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**Part I**

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# Contents



*Durham County has found a new use for an old, one-room schoolhouse. After restoration and a fresh coat of red paint, Patrick Henry School has become a Boy Scout meeting place in Lowes Grove.*

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# The 1973 General Assembly

Michael Crowell and Milton S. Heath, Jr.

The 1973 General Assembly convened at noon on Wednesday, January 10, 1973, and adjourned 97 legislative and 135 calendar days later—on May 24. Although much of the session's work remains to be done when it continues next January—and in the interim—an impressive statistical record was compiled in the four-plus months in Raleigh. The 2,317 introductions were not far behind 1971's record of 2,622—that accomplished in 141 legislative working days. Yet of that total, fully 980 bills remain to be acted upon in 1974; altogether, 973 were passed this year (826 session laws, 117 ratified joint resolutions, 30 single-house resolutions), and 364 were killed by committee or on the floor.

The numbers confirm an impression that 1973 was a particularly frenzied legislative year that fell short of full fruition. A great deal was attempted and much was accomplished, yet important matters were left hanging—a result perhaps partly attributable to the conversion to annual sessions. Legislation that was enacted included a statewide referendum on liquor by the drink, to be held in November; a police minimum-salary act and an appropriation to implement it; revision of the teacher-tenure act; a limit on the size of public classrooms and initiation of a statewide kindergarten program, with attendant appropriations; absentee voting in the primaries; increased control of sedimentation and oil pollution and expansion of the state parks system; a state occupational safety and health act; revision of the basic law governing the authority of counties; revision of the law on levy of taxes by local governments; a new basis for taxing agricultural land; a new claim-and-delivery statute requiring a hearing or the waiver of that right before property may summarily be taken from the debtor and returned to the creditor; revision of the abortion law to conform to United States Supreme Court standards; a mandatory six-month revocation of one's driver's license for refusal to take the breathalyzer test when arrested for drunk driving; a uniform judicial retirement system; reorganization acts for several state departments that will serve as prototypes for all of state government; legislation encouraging the consolidation of local health departments; a mental patients' statutory bill of rights; revision of the judicial hospitalization statutes to tighten the standards under which a person may be involuntarily committed; apparent agreement on a four-year medical school at East Carolina University and the establishment of a $7.5 million reserve fund for that purpose; and the replacement of the current assigned-risk plan for high-risk drivers with an auto reinsurance facility.

Some of the matters that were debated but not enacted include: a code of legislative ethics; revision of the capital punishment statutes as rewritten by recent court decisions; no-fault automobile insurance to replace the current liability system; the Criminal

Code Commission's proposed revision of the statutes on pretrial criminal procedure; a revision of the administration of estates law; coastal and mountain area management proposals and a state land policy measure; a new date for the primary election and change or elimination of the presidential primary; revision of the tax structure including the income tax rates and the sales tax on food; a constitutional amendment to allow voters under 21 to hold public office; making it an offense to drive with more than .10 per cent alcohol in one's blood (this quantity now only creates a presumption of being under the influence); a plan for nomination and appointment of judges rather than election; and a revision of the rules of the road.

This is not to say that any or all of those proposals ought to have passed, but rather that their failure to be enacted, considering the attention given to them both before and during the session, seemed to be at least partially due to the phenomenon of annual sessions. That is, once the decision to try annual sessions was made, it became feasible, and tempting, to decide some things by not deciding them, by waiting until 1974 to act. In addition, there seemed to be a certain urgency about leaving Raleigh earlier than has been the case in recent years; an early adjournment was necessary to prove true the argument that two annual sessions would not be materially longer than one biennial meeting. As a result, some challenges were simply put off. Conversely, the desire for an early adjournment resulted in an even greater than usual end-of-the-session rush; over one-eighth of all the bills enacted this session were ratified on the day before adjournment.

## THE LEGISLATIVE INSTITUTION

**Annual Sessions.** This Assembly will probably be most remembered not for any of the substantive legislation mentioned below, but for what the General Assembly did to itself. More than ever before, the lawmakers considered their own institution and tinkered significantly with its operations. The most important decision was to experiment with annual sessions, formalized rather simply by joint resolution. The ratification of S 412 as Resolution 58 of the 1973 General Assembly was considered sufficient to legitimize annual meetings for three years (1973, '74, '75), and a proposal (S 45) to present a conforming constitutional amendment to the voters remained in the Senate Rules Committee to which it was originally referred.

One reason for converting to yearly sessions was to allow an annual appropriation. Thus the regular biennial budget proposal of the Advisory Budget Commission was restructured into a one-year document that authorized the largest single-year's expenditure in the state's history—$2.9 billion. Tentative plans were made for appropriation of $2.75 billion for 1974–75, but that estimate will be subject to review and revision by the 1974 Assembly. Included in the appropriation for fiscal year 1973–74 was $3,386,756 for the General Assembly itself, over twice the amount recommended for the coming year by the Advisory Budget Commission, reflecting the higher cost of expanded legislative activity.

The legislators gained further leverage over the budgetary process by enacting Ch. 820 (H 1202) on the last day of the session. Beginning July 1, 1973, the Advisory Budget Commission, the basic budget-preparing agency, will have six additional members, four of whom will be legislators. The Commission will continue to include the four chairmen of the appropriations and finance committees and two appointees of the Governor; the new members will be two others appointed by the Governor, two senators appointed by the President of the Senate (Lieutenant Governor), and two representatives chosen by the Speaker of the House.

**Interim Activities.** Because the 1974 session will be in effect a continuation of the 1973 General Assembly, the membership and (barring further rules changes) the committee structure will remain the same. Bills introduced in 1973 and not finally disposed of (almost 1,000) remain available for action when the legislature reconvenes on January 16. With this unique continuity from one session to another, it has become possible—and in some instances necessary—to carry on a substantial part of legislative activities in the interim between sessions. Committees can continue to work on legislation that is still pending from this year, and some may also undertake some of the longer, more intensive research projects that have not been possible during a session. It remains to be seen whether these efforts will be as productive as those of previous interim study commissions.

The statutory authorization for interim committee work is contained in several new sections of G.S. Chapter 120 added by Ch. 543 (H 443). Generally, interim work is to be authorized by resolution of the appropriate house or by directive of the Speaker or Speaker pro tempore for House committees and the President or President pro tempore for Senate committees. Meetings are to be in Raleigh unless another site is approved, and the subject matter is to be limited to that set out in the authorization. Subcommittees may be used. The chairman is to request any necessary staff assistance, and the need is to be certified by one of the officers named above. The Legislative Services Officer is to provide the help.

The new legislation on interim committee work and staffing provides that it may be superseded by Senate or House rule. The Senate has already adopted a new Rule 37 on interim activities. That scheme groups the regular standing committees under ten "interim standing committees," making eligible for membership on an interim committee each senator

who is a member of one of the constituent regular committees. The interim standing committees are as follows: Appropriations (composed of the regular Appropriations Committee), Commerce (including the regular Alcoholic Beverage Control; Banking; Insurance; Manufacturing, Labor and Commerce; and Public Utilities committees), Courts and Law Enforcement (Courts and Judicial Districts, Social Rehabilitation and Control, and Law Enforcement), Education and Health (Education, Higher Education, Mental Health, Public Health), Finance (Finance), Judiciary I (Constitution, Judiciary I), Judiciary II (Election Laws, Highway Safety, Judiciary II, Rules and Operation of the Senate), Natural and Economic Resources (Agriculture, Natural and Economic Resources, Wildlife), State and Local Government (Local Government and Regional Affairs, State Government, State Policies, Veterans and Military Affairs), and Transportation (Transportation). Chairmen are to be chosen from the chairmen of the constituent committees. The interim committees may hold hearings, conduct studies, and act on bills, but they must give notice to Senate sponsors of bills before considering them. Professional and clerical staff are to be provided the interim standing committees by the Legislative Services Officer from a central pool to be maintained for this purpose, but he may also contract for temporary assistance from others.

Another provision of Rule 37 allows Senate bills to be introduced between sessions by filing them with the Legislative Services Officer, who is to assign them numbers and have copies printed and distributed. The President of the Senate is to refer these bills to interim committees, but the rule forbids the committee to take any formal action; instead, the bills are to be referred to the appropriate standing committees when the General Assembly reconvenes.

The House did not formally adopt new rules to govern interim activities, but it was decided that the following committees would continue to meet between sessions: Appropriations, Finance, Judiciary I, Judiciary II, Health, Insurance, Roads, and State Government. The membership and chairmen of the committees will be the same as during the 1973 session. The House set no procedure for introducing bills between sessions.

**Committee Powers.** Besides setting guidelines for interim work, Ch. 543 provides some basic law on the conduct of committee activity, particularly the calling of witnesses. Before this revision, the law on compelling testimony applied only to "investigating" committees. The statutes now specify that all standing committees may subpoena witnesses to testify and bring relevant documents. The chairman may issue the subpoena upon majority vote of the committee and with the authorization of the Speaker or Speaker pro tempore for House committees and the President or President pro tempore for Senate committees. The witness is to have five days' notice of the hearing, and his failure to appear or to testify may be punished as civil contempt. Civil contempt is also applicable to those who disrupt proceedings of a legislative committee. All witnesses who are subpoenaed to testify are entitled to the same fees and expenses as witnesses in criminal proceedings in superior court.

**Study Commissions.** The expansion of committee activities in the interim is demonstrated by the fact that only one study was authorized for the Legislative Research Commission, but seven studies were specified for interim committees. But standing committees have not taken over all of the interim study activity. Eight entirely new study commissions were established, and particular state agencies were directed to make another five studies. All of the authorized studies are summarized in a separate article in the June issue of *Popular Government*.

**Other Rules Changes.** The General Assembly also undertook some minor adjustments during 1973. Speaker pro tempore was made an elective rather than appointive office. The number of regular standing committees was reduced from 32 to 27 in the Senate by consolidating several committees (Public Health and Public Resources were combined into Public Health and Resources, and Intergovernmental Relations joined with Local Government to make up Local Government and Regional Affairs) and dropping others (Congressional Redistricting, University Trustees, Libraries). The House dropped two committees (Congressional Districts and State Legislative Districts) and added one (Local Government No. 2). And for the first time in recent memory all committees and chairmen had been appointed when the session opened.

To give the committees more time to meet, the Tuesday through Thursday sessions were rescheduled to open at 2:30 rather than 12:30 on the rationale that extra morning hours would be more useful than post-session time, since meetings are difficult to arrange after the daily session, especially for joint committees. The House dropped from its rules the provision for closed executive committee sessions, and although the Senate retained its closed-session provision, an Attorney General's opinion during the session resulted in open meetings of the "super subcommittee" on appropriations, the unit responsible for the final round of cutting to make the appropriation fit the revenues. A bill (H 389) to remove the statutory provision permitting the two houses to adopt rules for executive sessions passed the House but never emerged from the Senate Rules Committee.

**Control of the Building.** Relatively early in the session the General Assembly took steps to put control of the Legislative Building clearly in the hands of legislators themselves. Ch. 99 (H 391) abolished the State Legislative Building Commission and the

Legislative Building Governing Commission and transferred the funds and duties of those agencies to the Legislative Services Commission. The two agencies that were abolished included in their membership the Lieutenant Governor (as President of the Senate) and his appointees in addition to the Speaker and his appointees. In the Services Commission, however, the Senate half of the membership consists of the President pro tempore of the Senate and those chosen by him, and does not include the Lieutenant Governor.

**Electronic Voting.** The last change made in the operation of the legislature will not take effect until the 1975 session—the installation of electronic voting apparatus. Ch. 488 (H 12) directs the Legislative Services Commission to purchase and install the equipment "as soon as it is practicable," but in any event at least as soon as possible after January 1, 1975. The roll-call process will thereby become much quicker but no doubt will lose some of its drama.

**Matters Still Pending.** Not all the changes that were recommended for the General Assembly were enacted. Ethics legislation, amended a number of times and finally passing the Senate, was delayed by the House until 1974. No action was taken on several bills (S 13, S 36, and H 312) to repeal the Legislative Retirement Fund, although the Senate in the first week of the session adopted a resolution (S 4) directing the appropriate committee to make a comprehensive study of the Fund and report back by April 1. Several bills were introduced to raise legislative salaries (S 710, H 1149), but were not acted upon, and the matter was sent to a 22-member citizens' advisory committee to study and report back by January 15, 1974 (H 1337, ratified as Res. 106). A joint resolution (S 711) that would have required non-state organizations receiving state grants-in-aid to file audit reports with the legislature's Fiscal Research Division passed the Senate but was killed by committee in the House.

Three major proposals were made with regard to legislative ethics:

*S 16* (introduced by Sen. B. L. Barker of Wake)—This bill originally applied to all elected and appointed state employees and officials and prohibited certain acts on their part, such as using confidential information for one's own gain or serving on a regulatory commission that governs business in which one has an interest. It required statements of economic interest to be filed with a new State Ethics Commission and provided civil and criminal penalties for violation of the act. The Senate amended the bill to resemble H 1001, below, making it applicable only to legislators; it passed the Senate in that form. A committee substitute adopted by the House tightened the financial reporting requirements somewhat, but the bill received no floor action and was finally re-referred to the State Government Committee for the interim.

*S 155* (introduced by Sen. Taylor of Transylvania)—Most of the bill's provisions prohibiting lobbying and regulating conflicts of interest apply only to legislators, but it would also require appointed state officers in the Executive Department and candidates or nominees for those positions to file statements of financial interest. The bill would create a legislative Board of Ethics to enforce the act and includes rules of conduct for legislators—e.g., a prohibition against using the office to influence state agencies and a limitation on acceptance of gifts. Some of the provisions, particularly those governing activities by business associates of legislators, were designated as guidelines rather than as enforceable. The bill has never been reported out of the Senate Rules Committee to which it was originally referred.

*H 1001* (introduced by Rep. Jones of Rutherford)—Originally, the bill established a Code of Ethics for legislators, prohibiting acceptance of favors and otherwise generally regulating possible conflicts of interest. It required statements of economic interests to be filed and established a Legislative Ethics Committee to investigate complaints and recommend action. The committee substitute adopted in the House on the day before adjournment deleted all provisions regarding a Code of Ethics and statements of economic interest, leaving the Legislative Ethics Committee with little to enforce. In that form, the bill was re-referred to the State Government Committee for further work in the interim.

**The Movie.** Before any discussion of changes in legislative operations is complete, Ch. 583 (H 593) must be mentioned. The act appropriates $25,000 to the Legislative Services Commission for fiscal year 1973–74 and directs the agency to use the money to produce an informational movie on the North Carolina legislative process. (An earlier movie on this subject was produced about a decade ago, shortly after the Legislative Building was opened.) The act specifies that the movie is to be in color, with professional actors and sound, and is to last 30 to 40 minutes. It is to "be timeless in nature and suitable to be shown to school children or any other interested person." Daily showings are to be made at the Legislative Building and copies are to be provided for groups in the state.

## CONSTITUTIONAL AMENDMENTS

Only one of the amendments to the North Carolina Constitution suggested this session finally passed and will be submitted to the voters in November. That is Ch. 394 (H 554), which if approved would change the name of the office of Solicitor to District

Attorney. This issue will be on the ballot along with liquor-by-the-drink, the $300 million school-construction bonds, and the amendments to the Clean Water Bond Act, each of which is discussed separately below.

Perennial proposals were renewed to grant the Governor the power to veto legislation and to succeed himself in office, but they made no progress. Both of the bills to permit two consecutive terms remained in the committees to which they were originally referred—S 428 in the Senate Constitution Committee and identical H 98 in the House Constitution Committee. The Senate version of the veto bill, S 427, also remains in the Constitution Committee, but the corresponding House committee killed the two House bills on that subject, H 99 and H 621.

An amendment approved by the voters in 1971 lowered the voting age to 18 but retained 21 as the age of eligibility for elected public office. Neither bill proposing an amendment to allow 18-year-olds to hold office was enacted. After passing the Senate, S 284 was amended by the House to lower the minimum age for holding the office of senator from 25 to 18, a change the Senate would not accept. Conference committees were appointed but could not reach a compromise before adjournment. The House bill, H 400, was reported favorably by the Constitution Committee but finally re-referred for the interim. On another election law subject, the House voted down a proposed amendment to prohibit persons adjudged mentally defective or insane from voting (H 1002).

The annual legislative sessions amendment, S 45, was never reported out by the Senate Rules Committee. Two identical bills were introduced to remove the Constitution's prohibition against local acts regulating trade in alcoholic beverages; H 1328 was killed by committee in the House, and S 670 made it from the ABC Committee to the Constitution Committee, but no further. The proposal to have the Secretary of Transportation become an elected constitutional officer, H 122, is still in the House Roads Committee. The House version of the "Missouri Plan" for appointment of judges, H 76, was reported favorably but not acted upon and eventually re-referred to the Courts Committee; the Senate version, S 72, stayed in the Senate Courts Committee the whole session.

Equal rights for women received much attention. After the House defeated H 259, a proposed referendum on ratification of the Equal Rights Amendment to the United States Constitution (prohibiting denial of equality of rights on account of sex), the Senate considered S 8, ratification of the amendment itself, and defeated the legislation on second reading (no action was ever taken on identical H 2). Following that, several bills came in for equal rights amendments to the North Carolina Constitution: (1) S 384 would prohibit denial of rights on account of sex but specifies that present rights, advantages, and benefits of women are to be retained; (2) S 407 would prohibit denial of equal educational and employment opportunities on account of sex; and (3) S 756 would prohibit denial of equal protection or discrimination by the state on account of sex. All three of those bills are in the Senate Constitution Committee.

The General Assembly considered several other amendments to the United States Constitution. An application to Congress to call a convention to propose an amendment prohibiting assignment of public school students on the basis of race passed the Senate but was killed by committee in the House (S 754). Two identical bills, S 842 and H 1153, ask for conventions on an amendment to allow prayers and Bible-reading in the public schools; the first of those is in the Senate Constitution Committee and the second was reported unfavorably by committee in the House. A bill endorsing a federal constitutional amendment allowing states to regulate and restrict abortions (S 829) is also still in the Senate Constitution Committee.

## APPROPRIATIONS AND FINANCE

Appropriations was probably the one area of legislative activity most affected by this session's concern for a stronger General Assembly. Most important, this was the year that an annual rather than biennial budget was adopted. As directed by the resolution establishing yearly sessions, Res. 58 (S 412), appropriations were made only for fiscal 1973–74. Although estimates were made of the funds that would be needed in 1974–75, they are subject to full review and revision in 1974. The intention here is to achieve a more active legislative control over the operation of state government. Control over money is the most effective control available, and an annual budget means that the General Assembly can have a closer look at how the state's funds are spent.

The budget-making process historically has relied heavily on the executive branch. Most often, questions on how dollar amounts were derived and how well past appropriations have been spent could be answered only by those in the administration. This session, for the first time, the General Assembly had employees of its own capable of making independent evaluations of state finance and spending. The Fiscal Research Division of the Legislative Services Office, created by the 1971 Assembly, generally received acclaim for its help to the appropriations and finance committees.

The appropriation that resulted totaled $2.9 billion, the largest single year's expenditure in North Carolina history. That much was available to be spent because revenues were somewhat higher than expected, because federal revenue-sharing money had become available, and because no substantial tax reductions were made. Although any number of tax repeals or reductions were proposed—including the

sales tax on food, the cigarette tax, and the soft-drink tax—the decision was made instead to invest substantially in programs such as kindergartens, reduced class size in public schools, more state parks, expansion of the community college system, minimum salary levels and increased retirement benefits for law enforcement officers, improvement of health services and implementation of a mental patients' rights bill, increased public assistance and Medicaid benefits, aid to private colleges, and improvement and conversion of correctional facilities. Salary increases for state employees generally were held to 5 per cent, but some groups were given additional boosts: those making less than $2.63 an hour received an additional 5 per cent increase; school teachers got an additional thirteen working days per year; community college personnel were given an across-the-board increase over and above that of other state employees; Council of State officers received raises between $5,000 and $6,000; and judges received increases of from $4,000 to $5,000 each.

The property tax was the only tax to undergo significant change. The proposal of the property tax study commission created by the 1971 Assembly that the use of assessment ratios be prohibited beginning in 1974 was enacted as Ch. 695 (S 147), so that henceforth all property will be taxed at its appraisal figure. That legislation also provided a reorganization and tightening of some of the more familiar exemptions to reflect constitutional limitations. The commission's other recommendations fared poorly. A restrictive statement of exemption policy (identical S 135 and H 170), and a proposal to tax the personal property of banks and all property of Blue Cross Blue Shield (identical S 145 and H 176) were both rejected. The commission's recommendation concerning exemptions for the residential real estate of the elderly was pushed aside in favor of another proposal that will substantially enlarge the amount of property in that favored class (Ch. 448, S 387). Ch. 709 (S 416), another noncommission proposal, gives preferential tax treatment for farm, horticultural, and forest land, to be achieved through assessment at use-value rather than market value.

The changes in other taxes were minimal: an additional income tax exemption was granted those with retarded children (Ch. 468, S 254); an increase was made in the amount of military retirement pay that is tax exempt (Ch. 287, H 153), and a tax exemption was provided for special nuclear materials (Ch. 290, S 685; later limited by Ch. 451, S 892).

## EDUCATION

This session the public schools got considerably more attention than higher education: The term for public school teachers was extended by thirteen days to a full ten months (Ch. 647, H 1097), and a statutory limit was placed on classroom size; Ch. 770 (S 536) imposes restrictions of 26 pupils per class in grades 1–3, 33 in grades 4–8, and 35 per class or 150 per teacher per day in the high school grades. The appropriations bill set aside approximately $33.4 million for implementing the longer teachers' term and $26 million for limiting class size.

A statewide kindergarten program is to be established over the next five years (Ch. 603, H 127). Approximately $12.3 million was appropriated for fiscal 1973–74 for the first phase of the implementation, providing 522 new kindergarten classes for the next school year. The total budget for 1973–74 for elementary and secondary education comes to $688 million, almost a 22 per cent increase over the current budget. More than $123 million of that amount is for new and improved services.

Before November 30, on a date to be fixed by the Governor, the people will vote on a $300 million school construction bond issue. As set out in Ch. 657 (H 415), the state bonds if approved would be used for making grants-in-aid to county and city administrative units for capital improvements. The funds would be allocated on the basis of per capita average daily membership in attendance in administrative units for the 1971–72 school year.

In statutory changes not tied to appropriations, the Teacher Tenure Act of 1971 was significantly amended by Ch. 782 (H 697). Restrictions were placed on who can acquire tenure and who is eligible for "administrative tenure"; requirements for notice on re-employment were expanded; and the length of the dismissal procedure was shortened.

Legislation was enacted requiring the State Board of Education either to maintain the 950 score on the National Teachers Examination for teacher certification or to prepare its own standardized test (Ch. 236, S 323). Scheduled to report in 1974 is a study commission created to consider the relations between school boards and professional employees' Associations (Res. 101, H 1254).

In higher education, the four-year medical school at East Carolina University remained in controversy. The issue was eventually resolved by passage of Ch. 562 (H 1123), placing $7.5 million in a reserve fund to be used by the University of North Carolina Board of Governors to create a new four-year medical school. The law on resident status for tuition purposes was amended to delete the provision that student status in an institution of higher learning in the state cannot establish eligibility for residence for qualifying for in-state tuition. Now, by virtue of Ch. 710 (H 326), the twelve-month residency requirement remains, but the flat prohibition against counting time in school toward that twelve months has been dropped; the statute provides that the person must establish that his presence in the state for twelve

months was for purposes of maintaining a bona fide domicile rather than for temporary residence incident to enrollment in school. The in- or out-of-state domiciliary of the student's parents is to create a prima facie presumption of his place of domicile. The General Assembly also repealed the statutes requiring institutions to collect a $10 nonrefundable admission application fee, a $100 advance tuition deposit for new students, and a $50 advance tuition deposit for returning students (Ch. 116, H 487).

The community colleges and technical institutes were well provided for in appropriations. Ch. 637 (H 307) set aside $25.4 million for capital construction, and the appropriations bill added $14.3 million for extension of programs and increased enrollment, plus $2.2 million for salary increases over and above the 5 per cent that went to all state employees.

## ELECTION LAWS

The change in administration from one political party to the other perhaps made inevitable the considerable amount of legislation on election procedures. An attempt was made (H 629) to retain Democrat control of the state and local election boards by requiring the party with largest registration to have a majority of the State Board and each county board to have a majority from the party with greatest local registration. Eventually, the bill was purposely kept in the Elections Committee and the law remains unchanged—that is, the Governor chooses a majority of the State Board, and the Board in turn chooses a majority of each of the local boards.

