns may not impose license taxes on private detectives.

Banks. The 1973 General Assembly made no changes in regard to the imposition of license taxes on banks. S 145 (H 176)—noted elsewhere in this article—would have subjected the tangible and intangible personal property of banks to taxation, and H 463 would have repealed Schedule I–C of Chapter 105 of the General Statutes (G.S. 105–228.11 through G.S. 105–228.20) and provided that banks would be taxed as other corporations. S 145 remains in the Senate Finance Committee, and both H 176 and H 463 remain in the House Finance Committee.

Repeal of Schedule B. S 154 would have repealed Schedule B of the Revenue Act in its entirety. This bill was not acted upon by the Senate Finance Committee and, thus, remains alive and may be considered in 1974.

Repeal of Dog License Tax. New G.S. 153–153, enacted by Ch. 822 (H 329), provides that "a county may levy an annual license tax on the privilege of keeping dogs *and other pets* within the county." But this is an authority that arises by virtue of another provision in Ch. 822 (H 329) that *repeals* all portions of G.S. Chapter 67 concerning the levy and collection of the county dog tax, together with all local acts modifying the dog-tax statutes or relating to the use of dog-tax proceeds. However, this repeal is not effective until *February 1, 1974,* which, of course, comes after the 1974 listing period.

The new provision empowering county commissioners to levy an annual license tax on the privilege of keeping pets does not set out administrative procedures for the levy of the tax. Instead, new G.S. 153–146 provides that "the power to impose a tax . . . includes the power to provide for its administration in a manner not inconsistent with the statute authorizing the tax." Under these provisions, a board of county commissioners may, in its discretion, continue the dog tax as presently administered; discontinue the tax altogether; or devise a new plan for levying and collecting a license tax on dogs and other pets.

Two points should be emphasized: During the 1974 listing period, the old dog-license tax law [G.S. 67–7, –10, and –11] will remain in effect. Nevertheless, since it will be abolished as of February 1, 1974, consideration should be given to whether the county should require the listing of dogs for license tax in 1974. This, however, should be done in conjunction with the second matter of emphasis: If the commissioners plan to retain the dog tax as presently administered, tax supervisors should request them to make that decision in advance of the 1974 listing period so that the tax authorities may proceed with the listing of dogs for license-tax purposes. If the commissioners plan to adopt a different approach, it may be necessary to redesign abstracts. (Technically, the commissioners' authority to adopt an alternative does not arise until February 1, 1974, but there would seem to be no reason why they might not immediately adopt a resolution stating what they intend to do after that date.)

One word of caution is in order. Ch. 822 (H 329) does not affect the Machinery Act's requirement that dogs, like other personal property, must be listed for *property* tax purposes.

If we hadn't developed this tobacco harvester, Wayne Stokes might have quit growing.

Wayne Stokes, of Greenville, N.C., has built family farming into a business enterprise by the application of modern agricultural science and the use of automatic equipment.

Last year, in line with this new philosophy, he harvested part of his tobacco crop with a tobacco harvester developed by us in cooperation with N.C. State University. And he's come to the same conclusion that a lot of growers reached last year. Machine harvesting is here to stay.

Wayne considered many factors before he made a decision to buy a tobacco harvester. Here's what happened, according to Wayne, and he keeps pretty thorough records.

Conventional harvesting by hand of 34 acres and curing in regular barns ran up $12,376 in labor costs or $364 per acre. But using this harvester and bulk curing barns on 36 acres only cost him $3,816 or $106 per acre in labor. This was a savings of $258 per acre.

However, figures alone don't tell the whole story. The real discovery was that, when it came to market, there was no discrimination shown by buyers or graders against machine harvested bulk cured tobacco. He got his full price. He got his whole crop in. And he had no labor shortage to worry about; it only took 5 men part time with the harvester, as opposed to 24 for hand priming and tying.

At Reynolds Tobacco, we don't build tobacco harvesters. But we do devote a lot of time and money researching ways of making tobacco growing a whole lot more profitable. Developing the automatic harvester was one of the results. We figure it this way. Anything that benefits the tobacco farmer ultimately benefits us.

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