H 1321 was another notable bill that did not pass. It would require a vacancy in an elected office to be filled by a member of the political party of the person vacating the office and would also allow elected officials to resign effective at a time certain in the future. After being approved by the House, the bill went to the Senate Calendar Committee, where it remains. The Senate did pass S 733, which requires unanimous approval for hiring and firing executive secretaries of elections boards, but after long debate the House re-referred the bill to its Elections Committee.

Other matters that received attention but failed enactment included regulation of campaigns and of expenses (S 99, H 165, H 1005), allowing voters under 21 to hold elected offices (see Constitutional Amendments, above), and repeal or revision of the presidential preference primary law (repeal—S 24 and H 265; revision—H 196, H 364). Legislation was introduced to change the date of the primary from May to June (H 197), July (H 374, which was amended to June and then September), August (S 22, S 47), and September (H 11, which was amended to June), but only one of these, H 374, passed either house. It will remain in the Senate Elections Committee for the interim.

Some elections bills did pass. Ch. 536 (H 94) extended absentee voting to primary elections and simplified the procedures. An omnibus revision of the elections laws was enacted (Ch. 793, H 913), repealing many obsolete or judicially voided sections, updating others to take into account full time registration, clarifying the duties of elections officials, and improving the 1971 uniform municipal elections law. The statutes with respect to terms of municipal officials were clarified by Ch. 470 (S 616).

## ENVIRONMENTAL LAW

Continuing a strong trend of recent sessions, the 1973 Assembly enacted much important environmental legislation. Highlights of this session included the enactment of most of the proposals recommended by the Legislative Research Commission (LRC); the enactment of the departmental program of the Board of Water and Air Resources (BWAR); and the adoption of substantial budget increases for the acquisition of state parks ($11.5 million in new money) and for staffing of the BWAR ($600,000 additional annual operating funds).

LRC proposals adopted in substance were: Ch. 392 (S 244), directing a new Board of Sedimentation Control to develop a state-local program for controlling sediment and silt pollution of rivers by residential, commercial, and industrial building projects; Ch. 534 (H 297), establishing stringent oil-spill control and clean-up procedures and providing for a one-year stand-by refinery licensing procedure; Ch. 452 (H 296), strengthening local health department controls over septic tanks to ensure suitable soils and proper installation; and Ch. 140 (S 152), earmarking one-eighth of 1 per cent of the gasoline tax proceeds for development of artificial reefs. An LRC proposal for a system of permits for animal-waste pollution control was converted to an advisory-study measure and adopted in that form (Ch. 765, S 898). As recommended by former Governor Scott in a report forwarded by the LRC, the North Carolina Environmental Policy Act was extended for four years (Ch. 119, S 23), through related recommendations for procedural changes in environmental impact statements died in committee (S 126, H 151). Carried over for further consideration in 1974 were LRC bills providing standing to sue for water-supply damages (H 344) and establishing a system of reporting industrial-waste discharges to city sewers (H 298).

Key items adopted in the BWAR departmental package were Ch. 698 (S 681) and Ch. 821 (S 682), which authorized a system of effluent standards, strengthened penalties for pollution violations, established variance procedures, tightened conflict-of-interest limitations on the BWAR, and generally revised BWAR powers and procedures to bring the state into compliance with federal laws. Amendments to the flood-protection laws authorized the BWAR to desig-

nate floodways and removed technical legal barriers to state participation in flood-protection projects (Ch. 621, H 1143). And the respective responsibilities of Health authorities and the BWAR over septic-tank pollution were clarified by Ch. 471 (S 692).

The Environmental Bill of Rights received its initial implementation in two new laws that establish procedures for placing properties in the State Nature and Historic Preserve and covering most existing state parks and historic sites into the Preserve (Ch. 443, H 272, and Res. 84, H 283). Two bills were enacted to clarify procedures under the Clean Water Bond Act, one of which will require a statewide referendum (Ch. 232, H 525 and Ch. 510, H 1166).

Among the notable casualties of this session were H 24, which would have provided a limited statutory basis for citizen suits on environmental matters, and a series of bills to place various stream segments in the Scenic Rivers system. And the Appalachian (Ch. 545, H 460) and Carolina Trails (Ch. 670, H 436) bills passed only after having been stripped of their condemnation provisions.

By all odds, the most important environmental bills carried over for consideration in 1974 were the coastal and mountain area-management bills and the state land policy bill (S 614–H 949, S 857–H 1180, S 951–H 1348). Members of the Senate Natural and Economic Resources Committee and House Water and Air Resources Committee plan to conduct a series of hearings in the coastal and mountain areas on these bills this summer. Other matters carried over to 1974 that may receive consideration by standing committees during the interim include a proposal for a land conservancy corporation; small water and sewer systems; procedures for designating scenic rivers; the industrial-waste reporting and water-supply damages bills; jurisdictional questions involving health and water and air agencies; and additional measures concerning oil pollution and animal-waste pollution.

## REORGANIZATION OF STATE GOVERNMENT

The 1971 General Assembly took the first steps toward legislative implementation of the constitutional mandate to reduce the number of state government agencies to not more than 25 principal administrative departments. In the Executive Organization Act of 1971, some 19 principal departments were created and more than 180 existing boards, commissions, departments, and agencies were transferred to and allocated among the new principal departments. The 1973 Assembly moved another long step down the reorganization trail by enacting legislation setting the pattern for reorganization of each of the individual principal departments. This year's legislation designed the detailed restructuring of four principal departments of state government: Human Resources, Cultural Resources, Revenue, and Military and Veterans Affairs (Ch. 476, H 1127; Ch. 620, H 1128). It established standard nomenclature and functions for the major units within all departments and then spelled out individual administrative provisions for each of the four principal departments covered in 1973. The 1973 act is expected to be the model for completing the job with respect to the remaining principal departments. Legislative committees this summer are studying plans to cover other departments in 1974.

Another major piece of legislation that developed this year independently of the over-all reorganization effort was Ch. 507 (H 1063), which reorganized the Department of Transportation and Highway Safety. This bill was a prime objective particularly of the legislative leadership. It abolished the State Highway Commission and established a new thirteen-member Board of Transportation to formulate general highway policies. A new fourteen-member Secondary Roads Council was also created, with the duty to adopt annual work programs for secondary roads in each county.

Ch. 825 (H 1169) provides that each future appointee to the Wildlife Resources Commission shall be selected from a list of nominees submitted from interested residents of the Wildlife District where any vacancy arises. This legislation also reasserts the proposition that the Wildlife Resources Commission "shall exercise all of its prescribed statutory powers independently of the Secretary of Natural & Economic Resources," the provisions of the 1973 reorganization act notwithstanding.

Two prominent reorganization proposals affecting law enforcement functions failed to receive legislative approval this year, identical H 217–S 29 and H 1334. The first of these bills, H 217–S 29, never reached the floor in either house; it would have transferred the Committee on Law and Order from the Department of Natural and Economic Resources to the Department of Justice. H 1334, which passed the House but was not acted upon by the Senate, would have placed the State Highway Patrol under the control of a new nine-member Public Safety Commission, with three members each to be appointed by the Governor, the Lieutenant Governor, and the Speaker.

## LOCAL GOVERNMENT

The trend of recent years toward fewer and fewer local bills may be leveling off. Although the number of local bills introduced this session was a low 18 per cent of the total number of introductions, a more meaningful statistic might be the ratio of ratified local bills to ratified public bills—locals comprised 30 per cent of bills ratified in 1973.

The Local Government Study Commission, which has now expired, remained the principal source of statewide legislation dealing with local government. Completing the work it set out to do some six years ago, the Commission sponsored and the General Assembly adopted several major pieces of legislation. One part of the Commission's package implemented a number of the provisions of the new Article V ("Finance") of the State Constitution. The most important of these new laws, Ch. 803 (H 333), sets forth the purposes for which local governments may levy property taxes without a vote. Generally, the legislature was more generous to local governments than the courts have been under the old necessary expense doctrine, placing airports, hospitals, libraries, and recreation in the list of those functions not requiring a vote. Three other bills implemented the new Article's authority to permit local governments to establish taxing districts and levy taxes in those districts to provide services additional to or at a higher level than provided unitwide (Ch. 489, H 330—county service districts; Ch. 655, H 331—city service districts; Ch. 537, H 332—consolidated city-county).

The Commission also finished recodifying the principal statutes relating to local government. The 1971 Assembly recodified the statutes dealing with city government (G.S. Ch. 160A) and with local government finance (G.S. Ch. 159), and this General Assembly recodified Chapter 153, pertaining to county government (Ch. 822, H 329). Bills were also passed making a number of technical changes and corrections to Chapters 160A (Ch. 426, H 334) and 159 (Ch. 474, H 335).

Annexation again received attention in 1973, but in the end, little change was made in the general law. After several cities had sought authority to annex satellite territory, a statewide bill, H 747, was proposed on the subject. That bill passed the House but is still in the Senate Calendar Committee; thus only the local bills were enacted. The 1959 annexation laws again came under some attack, but ultimately the only changes made were to remove a few more exemptions.

## MOTOR VEHICLE LAW

Over two dozen bills concerning drunk driving were introduced; of them, the most important bill to pass was Ch. 206 (S 86). Effective June 1, a person arrested for driving under the influence who refuses to take the breathalyzer test is to lose his license for six months (formerly, 60 days) and may not have it back even if he is later acquitted of the drunk-driving charge. Ch. 312 (S 85) provides for a preliminary roadside test to determine whether a driver should be taken in for the breathalyzer test, but the test is not mandatory, and the officer must give considerable warnings before he can even request the test. The third major drunk-driving bill to receive action was S 89, which would make it an offense to drive with more than .10 per cent by weight of alcohol in the blood; currently that level only creates a presumption that one is under the influence. The bill passed the Senate with surprising ease but is still in the House Judiciary II Committee.

Other changes of general interest in the motor vehicle law include:

Ch. 736 (H 1327)—A reciprocal act permitting a nonresident traffic violator to be given a ticket or citation rather than being placed under arrest. North Carolina residents traveling in other states that have this type of statute will also be eligible for a citation after being arrested.

Ch. 73 (H 251)—An amendment to the driver's license law specifying that a new resident of this state has thirty days in which to acquire a North Carolina license. Before this statute was enacted, there was no grace period whatsoever.

Ch. 191 (H 416)—An amendment lowering the age at which one may acquire a learner's permit from 15½ to 15 years.

Ch. 531 (H 292)—A new provision effective October 1, 1973, requiring persons operating motorcycles to use both headlights and tail-lights at all times when the vehicle is upon a highway or public vehicular area. Current law requires the use of lights only at night.

Ch. 679 (H 1003)—A new law prohibiting alteration of the mileage of an odometer, and providing penalties for doing so.

## HEALTH

**Mental Health.** The greatest changes in health law affect mental patients and those being considered for commitment to mental institutions. The mental patients' bill of rights, Ch. 475 (H 373), takes effect on September 1, 1973. On that date the statute will recognize certain patient rights, such as sending and receiving mail, contacting an attorney, having visitors, and being able to keep one's own money. Over $1 million was appropriated to implement this act.

Ch. 726 (H 1081), also effective on September 1, will considerably tighten the law on involuntary commitment of those alleged to be mentally ill or alcoholic. Before he can be committed, a person will have to be (1) found by reason of overt acts to be violent and of imminent danger to himself or others, or (2) disabled to the point of being unable to provide for his basic personal needs. A probable cause determination by a magistrate, an examination, and a due process hearing in district court within ten days (including the right to counsel) will be required for commitment.

**Public Health.** Ch. 137 (H 107) now requires counties to provide public health services as state policy. The State Board of Health, in conjunction with a Public Health Services Advisory Commission may set standards for these services, and localities have the alternative of contracting with the State Board to provide services (Ch. 109, H 103).

The health manpower shortage was partially dealt with by passage of Ch. 92 (H 168) and Ch. 93 (H 169), amending the Medical and Nurse Practice acts to remove questions about the legality of qualified nurses rendering "doctors' services," clearing the way for nurse practitioners in health clinics. Legislation was also enacted to prohibit insurance companies from refusing to reimburse patients of these nurses for covered services (Ch. 436, H 100; Ch. 437, H 101).

Ch. 208 (S 592) establishes a comprehensive emergency medical services program within the Department of Human Resources. The program includes establishment of treatment centers for sophisticated trauma care and the authority to develop regional demonstration plans and seek establishment of a supplemental air ambulance system.

Other new health laws require insurance companies to insure infants from the time of birth (Ch. 345, S 669); require that handicapped and mentally retarded children be insured on the same basis as other children (Ch. 754, S 740); and eliminate vaccination as a requirement for school attendance unless the State Board of Health finds it necessary in the interest of public health (Ch. 632, S 908). Ch. 711 (H 615) rewrote the abortion law to conform to last year's United States Supreme Court decision. A woman now has an unrestricted right during the first 20 weeks of pregnancy to an abortion if performed by a doctor in a certified facility; after that time, abortion is available if one doctor agrees that continuance of the pregnancy would impair her health.

**Alcoholism.** Bills dealing with alcoholism, other than those mentioned above, include Ch. 473 (H 102), which returns the proceeds of the 5-cent per bottle add-on to the county commissioners to use on alcoholism education, treatment, and research programs. Originally the proceeds were used to build alcoholism rehabilitation centers but most recently have gone into the General Fund. Ch. 682 (H 1025) created a new nine-member Alcoholism Research Authority to receive funds and contract with nonprofit organizations and agencies for research on alcoholism. No public funds were provided for the Authority.

**Studies.** Interim health studies include joint legislative committee studies of medical manpower and facility needs (Res. 93, H 1106) and of hospital charges and how they might be regulated (Res. 100, H 1244). Study commissions are to consider proposals for dealing with insufficient medical manpower (Res. 115, H 1133) and for delivery of state health care for mental illness, retardation, and alcoholism (Res. 80, S 702).

## AUTOMOBILE INSURANCE

No-fault automobile insurance—replacing the current liability insurance system with one in which a motorist's own insurance company pays his damages, hopefully reducing the amount of litigation and administrative costs—was a much discussed issue of the 1972 election campaigns. The Governor's Study Commission on Automobile Insurance proposed a modified no-fault plan (S 137) that passed in the Senate, though greatly amended, but did not clear the House Insurance Committee before adjournment. It will receive further study during the interim. (The committee has also been directed by H 1345 to study the Insurance Commissioner's rate-making authority for automobile insurance.) None of the competing proposals, such as the North Carolina Bar Association's plan under which the right to sue the other driver would be retained, received any action. Meanwhile, the automobile liability insurance minimums were raised by Ch. 745 (S 612), effective next January 1, to require minimum coverage of $15,000 per person instead of $10,000 and $30,000 per accident instead of $20,000.

Ch. 818 (H 212), another Automobile Insurance Study Commission proposal, created an Automobile Reinsurance Facility to replace the assigned-risk plan. Now, a company must accept a high-risk applicant for auto liability insurance, but it may choose to reinsure him in the Facility, without his knowledge. All companies that write liability insurance must participate in the Facility as a condition of doing business in the state.

## COURTS

For the first session in over ten years, the volume of significant legislation affecting the court system was sharply down this year. Only two major measures, both sponsored by the Courts Commission, were introduced. The first, nonpartisan merit selection of judges, never got out of committee in the 1971 session. This time one (H 76) of two identical bills (the other was S 72) containing the proposal reached the House floor, but its sponsors, uncertain of its welcome (as a constitutional amendment, it would require a three-fifths favorable vote), had it recommitted to the Courts Committee for the interim.

The second measure was the Uniform Judicial Retirement Act (Ch. 640, H 639), designed to cure several major deficiencies in the present uncoordinated laws governing the retirement and retirement benefits of judges. The new law will provide additional benefits for appellate and superior court judges, and will increase retirement benefits for district court judges and extend coverage to more district court judges. All judges will contribute 6 per cent of their

salary to the retirement fund established by the new law; and membership in the new system is mandatory. The act is effective January 1, 1974.

Bills that would have rewritten the administration of decedents' estates (identical S 222 and H 289), landlord-tenant relationships (identical S 431 and H 596; H 673), increased the numbers of trial judges (superior court, identical S 540 and H 784; district court, identical S 541 and H 783), and allowed the superior court to sit in certain sites other than the county seat (H 291) were also held over for action in 1974. Measures to permit district court judges to sit in superior court (H 347), to excuse policemen (H 1120) and senior citizens (H 317) from jury duty, and to limit publication of Court of Appeals opinions to matters of major legal significance (H 78) were killed outright.

## CRIMINAL LAW AND PROCEDURE

**Dealth Penalty; Pretrial Procedure.** The most widely discussed criminal law proposals of 1973 were ones that did not pass. Over a dozen bills were introduced on capital punishment, but none was finally enacted. The one bill that came closest to enactment was S 157, which would have retained death only for first-degree murder. The House and Senate passed different versions, and at adjournment the matter was still in a conference committee.

The long pretrial procedure revision of the Criminal Code Commission (identical S 207 and H 256) was also held over. Although the wiretapping and no-knock search provisions received wide publicity, the legislation is far more extensive than that, generally rewriting the law of search and seizure, altering the forms of arrest process, codifying plea-bargaining, establishing a 10 per cent bail bond system, granting trial judges speedy trial powers, and much more. The Commission, which now intends to consider trial procedure and substantive criminal offenses, had its membership expanded slightly and its life extended until 1975 by Res. 26 (S 17).

**Training and Benefits.** Of great interest to law enforcement officers was the enactment of several training and benefit bills. Ch. 749 (S 667) established the structure for a criminal justice education and training system within the Department of Justice, and Ch. 766 (S 18) fixed a minimum salary. Under the latter, the minimum pay for most officers will be $6,000 annually, with higher minimums for those in supervisory positions. Also, benefits were increased for those in the Law Enforcement Officers' Benefit and Retirement Act, and additional funds were appropriated so that those officers now in the Teachers' and State Employees' or the Local Governmental Employees' retirement systems may transfer membership to the Law Enforcement Officers' system without losing credit (Ch. 635, H 97; Ch. 572, H 96).

**Miscellaneous.** Changes in substantive criminal law were fewer than usual. As seems to happen each session, the assault statutes were rewritten, effective January 1 (Ch. 229, S 64); also, the penalty for safecracking was reduced (Ch. 235, S 184); and the theft of any firearm was made a felony (Ch. 238, H 358). The Controlled Substances Act, new in 1971, was modified somewhat by Ch. 654 (H 274). Effective next January 1, some punishments will be increased, especially for possession of the substances in Schedules I (heroin) and II (opium) with intent to distribute. Among other changes, provision is made for granting immunity to first offenders under age 18 who agree to name the person from whom they received the controlled substance.

Perhaps the most important new law concerning minors is Ch. 748 (S 640). It allows the expungement of the criminal record of any first-offender misdemeanant under 18 who goes two years after that conviction without any other offense.

Solicitors were given more assistants (Ch. 646, H 970) and new nonlawyer administrative aides (Ch. 807, H 929). They will also receive special prosecutorial help from the Attorney General's office (Ch. 813, H 670), and are subject to new procedures for removal from office (Ch. 148, H 41).

A new public-drunkenness law, often discussed over the last two sessions, was enacted as Ch. 696 (S 497), but in its final form it does not repeal the criminal offense of drunkenness and makes it only optional for officers to take drunks home or to detoxification centers or hospitals, which was possible under previous law. Ch. 720 (H 878) provides a new procedure for tagging and removing derelict and abandoned vehicles for sale or recycling.

## MISCELLANEOUS

One of the predictable events in sessions of the General Assembly is the introduction of liquor-by-the-drink legislation. This time the issue was resolved by enactment of Ch. 316 (H 9), setting November 6, 1973, as the date for a statewide referendum on whether counties that choose to do so should be allowed to authorize the sale of mixed drinks. If the vote is favorable to that proposition, a county with an ABC system can begin mixed drink sale (1) by request of the county commissioners, (2) following an election called by the commissioners, or (3) following an election called by petition of 20 per cent of the registered voters. Sale would be limited to bona fide private clubs, restaurants seating at least 36, and certain special-occasion sites such as convention centers.

An extensive Occupational Safety and Health Act was passed (Ch. 295, S 342). In accord with the 1970 federal act of the same name, it primarily adopts the federal standards for working conditions and grants the Department of Labor authority to enforce. The

*(Continued on Page 58)*

# The 1973-74 Budget

Charles D. Liner

The 1973 General Assembly was faced with a General Fund revenue surplus which at the end of the fiscal year amounted to about $321 million, including federal revenue sharing funds of about $60 million that have been received for 1972–73 (an additional $48 million will be received in 1973–74). This surplus was nearly twice as much as the largest surplus in history (Table 1). The surplus amounted to about $61 for each person living in North Carolina—enough to finance the total amount spent for operations in 1972–73 on the General Assembly, the judiciary system, general government, correction, community colleges, and higher education (Table 4).

The General Fund surplus resulted largely from revenues that the 1971 General Assembly failed to anticipate, but it also resulted from revenue-sharing funds and 1971–73 appropriations not used (about $80 million).

Inevitably there was much controversy over what to do with these whopping surpluses. Some people thought that taxes should be cut or repealed or that the tax structure should be changed to make it more equitable. Others thought the surplus should be spent to expand old programs and start new ones. In the past two decades the General Fund surpluses, which have occurred every biennium since the early 1930s, were usually used to finance capital improvements. This surplus—larger than all direct appropriations for capital improvements from 1965 to 1973—was really too large to spend solely on capital improvements. The final result was that no major tax structure changes were made (see the article on taxation in this issue and the article on property taxation in the June issue of *Popular Government*), and the General Fund surplus was divided between capital improvements and increased operating expenditures. Even then, capital improvements appropriations were much larger than ever before (Table 2), and General Fund operating expenditures were increased by about a third of a billion dollars, or by almost 30 per cent above 1972–73 estimated expenditures (Table 3). No annual increases in recent history have come close to this increase in operating expenditures.

Table 4 shows how the expected revenues were divided among state functions. Of the total increase in both General Fund and Highway Fund regular appropriations over 1972–73 estimated expenditures, 57.3 per cent went to education. Public schools, whose budget was increased 24.5 per cent, alone received 37.5 per cent of the increase. The budget for community colleges rose 59 per cent, and the budget for higher education jumped 21.7 per cent. The next largest absolute increase was for health, welfare, and rehabilitation, which received 11.2 per cent of the increases. Very large portions, 7.2 per cent and 8.6 per cent, respectively, of the increases went to increased debt retirement and reserves—most of the latter to finance salary increases for state employees. Appropriations for almost all functions rose significantly. The major exception was programs of the State Highway Commission, whose appropriations went up by only 2 per cent.

**TABLE 1**

Credit Balances of the General Fund at the End of the Biennium, 1959–61 to 1971–73 (estimated)
(thousands of dollars)

| *Biennium* | *Credit Balance at End of Biennium* | *Credit Balance Percentage of Biennial Expenditures for Current Operations* |
|---|---|---|
| 1961–63 | $111,674 | 14.9% |
| 1963–65 | 87,672 | 9.9 |
| 1965–67 | 172,680 | 16.0 |
| 1967–69 | 153,336 | 11.3 |
| 1969–71 | 147,218 | 8.0 |
| 1971–73 (estimated) | 321,000[1] | 14.5 |

1. Includes $60 million from Revenue Sharing.

**TABLE 2**

Appropriations for Capital Improvements, 1963–65 to 1971–73 Biennia and Fiscal Year 1973–74
(thousands of dollars)

| *Biennium* | *General Fund* | *Highway Fund*[1] |
|---|---|---|
| 1963–65 | $ 63,074 | $3,276 |
| 1965–67 | 41,640 | 3,193 |
| 1967–69 | 112,357 | 4,345 |
| 1969–71 | 75,589 | 1,080 |
| 1971–73 | 64,891 | 4,097 |
| 1973–74 (fiscal year) | 191,822 | 8,551 |

1. Other than highway construction and maintenance.

## TABLE 3

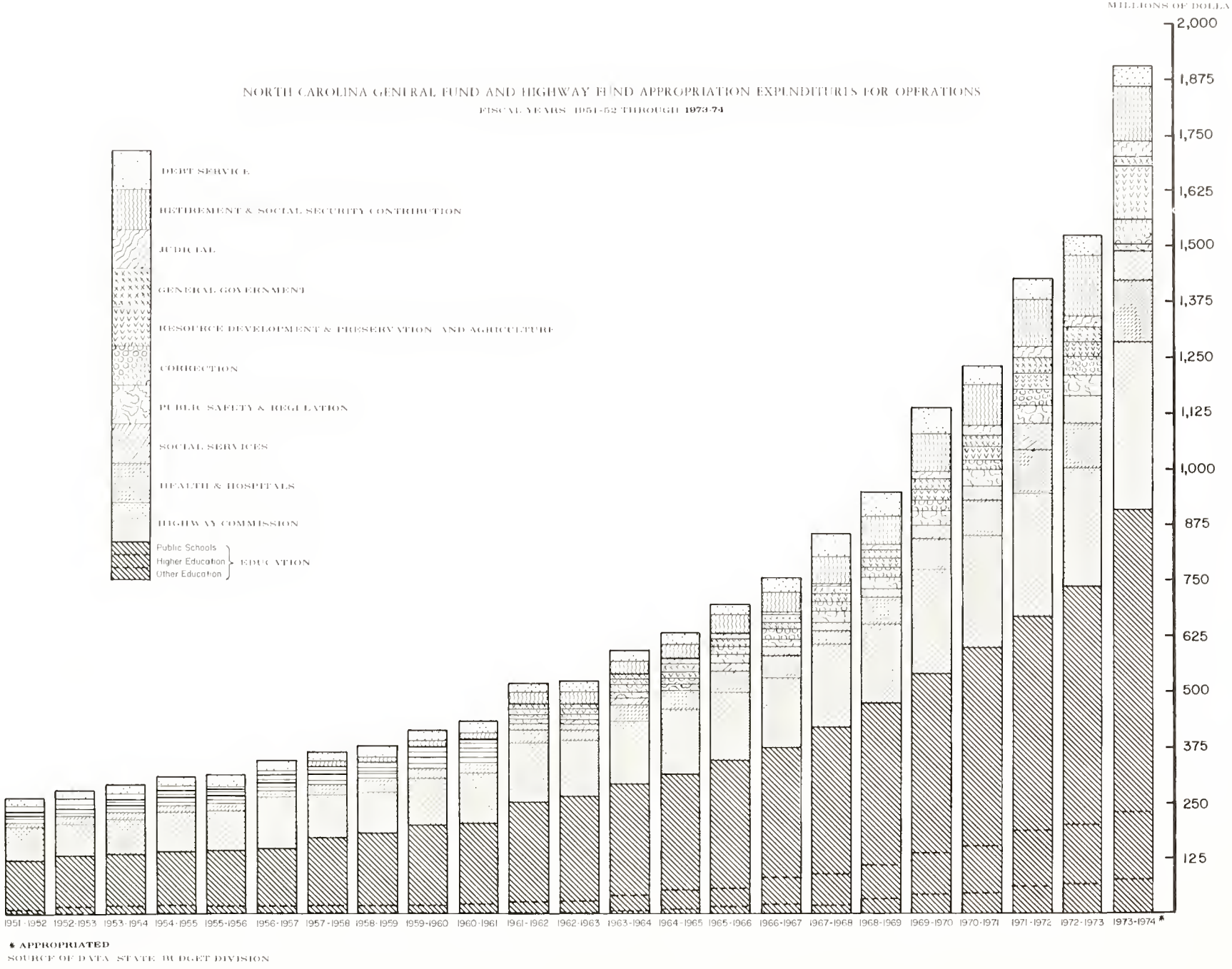
Appropriation Expenditures for Current Operations, Fiscal Years 1963–64 to 1972–73 (estimated) and Appropriation for Current Operations, 1973–74 (thousands of dollars)

| *Fiscal Year* | *General Fund* | | | *Highway Fund* | |
|---|---|---|---|---|---|
| | *Expenditures* | *Annual Increase* | *Percentage of Annual Increase* | *Expenditure* | *Percentage of Annual Increase* |
| 1963–64 | $ 429,922 | $ 45,910 | 12.0% | $164,106 | 16.2% |
| 1964–65 | 460,056 | 30,134 | 7.0 | 171,317 | 4.4 |
| 1965–66 | 517,111 | 57,055 | 12.4 | 182,683 | 6.6 |
| 1966–67 | 565,195 | 48,084 | 9.3 | 190,338 | 4.2 |
| 1967–68 | 643,993 | 78,798 | 13.9 | 211,711 | 11.2 |
| 1968–69 | 718,260 | 74,267 | 11.5 | 232,575 | 9.9 |
| 1969–70 | 837,405 | 119,145 | 16.6 | 299,938 | 29.0 |
| 1970–71 | 939,311 | 101,906 | 12.2 | 304,412 | 1.5 |
| 1971–72 | 1,031,353 | 92,042 | 9.8 | 352,178 | 15.7 |
| 1972–73 (estimated maximum) | 1,175,264 | 143,911 | 14.0 | 354,008 | 0.5 |
| 1973–74 (appropriated) | 1,520,611 | 345,347 | 29.4 | 377,623 | 6.7 |

## TABLE 4

Estimated Appropriation Expenditures in Fiscal Year 1972–73 Compared with Appropriations for Fiscal Year 1973–74 for Current Operations, General and Highway Funds (thousands of dollars)

| *Function* | *1972–73 Estimated Maximum Expenditures* | *1973–74 Appropriations* | *Percentage Increase from 1972–73 to 1973–74* | *Increase as a Percentage of Total Additional Operating Appropriations Over 1972–73 Expenditures* |
|---|---|---|---|---|
| GENERAL FUND | | | | |
| General Assembly | $ 3,350 | $ 3,412 | 1.9% | nil |
| Judicial | 29,342 | 34,573 | 17.8 | 1.4 |
| General Government | 32,028 | 42,156 | 31.6 | 2.7 |
| Public Safety and Regulation | 9,372 | 12,577 | 34.2 | 0.9 |
| Correction | 44,412 | 54,568 | 22.9 | 2.8 |
| Education | | | | |
| Public Schools | 565,971 | 704,354 | 24.5 | 37.5 |
| Community Colleges | 61,539 | 97,858 | 59.0 | 9.8 |
| Higher Education | 150,178 | 182,833 | 21.7 | 8.8 |
| Other Education | 5,876 | 10,028 | 70.7 | 1.1 |
| Total Education | 783,564 | 995,073 | 27.0 | 57.3 |
| Health, Welfare, and Rehabilitation | 181,967 | 223,415 | 22.8 | 11.2 |
| Resource Development and Preservation | 16,434 | 21,096 | 28.4 | 1.3 |
| Agriculture | 21,529 | 23,162 | 7.6 | 0.4 |
| Debt Service | 21,466 | 48,147 | 124.3 | 7.2 |
| Reserves | 31,800 | 62,500 | 96.5 | 8.6 |
| Total General Fund | 1,175,263 | 1,520,679 | 29.4 | 93.6 |
| HIGHWAY FUND | | | | |
| Public Safety and Regulation | 268 | 303 | 12.9 | nil |
| Education | 2,856 | 3,120 | 9.2 | 0.1 |
| Transportation | | | | |
| Office of Motor Vehicles | 30,427 | 34,333 | 12.8 | 1.1 |
| State Highway Commission | 283,160 | 288,695 | 2.0 | 1.5 |
| Other | 2,255 | 2,358 | 4.6 | nil |
| Total Transportation | 315,841 | 325,386 | 3.0 | 2.6 |
| Agricultural Inspection, Debt, & Reserves | 35,043 | 44,970 | 28.3 | 2.7 |
| Total Highway Fund (plus special bills) | 354,008 | 377,623 | 6.7 | 6.4 |
| TOTAL GENERAL AND HIGHWAY FUNDS FOR CURRENT OPERATIONS | 1,529,272 | 1,898,302 | 24.1 | |


NORTH CAROLINA GENERAL FUND AND HIGHWAY FUND APPROPRIATION EXPENDITURES FOR OPERATIONS
FISCAL YEARS 1951-52 THROUGH 1973-74
MILLIONS OF DOLLARS
DEBT SERVICE
RETIREMENT & SOCIAL SECURITY CONTRIBUTION
JUDICIAL
GENERAL GOVERNMENT
RESOURCE DEVELOPMENT & PRESERVATION AND AGRICULTURE
CORRECTION
PUBLIC SAFETY & REGULATION
SOCIAL SERVICES
HEALTH & HOSPITALS
HIGHWAY COMMISSION
Public Schools
Higher Education
Other Education
EDUCATION
2,000
1,875
1,750
1,625
1,500
1,375
1,250
1,125
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* APPROPRIATED
SOURCE OF DATA: STATE BUDGET DIVISION

# The Courts

## C. E. Hinsdale

Ending more than a decade of sessions crowded with weighty measures affecting the courts and court personnel and procedures, few legislative proposals of major importance to the court system came before the 1973 General Assembly. Only three proposals stand out as exceptions to this statement in 1973—bills recommending a uniform judicial retirement system, a nonpartisan merit method of selection of judges, and a revamping of the procedures for judicial hospitalization of the mentally ill.

### THE UNIFORM JUDICIAL RETIREMENT ACT

This act (Ch. 640, H 639), under study by the North Carolina Courts Commission for several years, is designed to cure several major deficiencies in the present uncoordinated laws governing retirement and retirement benefits of judges. Effective January 1, 1974, it provides death and survivor benefits for appellate and superior court judges who now have none; it increases the retirement compensation accrual rate for district court judges; and it extends coverage to a few district court judges who, due to their ages when they became judges, have not heretofore qualified for any retirement benefits. District court judges are removed from coverage by the Teachers' and State Employees' Retirement system, and join appellate and superior court judges in a new, unified system. All judges contribute 6 per cent of salary to the fund established by the new law, and membership in the new system is mandatory. Besides having the virtues of uniformity and simplicity, the new law should be valuable in attracting and keeping additional highly qualified judges. The survivor benefits provided by the act extend to emergency judges, judges retired because of physical disability, and the widows of former judges.

Since the act will require a contribution of 6 per cent of their pay by superior court and appellate judges who have not previously made such contribution, the legislature granted these judges a generous $5,000 annual increase in pay. District court judges, who under the TSER system contributed about 6 per cent of their salaries to the retirement fund, received a $4,000 increase. Representations in committees were that these raises were for the biennium, not merely for fiscal year 1974, as raises for most other state employees were.

### NONPARTISAN MERIT SELECTION OF JUDGES

A second important proposal of the Courts Commission—nonpartisan merit selection of judges—was first introduced in the 1971 session, but remained in committee. This session the proposal (S 72, H 76) was favorably reported out of the House Courts and Judicial Districts Committee, but was recommitted by agreement on the House floor until the 1974 session. The bill would amend the Constitution to require the Governor to appoint judges from a list of nominees selected by a nominating commission com-

posed of lawyers and laymen; after one to three years of service the judge would face the electorate on whether he should be retained in office. If the vote to retain him was favorable, the judge would then begin a regular term. Successive elections would also be "retention" elections. The House committee, noting that retention elections in other jurisdictions typically resulted in about 80 per cent majorities for retention, amended the bill (and a companion bill [S 120, H 145] that would implement the constitutional amendment) in committee to require a retention vote of 60 per cent, rather than a simple majority. A second committee amendment of substance confines the electorate for retaining superior court judges to the superior court judicial *division*, thus compromising sharp differences over whether voters of the state (as now) or of a particular judicial district should select their superior court judge or judges. Whether these amendments improve the bills' chances of passage in 1974 cannot be predicted with any certainty. Merit selection along these lines, however, is a concept that increasing numbers of states have approved in recent years.

## COMMITMENT OF THE MENTALLY ILL AND INEBRIATES*

Several enactments affect the provisions of G.S. Chapter 122 (Hospitals for the Mentally Disordered). The most important of these (Ch. 726, H 1081), effective September 1, 1973, makes fundamental changes in the procedures for *involuntary* commitment of a mentally ill respondent determined "to be dangerous to himself or others or gravely disabled." (By definition, "gravely disabled" includes inebriates.) Under this new law there are only two methods of involuntary commitment: judicial hospitalization and emergency hospitalization. The former procedure authorizes a law enforcement officer, upon determination that a person, by reason of commitment of overt acts, is "violent and of imminent danger to himself or others" or is "gravely disabled," to take him into custody to have him examined medically within 24 hours by a qualified physician. The examining physician's written statement that the person is violent, etc., authorizes the law enforcement officer to take the person immediately before a magistrate.

If the law enforcement officer has "reasonable grounds" to believe that a person is violent, etc., and that delay in obtaining a medical examination would "endanger life or property," he may take the person immediately before a magistrate without prior examination.

In a judicial hospitalization case, the magistrate must take oral testimony and consider the written authorization of the physician. He must find that reasonable grounds exist to believe that "by reason of the commission of overt acts . . . the person is violent and of imminent danger to himself or others, or is gravely disabled." If he so finds, he issues an order to the law enforcement officer to take the person to a treatment facility pending a hearing before a district court judge. If he does not so find, he orders the person released.

In an emergency hospitalization case, the magistrate, if he fails to find either that the person is violent, etc., or that delay in obtaining a medical examination would endanger life or property, releases the person. If he finds that the reverse is true, he orders the person to a treatment facility to obtain a medical examination before resumption of the magistrate's hearing, which is to be held in the same way as a judicial hospitalization proceeding. The magistrate's order must be supported by written findings of fact.

A person arriving at a treatment facility must be examined within twenty-four hours by a physician to determine whether he is violent, etc.; the person may be released or held, depending on the physician's written findings, pending a district court hearing.

Not later than ten days after the person is taken into custody, a district court judge must conduct a hearing to determine whether the person, by reason of the commission of overt acts, is violent and of imminent danger to himself or others or is gravely disabled. Notice of the hearing must be given by the clerk of court to the person and his attorney forty-eight hours in advance. The person is entitled to be present and to have counsel. If the court determines that the person is indigent, counsel must be supplied at state expense, as with indigents charged with crimes. A transcript of the hearing must be made, at state expense if the person is indigent. If the judge finds that the person is violent, etc., he orders commitment to a treatment facility for ninety days. The person may appeal an adverse finding to the superior court for a hearing de novo, with right to a jury trial. Additional hearings of this type must be held in district court every 120 days, if the treatment facility considers continued commitment to be necessary. The clerk of superior court must notify the person and his attorney fifteen days before any such hearing.

The treatment facility may discharge any committed person at any time before the commitment period expires; if it does so, it must send a certificate of discharge to the district court.

This act repeals the first subparagraph of G.S. 122–65.8, which had authorized a court that acquitted a public drunk by reason of chronic alcoholism to direct the clerk to initiate judicial hospitalization proceedings. Henceforth in these cases, commitment

*After this article was typeset, the N.C. Court of Appeals, on June 27, 1973, held G.S. 122–59, –63, and –65 (emergency and judicial hospitalization) constitutionally defective on procedural due process grounds. *In re Hayes*, ——N.C. App.——.

of the acquitted alcoholic presumably must be in accordance with the new law as outlined above.

In substituting the magistrate and the judge of the district court for the clerk of superior court in commitment hearings, in requiring precise and detailed written findings by magistrates and judges, in providing counsel for the indigent, and in its ten-day deadline for a hearing, this act imposes administrative burdens on court personnel that will require a maximum of good faith and cooperation to discharge successfully.

## OTHER CHANGES IN CHAPTER 122

The procedure for *voluntary* admission of mentally ill and inebriate persons to mental hospitals, set forth in G.S. Chapter 122, Article 4, was also substantially revised. Ch. 723 (H 952), effective May 23, 1973, provides that a person who believes himself in need of treatment at a facility for treating the mentally ill need only present himself for evaluation at such facility. No written application or certification is required. The receiving facility must examine the person seeking treatment within twenty-four hours to verify the need for treatment. Any person voluntarily admitted under this procedure must be discharged at any time, on his written request, and the receiving facility must inform the one admitted in writing of this right within 24 hours of admission.

Still another major change was effected in Chapter 122. The procedure set forth in G.S. 122–86 for discharge from mental hospitals of persons acquitted of crime by reason of insanity was revised by Ch. 658 (H 545), effective May 22, 1973. The revised version was enacted in response to the North Carolina Supreme Court case of *In re Tew,* 280 N.C. 612 (1972), which invalidated certain provisions of old G.S. 122–86. The new procedure authorizes a person so acquitted and committed to seek his release via a writ of habeas corpus, with the burden being on the petitioner to prove that he has recovered from his mental illness and that he does not require further hospitalization and treatment to avoid danger to himself and others. The judge may release the petitioner unconditionally or conditionally, or he may remand him to the custody of the hospital.

Three other enactments affect parts of Chapter 122. Ch. 774, (S 715), effective May 23, 1973, adds a proviso to G.S. 122–63.1 authorizing the clerk of superior court, when a judicially hospitalized person cannot be admitted to a local mental health facility for any reason, to commit such person directly to the appropriate state hospital. Ch. 253 (S 231), effective April 23, 1973, amends various sections of Article 11 (Mentally Ill Criminals) of Chapter 122 to permit commitment of mentally ill criminals to any mental health facility of the state. Formerly such patients could be admitted only to Dorothea Dix or Cherry hospitals. Finally, Ch. 475 (H 373), effective September 1, 1973, expands in some detail the rights of mental patients at treatment facilities. This Act is discussed in the Health article in this issue of *Popular Government.*

## APPELLATE JURISDICTION

In an effort to curtail the sizable number of nonmeritorious appeals reaching the appellate courts in recent years, the General Assembly made one significant change in the jurisdiction of the Appellate Division. Ch. 122 (S 209), effective March 30, 1973, added to G.S. Ch. 15 a new provision (Sec. 15–180.2) providing that when a defendant pleads guilty or nolo contendere to a charge pending in the superior court, he has no right of appeal of such plea to the Appellate Division, but he has the right to petition the Appellate Division for issuance of a writ of certiorari.

A corresponding change was made in G.S. 7A–27 (appeals of right from the courts of the trial divisions) by Ch. 704 (H 1158), ratified May 23, 1973.

## COUNSEL FOR INDIGENTS

G.S. 7A–451 (scope of entitlement of indigents to counsel) was modified in several particulars by Ch. 151 (S 77), effective April 10, 1973, in response to the dictates of case law. In *Argersinger v. Hamlin,* 32 L.Ed.2d 530 (1972), the United States Supreme Court held that counsel must be furnished to any accused if confinement is to be included in the sentence. Accordingly, G.S. 7A–451(a) was amended to eliminate the reference to six months' confinement as the limit beyond which appointment of counsel was mandatory. In *Kirby v. Illinois,* 32 L.Ed.2d 411 (1972), the same court apparently restricted the scope of the earlier *Wade* and *Gilbert* cases concerning the requirement for counsel at line-ups. G.S. 7A–451(b)(2), was therefore amended to require counsel only for those pretrial identification procedures that occur "after formal charges have been preferred and at which the presence of the indigent is required." The reference to formal charges is taken from the *Kirby* case; in misdemeanor cases, some judicial interpretation may be required in North Carolina to determine whether issuance of the warrant or convening of the preliminary hearing constitutes a "formal charge." (*Kirby* was a postindictment case, and there seems little doubt that in North Carolina in a felony case, return of the indictment would be the formal charge.)

In *State v. Mems,* 281 N.C. 658 (1972), the North Carolina Supreme Court held unconstitutional the provision in G.S. 7A–457(a) that "one charged with a capital crime" could not waive his right to counsel. Accordingly, these words were deleted from the statute, also by Ch. 151.

G.S. 7A–451(a)(6) was amended by Ch. 616 (H 917), effective May 18, 1973, to provide that an in-

digent is entitled to counsel in judicial hospitalization proceedings under Article 7 (now Art. 5, Involuntary Commitment) as well as Article 11 of G.S. Chapter 122 (Hospitals for the Mentally Disordered). A similar amendment was made by Section 4 of Ch. 726 (H 1081), to be effective September 1, 1973.

## EXPUNCTION OF YOUTHFUL OFFENDER RECORDS

In 1971 the General Assembly enacted G.S. 90–96, which provided that first offenders tried for possessing certain controlled substances could be placed on preconviction probation and, if they fulfilled the terms of their probation, proceedings would be dropped. If the charge was dropped, the defendant, if under 21 at the time of the offense, would be entitled on application to have his record expunged of all entries relating to the offense. A somewhat similar statute, Ch. 748 (S 640), effective May 23, 1973, extends the expungement policy, for offenders under the age of 18, to *all misdemeanor convictions*. A two-year postconviction period free of any offenses other than traffic violations authorizes the offender to petition for expungement. The petition (a motion in the cause) must be supported by affidavits and official records indicating good conduct; if it is followed by appropriate findings of fact and is accepted by the judge, the offender is restored to his prearrest status. Some confusion may result from the location of the new law in Chapter 90 (Medicine and Allied Occupations); a more appropriate place might have been Chapter 15 (Criminal Procedure). The new act imposes some additional administrative chores on law enforcement agencies, solicitors, and clerks of superior court, but is consistent with a growing national trend to give a "break" to first-time teen offenders.

## CLAIM AND DELIVERY

*Fuentes v. Shevin*, 32 L.Ed.2d 556, (1972), held unconstitutional ex parte claim and delivery procedures (such as North Carolina's) that took from a defendant personal property without a prior opportunity to be heard. Ch. 472 (H 43), effective May 14, 1973, revises G.S. 1–474 and adds –474.1 and –484.1 to Article 36 of G.S. Chapter 1 to comply with the *Fuentes* case by providing for a hearing before the clerk of superior court before the property is seized and pending trial on the merits. Presumably (the new law is silent on this), the clerk will decide whether the plaintiff is *probably* entitled to the property; a decision favorable to the plaintiff on this issue will support seizure of the property before trial. The statute provides forms for notice of the hearing to the defendant and for waiver of the hearing by the defendant. Contractual waivers are not permitted.

## UNDISCIPLINED CHILDREN

Juvenile caseloads of the district court will be enlarged somewhat by Ch. 463 (H 125), effective May 11, 1973, which amended G.S. 7A–278(1) to extend jurisdiction over an "undisciplined child" until he reaches his eighteenth birthday if he is not married or emancipated or a member of the armed forces.

## UNIFORM ARBITRATION ACT

Ch. 676 (H 959), effective August 1, 1973, replaces the 1927 Uniform Arbitration Act (G.S. 1–544 *et seq.*) with a new uniform act of the same name. The new act applies only to agreements made on or after August 1, 1973.

## EXTENSION OF JUVENILE PROBATION SERVICES

G.S. 7A–134 currently authorizes family court counselors in any judicial district having a county with a population of 84,000 or more. In districts that do not qualify, services to juveniles are the responsibility of the county department of social services. This not-so-satisfactory arrangement, generally considered to be temporary, was scheduled for study in this session of the General Assembly. The issue became enmeshed in the related question of whether family court counselors should remain under the Administrative Officer of the Courts or be transferred, under pending state government reorganization plans, to be a separate government department. Ch. 815 (H 1358), effective May 24, 1973, is a last-minute, temporary compromise of these issues. Ch. 815 provides that the Administrative Office, from September 1, 1973, through June 30, 1974, shall provide in all judicial districts of the state, regardless of population factors, *all* juvenile probation and counseling services authorized by either G.S. 7A–134 or G.S. 110–21 (county department of social services). Presumably the issues of the extent to which these services will be provided by the state and what state agency will administer them will be permanently settled by the 1974 session.

## AMENDMENTS TO G.S. 50–10

G.S. 50–10 was rewritten by Ch. 460 (S 225), effective May 11, 1973, to read as follows:

> The material facts in every complaint asking for a divorce or for an annulment shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a judge or jury. The determination of whether there is to be a jury trial or a trial before the judge without a jury shall be made in accordance with G.S. 1A–1, Rules 38 and 39. On such trial neither the hus-

band nor wife shall be a competent witness to prove the adultery of the other, nor shall the admissions of either party be received as evidence to prove such fact.

District court judges should note that the above statute is already in effect and that it entirely supersedes Ch. 2 (S 30), which repealed the last sentence of former G.S. 50–10, effective October 1, 1973.

## DETENTION OF PUBLIC DRUNKS

Crowded dockets in some district courts may be alleviated somewhat by Ch. 696 (S 497), effective May 23, 1973, which eliminates the necessity for judicial processing of public drunks. Henceforth, a law enforcement officer who takes a public drunk into custody may, instead of taking him before a magistrate for issuance of a warrant, take him home or to a detoxification center or hospital. As detoxification centers (undefined in the new law) become available throughout the state, the courts' involvement with public drunks will probably shrink correspondingly.

## SELECTED LAWS OF PARTICULAR INTEREST TO JUDGES

Prompted by the realization that North Carolina judges (contrary to those in nearly all other states) did not have the benefit of the guidance of any formal canons of professional conduct and aware that the American Bar Association has recently updated its *Code of Judicial Conduct,* the General Assembly enacted Ch. 89 (S 40), which adds G.S. 7A–14 to the General Statutes; it provides that the State Supreme Court is authorized, by rule, to prescribe standards of judicial conduct for the guidance of all justices and judges of the General Court of Justice. Presumably, such standards, when promulgated, will also be helpful to the members of the Judicial Standards Commission, created effective January 1, 1973.

In response to the judicial manpower difficulties created in July, 1971, when the Governor failed to fill promptly by appointment or reappointment eight special superior court judgeships that expired June 30, 1971, the legislature enacted Ch. 82 (S 58), which provides that all incumbent special superior court judges shall continue in office when their terms expire until their successors are appointed and qualified.

G.S. 7A–4.20(a), enacted in 1971 and providing for the mandatory retirement of appellate court judges at age 72 and trial court judges at age 70, contained a "grandfather" clause exempting from its coverage judges who were over the specified ages on the effective date of the act (January 1, 1973). Ch. 248 (S 128), effective April 20, 1973, expanded this clause to permit all judges elected before January 1, 1973, who reach the specified ages thereafter to remain in office until their terms expire. This has the effect of extending coverage of the clause to about 32 judges (from about 16) and extending the clause in time to 1980.

G.S. 7A–16, added by Ch. 301 (S 191), corrects an oversight in the Court of Appeals Act of 1967 by providing that if the Chief Judge is unable, on account of absence or temporary incapacity, to perform his duties, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court of Appeals.

The 1971 law creating the Judicial Standards Commission (G.S. 7A–375 through –377) was strengthened by Ch. 50 (H 79), which provides for alternate and holdover members, and by Ch. 808 (S 344), which provides for a commission investigator.

In *State v. Dawson*, 281 N.C. 645 (1972), the North Carolina Supreme Court interpreted G.S. 9–15(a) to authorize a trial judge on *voir dire* to query prospective jurors as to their fitness and competency to the *exclusion* of direct inquiry by the parties of their counsel. Sponsored with enthusiasm by many lawyer-legislators, Ch. 95 (S 76) overturns this decision, declaring that ". . . any party to an action, or his counsel of record shall be allowed, in selecting the jury, to make direct oral inquiry of any prospective juror . . ." as to his fitness and competency. The new act was effective March 21, 1973.

An amendment to G.S. 15–179 (Ch. 467, S 219), effective May 14, 1973, extends to the state the right to appeal adverse rulings on motions to bar prosecution based on the prohibition against double jeopardy.

Ch. 149 (H 351), effective April 9, 1973, amended G.S. 1A–1, Rule 38, to grant the right of jury trial on the issue of just compensation in *any* condemnation proceeding brought by "bodies politic, corporations or persons which possess the power of eminent domain."

In accordance with G.S. 7A–245, as interpreted by the North Carolina Court of Appeals in *Boston v. Freeman,* 6 N.C. App. 736 (1969), Ch. 66 (S 79), effective March 8, 1973, amended G.S. Chapter 1, Article 37 (Injunctions), to include district court judges (formerly, superior court judges only) among those authorized to grant injunctive relief. The changes extend the authority only to those district court judges authorized under G.S. 7A–191 to hear in-chambers matters, and specify that orders issued by one trial level are returnable only to that trial level.

Ch. 240 (H 491), effective April 19, 1973, amended G.S. 7A–100(a) to relieve a long-standing difficulty that regular superior court judges have heretofore encountered when an office of superior court clerk in their respective districts became vacant through death and no qualified prospect was immediately available as a permanent replacement. The amendment permits the judge, pending appointment of a successor clerk, to appoint an *acting* clerk for no

longer than 30 days. This change also applies to vacancies created by resignation.

Chapter 8 of the General Statutes is amended (Ch. 464, H 267), effective October 1, 1973, by the addition of a new section (G.S. 8–51.1) providing that dying declarations of a deceased person regarding the cause or circumstances of death are admissible in evidence in all trial and other proceedings before courts and administrative agencies to the same extent and for the same purposes that they might have been admissible had the deceased survived and been sworn as a witness. According to the General Statutes Commission, which sponsored the bill, it removes the limitations on the types of actions in which such a declaration is admissible but preserves the common law rule by which admissibility of the declaration is determined.

Ch. 751 (S 722), effective June 1, 1973, provides that a district court judge, before denying a parent the right of reasonable visitation in a child-custody case, must make a written finding of fact that the parent being denied visitation rights is an unfit person to visit the child or that such visitation rights are not in the best interest of the child. Presumably this new act will be codified in G.S. Chapter 50.

The office of public defender, now operating in two judicial districts, was extended to a third—the Twenty-eighth (Buncombe County). Ch. 799 (S 548), effective July 1, 1973, provides that the senior regular resident superior court judge of the district shall appoint the defender from a list of nominees supplied by the local bar. The other two defenders are appointed by the Governor.

## OF PARTICULAR INTEREST TO CLERKS OF SUPERIOR COURT

Minor new laws primarily of interest to the clerk of superior court include the following:

Ch. 204 (H 36), effective April 16, 1973, repealed G.S. 108–29 *et seq.* ("welfare liens"), but prospectively only. Ch. 480 (S 473), effective May 14, 1973, rewrote G.S. 44–68.5 to transfer federal tax liens filed before October 1, 1969, to the office of the clerk of superior court. Ch. 23 (S 103), effective February 21, 1973, amended G.S. 28–68 to raise from $1,000 to $2,000 the amount of indebtedness to an estate that can be administered by the clerk of superior court. Ch. 83 (S 73), effective March 15, 1973, lowered the minimum number of names required for the master jury list from "two" to "one and one-quarter" times the number of names used for jury duty in the county in the preceding biennium, provided at least 500 names are selected. Ch. 795 (H 1346), effective May 24, 1973, amended G.S. 7A–102.1(a) to permit assistant and deputy clerks (and reporters and judicial and solicitorial secretaries) who were or are transferred to such employment from county employment to receive transfer credit without limit (formerly thirty days) for accumulated sick leave. This act further specifies that any such employee ". . . who retires on or after the ratification of this act shall be given credit for all sick leave accumulated at the time of the ratification of this act." Ch. 558 (H 664) amends G.S. 152–7(2), effective September 1, 1973, to provide that the coroner shall secure prospective jurors for a coroner's jury under the procedures prescribed in G.S. 9–5 for regular courtroom jurors. Ch. 251 (H 33), effective April 20, 1973, rewrote Chapter 13 of the General Statutes ("Citizenship Restored") to provide for "automatic" restoration of citizenship when certain conditions occur. The clerk of superior court is charged with certain new record-keeping functions under the act.

Ch. 417 (H 871) amended G.S. 7A–311(a)(1), effective July 1, 1973, by deleting authority for collection of the $2 fee for service of civil process unless the process is actually served; attempted service no longer justifies collection of the fee. This may require some bookkeeping adjustments in those clerks' offices that collect this fee directly. Since the fee is collectible in advance, refunds will apparently be required when service is not effected.

Ch. 60 (H 268), effective October 1, 1973, adds a new subsection (e) to G.S. 47–14 to provide a new procedure for registering documents to which the register of deeds is a party. After the document is acknowledged before a magistrate or notary public, the clerk of superior court is required to certify that the execution and acknowledgment of the instrument are in due form (if they are) before its registration.

Ch. 522 (H 22), effective May 16, 1973, provides a procedure for establishing receiverships for the estates of armed forces personnel listed as prisoners of war or as missing in action. Appropriate amendments to G.S. Chapter 28A ("Estates of Missing Persons") are made to delete POWs and MIAs from coverage by that chapter.

Ch. 678 (H 988), effective May 22, 1973, amended G.S. 7A–102(b) to authorize deputy clerks of superior court to "take the proofs and examinations of the witnesses touching the execution of a will as required by G.S. 31–17."

Finally, by Ch. 571 (H 73), effective July 1, 1973, a new population-salary schedule for clerks was enacted. In addition to granting handsome raises in G.S. 7A–101(a), the General Assembly amended 7A–101(b) to require that merit raises must be henceforth recommended by the Administrative Officer to the Advisory Budget Commission, whose decision is final.

## OF PARTICULAR INTEREST TO MAGISTRATES

Effective October 1, 1973, Ch. 6 (S 57) removes from G.S. 7A–273 the magistrate's authority to hold preliminary hearings in misdemeanor cases. Time saved to the magistrate by the elimination of this duty

will be more than taken up by the duties imposed on him under the revision of the judicial hospitalization laws as noted above, however.

Grounds for removing a magistrate from office—"the same as for a district judge"—are now the same as for any judge of the General Court of Justice, and the specific grounds have been somewhat modernized (Ch. 148, H 41). This results from adoption by the people in November, 1972, of a constitutional amendment setting forth grounds for administrative removal of judges and consequent repeal of the statute in G.S. Ch. 7A on removal of district court judges to which removal of magistrates had been keyed. The revised grounds for removal are mental or physical incapacity interfering with the performance of duty that is or is likely to become permanent, willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Magistrates who try small claims (and sheriffs) will be interested to know that, pursuant to Ch. 90 (S 44), effective March 19, 1973, personal service of process under G.S. 7A–217 in small claims in general is now the same as for civil actions under Rule 4(j)(1) of the rules of Civil Procedure. And in summary ejectment cases, G.S. 42–29 has been rewritten by Ch. 87 (S 41), effective March 16, 1973, to effect the same change; it also now provides that when such service cannot be made, and if the defendant cannot be found in the county, process may be affixed to "some conspicuous part of the premises claimed."

An amendment to G.S. 7A–281 effected April 26, 1973, by Ch. 269 (S 608) provides that, when the office of clerk of superior court is closed, a magistrate (on authorization by the chief district judge)—when requested by a "juvenile probation officer, a representative of the County Department of Social Services or a law enforcement officer"—may issue a juvenile petition. (Note that a request from a family court counselor does not empower a magistrate to issue a petition.) Petitions so issued must be delivered to the clerk's office as soon as it reopens.

## CREDIT FOR TIME SPENT IN CUSTODY

Ch. 44 (S 211), effective March 1, 1973, extended sentence credit for time served in confinement in "any State or local correctional, mental or other institution" as a result of the charge that culminated in the sentence. Credit for such confinement is also given toward attainment of privileges in correctional institutions, and for parole consideration. The judge who imposes or activates a sentence determines the credits to be given. The act is applicable to prisoners convicted before its enactment and supersedes the less comprehensive provisions of G.S. 15–176.2 and 15–186.1. It is codified as Article 19A of G.S. Chapter 15.

## CHANGES IN G.S. CHAPTER 7A

Chapter 503 (H 146), effective October 1, 1973, makes a number of editorial and technical amendments to G.S. Ch. 7A (Judicial Department). Some of these remove transitional language that is not needed since the district court is now effective in all counties of the state; others clarify ambiguous language. Several minor adjustments are made in the costs of court: the fee for a small claim (an action involving no more than $300) set forth in G.S. 7A–305(a)(2) is made a flat $5; costs of service of process by publication are added to the list of uniform civil costs set out in G.S. 7A–305(d); the formula in G.S. 7A–308(a)(15) for computing the clerk's fee for administering or investing certain funds is revised; the magistrate's fee (which goes to the state) in G.S. 7A–309 for performing the marriage ceremony is raised from $4 to $5; G.S. 7A–311(a) is amended to provide that, if civil process is served by a city policeman, the process fee goes to the city rather than to the county; and G.S. 7A–312 is amended to permit out-of-county jurors summoned to sit on a special venire to receive the standard reimbursement for mileage.

## BILLS POSTPONED OR REPORTED UNFAVORABLY

In addition to the nonpartisan merit-selection proposal, several bills that would have revised significant areas of substantive law were postponed pending further study. Among these were a new code of pretrial criminal procedures, an updating of the law governing relationships between landlord and tenant, and a modernization of the law controlling the administration of decedents' estates. Each of these measures will be the subject of continued study between sessions and may receive favorable action in some form in 1974. Bills to increase the number of trial judges, to raise jurors' pay, and to reinstate the office of constable were also postponed.

As usual, a number of bills affecting a wide spectrum of judicial matters received unfavorable committee reports. Among the most important of these was a proposal to limit publication of Court of Appeals opinions only to those having precedential value. Other bills of secondary importance included proposals to authorize district court judges to sit in superior court; to excuse police and senior citizens from jury duty; to authorize the superior court to sit in places other than county seats; to eliminate the register of deeds' role in the selection of jurors; to modernize the Uniform Reciprocal Enforcement of Support Act; and to require more specialization by district court judges in the handling of juvenile matters. Undoubtedly some of these measures will be heard from again—in 1975, if not in 1974.

# Election Law

H. Rutherford Turnbull, III

**NOT OFTEN DOES LEGISLATIVE** action in an area of public law draw attention not because of the bills that passed but because of the bills that did not pass. That is the case, however, with respect to the 1973 General Assembly's treatment of the elections laws.

In the elections area, the 1973 session is noted principally for its unsuccessful attempts to change the dates of the statewide primary elections, to alter the procedures for appointing members of the state and county boards of elections and protect executive secretaries of county boards from partisan-motivated firings, to enact reforms of those portions of the corrupt-practices act that deal with reporting campaign expenditures, and to let the voters decide whether voters under age 21 should be allowed to hold public office and whether persons adjudicated mentally incompetent should lose the right to vote.

What escapes public notice but is vitally important to voters and officials is that the legislature enacted several significant bills. First, the General Assembly extended the privilege of absentee voting to primary elections and simplified the procedures for absentee voting. Second, it enacted an omnibus revision of portions of the elections laws, repealing many obsolete or judicially voided sections, updating others to take into account the system of full-time registration, clarifying the duties and responsibilities of elections officials, carrying forward ten of the twenty recommendations of the Commission on Election and Voting Abuses,[1] and improving the 1971 uniform municipal elections law. Third, it patched up some holes in the procedures for filling vacancies in elective offices, clarified the terms of municipal officials, and provided for the election of soil conservation supervisors. Fourth, it tinkered with the procedures for appointing some precinct officials. Fifth, it improved some municipal election law provisions. And, finally, it provided for restoring citizenship rights of convicted felons.

1. The following recommendations were enacted (principally in the absentee voting and omnibus bills): Nos. 2, 3, 6, 10, 12, 15, 16, 18, 19, and 20. Not all are discussed in this article.

When the 1974 session convenes, the legislature will again face the difficult problems of when statewide and county primaries should be held and whether the second primaries and presidential preference primary should be retained. It also will receive reports from its interim standing committees on regulating campaign expenses and changing expense-reporting procedures. And it is almost certain to take up once more the highly charged matter of appointments to state and county boards of elections and the partisan nature of other elections officials. These and other matters left pending in various committees could provide some difficult tasks for the legislators both with respect to the sensitive political issues they raise and the amount of work and time they will require.

Not that the 1973 session was lackadaisical in the elections field. A total of 74 bills affecting elections was introduced (compared with 58 in 1971); of these, 66 dealt with G.S. Ch. 163 (elections and election laws), two dealt with constitutional amendments on the

rights to vote or hold office, five concerned officeholders, and one spoke to the issue of restoring citizenship (and voting rights) to persons convicted of felonies. Of these 74 bills (fifteen were identical), sixteen were ratified, one resolution was adopted (H 93, ordering a study of election expenses and campaign reporting), three failed to pass a necessary floor reading, three were postponed indefinitely, eight received unfavorable committee reports (three of these were incorporated into ratified bills), and 43 are in various committees. This last figure underscores the amount of leftover work facing the legislature when it reconvenes in January. And undoubtedly more elections bills will be introduced in 1974.

This article discusses the ratified bills and presents the report of the Commission on Election and Voting Abuses as an appendix.

## ABSENTEE VOTING

A major accomplishment of the 1973 General Assembly was the passage of the committee substitute for H 94, dealing with absentee voting. The action has an interesting background.

In 1971, the General Assembly, in its adjourned session, granted qualified voters the privilege of voting an absentee ballot in the 1972 primaries only (Ch. 1247, H 1606). The privilege was limited with respect to who could vote an absentee ballot (party members who would be qualified to vote an absentee ballot in general elections), and it was temporary in that it was available in the 1972 primary elections only.

In 1973, legislators introduced five different bills dealing with absentee voting. Representatives E. Lawrence Davis (D-Forsyth), R. Lane Brown, III (D-Stanly), Foyle Hightower, Jr. (D-Anson), James E. Long (D-Alamance), Edward L. Powell (R-Forsyth), Charles E. Webb (D-Guilford), and Willis P. Whichard (D-Durham) proposed H 94, extending to all statewide primaries the temporary absentee-voting privilege granted by the 1971 General Assembly. Representative Davis (and others) also introduced H 260, requiring that absentee ballots be counted and challenged at the offices of the county board of elections rather than in the precincts, as under then-existing law. And Representatives Joy J. Johnson (D-Robeson) and H. M. Michaux, Jr., (D-Durham) proposed (H 35), granting the privilege of registering and voting by absentee process to any qualified voter convicted of a misdemeanor who is incarcerated in the county of his residence or elsewhere. These three bills were consolidated into the committee substitute for H 94, which was enacted as Ch. 536. Two other legislators introduced absentee-voting bills that are still pending in committee. Senator Herman A. Moore (D-Mecklenburg) proposed S 648, a one-stop absentee-voting process; significantly, Ch. 536 (H 94) also provides for a one-stop absentee-voting process. Senator A. B. Coleman (D-Orange) wanted to permit absentee voting in municipal and school board elections (S 812) (absentee voting had been allowed only in statewide primaries or general elections and in county board elections).

Ch. 536 (H 96 and H 260 and H 35) makes several important changes in the absentee-voting laws. First, it provides for absentee voting in statewide primary elections. Second, it allows absentee voting by any qualified voter who has been convicted of a misdemeanor and is incarcerated, whether in the county of his residence or elsewhere. Third, it provides a one-stop absentee-voting process. Under this process, a voter who will be absent from the county in which he is registered on the day of a primary or general election or county bond election may go to the office of the county board of elections, request and complete the application for absentee ballots, receive the ballots, vote them, and return them in the sealed container-return envelope. In short, the voter may perform the entire absentee-voting process in one place and at one time. (The bill sets forth detailed procedures for the county elections board's ruling on "one-stop" applications and handling accepted or rejected applications. It also provides for security and privacy of the "one-stop" ballot.) Fourth, Ch. 536 provides for counting absentee ballots at the office of the county board of elections rather than in the precincts and for challenging them both at the board's office and in the precincts. All challenges, wherever made, will be heard and decided on by the board on canvass day rather than by precinct officials on election day. Fifth, it allows a "near relative" (defined as a spouse, parent, child, grandparent, grandchild, brother, or sister) of the absentee voter to request the application for absentee ballots and to do other absentee-voting acts on behalf of the voter (but not to vote the ballots). The bill provides that a near relative may request the application for absentee ballots, complete it, and return it to the county board. The bill also provides that the near relative may return the voted absentee ballots to the board. However, it prohibits the board from transmitting the ballots themselves to a near relative (the board must transmit them to the voter only); it also provides that only the voter may vote the ballots (or have them voted at his request and as he directs). Sixth, Ch. 536 establishes a 60-day period in which absentee voting is available before a primary or election (previously, the period was 45 days). And, finally, it tightens up the privacy of the absentee-voting process and creates new antifraud procedures.

## OMNIBUS BILL

### (and related legislation)

The omnibus bill, Ch. 793, (H 913) was introduced by Representatives Ernest Messer (D-Haywood), chairman of the House Elections Committee, and R. Lane Brown, III (D-Stanly), chairman of that committee's subcommittee on election procedures. It underwent careful scrutiny in the subcommittee, and a committee substitute, prepared in a bipartisan effort by Representative Brown and Representative W. Frank Redding, III (R-Randolph), was introduced and adopted without significant change and with scant opposition in both chambers of the legislature. Ch. 793 made several important changes:

• *State Board of Elections.* The act requires the State Board to give the same assistance to and exercise the same powers and duties with respect to municipal boards of elections as it must in regard to county boards. It grants the State Board access to ballot boxes, voting machines and their contents, registration records, poll books, and other voting equipment in any precinct, county, or municipality whose elections it supervises; it thus explicitly provides a power that previously was implicit. It rewrites portions of the statute dealing with the proceedings and meetings of the State Board by providing that meetings of the Board will be held in Raleigh unless four of the five members designate a different place of meeting and unless the meeting is held to investigate alleged violations of G.S. Ch. 163, in which case the meeting will be held in the county where the violations are alleged to have occurred (in changing the places of meetings, Ch. 793 enacts recommendations 2 and 3 of the Commission on Election and Voting Abuses). The bill adds a provision that other members of the State Board may require the chairman to exercise his powers and duties, and adds a provision for exercising those powers and duties in his absence or refusal to act (the bill thus carries forward recommendation 6 of the Commission). Finally, it explicitly grants the State Board power to order new elections statewide, or in any county, electoral district, special district, or municipality if four of the five members consent and after the Board has held public hearings on election contests or alleged irregularities or fraud and has determined that a new election should be held; the bill thus makes clear what was implicit, and sets up a procedure for the Board to follow before ordering new elections.

• *County Boards of Elections.* The act provides that *all* members of the county boards must attend the instructional meetings (previously, only the chairman was required to attend) and provides that they will be paid $15 for attending the meetings. It also increases their per diem salary to $25 from $15 and provides that the per diem must be prorated over a portion of a day (defined as five hours of working time). It states that a majority of the whole board must be present at any meetings at which the board appoints or removes precinct or other elections officials or investigates election irregularities (the presence of a majority had not been specifically required). It requires the board to give twenty days' notice of all forthcoming elections (notice had been required only as to some elections) and explicitly grants the board access to voting records (the board had that power by implication). Finally, it requires the board chairman to certify to the State Board the number of registered voters in the county when required to do so by the State Board (the State Board had the right to require this certification only by implication).

• *Precinct Officials.* The act provides that ballot counters must be paid a minimum of $5 per day for their services (previously, ballot counters were not allowed to be paid). It changes the title of "watchers" to "observers" and states that the party officials entitled to appoint "observers" must submit the list of appointees to the board at least five days before a primary or general election (previously, there was no deadline for submitting the names and thus in practice no opportunity for precinct officials to know in advance who the "observers" would be and object to any, if they chose to do so). (Note that in a different action, the legislature provided that "observers" will be allowed in *all* counties. It achieved this result by repealing a portion of a 1969 act that exempted certain counties from the poll-watchers statute; see Ch. 100, S 92). The omnibus act also requires bipartisan representation among precinct assistants and sets forth a procedure for obtaining partisan nominations of persons to be precinct assistants. (Also note that in a separate chapter—Ch. 435, H 85—the General Assembly provided that the chairman of each political party in the county shall, where possible, recommend five registered voters for appointment as registrar and judges of election in each precinct. The persons recommended must be voters of the precinct in which they will serve, have good moral character, be able to read and write, and be otherwise qualified. The recommendations are to be made to the county board of elections, which, if it receives the recommendations before the seventh Saturday before the primary, must make precinct appointments from among the persons recommended.) Finally, the omnibus act requires the precinct registrar and judges to remain at the voting place from the time they begin their duties until they finish them and forbids them to separate except for reasons of unavoidable necessity (the requirement of "continuous presence together" is de-

signed to prevent fraud and to require the sharing of duties).

• *Voters.* Ch. 793 rewrites G.S. 163–55 in two important ways. First, it conforms statutory and constitutional language [Art. VI, sec. 2(3)] as to prohibiting persons from voting who have been convicted of felonies. (In a related action Ch. 251, H 33, provides for restoring citizenship and the right to vote to convicted persons.) This change is technical in nature.

Second, the bill deletes from G.S. 163–55 the provision that prohibited "lunatics and idiots" from voting. This change is substantial and has been complicated by the 1973 legislature. The State Constitution provides only two grounds of disqualification to vote—felony convictions and residence for less than 30 days. It does not disqualify "idiots or lunatics" or other mentally incompetent persons. For that reason, the statutory disqualification of those persons was viewed as unconstitutional; its deletion from the statute was seen a constitutional necessity and as an appropriate step in revising the statute in the omnibus bill. At the same time, however, state officials and some legislators concerned with the voting rights of mentally incompetent persons recognized that a constitutional disqualification of those persons should be attempted. H 1002 (introduced by Representative R. Lane Brown, III, a sponsor of the omnibus bill) was therefore designed to amend the State Constitution to disqualify persons adjudicated mentally incompetent or insane in the manner prescribed by law unless the disability is first removed as provided by law. The bill received a favorable report from the House Constitution Committee but failed to pass its second reading in the House. A further complication is posed by Ch. 475 (mental patients' rights), which provides that each patient in a state hospital for the mentally ill or retarded retains the right to register and vote unless adjudicated incompetent under G.S. Ch. 35 proceedings and not restored to legal capacity. Ch. 475 thus raises, as did G.S. 163–55, the issue whether the legislature can impose a disqualification that is not imposed by the Constitution. It also casts doubt on the effectiveness of the repeal of G.S. 153–55's disqualification of "idiots and lunatics."

The omnibus act makes other changes affecting voter registration. It allows voting in municipal primaries on the same basis as in state or county primaries (previously, there was no explicit provision to this effect). It also adds a requirement that persons applying to register must state the name of the municipality in which they reside, if any, and must submit proof in writing that they are who they say they are. (In a different act, the requirement that persons seeking to register swear by God to certain statements they make to registrars was changed to allow voters who object to so swearing to state that they affirm the truth of their statements; see Ch. 184, S 571). The omnibus act further changes the present statute (making it conform to federal constitutional law) by establishing a thirty-day residency period in the state and precinct as a condition of registering.

The Commission on Elections and Voting Abuses had recommended (recommendation 15) that a statewide uniform system of canceling prior registration be established, and the act responds to the recommendation. The procedure applies to canceling prior registration in a different state or different county in this state, and requires voters to cooperate with county elections boards in canceling prior registrations.

• *Miscellaneous New Provisions.* Various miscellaneous changes occurred as a result of the omnibus act, which, among other things:

(a) Adds a provision that boards of elections *must* purge their registration lists after each presidential election (previously, boards *could* purge then or at any other time); it carries forward the provisions that the boards also may purge at any other time. It also provides that a death certification shall be provided to the board by registers of deeds *free of charge* (the statute had been silent about charging, and some registers have charged).

(b) Amends G.S. 163–122 to make it conform to recent decisions of many federal and state courts. G.S. 163–122 had required that an independent candidate, in order to have his name placed on the ballot, must obtain signatures of 25 per cent of the number of persons voting in the last gubernatorial election in the political subdivision in which he seeks election. The 25 per cent requirement is reduced to 10 per cent by the amendment.

(c) Makes it clear that there shall be at least one voting place in each precinct, and requires the county board to give notice of changes in precinct lines at least twenty days before the registration books close before the next primary or general election after the change (the bill clarifies the present law).

(d) Amends G.S. 163–148 so that the boundaries of the voting enclosure shall be between ten and twenty feet from *each* ballot box or voting machine (the statute has seemed to intend that but had not been clear). It also amends G.S. 163–148 by providing that there shall be only one entrance to the voting enclosure and thus permits one or more exits (until now, the entrance has also served as the exit, which has been found to be undesirable for practical reasons in many instances).

(e) Amends G.S. 163–150 to allow husbands and wives to vote in the same booth together, whether or not one is rendering assistance to the other. It has been a common practice for husbands and wives to enter voting booths together; under the pre-omnibus statute, one had to be assisting the other if they were to vote together legally. The amendment obviates

# REPORT BY COMMISSION ON ELECTION AND VOTING ABUSES IN NORTH CAROLINA

The Commission on Abuses of the Election and Voting process respectfully files the following written report with the Governor, for transmittal to the members of the General Assembly, reflecting the findings and conclusions of the Commission along with recommendations for changes in the North Carolina Election Laws:

1. Present Situation: The State Board of Elections consists of five (5) members, all appointed at the same time, whose term continues for four (4) years.

Proposed Change: The five (5) members of the State Board of Elections should initially be appointed for staggered terms (one member being appointed to a one year term, another member being appointed for a two year term, etc.), and when a member's term expires, a replacement should be appointed for a term of five (5) years.

Explanation: It is imperative to have at all times experienced members serving on the State Board.

2. Present Situation: The State Board shall meet at such times and places in the City of Raleigh as the Chairman may appoint unless required to meet elsewhere under the provisions of Section 163–23.

Proposed Change: The State Board shall meet at such times and places in the City of Raleigh as the Chairman may appoint; however, the Board may meet at any place within the State, where the time and place of such meeting is agreed upon in advance by at least four (4) members of the Board; but this is subject to the provisions of Section 163–23.

Explanation: In order to carry out its many functions, including educational seminars for the County Boards of Elections, the Board is required to meet at different places within the State. This change will simply recognize a practice that the State Board has been following for many years.

3. Present Situation: Place of hearings by the State Board shall be in the County in which the irregularities are alleged to have been committed.

Proposed Change: The place of hearings of the State Board of Elections shall be in the County involved, where there are sworn allegations of either election fraud or a serious, willful violation of the Election Laws.

Explanation: It is impossible for the State Board to hear Appeals from each County where an irregularity is alleged, and such appeals have been held in a central location, generally in Raleigh. The proposed change would simply give effect to the present practice of the State Board. The State Board has consistently gone to the County where there has been a serious charge of fraud or willful violation of the Election Laws, and this again gives effect to the practice that the State Board has had to follow.

4. Present Situation: Members of the County Boards of Elections continue in office for two years.

Proposed Change: Members of the County Boards of Elections will continue in office for four (4) years.

Explanation: As a practical matter, it takes a considerable period of time to teach a new Board member the Election Laws, and the procedures for carrying out an election. By the time a person has learned what he is supposed to do, and why, his two year term is about to expire.

5. Present Situation: Members of the County Boards of Elections are appointed on the Friday before the 10th Saturday preceding each primary election.

Proposed Change: Members of the County Boards of Elections would be appointed during February, following a General Election.

Explanation: It is impractical to expect a person selected only ten (10) weeks before a Primary, to be capable of knowing the Elections Laws, and what is necessary to put on a Primary Election within that period of time. By appointing County Board members at least one year before a Primary, and during an off election year, this would better insure a competent, trained County Board of Elections.

6. Present Situation: Only the Chairman of the State Board of Elections is given the statutory power to issue subpoenas.

Proposed Change: In addition to the Chairman, subpoenas for specific witnesses must issue upon the written request of two or more members of the State Board of Elections.

Explanation: First, the Chairman may be disabled temporarily. Secondly, this insures that the members of the State Board, in addition to the Chairman, shall have the power when at least two of them are acting together, to require the presence of specific witnesses.

7. Present Situation: Precinct Registrars and Judges of Election are appointed on the 7th Saturday before each Primary Election, by the County Board of Elections.

Proposed Change: The Precinct Registrars and Judges of Election would be appointed within sixty (60) days after the time set for the appointment of County Board of Elections.

Explanation: (Same reason as applicable to the appointment of County Boards of Election, except here you are dealing with the persons that will actually carry on an election, who are only appointed seven (7) weeks before the Primary. This will effect a change in Sections 31 and 41 of the Election Laws).

8. Present Situation: The law provides for the appointment of special registration commissioners.

Proposed Change: This title would be deleted. In its place, the following persons would be authorized to register voters; all of the members of the County Boards of Election, the Executive Secretary, Deputies to the Executive Secretary, and Precinct Registrars. In addition, such authority would also extend in

those municipalities operating under registration Method A, to the members of a City Board of Elections, the City Registrars, the City Executive Secretary, and the Deputy Executive Secretary.

Explanation: These sworn election officials are already familiar with the election laws and process, they can be held accountable for following required election procedures, and they are more subject to the authority of the County Board of Elections.

9. Present Situation: A person applying to register may refuse to declare his party affiliation, and no party affiliation is indicated; a person applying for registration may state that he is an independent, and be entered as an independent.

Proposed Change: There should only be one neutral category, not two.

Explanation: The independent is prevented from voting in a Primary, while a registrant who is not declared is not so prevented. There should be one uniform rule applicable to those persons that do not state their party affiliation.

10. Present Situation: There is no uniform standard for setting an arbitrary date, after which a County Board of Elections must have available information from the registration records and poll books of persons registered as of such arbitrary date.

Proposed Change: A date should be set (for example, March 1, of an election year), by which time a County Board of Elections should have available for sale a list of persons registered in that County (for example, as of January 1, of such year).

Explanation: This would insure those interested in obtaining copies of this information a date on which these records were current, and would leave the option with the County Board of Elections regarding either making its records available for copying, or thereafter furnishing an interim list of new registrants.

11. Present Situation: There is no way to identify an illiterate voter.

Proposed Change: On the registration card, there would be a uniform requirement whereby it would be noted that a particular voter was illiterate.

Explanation: During the election process it frequently becomes necessary to identify the person as a particular registrant, and this cannot be done with an illiterate by the comparison of signatures. A note in the record that a particular registrant is an illiterate could afford the illiterate some additional protection in providing additional safeguards with respect to voter identification.

12. Present Situation: There is one absentee ballot requirement in the Primary, and another in the General Election.

Proposed Change: The absentee ballot should be uniform.

Explanation: The public does not understand why there should be one type absentee ballot used in a Primary, and another in a General Election.

13. It is the consensus of the Elections Commission that voting day, whether Primary or a General Election, should not be on Saturday, and Tuesday is found to be a generally suitable date.

14. Present Situation: There is no mandatory requirement about a County sending a postcard (or written notice) to the previous county where a person was registered, so that the previous county can cancel such person's registration. However, about twenty (20) counties voluntarily do this.

Proposed Change: Establish a uniform system whereby a County sends a cancellation notice where a new registrant is recorded, to the County where such person was formerly registered.

Explanation: This is a sincere effort to prevent a person from being registered in more than one County.

15. Present Situation: There are no minimum standards set regarding how many voting machines is adequate.

Proposed Change: The State Board of Elections would be given authority to set minimum standards regarding the number of voting machines to be made available under prescribed standards.

Explanation: There is no minimum standard at present.

16. The Elections Commission recommends that a bill be enacted whereby the General Assembly would provide matching funds to counties that purchase voting machines.

17. Present Situation: The use of "watchers" is established by statute.

Proposed Change: This person would be designated as an "observer."

18. Present Situation: The statute provides for the appointment of assistants for each Precinct within the County to aid the Registrar and Judges, but no criteria is set for this appointment.

Proposed Change: Where there are as many as two assistants, such assistants should be from different political parties; and where more than two assistants are employed, there should be some established ratio (such as the two to one ratio membership on the County Board of Elections).

Explanation: Most Counties have already followed this equitable arrangement, but this equitable arrangement should be made compulsory.

19. Present Situation: Independent candidates can now only be put forward by a Petition signed by qualified voters equal in number to twenty-five (25%) of those who, in the last gubernatorial election in the same political division, voted for Governor.

Proposed Change: This percentage should be reduced to ten per cent (10%).

Explanation: The reduction to ten percent (10%) is more equitable, and the present law is probably unconstitutional.

20. It is the recommendation of the Elections Commission that the Executive Secretary and the staff of the Executive Secretary in each County should, as nearly as possible, obtain professional status. It is recommended that the General Assembly consider setting minimum standards for the Executive Secretary, and persons employed in the office of the Executive Secretary. In this connection, it is recommended that the State Department of Personnel evaluate positions of the Executive Secretary in all 100 Counties, with the hoped for result that a general range of classifications can be established.

* * * * * * *

Adopted unanimously by the Full Commission this 16th day of February, 1973.

J. Brian Scott, Chairman

Also unanimously adopted by the Full State Board of Elections this 16th day of February, 1973.

Alex K. Brock, Executive Secretary

that "assistance" theory and makes the statute conform to almost universal practice.

(f) Provides that if there is a need for curbside voting and no precinct assistant is available to help, a registrar or judge designated by the voter, or by the registrar if the voter designates no one, may assist at curbside.

(g) Amends G.S. 163–168 by providing that the persons in line waiting to vote at the close of voting day, whether or not they are in the voting enclosure, may be permitted to vote (previously, only persons in the voting enclosure were allowed to vote after the polls closed). The section also sets out a procedure for determining who those persons are and carries forward previous law that voters in the act of voting may finish voting after the polls close.

(h) Amends G.S. 163–177 to require the county board to mail duplicate abstracts to the State Board within twenty-four hours after the end of the canvass (before, the county board could delay mailing until three days after canvass day).

● *Deletions of References to Part-Time Registration.* Each county board of elections operates under a full-time (or modified full-time) registration system; under this system, registration is available throughout the year, not simply at particular times during the year. Numerous sections of G.S. Ch. 163 used to refer to the old system of part-time registration, but the omnibus act repealed those references and rewrote, without changing the substance, the sections containing them. The result is that the full-time registration system will be taken into account in all sections of G.S. Ch. 163. Affected provisions deal with registration of voters, custody of registration records, changes in voter registration records, special registration, challenges to voters, notice of changes in precincts, assistance to voters, and persons allowed in the voting enclosure.

● *Clarifications of Present Statutes.* Although G.S. Ch. 163 is exceptionally well drafted, some county elections officials had difficulty in understanding certain provisions. Accordingly, some sections have been rewritten in an attempt to clarify their meaning. The act's clarifying provisions:

(a) Rewrite G.S. 163–129 to require the county elections board to direct precinct officials to mark off the boundaries of the voting place (under the statute before amended, it appeared either that the board might or might not direct them to do so, in its own discretion, or that precinct officials might or might not do so, on their own initiative), and makes it clear that the boundaries of the voting place can be up to 100 feet from *each* ballot box or voting machine.

(b) Amend G.S. 163–150(f), dealing with poll books, by requiring a poll book to be kept for special elections and allowing the State Board to provide for alternate methods of keeping records of who votes (some counties now use alternate records).

(c) Add a clarifying cross-reference to G.S. 163–162 and rectify an incorrect cross-reference in G.S. 163–293(e) (to G.S. 163–155).

(d) Delete from G.S. 163–179 the requirement that an independent candidate receive at least 5 per cent of the votes cast for candidates for the United States House of Representatives in the jurisdiction in which he is running. The provision was believed to violate the equal protection clause of the Fourteenth Amendment to the federal Constitution. The section also deletes reference to obsolete township offices. Finally, it carries forward the tie-breaking-by-lot requirements for county offices but changes that system with respect to membership in the House of the General Assembly in single-county districts by providing that G.S. 163–191 will apply (under that section, a new election is required).

(e) Change "husband" to "spouse" in provisions dealing with absentee ballots, so that the husbands of *women* entitled to vote by military absentee ballot will be accorded the same privilege (under the statute before it was changed, the *wives* of *men* entitled to vote by military absentee ballot also could vote by the same process).

● *Municipal Elections.* A uniform municipal elections statute (Articles 23 and 24) was enacted in 1971. The statute has not been fully tested yet. Nevertheless, some flaws have been discovered. The omnibus act attempts to improve the municipal elections law by clarifying it, making it parallel to county provisions where appropriate, and removing partisan considerations from nonpartisan city elections. Thus the statute:

(a) Extends to municipal elections or municipal elections *officials* the powers of the State Board of Elections with respect to state elections and county elections and elections *officials*.

(b) Provides for changes in registration forms, cancellation of prior registrations, and new registration, all for municipal purposes. It thus makes municipal registration a part of county registration and carries forward the intent of G.S. Ch. 163 to establish a system of one-time registration for federal, state, county, municipal, and special-district purposes.

(c) Makes it clear in G.S. 163–140 that facsimile signature of the chairman of either the municipal or county board of elections may appear on municipal ballots, since either the municipal or the county board may now conduct a municipal election.

(d) Provides for a slightly different time for appointing municipal boards of elections and allows the city council to appoint at a regular meeting rather than requiring a special meeting. It also provides against domination of a municipal elections board by one political party.

(e) Allows municipal elections boards to appoint executive secre-

taries and grants the powers of county executive secretaries to municipal executive secretaries.

(f) Provides that, in nonpartisan cities, officials of political parties shall not have a right to recommend persons to be appointed to or by municipal elections boards.

(g) Provides that vacancies on a municipal board of elections must be filled by the appointing city council and that the council may remove a member appointed by it to a municipal elections board, after notice and hearing.

(h) Parallels county-law provisions on appointment of municipal precinct officials, their removal by the appointing municipal board of elections, and their duties.

(i) Incorporates by reference provisions of the county elections laws that are related to or apply in the municipal elections laws (before the change, it had not been clear that related sections of the county elections laws were incorporated, or it was unclear which were intended to be incorporated).

(j) Substitutes a 30-day required interval for a 45-day required interval between a special election and any other election. Corresponding changes are made in the notice-of-elections provisions.

(k) Clarifies the existing requirement that the municipal registration records must be maintained in the same manner as county registration records. It also provides a 90-day compliance provision if a city later elects to conduct its own elections.

(l) Clarifies G.S. 163–288.1 by changing the title and allowing special registration pursuant to G.S. 163–288.2, enacted by Ch. 551, 1973 session laws.

(m) Provides for challenges to municipal voters and notification to county boards concerning successful challenges to municipal voters.

In separate actions relating to municipal elections, the General Assembly validated elections held under the 1971 municipal elections law in cities, special districts, and school administrative units: see Ch. 492, H 503. It also made clear that if a city is in more than one county, its elections may be conducted either by the county in which the majority of its citizens live or jointly by the county boards of elections in the counties in which it lies, or by its own municipal board of elections; see Ch. 171, H 613. Finally, it added a new section (Ch. 551, H 666) to the municipal elections law setting forth two methods for determining who is entitled to vote on the incorporation of a new city when the General Assembly provides for a vote on incorporation or for a special election of town officials or for both. The two methods are by preparing a list of eligible voters for public inspection and adding to the list persons not on it who are residents within the proposed city, and by holding a special registration of eligible voters.

● *Obsolete Provisions Repealed.* G.S. Ch. 163 had numerous obsolete provisions; these are repealed by the omnibus act, which among other things:

(a) Repeals provisions for markers, as those persons no longer are allowed in counties with full-time or modified full-time registration.

(b) Repeals G.S. 163–56, which established a 30-day residency period for *presidential* elections only (now, residency requirements for *all* elections are 30 days), and G.S. 163–73, which was designed to work in conjunction with G.S. 163–56.

(c) Repeals provisions dealing with numbered seats, since the provisions were held unconstitutional by a federal court and were not enforced in the 1972 elections.

(d) Deletes references to the obsolete township offices and justices of the peace (see also Ch. 108, H 64, to the same effect).

(e) Deletes references to rotation agreements, which were declared unconstitutional by a federal district court and were not enforced in the 1972 elections.

(f) Deletes a transition provisions relating to establishing precincts.

(g) Repeals references in the State Corrupt Practices Act to candidates for federal offices (federal legislation covers campaign reporting by candidates for federal offices and provides that those candidates shall file copies of federally required reports with state officials).

(h) Deletes provisions that prohibit anti-single-shot voting, which were declared unconstitutional by a federal court and were not enforced in the 1972 elections.

## OFFICEHOLDERS

The General Assembly took various steps to solve problems relating to officeholders. First, it filled a gap in the statutes with respect to vacancies in offices in the General Assembly in multi-county districts. Ch. 35 (S 281) provides that if there is a vacancy in a seat in the General Assembly of a member elected or appointed from a multi-county district, the Governor must appoint for the portion of the unexpired term the person recommended by the State House of Representatives District Committee or the Senatorial District Committee of the political party with which the vacating member was affiliated when elected. The Governor must act within seven days after receiving the recommendation, and, if he does not, the House or Senate, as appropriate, must seat the person recommended. The county convention or county executive committee of each political party must elect or appoint at least one member from each county in the multi-county district to serve on the appropriate district committee, and each such committee must consist of at least one member from each county within the multi-county district. Each member of the committee is entitled to cast for his county one vote for each 300 persons or major

*(Continued on Page 77)*

# HEALTH LAW

Ernest E. Ratliff

Unlike the past two sessions, this year's legislative session was more active in developing health-related programs and retooling service machinery than in appropriations. This is not to say that funding was neglected; in fact, appropriations were impressive. But the legislature went beyond the question of costs to address itself to the more fundamental issues of accessibility of care, systems utilization, agency organization, and program structure and content. This approach led to the enactment of far-reaching measures in the areas of public health, mental health, emergency medical services, provider licensing, and third-party payer responsibilities, and—to implement these measures—generous funding. Actions were taken to deal with such persistent trouble spots as septic-tank regulation, abortion, immunization requirements, and a number of other problems.

## PUBLIC HEALTH

Five bills initially prepared by a presession legislative study group resulted in thorough-going revision of the public health service. By Ch. 137 (H 107), counties are now not merely authorized but required to provide public health services. The composition of policy-making boards for single- and multi-county (district) health departments was revised to allow greater citizen participation. The new single-county boards comprise nine members appointed by the county commissioners. The membership includes five persons from the general public plus a doctor, a dentist, a pharmacist, and a county commissioner. District boards now have fifteen members. The county commissioners of each participant county appoint one of themselves to the district board. These appointees, after consulting with the local health director, appoint a doctor, a dentist, a pharmacist, and enough people from the general public to bring the membership to fifteen (Ch. 143, H 106). In an attempt to assure the quality of services, the State Board of Health was empowered, upon consultation with a Public Health Standards Advisory Committee, to set standards governing the nature and scope of public health services rendered by local health departments (Ch. 110, H 101). The advisory committee is to be comprised of nine persons appointed by the State Health Director: three local health directors, three chairmen of local boards of health, and three county commissioners (chosen from five recommended by the North Carolina Association of County Commissioners). Ch. 109 (H 103) allows local health departments, subject to the approval of the appropriate boards of county commissioners, to contract with the State Board of Health for provision of local public services when direct state operation would be advantageous. Ch. 152 (H 105) requires local boards of health to consult with boards of county commissioners and the State Health Director before appointing the local health director.

In addition to the study commission package, a number of other actions affect the role and operation of local health departments. Perhaps most important of these is inclusion in the current operations budget of public health clinics as reimbursable providers of service under the Medicaid program. Thus, health departments have been assigned an important role in the providing of primary care services, as opposed to their traditional role in preventive services and control of communicable diseases. Of course, many

health departments had assumed broader roles, and special programs have long been authorized, but this represents the first legislative attempt to use the public health establishment in providing *general* medical care.

This development is facilitated by Ch. 508 (H 1078), which authorizes health departments to charge for the provision of voluntary services when fees are not specifically prohibited by statute or regulation. Under prior law, charging was not permitted for services required by statute, ordinance, or regulation. The new law retains the prior provision requiring charges to be at cost. Ch. 756 (S 744) empowers local boards of health to enter into contracts vesting exclusive authority for inspecting meat-packaging and slaughtering establishments in the Commissioner of Agriculture. Ch. 165 (S 418) took away the authority of county commissioners to require the local health director to serve as county physician, but health directors may serve in that capacity if both the board and the health director agree.

The extent of legislative receptiveness to greater use of public health departments may be gauged by the fact that only one bill of consequence extending the powers and duties of local health departments failed. S 343 would have allowed health departments to provide contraceptive materials to needful minors without parental consent. Generating intense opposition from the public and from legislators, the measure was tabled, at the request of the introducer, after being amended in the Senate to negate its intended purpose by requiring consent.

## MEDICAL MANPOWER

The only issue of broad health-service delivery to command great time and attention in recent years has been the problem of the health manpower shortage. This term, the questions centered about the issues of professional licensing, the necessity and desirability of a new medical school at ECU, and establishment of a rural health care program.

**Provider Licensing.** Continuing on the course begun by enactment of a registration law for physicians' assistants in 1971, the General Assembly again turned to the ranks of nonphysicians for help in alleviating the shortage of providers of primary care. This time it was registered nurses who were accorded an expanded role. Companion bills, Ch. 92 (H 168) and Ch. 93 (H 169), provide legal sanction for the functioning of registered nurses as physician extenders. This was accomplished through an involved procedure: first, the Medical Practice Act (the doctor licensing law) was amended to provide an exception to its prohibition against practicing without a license for nurses performing medical (as distinguished from nursing) acts under rules and regulations developed by subcommittees of the Board of Medical Examiners and the Board of Nursing, working jointly; next, both boards were directed to appoint and maintain the necessary subcommittees; then, the Nurse Practice Act's prohibition against nurses' making a diagnosis was changed so as to allow such diagnosis under the supervision of a physician; finally, rules and regulations developed by the subcommittee were made effective when adopted by both boards, to govern the performance of medical acts by nurses. This expansion of nurses' role takes place in apt time to facilitate their use in rural health care clinics as proposed by the Governor.

Other licensing problems also received attention. Ch. 93 (H 169) makes a limited attempt to tap the supply of ex-military medical personnel by requiring diploma nursing schools (three-year hospital schools) to award appropriate credit to applicants who are graduates of military schools comparable with our schools for licensed practical nurses. The act also provides that graduates of comparable military schools satisfactory to the Board of Nursing shall be eligible to take the examination for licensure as a practical nurse. A far more ambitious measure, H 1204, would have set up procedures for allowing military medical personnel to sit for the licensing examinations in registered nursing, licensed practical nursing, and dental hygiene. This measure ran into intense opposition from health professionals and, after spirited controversy at a public hearing, was retained in the House Committee on Health for consideration during the recess. Suffering a like fate was H 198, which would have made a very narrow amendment to the Pharmacy Practice Act to make its exception from the prohibition against selling drugs without a license if the drugs are sold by physicians who have compounded their own prescriptions apply also to qualified nurses acting under such a doctor's supervision.

An omnibus measure revising the licensing law for optometrists was enacted (Ch. 800, S 844), but similar measures for pharmacists and veterinarians were not. However, a more limited measure broadening the authority of the Board of Pharmacy to revoke licenses for fraud was passed (Ch. 138, H 477).

**ECU Medical School.** Despite the great attention it received from the press, the ECU medical school issue did not generate nearly so much controversy nor occupy so large a portion of legislative time as in the past. Indeed, the subject was rarely broached on the floor or in the health committees. Also, whether attesting to a willingness to give the university system a chance or to political farsightedness, both the successful "ECU" bills take some cognizance of the higher education organization. Ch. 562 (H 1123) provides a reserve fund of $7,500,000 to establish an additional degree-granting school within the University of North Carolina, should a Board of Governor's study indicate the need for it. (Actually, the operative section of the bill simply appropriates money to the Board of Governors for the new school, though the

"whereas" clauses refer to the ECU request and to the Board of Governors' ECU study.)

The other successful bill also refrained from frontal assault on the university system. After a number of resolves involving ECU, Res. 115 (H 1133) simply establishes a commission to study the need for medical manpower and directs it to consider specifically the Board of Governors' ECU report in making its recommendations for legislation. The commission is to be composed of four representatives appointed by the Speaker of the House and four senators appointed by the Lieutenant Governor. It is directed to hold hearings at strategic locations throughout the state.

Perhaps it is instructive that the only bill that did not show facial respect for the unified system—H 1067, which would have authorized an election to issue $50,000,000 worth of bonds to construct the proposed school—did not clear the House Committee on Finance.

**Rural Health.** In a special message to the General Assembly, Governor Holshouser outlined plans to deal with the shortage of doctors in rural areas through a program using nurses and other paraprofessionals to staff satellite clinics. Ch. 627 (H 1237) provides a vehicle for implementing this program. This broadly worded act simply establishes a Rural Community Health Assistance Division within the Department of Human Resources to deal with the problem and appropriates $456,000 to fund the program. Coupled with the expansion of the role of nurses, this authority can be used to resolve the problems involved in supplying prompt, continuous, and systematic physician back-up for the nurses. The authority can also be used to provide the on-going training and quality-monitoring so essential to a successful program of this nature. A related measure, Ch. 638 (H 512), appropriates $100,000 to the Medical Care Commission to test ways and means of attracting doctors to medically deprived areas.

## EMERGENCY MEDICAL SERVICES

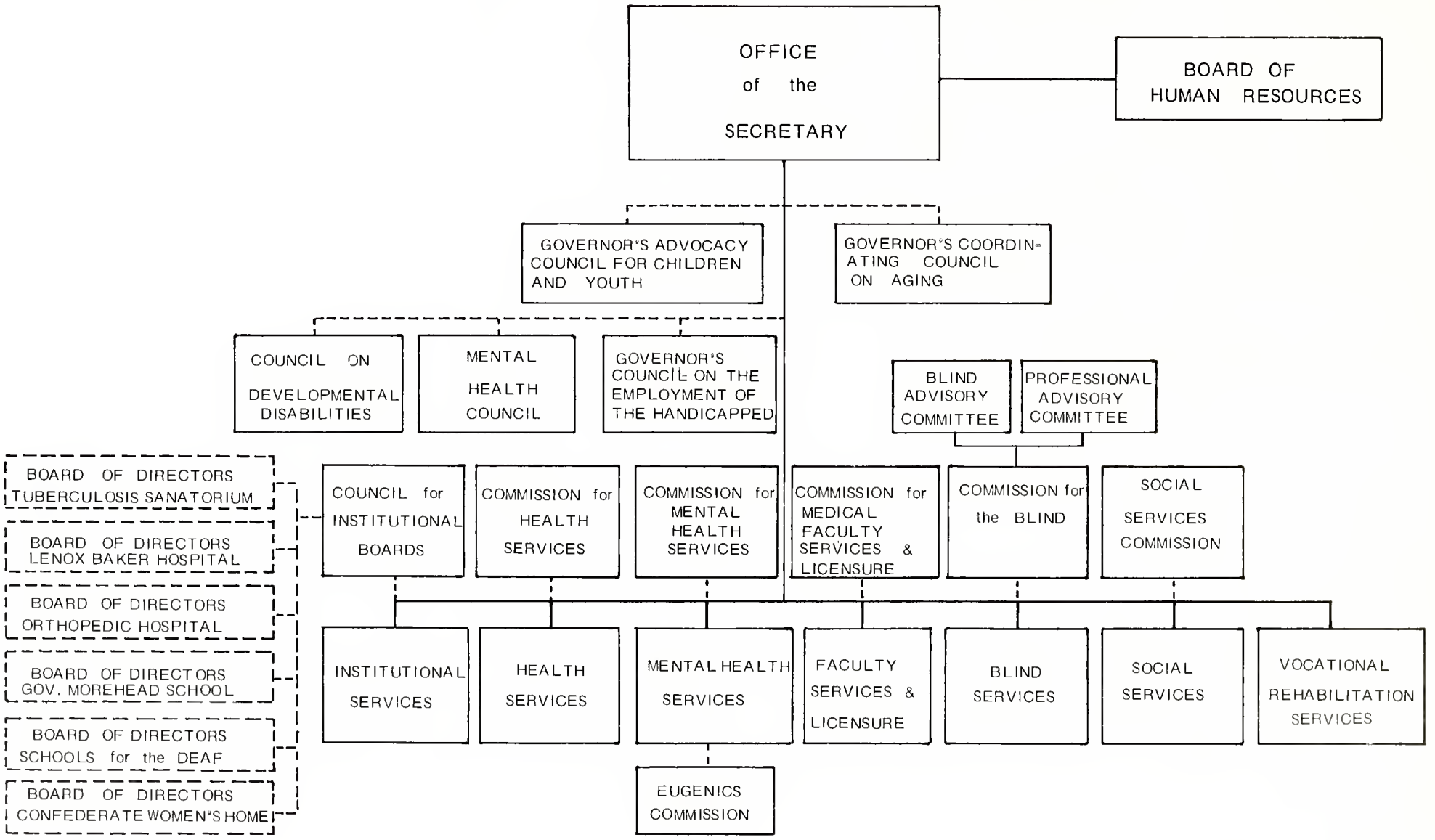
In another broad program action based on Legislative Research Commission recommendations, a full-scale assault was launched on the troublesome problem of inadequate emergency medical services—the so-called "hidden crisis in medical care." Ch. 208 (S 592) establishes a comprehensive emergency medical-services program within the Department of Human Resources. The concept involves consolidating all emergency medical functions, regulatory and developmental, under the auspices of this program. The Secretary of Human Resources is to seek establishment of state, regional, and local EMS operations systems, which provide for centralized vehicle-dispatching procedures, a standardized communications system, and planned transportation routes. He is also to develop a system for classifying hospitals according to the levels and kinds of emergency treatment they normally provide. This information is to be given out to the public to facilitate routing all emergency evacuations to the proper facility. The Secretary is also to oversee the training of ambulance attendants, insure that ambulances meet the quality standards, seek the development of a supplemental air ambulance system, and may also establish multi-county EMS regions. He is to be advised by an Emergency Medical Services Advisory Council composed of seventeen persons who include physicians, emergency room nurses, hospitals, ambulance providers (including rescue squads), local government, and the public.

By a separate measure, sponsored by the Department of Human Resources, the long battle (1969–73) over how many attendants to require per ambulance ended in compromise. Ch. 725 (H 1079) requires a certified ambulance attendant to be in the passenger compartment of ambulances during emergency runs. This solution should not tax the capacity of most small operators, since an untrained driver may be procured easily and without substantial extra cost. Should this requirement prove too stringent for some, the State Board of Health may, with the approval of the Emergency Medical Services Advisory Council, grant an exemption when the Board considers it to be in the public interest to do so.

## THIRD-PARTY PAYERS

Attendant upon rapidly rising health-care costs, the role of insurance companies has become dominant in the health-care field. Insurance company decisions about what to reimburse and what not to reimburse have become determinants of care at least equal with doctors' decisions as to what care is required. Some measures enacted indicate a trend toward closer supervision of this traditionally closely regulated industry. Ch. 345 (S 669) requires health insurance companies to insure infants from the moment of birth, thus ending a practice of offering no coverage during the "high risk" first two weeks of life. Benefits for congenital defects under such policies are to be the same as for most illnesses covered by the plan. Ch. 754 (S 740) requires mentally retarded and physically handicapped children to be insured on substantially the same basis as other children (except that benefits for expenses directly and solely attributed to the handicap or retardation may be excluded). Ch. 436 (H 100) and Ch. 437 (H 101) require reimbursement of an employer of a nurse acting within the lawful scope of expanded practice pursuant to Chapters 92 and 93 (discussed above). Ch. 610 (H 743) requires commercial insurance companies to pay disability benefits upon certification by a chiropractor. Ch. 642 makes the service of a chiropractor acting within the proper scope of his

# DEPARTMENT OF HUMAN RESOURCES



practice reimbursable under nonprofit health insurance plans.

## MENTAL HEALTH

At the session's opening, the mental health system was receiving heavy criticism in two areas: (1) commitment and discharge procedures had been attacked in both state and federal courts, (2) the treatment programs in some state mental hospitals were being decried as both callous and woefully inadequate. Again drawn heavily from Legislative Research Commission recommendations, new measures were enacted to meet these criticisms.

To protect the rights of persons being committed, the involuntary commitment laws were revised (Ch. 726, H 1081). The new law uses a three-level procedure to provide due process. Level one requires a physician's determination based upon examination that a person is violent, dangerous, or disabled before that person may be taken before a magistrate (the beginning of the commitment process) in all cases except when a law enforcement officer determines, on the basis of overt acts, that delay would endanger life or property. On level two, the magistrate is required to make another determination that the person is violent, dangerous, or disabled or release him from custody. If no physician's examination was made (emergency cases), the magistrate may determine to release the person or have him transported to a treatment facility for examination by a physician. Unless the examination shows the person not to be dangerous or disabled (in which case, he is released), the magistrate may discharge the patient or retain him in custody for a district court hearing. On level three, a district court judge must determine, usually within five days of the time a person is taken into custody, whether he is violent, dangerous, or disabled and if so, either commit him for ninety days or order outpatient treatment. At the district court hearing, a person is to be accorded the due process rights of personal presence, representation by counsel, and preparation of a transcript. If treatment is needed beyond the initial ninety days, the superintendent of the treatment facility must request a rehearing thirty days before the end of the period. Subsequent commitments may be made for 120 days, but a rehearing is required for each recommitment. Superintendents may discharge a patient in their discretion before the end of a commitment period.

Under the new voluntary-admission law, any person may present himself to a treatment facility for evaluation. An applicant who does so must be examined and evaluated within twenty-four hours of presenting himself. Persons determined not to need care may not be accepted. Persons accepted must be discharged at any time upon their request (Ch. 723, H 952).

The procedure for discharging those confined as criminally insane from mental hospitals upon their recovery was changed to comply with court requirements. The portion of the old procedure that prevented a judge issuing a writ of *habeas corpus* entering an order effecting discharge until the superintendent of the mental hospitals had certified that the patient had been examined and found to be sane was held unconstitutional as violative of due process by the State Supreme Court in 1972. As changed by Ch. 658 (H 545), the new procedure simply authorizes application for the writ and places the burden on the patient of showing that he has recovered and constitutes no danger to himself or others. No other conditions are placed on issuance of a discharge order.

Significant measures deal with the care provided in the mental hospitals. An omnibus patients' rights measure (Ch. 475, H 373) grants patients an absolute right to send and receive uncensored mail and to contact and consult with attorneys and physicians. Subject to restriction for legitimate therapeutic reasons (after notice to the next of kin and the Secretary of Human Resources), the following rights are accorded patients: to make and receive confidential telephone calls, to receive visitors during a six-hour period daily, to outdoor exercise, to keep and use their own clothing and personal possessions, to meet and communicate with others, to participate in religious worship, to keep and spend part of their own money, to individual storage space, to outside visits (unless criminally committed), and to retain a driver's license unless otherwise prohibited. In addition, patients retain most civil rights, may not be restrained or secluded except for therapeutic reasons or to protect themselves or others, and may not be given unnecessary medication (nor electro-shock therapy or experimental drugs or surgery without consent, if competent). A patient is guaranteed implementation within two weeks of his admission of an individual treatment plan designed to meet his needs. Plans are also to be developed within thirty days of admission for counseling and care of patients after their release from the hospital.

Other measures affecting the delivery of mental health were enacted. Ch. 673 (H 797) requires the Commissioner of Mental Health to be a physician who has experience and training in mental health, or mental health-related administration and in psychiatry. It also requires an administrator (to be chief executive officer) for all mental hospitals and residential centers for the mentally retarded. Both types of facilities are required to have, as well, professionally qualified chiefs of medical services. Ch. 661 (H 885) changes the formula for developing and testing budgeting procedures for combining state and local funds for area mental health programs. Ch. 613 (H 806) provided for allocation of funds to area programs so as to guarantee at least $500 in state funds per 1,000 population within the catchment area.

## SPECIAL PROBLEMS

Action was taken on a number of special and recurring problems, ranging from shots to sickle cell anemia. Like the programmatic measures, these enactments may have far-reaching import.

**Abortion.** On January 22, the United States Supreme Court handed down its long-awaited abortion decisions. The Court (1) declared the existence of a right of privacy broad enough to encompass a woman's decision to terminate her pregnancy, (2) held that the word "person" as used in the Fourteenth Amendment does not include the unborn, and (3) set the parameters of this right of privacy so wide as to exclude requirements for certification of the need for abortion by co-practitioners and the use of hospital abortion screening committees. By these actions, the Court undercut the basis for most state prohibition of abortions. In reluctant response, the legislature enacted Ch. 711 (H 615), granting a woman an unrestricted right to an abortion during the first 20 weeks of pregnancy. After that period, she may have an abortion if the continuance of the pregnancy would gravely impair her health or threaten her life. The act also requires the procedure to be in a clinic or hospital, provides that no doctor or nurse objecting on ethical grounds need participate (only one doctor need be involved), and revises the abortion-reporting procedure so as to provide for a statistical compilation rather than case-by-case reporting.

**Septic Tanks.** Ch. 452 (H 296) dealt with the problem of septic-tank regulation. Essentially the bill (discussed elsewhere in this issue) prohibits location, relocation, or construction of dwellings or mobile homes in areas not served by public or community sewer systems until the local health department has granted an improvements permit indicating that the area is suitable for septic-tank use (this permit is also required before installation of a privy).

For mobile homes, the issuance of other construction permits (electrical, air conditioning, etc.) must await the issuance of a certificate of completion that issues after the septic tank is properly installed. For conventional dwellings, special permits may be issued after the certificate of improvement has been issued. Neither conventional dwellings nor mobile homes may be lived in until the certificate of completion has been issued. Mobile homes located in mobile home parks are exempted from these requirements.

**Immunizations.** As medical science has developed new knowledge and as health conditions have changed, physicians have become increasingly unwilling to administer the smallpox vaccine to young children. Yet state law has required it to be given before a child is admitted to school. Ch. 632 (S 908) resolves this problem by requiring smallpox vaccination only when the State Board of Health finds it necessary in the best interest of public health. The act continues the legislatively mandated requirements for immunization against whooping cough, polio, and red measles (rubella), but the Board is given authority to determine the age of administration. Parents and guardians are given 30 days after the child's first admission to school in which to present evidence of his immunization.

**Sickle Cell Anemia.** Ch. 570 (H 32) sets up a council of fifteen members to deal with the problem of sickle cell anemia. Membership on the council is to represent public health professionals, university faculty, school board members (state and local), and sickle cell patients or their relatives. The council is to conduct a study of means of dealing with sickle cell and recommend necessary legislation to the General Assembly. The act does, however, authorize the Board of Health, after consultation with the council, to promulgate rules and regulations providing for voluntary testing, education, and counseling. Too, the Board is required to make testing and counseling available to those requesting it. Counselors must be trained according to standards established by authorities in the field.

## OTHER ACTS

Other enactments require the State Board of Health to file a certified copy of the order of approval for sanitary landfills with the county register of deeds in order to provide notice to subsequent purchasers (Ch. 44, H 337); change the name of Eastern North Carolina Sanatorium to Eastern North Carolina Hospital and authorize that facility to treat general pulmonary ailments. (Ch. 162, S 845); authorize a preschool satellite program for the deaf and educationally hard-of-hearing (Ch. 630, H 1331); authorize local governments to levy taxes for support of hospitals without a vote of the people (Ch. 803, H 333); provide that the size of hospital authority boards (formerly between six and thirty) may be increased upon a finding by the authority board that such an increase is in the public interest (Ch. 792, H 1217) (this act also requires mayors and chairmen of boards of county commissioners to fill all vacancies on authority boards within a reasonable time); allow boards of county commissioners in one-county "area" programs having a population over 325,000 (Mecklenburg County) the option of serving as the mental health board (Ch. 153, H 813); allow boards of county commissioners to assume the function of the boards of mental health in counties over 323,000 population (Ch. 452, H 811); revamp the State Board of Examiners for Nursing Home Administrators (the revised board comprises eight members, including three licensed nursing home administrators) (Ch. 728, H 1270); establish occupational health and safety standards to be administered by the State Department of Labor (Ch. 295, S 312); vest authority for regulating septic tanks of over 3,000-gallon capacity in the Board

of Water and Air Resources while the State Board of Health retains jurisdiction over those having a smaller capacity (Ch. 471).

## HEALTH FUNDING

Despite the increased attention given to program formulation and development, health funding fared well. Ch. 574 (H 280) appropriated $2,000,000 to be used for the dual purposes of providing special assistance to those local public health units that elect to combine into district departments or contract with the State Board of Health for provision of public health services and to assist all units in increasing salaries of personnel. Ch. 593 (H 921) appropriated $750,000 to fund the Emergency Medical Services Program. The Carolina Population Center received $200,000 to aid in the carrying out of its demographic programs (Ch. 561, H 974). Ch. 585 (H 611) provided $425,000 to help improve service at the Eastern North Carolina Hospital at Wilson. Health agencies also fared well in their general budget requests.

Mental health programs were also well funded. Some $2,813,014 was provided for improvement in direct patient care. Another $1,150,000 plus was provided to implement a "patients' privileges program" to provide for privacy and remuneration of working patients. Local mental health centers received a state aid increase of $3.6 million, and $2.5 million was appropriated to provide up to 85 per cent state financing of capital construction costs of mental health centers. Area mental health programs received $1 million in direct aid.

Notwithstanding this disposition to fund well (particularly needed in an era of impending and already effective federal cutbacks), two bills placed limitations on state agency disposition of funds. Ch. 650 (S 337) prohibits the Department of Mental Health from withholding funds from local mental health programs for refusing to join an area or regional program. Ch. 143 (H 106) applies a similar prohibition to the State Board of Health.

## INTERIM ASSIGNMENTS

A unique feature of the 1973 legislative session is its division into two sessions. During the interim before the second session convenes in January, several important tasks have been assigned to different groups for study and development of recommendations. Attempting to end the traditional practice of conducting piece-meal studies of isolated segments of the health-care system, Res. 93 (H 1106) directs an omnibus study of health manpower, medical facilities, and financing considerations by the two health committees. Should that broad formulation not be enough to cover the field, two other study measures were passed. Res. 115 (H 1133) establishes a Joint Legislative Committee on Medical Manpower (discussed above) to study medical manpower needs, specifically including the UNC Board of Governor's study of the need for another medical school. Res. 100 (H 1244) requires the health committees to investigate the desirability and feasibility of instituting a system of review of hospital rates and charges. Res. 80 (S 702) requires a comprehensive study of mental health, retardation, and alcoholism to be conducted by an eleven-member commission composed of three representatives appointed by the Speaker of the House (including the chairman of the Mental Health Committee), three senators appointed by the Lieutenant Governor (including the chairman of the Mental Health Committee) and five persons appointed by the Governor. The commission must report to the General Assembly and the Governor next January. Finally, a narrow measure that may have broad implications should be mentioned. S 840 would have placed exclusive authority for regulation of water wells serving individual residences and food-and-lodging establishments in the State Board of Health, thus ending involvement by the Board of Water and Air Resources. Meeting some opposition, the bill was retained in the House Committee on Water and Air Resources for further study.

## REORGANIZATION

As part of the continuing effort to effectuate the reorganization of State Government, Ch. 476 (H 1127) rearranged the structure of the Department of Human Resources. While this is essentially a mechanical and organizational matter, health personnel should note two important substantive changes. The Board of Health (renamed the Commission for Health Services) was expanded from nine to eleven members. The two additional appointments go to the Governor, but he is required to select one optometrist. Also, policy development could be affected by the establishment of a Human Resources Board consisting of all commission chairmen plus eight persons selected by the Governor and the Secretary of Human Resources serving ex officio. While the Board serves only in an advisory capacity, the broad perspective to be provided by this group augurs for a more catholic approach to human resource problems. Apart from these two matters, the relevant portions of the act set up the new departmental organization and make the necessary conforming changes in the General Statutes. Chart I shows the new organization of the department.

# No-Fault Auto Insurance: A Major Issue for the 1974 General Assembly

Elmer Oettinger

## No-Fault Automobile Insurance—The Continuing Drama

No-fault automobile insurance will continue to be a lively legislative item in North Carolina in 1974. A modified no-fault bill, recommended by the Governor's Study Commission on Automobile Insurance and Rates, passed the Senate but was detained at the 1973 session's end for further study by a House insurance subcommittee. The subcommittee, chaired by Representative Gerald Arnold of Harnett, plans to continue to work on the bill with augmented membership through the late spring and summer and to report the measure in some form back to the parent insurance committee during the first weeks of the renewed General Assembly in January 1974. If the off-session plan is carried through, the second part of the split 1973–74 legislative session will have up for final action a bill that will have undergone more than two years of intensive study and work by (a) the Study Commission, (b) the State Senate, (including subcommittee and floor consideration), (c) a House committee and subcommittee. Those engaged in the long process will have had an opportunity to consider first-hand not only the 41-page bill (now in third-edition committee-substitute form) and its potential legal and practical effects in North Carolina, but also the content and workings of other no-fault laws in more than a half-dozen states, including communication with officers and citizens of these states, plus the nature and import of pending federal legislation. The chances appear good that some form of no-fault legislation will be presented to the House with powerful backing early in 1974 and that a conference committee will be called upon in winter or spring of next year to agree upon the final form that no-fault is to take in North Carolina.

The battle lines were drawn on no-fault automobile insurance in the 1973 North Carolina General Assembly. The legislature had alternatives: (1) enact the modified, threshold no-fault bill proposed by the Governor's Study Commission on Automobile Insurance (S 137, H 180); or (2) pass the add-on first-person plan supported by the North Carolina Bar Association (S 226, H 293); or (3) reject all first-party automobile insurance legislation and retain the present third-party liability system. Whether these include one or two no-fault options is debatable, for option (2) keeps the fault system intact." The legislators showed no inclination to adopt the optional add-on measure drafted by Representative Arnold (H 625) or to introduce a "pure" no-fault bill, akin to the uniform bill drafted by the Conference of Commissioners on Uniform State Laws.

## What Is No-Fault?

No-fault automobile insurance is first-person insurance. A motor vehicle owner insures himself (and his vehicle) against loss in accidents rather than insuring himself against liability to those whom he kills or injures, as under the present third-person liability system. Most kinds of insurance are already first-person: for example, life, health and accident, fire, and even the collision part of automobile insurance.

However, no-fault automobile insurance also means that some or all claims are paid without regard to fault. The driver loses his right, either completely or up to a certain specified amount, to sue for personal injuries or (in some laws) for property damages. Under "pure" no-fault, tort liability would be abolished, and all claims would be paid without regard to fault. No state has passed legislation embracing "pure" no-fault, although one

The author has served as consultant to the 1971 and 1973 Governor's Study Commission on Automobile Insurance and Rates.

insurance trade association (initially) and some insurance scholars have recommended it. Under modified no-fault, a limit or threshold is set; below it, first-person no-fault insurance applies, and court suit may not be brought. Seven states have enacted legislation using this modified threshold approach. A eighth state has passed a more drastic no-fault bill, abolishing tort liability but making several exceptions. Another state passed a bill (later declared unconstitutional by the state court) using a modified "formula" approach. Several other states have chosen simply to pass add-on laws, requiring or permitting first-person automobile insurance up to a certain limit but not reducing or eliminating court suits.

More specifically, under no-fault insurance, insurance companies pay those they insure for actual economic losses (including medical bills and lost wages) caused in automobile accidents, without regard to who was at fault in the accident. No-fault systems usually require that insurance claims be paid directly and promptly to the insured, without the investigating, negotiating, litigating, and risk of partial or no payment that happens in the present system. The purpose of no-fault is thus to compensate victims more fairly, directly, and immediately for net economic losses from motor vehicle accidents.

No-fault insurance protects the insured from suit for negligent automobile operation, but only to the extent that the no-fault principle is adopted in a state.

## Why No-Fault?

The present third-party liability insurance system does not compensate motor vehicle accident victims fully, fairly, or quickly enough. Law professors Robert Keeton and Jeffrey O'Connell concluded this in 1965, and it was documented over the following six years by extensive study by the federal Department of Transportation and several states. The DOT study indicated that, on the average, less than 50 per cent of actual losses were recovered under the present system. Richard F. Walsh, who headed the DOT study, told the National Legislative Conference in 1971:

> The main conclusions of the DOT Study should come as no shock to any student of the automobile compensation problem. In summary, it was concluded that the existing system ill serves the accident victim, the insuring public, and society at large. It is inefficient, grossly expensive, incomplete and slow. It allocates benefits poorly and very unevenly, discourages the use of rehabilitative techniques, and overburdens the courts and the legal system. Both on the record of its past performance and on the inherent logic of its operation, it does little if anything to minimize crash losses.

Other studies confirmed the DOT finding that the present negligence system is (1) incomplete (victims pay for much accidental loss that insurance could easily pay; some injured persons are underpaid or denied recovery altogether), (2) inequitable (some victims are overpaid, others just as deserving underpaid), (3) too slow (settlements and compensations are delayed, rehabilitation is adversely affected, and over-all cost is increased), (4) wastefully expensive (inadequate guidelines for determining fault and lump-sum findings of damages cause high administrative costs), (5) unattractive to consumers (the percentage of premium dollar benefits returned is too small and does not measure up to public expectations), and (6) conducive to claim exaggeration and even fraud.

## The Federal Perspective

The Nixon Administration has urged states promptly to begin shifting to a first-party, no-fault compensation system for automobile accident victims. Its spokesmen prefer the change to take place at the state level but cite general national goals or principles toward which states should be moving. A two-year deadline ending in April 1973 was set for states to adopt no-fault. If that deadline is kept, the Administration should decide soon whether federal legislation is necessary. In specifying the requirements for an acceptable state no-fault system, DOT's Walsh said: "The existing right to sue for damage resulting from negligence in car crashes would be drastically curtailed, perhaps remaining only for certain specified intangible losses." Under that definition, it would appear that the only bill that has been introduced before the North Carolina General Assembly so far that complies with the Administration's definition of no-fault legislation is the Study Commission bill. Clearly, the Administration has called for a state system that is both first-party *and* no-fault.

Bills introduced in Congress by Democratic senators would go further than Administration proposals. Bills introduced by Senators Hart and Magnusson would set up a national system of no-fault insurance. States that have not enacted no-fault legislation would be held to a higher standard of compliance than those that have. A new U.S. Senate version sets forth federal no-fault standards for states; a new House version calls for a federal no-fault system. An earlier Hart-Magnusson version was sent back to committee last session by only a 49-46 vote; the major provisions of that bill equated with those of the Uniform Bill adopted by the Commissioners on Uniform State Laws (discussed later).

So do the provisions of the new no-fault bill (S 354) introduced by Senator Hart and Senator Magnusson this session. That federal bill calls for reimbursement for loss of wages up to $50,000 with a monthly maximum payment of $1,000. The Senate bill also would abolish lawsuits, except when there is catastrophic injury, such as loss of a limb or permanent disfigurement. This federal bill would permit un-

limited reasonable medical and rehabilitation expenses, including $500 for funeral expenses and reasonable survivor's loss, replacement loss, and survivor's replacement loss, subject to state limits. All automobile insurance would be compulsory.

Liability insurance would be required in at least the amount of $25,000 for bodily injury damage and $10,000 for property damage. Optional added benefits would include collision coverage (a) against property damage without regard to fault, subject to $100 deductible, (b) for a car and its contents on proof that damage was caused by the fault of another person.

Tort liability arising from the ownership, maintenance, or use of a motor vehicle would be abolished except when the accident involves: (1) an uninsured motorist; (2) improper design, manufacture, repair, or service of a motor vehicle as the cause of accident; (3) intentional harm; (4) damage to property other than a motor vehicle and its contents; (5) damage caused to a motor vehicle in the process of storing or parking; (6) tangible damages that the policy of no-fault insurance does not cover when the loss does not accrue during the period when no-fault benefits are paid; (7) damages for pain and suffering above $5,000 if the accident caused death, serious permanent disfigurement, significant permanent injury, or more than six months' total inability to work.

S 354 would require states to provide assigned-claims plans to cover injured persons who are not covered by no-fault insurance yet are entitled to benefits (the North Carolina Commission bill does this) and to establish "fair and equitable" deductions and exclusions.

Most important to states, the United States Senate bill provides more stringent federal standards for those states that have not enacted a no-fault automobile insurance law by the end of the first legislative session after S 354 is enacted. The delinquent states would be subject to providing wage-loss benefits up to $1,000 a month as long as necessary; replacement loss, survivor's loss, and survivor's replacement loss up to $200 per week as long as needed; unlimited reasonable medical and rehabilitation expenses; and to require that tort liability be abolished for pain and suffering (noneconomic detriment), to be offset by an added optional coverage for noneconomic detriment.

The no-fault bill introduced in the House of Representatives by Congressman John E. Moss, Democrat of California, and John D. Dingell, Democrat of Michigan, is almost identical to S 354 although less flexible in permitting the states to set the levels of benefits. This House plan, unlike the Senate plan, would become law in every state no more than eighteen months after its enactment into law. Still another congressional bill, (HR 1400), closely parallels HR 10, yet would do away with tort action unless the driver is engaged in criminal activity. The strength of the federal proposals suggest some advantages in early state action.

So, the interest of Congress in no-fault legislation remains high. Representative Broyhill told the Study Commission that unless enough states act, federal no-fault legislation appears likely.

## Recent History of State No-Fault Legislation

On January 1, 1971, Massachusetts put into effect the first no-fault automobile insurance law. Two years earlier, Puerto Rico enacted a "Social Protection Plan" of automobile insurance. At present, seven states — Massachusetts, New York, Nevada, and Colorado —have enacted a modified no-fault, threshold type of legislation resembling that proposed by the North Carolina Study Commission. An eighth state, Michigan, has enacted a related but even stronger no-fault law. Some comparison will be made later between the provisions of these laws and the proposed bill in North Carolina. Several other states—including Oregon, South Dakota, Minnesota, Arkansas, and Maryland — have passed add-on first-person laws, a type related to the North Carolina Bar Association measure. Delaware has in effect a first-person law with some provisions relating to tort action that remove it from strict identification with the other categories. Although some type of first-person or no-fault bill has been introduced in about four-fifths of the states and has been rejected or deferred or is impending in more than half, several states (e.g., New York, Michigan) have overcome initial rejections and enacted no-fault bills while others are having second thoughts.

Directions may be suggested by the fact that certain insurance and legal groups previously opposed to any no-fault or first-person auto insurance system have shifted ground to the point that the insurance industry now solidly supports modified no-fault while some lawyers' organizations back first-person add-on plans. A few bar organizations (e.g., Michigan, New York City) have approved modified no-fault laws. And the *ABA Journal* has editorialized its hope "that no lawyer will oppose no-fault because of a supposed self-interest in preserving the legal fees produced by the present system."

## Before the General Assembly

● *Study Commission Bill.* The purpose of S 137 proposed by the Governor's Study Commission is to provide a reparations system under which prompt and direct compensation can be paid to persons injured in automobile accidents. The Commission's bill partially abolishes tort liability and substitutes first-party insurance to pay injured persons. In effect, under the tort system, an insured person is protected from suit by others and recovers for his own injury through

his own insurance company. After the insured has filed reasonable proof of claim with the insurer, claims would normally be paid as injury cost accrues (to avoid hardship). Claims are overdue if not paid within 30 days, and the insurer is subject to interest of a 1.5 per cent per month for overdue payment and, in the event of necessary suit, to the claimant's reasonable attorney fees.

Total basic reparation benefits (under first-person, no-fault coverage) cannot be more than $5,000, and a person's own insurer must pay for medical expenses, loss of wages, replacement services, funeral expenses (up to $750), and survivors' benefits. These benefits would be primary, taking precedence over benefits from social security, health insurance, etc., but not over workmen's compensation. Compulsory automobile insurance is continued in the state, and the first-party insurance for basic reparation benefits and residual liability insurance is made compulsory for all motor vehicles operated in the state.

The crux of the Commission bill lies in its thresholds. Tort exemption exists for the first $5,000 of first-person basic benefits. Specifically, court action may be brought only for economic losses above the $5,000 maximum that basic reparation benefits limit. However, when medical expenses from the motor vehicle accident exceed $1,000 (cut to $750 by the Senate) or death, disfigurement, or a permanent injury (as defined in the bill) occurs, the bill permits suit for noneconomic loss. In other words, when either is met, suit may be brought and no restriction is placed on the amount that can be recovered in general damages.

The Commission bill passed the Senate, but not before it was weakened by amendments that (1) reduce the medical threshold from $1,000 to $750, (2) remove requirements that permanent injury or disfigurement be significant or serious to permit court action, and (3) permit persons under 18 years of age who are killed or injured to have suits brought in their name. Such greater access to courts cuts into the projected reforms of a no-fault. At one point the bill had to be brought back from the engrossing office to remove an amendment that would have gutted it. An amendment to reduce allowable premium rates by 10% was intended to protect the insured.

The $5,000 basic reparation benefits proposed for North Carolina by the Commission's bill compares with the $5,000 limit in Florida and Connecticut and $2,000 in Massachusetts. Michigan provides *unlimited* reasonable medical and rehabilitation benefits, up to $1,000 monthly in lost income, up to $20 a day for nonwage-earner replacement services, and survivors' payments up to $1,000 a month (all of these up to three years), plus a $1,000 funeral benefit. The tort exemption in Florida is similar to the proposed North Carolina $5,000 personal injury benefits, with $1,000 for permanent or serious injury threshold for pain and suffering. Massachusetts limits total benefits to $2,000 and recovery for pain and suffering is allowed only if medical expenses exceed $500 or the injuries are serious or permanent or cause death.

The Commission's bill provides first-party physical-damage coverage. As with bodily injury, the number of property-damage court actions should be reduced. The measure permits no tort action for damages totaling $500 or less. The owner may choose either (1) collision coverage, limited to actual cash value of the car and subject to a deductible, or (2) coverage applicable only if another driver is at fault in causing damage to his vehicle. The Senate cut option (3) which would have allowed a driver to have *no* collision coverage. It would be possible to buy back insurance up to $500 at low cost. The interest penalty of 1.5 per cent per month for nonpayment within 30 days after notice also applies to physical-damage benefits. Three states (Massachusetts, Florida, Delaware) include property-damage coverage in their no-fault laws.

● *Bar Association Bill.* S 226, sponsored by the State Bar Association provides for: (1) medical and hospital expenses above $50, incurred, within 12 months of the accident, up to a $1,500 total; (2) income disability up to 80 per cent of the income lost because of absence from work, beginning three days after the accident and continuing up to 26 weeks, with maximum $150 payment per week; and (3) funeral expenses up to $600. Tort liability is expressly retained. Benefits must be paid monthly as incurred, within 30 days of reasonable proof of claim, or a penalty of 18 per cent annual interest is incurred. The bill does not affect property-damage insurance. Oregon and South Dakota laws are similar in that they do not affect physical-damage policies or change tort liability. By contrast, however, bodily injury benefits in South Dakota would include up to $2,000 medical expenses and a minimum of $10,000 death benefits. Oregon allows first-person benefits up to $3,000 medical and hospital expenses (with a $250 optional deductible) and up to 70 per cent of income (after 14 days) or up to $12 a day for replacement services. The Delaware statute differs from all North Carolina bills both in the types of losses compensated and the approach to tort liability. Delaware permits first-person injury protection up to $10,000 per person and $20,000 for any expenses incurred or "medically ascertainable" within twelve months of the accident; however, Delaware does not limit medical expenses, wage loss, or replacement services other than the overall maximum limit. Delaware does permit funeral expenses up to $2,000 per person. The Delaware law also covers bodily injury and property damage. And it specifically provides that in tort actions, the injured may not introduce evidence of damages when no-fault damages are available for personal damage

other than to a motor vehicle; and it requires insurers to submit claims for damages to motor vehicles other than the insured vehicle.

● *Arnold Bill.* In early March Representative Gerald Arnold introduced H 629 requiring motor vehicle insurance policies to provide certain minimum benefits, without reference to fault. The insured would thus have a no-fault option. At the option of the insured, the benefits would include reasonable expenses over $50 up to $1,500 for medical services incurred within 24 months of the accident, income disability up to $600 a month, totaling 80 per cent of income lost because of absence from work beginning five days after the accident up to 26 weeks maximum, or replacement services up to $15 per day for a nonwage earner beginning five days after the accident up to 26 weeks maximum; and/or $2,500 death benefits. The bill would bar coordination of benefits and exclude benefits from intentional self-injuries, driving under the influence, and injuries sustained while engaging in crime and attempting to elude police. As introduced, the measure specifically retains tort liability but specifies reimbursement of the insurer from tort recovery and bars subrogation. The bill also contains a comparative-negligence provision (see discussion later).

## Crucial Differences

The crucial difference between the Commission and other North Carolina bills lies in tort exemption as opposed to tort retention. The Commission's qualified no-fault bill clearly bars tort suits up to specified limits, assuring a substantial reduction of negligence cases and litigation potential (perhaps as much as 85 per cent). The Bar Association's add-on bill retains, in full, the "right" to sue. It is argued that the addition of some first-person coverage will provide *some* reduction in claims and court costs. At this point the definition of no-fault and its potential for remedying defects in the present system becomes meaningful. In a broad sense, the question is whether some tort exemption is essential to meet no-fault definition, goals, and standards.

Other differences can be considered—differences in benefits, coverages, claims, rehabilitation, and physical damage, among others. The Commission's bill provides physical-damage coverage. The Bar's bill does not change present physical-damage coverage. The Commission provides maximum reparation benefits up to $5,000 for everyone. The Bar bill's maximum of $6,000 benefits applies only to an injured person who is out of work for 26 weeks. In the more typical case, the Bar bill's limits on medical expenses and wage-loss recovery, coupled with a shorter period out of work, could provide lower benefits and less feasibility of tort suit. On the other hand, an injured person out of work 26 weeks would probably meet the Commission bill's definition of serious injury and be qualified to bring a tort suit.

The Commission bill has adopted a number of relevant provisions from the Uniform bill. These are related, in part, to aspects of coverage, security, assigned claims, rehabilitation, availability of insurance, and equitable allocation. But any claim that the key provisions of the Commission bill are drawn from the Uniform bill would be inaccurate. Basic reparation benefits under the Uniform bill (and, for the most part, the Michigan bill) would provide payment of all reasonable medical and rehabilitative expenses without limit, reimbursement for lost earnings and replacement services, survivors' benefits each up to $200 per week, and a funeral expense limit of $500. These are very different from the Commission bill benefits. The Uniform bill tort exemption—which, like Michigan's, specifically abolishes, with only a few exceptions, tort liability from ownership, maintenance, or use of a motor vehicle—is also different. The exceptions (when court action is possible) relate to (1) owners who have not provided security; (2) intentionally caused harm to person or property; (3) damages for work loss, replacement services loss, and survivor's loss uncompensated by basic reparation benefits because of the $200 weekly limit; (4) damages in excess of $5,000 for noneconomic detriment when there is permanent significant loss of body function, death, permanent serious disfigurement, or more than six months of total disability; and (5) damage to property other than motor vehicles and their contents and damage to motor vehicles caused by operators of parking lots and storage garages. The Uniform bill does not apply to physical damage. Obviously, in the most essential provisions, the Commission's decisions do not equate with those of the proposed Uniform (or the Michigan or proposed federal) Act.

The Arnold bill resembles the Bar bill in its benefit provisions and add-on type. It differs from the other bills by adding larger death benefits; it re-emphasizes the fault basis by banning benefits for self-inflicted injury, driving under the influence, and activities related to crime; and it utilizes a system of reimbursement rather than subrogation. It also adds a comparative-negligence proposal not in the other bills. Total benefits would remain lower than those provided in the Commission bill.

## Claims and Advantages

When Chairman F. O'Neil Jones presented the Commission bill, he noted that its primary significance to the North Carolina public would lie in fuller, fairer, and prompter settlement of claims and allocations of insurance money. He did not claim that enactment would necessarily result in decreased (or increased) rates or that court congestion is a primary issue.

Commission spokesmen emphasize that the plan would permit more injured people to be paid a

greater share of the premium dollar for actual loss as loss accrued. They note that it allows the insured to deal directly with his own agent and company. They distinguish the rate reductions realized in Massachusetts, which had the highest premium rates in the nation, and the potential for rate reduction in North Carolina, which has the second lowest rates of any state east of the Mississippi. One survey indicates that lower rates are at least possible for North Carolina if the Commission plan is adopted. Further, actuaries from two of three insurance associations have arrived at figures that suggest that even if North Carolina should adopt a version of a no-fault bill based on the more drastic Uniform State Laws, rates could probably be reduced.

The Bar Association, on the other hand, bases its plan on the concept that auto insurance problems existing in other states are either not present or pressing in North Carolina and concludes that its plan achieves the same purposes and results as the Commission bill —without limiting an injured person's ability to sue. The counterargument is that add-on bills tend to increase insurance costs without remedying present inequities.

Certainly court congestion is not so much a problem in North Carolina as in Massachusetts, for example. But court crowding is only one of a number of factors that have led to findings in every major study that the tort system is both ineffective and expensive as a system of reparations. A careful study would be required to discover the exact percentages of injured victims compensated in North Carolina and the precise extent of overpayment and underpayment of claims. A further study would be necessary to ascertain whether the tort system operates more efficiently in this state than in others. Three major studies have already shown that, nationally, less than half the premium dollar is returned to compensate for personal injuries. The General Assembly may require proof that North Carolina is different.

The Commission's threshold approach has been criticized for paying the guilty by taking from the innocent and for taking away an injured person's right to sue. However, a related question arises under the Bar plan: would an increase in compensation (due to the higher frequency of claims under first-person insurance) and fewer "nuisance" claims bring the same result? Yet another question is whether the present system's discrimination against the poor and uninformed would be reinforced by a lack of awareness of and recourse to available court action.

The relatively small percentage of automobile accident cases actually litigated is a national statistic—not merely for North Carolina. It can scarcely prove that no major problem in automobile accident reparation exists. Attorney's fees have been a significant cost in administering the tort system, and the cost of the system remains a major problem. What happens in other states under roughly similar plans offers a partial basis for comparison. Administrative costs of insurance, delays, and tort suits contribute to the cost problem. Add-on bills generally are believed to add to the cost.

Possibly a more reliable, objective, and updated prediction of the potential costs of proposed bills may be sought from the National Association of Insurance Commissioners. This organization has acquired base statistics that reportedly enable it to predict the probable effect of any no-fault or first-person insurance legislation in a state. Request for an NAIC study apparently must come from the State Commissioner of Insurance. Cost must be borne by someone. In projections to date, the variables—the increase or decrease of claims and court actions—permit divergent premises and predictions.

Some legislators understandably have pushed for new projections. Such inquiries should not, however, prevent recognition that other no-fault gains may be more predictable and important than possible premium savings.

## Rates Not Wholly a Matter of No-Fault

Study commissions quickly learn that "inadequate" rates to insurance companies can equate with "excessive" costs to the consumer. They also learn that factors affecting rates are many and complex, including the particular rating systems (prior-approval, file-and-use, open-competition), rating organizations (industry-controlled bureau, rate development unit within insurance department), approaches (formula, guaranteed underwriting profit, consideration of all factors including investment income), administrators (commissioner, board), and even assigned-risk programs (percentage of insureds, basis for inclusion, surcharge). The point is that no-fault insurance is only one of many factors that can affect rates. Consequently, to adopt or to reject a no-fault plan solely on the basis of its possible effect on rates might, in this light, be to ignore other relevant considerations.

## Constitutionality

The constitutionality of any legislation is, of course, a legitimate inquiry, but there is some danger that it can be turned into a red herring. Although future court decisions may be unpredictable, a line of holdings in workmen's compensation and heart-balm cases gives reason to believe that no-fault automobile insurance is constitutional. An Illinois formula no-fault law was declared unconstitutional by the courts of that state on grounds that appear unrelated to the proposed Commission's bill in North Carolina. The North Carolina Commission deliberately steered clear of the Illinois formula approach. The only other state no-fault law that has been challenged

in Massachusetts's. The state supreme court held the Massachusetts law constitutional. Since the Massachusetts provision is not unlike the North Carolina constitutional requirements as to open courts (Article I, section 18), the Massachusetts holding seems relevant to the constitutionality of similar legislation in this state.

## Comparative Negligence

Some states have adopted comparative-negligence laws, either separate from or as adjuncts to no-fault programs. The Arnold bill allows proportional reduction of damages in personal injury or wrongful-death actions that could have been recovered, if there were no contributory negligence. It also would allow proportional contribution among defendants based on proportion of negligence.

Two other bills providing for comparative negligence verdicts in North Carolina were introduced late in March. S 539, introduced by Senator A. B. Coleman, Jr., of Orange, specifies that contributory negligences (not greater than the defendants) shall not bar recovery in suits for death, personal injury, or property damage but shall reduce recovery in proportion to the plaintiff's negligence. H 995, introduced by Representative John S. Stevens of Buncombe, a member of the Study Commission, provides that contributory negligence by the plaintiff or defendent shall not bar recovery in actions for negligence resulting in personal injury, property damage, or wrongful death. This bill, which has Commission backing, also reduces any award of damages in proportion to the amount of negligence attributable to the plaintiff or defendent.

Under the negligence system, a person found guilty of contributory negligence is barred from recovery. By contrast, some comparative-negligence laws permit loss recovery to the less-negligent driver up to a specified percentage of no-fault. Other comparative-negligence laws allow recovery to any driver for the proportion he was not negligent. Such a law would expand the number of motorists who would have the right of recovery for automobile accident losses. This concept, when enacted into law, has the effect of further lowering the fault barrier. On the other hand, it permits greater equity for the injured motorist. These comparative-negligence bills remained in committee at session's end. Yet whether or not some form of no-fault law is enacted in 1974, comparative negligence may get renewed consideration.

## Conclusions

The 1971 Commission proposed a further study of no-fault on the grounds that too little state experience with no-fault plans was available for evaluation at that time. Since then, considerable state experience and research in no-fault have become available.

The 1973 Commission studied no-fault in depth. Its eleven members, (including four attorneys) together with staff members (including three attorneys), did research and traveled widely, delving into the experience of various states with no-fault laws, pending federal legislation, and North Carolina needs in lengthy hearings and meetings. S 137 (H 180) is the product of its study. The Bar Association, meanwhile, affirmed the work of its own study committee. S 226 (H 293) is the result. The Commission and Bar Association bills both were studied by a State Senate Insurance Subcommittee. The Commission bill passed the Senate, after amendment in subcommittee and committee and on the Senate floor. Amendments to reduce the medical threshold from $1,000 to $750 and to permit suits for permanent injury or disfigurement arising out of motor vehicle accidents without regard to whether they are "significant" or "serious" weakened the no-fault aspects but left the bill viable. A third substantive amendment allowing injured persons under 18 years of age access to court actions (while continuing tort exemption for other age groups) invites problems of consumer cost and constitutionality. An amendment directing at least a 10 per cent reduction in allowable premium rates for "Automobile Liability Insurance" on both property damage and bodily injury coverage represents an effort to assure lower rates for insureds and to prevent excess profits for insurance companies. A question may be raised whether the rate reduction, as worded, would apply only to residual liability coverage (and *not* to the first person no-fault coverage.)

The House subcommittee discussed but did not act on a number of other possible changes in the bill. The Study Commission felt that the bill as introduced was balanced and workable. The subcommittee has challenged itself to work through the interim to bring out a bill that it finds acceptable. The test of that purpose will come when the General Assembly reconvenes next January.

The directions of state and federal thinking have become more clear. It would appear that sufficient evidence is available for legislative decision.

# JUVENILE CORRECTIONS

Mason P. Thomas, Jr.

During the past year statewide interest in changing and improving the juvenile corrections system has gained momentum, beginning with the work of the Penal System Study Committee of the North Carolina Bar Association. This committee, at the request of former Governor Robert W. Scott, studied juvenile corrections and training schools and issued a report entitled *As the Twig Is Bent,* which made seventeen recommendations for improving the juvenile justice system. This report found that 50 per cent of the children committed to training school should not be there, and observed that "North Carolina has the unenviable distinction of ranking first among all the states in the number of children committed to juvenile training schools per capita." The seventeen recommendations included the following:

—Greater use of community-based facilities and services to deal with delinquent youth rather than commitment of so many to training school (Recommendation 1);

—Establishment of diagnostic and reception units to serve counties in Piedmont and eastern North Carolina (Recommendation 2);

—Designation by chief district judges of one or more judges to specialize in juvenile cases (Recommendation 7);

—That no child under age ten be committed to training school (Recommendation 9);

—That the statutes be amended to allow a district judge exercising juvenile jurisdiction to alter or modify his order of commitment to training school after an adjudication of being delinquent has been affirmed on appeal (Recommendation 10);

—That a unified system of juvenile probation and after-care be established on a statewide basis (Recommendation 12).

In April, 1972, Governor Robert W. Scott appointed a 36-member Governor's Advisory Committee on Youth Development to implement the report of the Penal System Study Committee when possible and to study juvenile corrections further and make recommendations of its own. This Committee worked under the leadership of Rep. Robert W. Wynne as chairman; it included professionals in juvenile corrections, citizen leaders, and four members of the General Assembly. It was reappointed by Governor James Holshouser, who added two Republican members of the House of Representatives—Margaret Keesee and David Jordan. The Advisory Committee proposed five bills to the 1973 General Assembly that were designed to implement recommendations contained in *As the Twig Is Bent* and its own findings. Four of these bills were adopted without significant change; the bill providing for specialization of district court judges in juvenile cases (H 943, identical to S 610) was defeated, primarily because of opposition by the judges concerned.

### State Policy Relating to Undisciplined and Delinquent Children

The most significant legislation is contained in Ch. 674 (H 944), which establishes a state policy for juvenile cases that involve undisciplined or delinquent children designed to encourage the court to utilize community-based resources for such children. The new law rewrites G.S. 7A–286(3) through (5) to establish a policy that a judge who exercises juvenile jurisdiction over an undisciplined or delinquent child

must consider in developing a disposition to meet the needs of that child. The new state policy contained in the statute is as follows:

> The initial approach should involve working with the child in his own home so that the appropriate primary resources (such as the parents, school and other community services) may be involved in child care, supervision and treatment according to the needs of the child. Thus, the court should arrange for appropriate community-level services to be provided to the child and/or his family in order to strengthen his own home, such as juvenile probation services, mental health services, educational services, social services and others as may be appropriate. In cases where it is necessary to place a delinquent child outside his own home, first consideration should be given to residential resources in the child's own community, such as a relative's home, a foster home, small group homes, halfway houses, group child care, and others as may be available. A child should not be committed to training school or to any other institution solely for unlawful absence from school; such a child should generally be helped through community level resources. A commitment to training school or to any State institution is generally appropriate only for a child over 10 years of age whose offense would be a crime if committed by an adult and where the child's behavior constitutes some threat to the safety of persons or property in the community so that the child needs to be removed from the community for the protection of the community.

### Criteria for Commitment to Training School

In line with the state policy summarized above, Chapter 674 amends G.S. 7A–286(5) to establish four criteria that a district judge must comply with before committing a delinquent child to training school. The general thrust of the criteria is to encourage use of community-based alternatives to training school and to discourage training school commitments except when community-based alternatives have been exhausted. The new statute allows commitment to training school only if the "court finds that such child meets each of the following four criteria for commitment to an institution and supports such finding with appropriate findings of fact in the order of commitment. . . ." The four criteria are:

(1) The child has not adjusted or would not adjust in his own home on probation or while other services are being provided;
(2) Community-based residential care has already been utilized or would not be successful or is not available;
(3) The child's behavior constitutes some threat to persons or property in the community or to the child's own safety or personal welfare;
(4) If the child is less than 10 years old or if his offense would not be a crime if committed by an adult, the court must find that all community-level alternatives for services and residential care have been exhausted.

### Definite and Indefinite Commitments to Training School

H 944 (identical to S 607), as proposed by the Governor's Advisory Committee on Youth Development, would have rewritten G.S. 7A–286(5) to continue provision for indefinite commitments to the Office of Youth Development of the Department of Social Rehabilitation and Control. A floor amendment in the House of Representatives on April 24 amended the bill to provide that such commitment "shall be for a definite or indefinite term, not to extend beyond the eighteenth birthday of the child, as the Department or its administrative personnel may find to be in the best interest of the child." North Carolina law has provided for indefinite commitments to training school since 1907. Further, G.S. 7A–286(5) as rewritten is inconsistent because it states: "The Department, or its administrative personnel, shall have final authority to determine when any child who has been admitted to any program operated by the Department has sufficiently benefited from the program as to be ready for release." The exact meaning of this new statute may require some interpretation by the Office of Youth Development and by judges, perhaps with an advisory opinion from the Attorney General.

### Judge May Excuse Child from Compliance with Compulsory School Attendance Law

Ch. 674 rewrites G.S. 7A–286(4), dealing with the dispositional alternatives available to a judge who exercises juvenile jurisdiction over children who have been adjudicated delinquent or undisciplined to authorize the judge to excuse such a child from school attendance. The general idea is to develop some flexibility in planning for undisciplined or delinquent children who have difficulty in public school. Such children frequently have educational or learning problems or are unable to adjust to public school conditions that seem sometimes to contribute to truancy or other delinquent behavior. The new law authorizes a judge to excuse an undisciplined or delinquent child "from compliance with the compulsory school attendance law, provided the court finds that suitable alternative plans can be arranged by the family or through other community resources for one of the following: an education related to the needs or abilities of the child, such as (but not limited to) vocational education or special education; a suitable plan of supervision or placement; or some other plan

that the court finds to be in the best interest of the child."

### Juvenile Detention Changes

Chapter 674 amends G.S. 7A–286(3) to provide a plan for approval of detention of an undisciplined or delinquent child after hours or on weekends or other times when the district court is not in session. The new law authorizes the chief district judge (or the district judge who has primary responsibility for hearing juvenile cases in the district) to delegate the court's authority to detain by an administrative order that must be filed in the office of the clerk of superior court. The statute requires that the administrative order specify which judicial officials shall have detention approval authority in the following order: (1) any available district judge; (2) the chief juvenile probation officer (which would include the chief court counselor) or any juvenile probation officer; (3) the clerk of superior court; (4) an assistant clerk of superior court.

This statute also clarifies the number of days that a child may be held in a juvenile detention home or jail and provides clearly for a detention hearing within five days, rather than a hearing on the merits of the case. The new law states that no child may be held more than "five calendar days without a hearing to determine the need for continued detention" under juvenile procedures. Former G.S. 7A–286(3) limited detention without a hearing to "five days," which had been interpreted to exclude weekends and holidays in calculating the number days as under the Rules of Civil Procedure. The clear intent of the new law is to limit detention without a hearing to five calendar days, so that weekends and holidays must be counted.

### After-Hours Juvenile Petition

Ch. 269 amends G.S. 7A–281, which deals with juvenile petitions that are filed in the office of the clerk of superior court. The amendment authorizes a chief district judge to arrange for the issuance of juvenile petitions by a magistrate or other court officials in emergencies when the clerk's office is closed. When authorized by the chief district judge, a magistrate or other court official may issue juvenile petitions in emergency situations, such as when a petition is required to detain a child after hours. If a magistrate or other judicial official issues a juvenile petition after hours, the petition must be delivered to the clerk of superior court for customary processing as soon as the clerk's office is open for business.

### Purpose of Juvenile Jurisdiction

Ch. 270 (S 611) amends G.S. 7A–277, dealing with the purpose of the juvenile jurisdiction of the district court, to emphasize that the court should use community-based resources whenever possible in all juvenile cases. The sentence added to the statute reads: "The intent of this Article is to assure that, where possible, the court will arrange for the available community resources to be utilized to strengthen the child's family relationships in order to avoid removal of the child from his own home or community."

### Judge May Modify Juvenile Order After Affirmation on Appeal

In line with Recommendation 10 of *As the Twig Is Bent*, G.S. 7A–289, which deals with appeals in juvenile cases, was amended by the addition of a sentence reading:

> Upon the affirmation of the order of adjudication or disposition of the district court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of such an appeal, the district court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interest of the child to reflect any adjustment made by the child or change in circumstances during the period of time the case on appeal was pending, provided that if such modifying order be entered ex parte, the Court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why said modifying order should be vacated or altered.

### Increase in Age Jurisdiction in Undisciplined Category

Ch. 463 (H 125) amends G.S. 7A–278(1), dealing with the definitions and categories of juvenile jurisdiction, to change the definition of child (elsewhere defined as a person who has not reached his sixteenth birthday) in one category of jurisdiction, the "undisciplined child." For purposes of the "undisciplined child" category, a child is now any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

The purpose of the change is to bring within the juvenile jurisdiction of the district court children aged 16 or 17 who (1) are regularly disobedient to their parents and beyond their disciplinary control; or (2) are regularly found in places where it is unlawful for a child to be; or (3) run away from home. This amendment seems to bring children in this category within the protections afforded to children under age 16 in the other categories (delinquent, neglected, and dependent). They are subject to being brought into district court by juvenile petition; may be detained only in a juvenile detention home or, if a juvenile detention home is not available, in a separate section of the local jail; and may be placed on juvenile probation. If they violate probation, they may be adjudicated delinquent and are subject to commitment to training school if the court considers the required state policy and finds the required four criteria to be met.

**Juvenile Probation and After-Care**

The organization of juvenile probation and after-care services has been the subject of much study and discussion during the last year. *As the Twig Is Bent* pointed to the need for a "unified system." The previous Secretary of Social Rehabilitation and Control (the late George Randall) proposed a budget to the Advisory Budget Commission that would have established a division of juvenile probation and after-care in the Department of Social Rehabilitation and Control that would have been separate from the adult probation and parole systems.

The legal responsibility for juvenile probation and after-care has been fragmented between state and county governments in North Carolina. As of June 1, 1973, in twenty-seven urban counties, the service is provided through the state-supported court counselor program that is funded through the Administrative Office of the Courts under G.S. 7A–134. Under this statute, court counselor services are authorized in any district court district having a county with a population of at least 84,000 if the Administrative Officer of the Courts and the chief district judge of the district determine that the program should be implemented. The population requirement is met in two district court districts (4th and 25th, which include seven counties), but the chief district judges in these two districts decided not to implement the program, so that juvenile probation and after-care services have been provided through the county departments of social services. As of June 1, county departments of social services were providing juvenile probation and after-care in 61 counties. Twelve other counties have such services provided by federally supported programs under G.S. 110–23.1. The differences across the state in the quality and availability of juvenile probation and after-care services have been significant.

The Governor's Advisory Committee on Youth Development studied the problem. Its report recommended that "juvenile probation and after-care continue to be separate from the adult probation and parole programs in North Carolina." However, the Advisory Committee could not agree on the proper organizational home for this program in state government. The organizational alternatives considered included the Department of Social Services of the Department of Human Resources, the Department of Social Rehabilitation and Control, and the Administrative Office of the Courts.

While the Governor's Advisory Committee was studying these organizational issues, the State Government Reorganization Staff was drafting legislation to implement phase two of state government reorganization. The state government reorganization bill (S 533, identical to H 749) proposed two youth divisions in the newly named Department of Correction—the Division of Youth Development for administration of state training schools and the Division of Juvenile Probation and After-Care. In line with this organizational approach, the Advisory Budget Commission recommended that the funding for the court counselor program for one year (some $1,827,341) be transferred from the budget of the Administrative Office of the Courts to the Department of Social Rehabilitation and Control and that another $375,000 in state funds be appropriated to the Department of Social Rehabilitation and Control for expansion of juvenile probation and after-care services in the rural counties. The Department of Social Rehabilitation and Control was awarded a $1 million grant ($882,353 in federal funds with a state buy-in of $117,647) by the Division of Law and Order, Department of Natural and Economic Resources, on the assumption that the recommendations of the Advisory Budget Commission would be followed and that the proposed state government reorganization legislation would be adopted. By mid-April, 1973, it seemed unlikely that phase two of state government reorganization as it affected the Department of Social Rehabilitation and Control would be completed before the proposed adjournment date. However, the Appropriations Subcommittee decided to recommend to the full Appropriations Committee that the funding for the court counselor program be moved from the Administrative Office of the Courts to the Department of Social Rehabilitation and Control as recommended by the Advisory Budget Commission and that this department be awarded $375,000 to expand probation services in rural areas. In the closing days of the General Assembly, this recommendation was changed. The funding for the court counselor program was left in the Administrative Office of the Courts, which also received the $375,000 for expansion in rural counties. In addition, Ch. 815 (H 1358) was ratified in the closing hours of the General Assembly to authorize the Administrative Office of the Courts to provide all juvenile probation and counseling services, including after-care services from September 1, 1973, to June 30, 1974, in all judicial districts of the state regardless of the population of the district or any county in the district, either directly or through contractual arrangements with county boards of social services. This interim legislation does not repeal existing state legislation structuring juvenile probation and after-care services in state and county government (G.S. 7A–134 and G.S. 110–21), but it seems to have the effect of suspending the operation of these statutes during the nine-month period from September 1, 1973, to June 30, 1974. Ch. 815 (H 1358) also includes a rather confusing definition of after-care services to "include but not be limited to services to children who are on probation or who are on conditional release from the Department of Youth Development."

Two bills dealing with the organization of juvenile probation and after-care services were introduced

in the House of Representatives—House Bills 1255 and 1349. Both were referred to the Judiciary II Committee of the House of Representatives, which will meet between May 1973 and January 1974 when the General Assembly reconvenes. These bills provide organizational alternatives for interim study. House Bill 1255 would establish three youth divisions in the Department of Social Rehabilitation and Control: (1) community services; (2) juvenile probation and after-care; and (3) youth development (for administration of training schools). H 1349 would rewrite G.S. 7A–134 (now providing for state-supported family court services in a district containing a county with a population of 84,000 or more) to establish a Division of Juvenile Probation and After-Care Services within the Administrative Office of the Courts to be responsible for planning, organizing, directing, and supervising probation and after-care services in all judicial districts in the state.

In the meantime, legislation (S 533, H 749) to implement phase two of state government reorganization in the Department of Social Rehabilitation and Control is pending for interim study before state government committees of both the House and Senate. Apparently the Governor's Advisory Committee on Youth Development will work with the appropriate legislative committee during the interim period to give further study to the complicated issues related to juvenile probation and after-care.

### Community Services for Youth

While the reports of the Penal System Study Committee of the Bar Association and the Governor's Advisory Committee on Youth Development both stressed the importance of developing community-level alternatives to training schools for delinquent youth, no legislation was enacted that would structure state-level leadership to be responsible for developing such programs. H 1297 was introduced and passed the House, but it was in the Senate Calendar Committee at the time of adjournment. It would have established an Office of Community Services for Youth within the Department of Social Rehabilitation and Control to be responsible for developing and coordinating community-based services and residential programs for predelinquent and delinquent youth. It defined the government's role as one of leadership, technical assistance, and setting of standards. The basic idea was that the state should contract for services and/or care with local public or private groups that could meet state standards.

### Authority to Close Training Schools

G.S. 134–2 provides that the Board of Youth Development "may not authorize the consolidation or abandonment of any of the said schools." This statute has been interpreted to mean that only the General Assembly may close any of the seven juvenile training schools or the Juvenile Evaluation Center operated by the Office of Youth Development, Department of Social Rehabilitation and Control. The administrative leadership has spoken of closing Samuel Leonard School at McCain, but neither the Office of Youth Development nor the Secretary of Social Rehabilitation and Control has such legal authority. While the 1973 General Assembly did not amend or change G.S. 134–2, it did adopt a special provision of the Appropriations Act. (Sec. 12, Ch. 533, known as H 50) that states:

> Should sufficient reductions in the population of the schools be effected, the Department of Social Rehabilitation and Control shall have the authority, subject to approval of the Advisory Budget Commission, to close one or more of the remaining schools, and to redirect the resources to other programs within the Department.

### Convert Richard T. Fountain School to Reception and Diagnostic Center

The Advisory Budget Commission recommended, in accordance with Recommendation 2 of *As the Twig Is Bent*, that Richard T. Fountain School be converted to a reception and diagnostic center for the eastern counties, similar to the reception and diagnostic center in the west at Swannanoa. The Appropriations Act. (Sec. 12, Ch. 533, known as H 50) contains a provision to implement this recommendation: "It is the intent of this General Assembly that the Richard T. Fountain School at Rocky Mount shall be converted from its present custodial function to a reception and diagnostic center for students admitted to the Youth Development System from central and eastern North Carolina." This would apply only to committed delinquents. This diagnostic resource, when available, would not necessarily meet the serious problems relating to the need for an adequate community-level diagnostic study and evaluation of any child before he is adjudicated delinquent or committed to training school. The General Assembly appropriated some $152,000 to convert Fountain to a reception and diagnostic center. The farm program is being terminated at Fountain. The additional funds will provide a net of ten more staff positions for the reception and diagnostic program to be staffed at about the same level as the Juvenile Evaluation Center, Swannanoa.

There was less emphasis on new buildings at the training schools than in previous sessions. The major capital fund appropriations were at Stonewall Jackson School—including $1,250,000 for two new cottages (50 students each) and $250,000 for renovating the physical education facilities.

# Planning Law

Philip P. Green, Jr.

The most significant piece of planning legislation enacted by the 1973 General Assembly was a revision of the General Statutes chapter pertaining to counties (Chapter 153) that placed them on almost exactly the same footing with respect to planning powers that cities have enjoyed since Chapter 160A went into effect on January 1, 1972.

The most significant planning legislation yet to be acted upon by the General Assembly consists of bills that would fundamentally realign the relationship between the state, the regions, and the local governments of North Carolina insofar as their roles in regulating land use and development are concerned.

In addition to these landmark pieces of legislation, planners will find much to please them when they open the package of laws passed and laws still before the General Assembly. The statutes relating to various aspects of the physical environment are of most interest, but many other useful provisions were enacted.

## COUNTY LAW REVISION

Following enactment of the new General Statutes Chapter 153 (Ch. 822, H 329), one is hard put to find any essential differences between the powers of counties and the powers of cities in North Carolina. The new chapter follows closely the organization of Chapter 160A, which is perhaps natural, since both resulted from recommendations of the Local Government Study Commission that has done such yeoman work the past three biennia.

One caution should be noted at the outset: the revised law does not take effect until February 1, 1974. This time lag was granted to give county officials an opportunity to become familiar with the new provisions before they must use them, and it will also allow the legislators time in the 1974 session to make needed corrections before any unexpected harm results.

Most of the provisions relating to planning and land-use regulation have been combined in a single article—Article 18. This includes authority to create a planning agency and undertake planning programs, to regulate subdivisions, to zone, to create an inspection department and enforce the State Building Code, and to create Regional Planning Commissions or Regional Planning and Economic Development Commissions.

But this does not exhaust the county planning powers. Counties are authorized to enact historic district provisions as part of their zoning ordinances, to acquire and preserve open space, to adopt and enforce minimum housing standards ordinances, to create Appearance Commissions, and to create Historic Properties Commissions by the municipal laws in Article 19 of G.S. Chapter 160A, and to carry on urban renewal activities by a newly codified Article 22 of Chapter 160A. Many other planning-related statutes apply to both cities and counties.

**Jurisdiction.** The geographical jurisdiction within which a county can exercise planning powers remains unchanged under the new act. Essentially, it is all territory falling outside the jurisdiction of cities and towns; in addition, a county may regulate inside a municipality's jurisdiction with the approval of the municipal governing body. The nuances through which jurisdiction is allocated are spelled out in G.S. 160A–360.

**Planning Agency.** As the law now stands, any county that wishes to exercise planning powers must

create a planning board consisting of at least three members and no more than the number of townships in the county; it could substitute a joint planning board created by agreement with other local governments, but such a board would not be authorized to play a role in subdivision plat approval.

The new law introduces considerable flexibility to this situation, just as the municipal law does. It first authorizes the creation of "one or more agencies" to carry on and administer the planning function. Next, it provides that among these agencies may be a "planning board or commission" or a "joint planning board created by two or more local governments." Rather than specifying the membership of the planning board, the act provides that it may be of any size or composition deemed appropriate, organized in any manner deemed appropriate; however, the size may not be less than three members. This would allow, for example, the creation of a very large and much more representative planning board than has been customary under existing law.

Next, while the act provides for a zoning board of adjustment, it specifically allows the county to designate some other planning agency to perform the duties of such a board.

This basic philosophy of allowing maximum flexibility in organizing local planning efforts has not been fully appreciated by cities and towns since their new laws went into effect. It remains to be seen whether there will be more experimentation among the counties. It is quite possible under the act, for example, to have no planning board at all—but instead to let the board of county commissioners or a committee of that board or a committee of the regional council of governments or some entirely different agency exercise the functions traditionally performed by the planning board.

The act duplicates the municipal law in its statement of the duties to be assigned to one or more planning agencies:

(1) Make studies of the county and surrounding areas;

(2) Determine objectives to be sought in the development of the study area;

(3) Prepare and adopt plans for achieving those objectives;

(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;

(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;

(7) Perform any other related duties that the board of commissioners may direct.

It should be apparent from a reading of this list that some of these duties are advisory, some legislative, and some administrative in nature—which suggests that *several* agencies, rather than a single one, may be required to perform them.

**Procedures for Adoption, Amendment, and Enforcement.** The new law standardized the procedures to be followed by a county whenever it adopts a regulation under either Article 18 of Chapter 153 or Article 19 of Chapter 160A. A public hearing must be held by the board of commissioners before it adopts or amends any ordinance authorized by these two articles. Notice of such hearing is to be published once a week for two successive calendar weeks in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county. The first publication must be not less than fifteen days nor more than twenty-five days before the date fixed for the hearing.

The new provisions for enforcing county ordinances are basically the same as those authorized for cities. As such, they are much broader in their scope than anything heretofore available to counties:

> § 153-123. *Enforcement of ordinances.*—(a) A county may provide for fines and penalties for violation of its ordinances and may secure injunctions and abatement orders to further insure compliance with its ordinances, as provided by this section.
>
> (b) Unless the board of commissioners has provided otherwise, violation of a county ordinance is a misdemeanor as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine or term of imprisonment to be imposed for its violation is some amount of money or number of days less than the maximum fine or term prescribed by G.S. 14-4.
>
> (c) An ordinance may provide that violation subjects the offender to a civil penalty to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.
>
> (d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such a case, the General Court of Justice has jurisdiction to issue any order that may be appropriate, and it is not a defense to the county's application for equitable relief that there is an adequate remedy at law.
>
> (e) An ordinance that makes unlawful a condition existing upon or use made of real property may provide that it may be enforced by injunction and order of abatement, and the

General Court of Justice has jurisdiction to issue such an order. When a violation of such an ordinance occurs, the county may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt and the county may execute the order of abatement. If the county executes the order, it has a lien on the property, in the nature of a mechanic's and materialman's lien, for the costs of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter was heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

(f) Subject to the express terms of the ordinance, a county ordinance may be enforced by any one or more of the remedies authorized by this section.

(g) A county ordinance may provide, when appropriate, that each day's continuing violation is a separate and distinct offense.

**Changes in Subdivision Law.** The major substantive changes in Article 18 have to do with county regulation of land subdivision. The first of these is perhaps the most fundamental: where the existing law authorizes counties to regulate the "platting and recording" of any subdivision of land, the new law authorizes them to "regulate the subdivision of land." Further, subdivision regulations "may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever a subdivision of land takes place." This blocks one large loophole in the enforcement of such regulations.

Next, the definition of a subdivision has been altered somewhat, so as to exempt divisions into parcels of ten acres or more (rather than five acres as at present).

Third, the law authorizes a requirement that "recreation areas serving residents of the immediate neighborhood within the subdivision" be dedicated or reserved, and also provides for the reservation (for not over eighteen months) of school sites shown on an approved plan and requested by the local board of education.

Fourth, the law authorizes counties for the first time to require installation of "community service facilities in accordance with county policies and standards" and for posting of bond or other methods to assure compliance with such requirements.

Finally, it clarifies and broadens the penalty provisions to make it absolutely sure that anyone subdividing land in violation of an ordinance or making "any use" of a plat that has not been properly approved and recorded is guilty of a misdemeanor.

**Changes in Zoning Law.** Only two minor changes were made in the basic county zoning enabling act. The first makes clear that the board of adjustment or board of commissioners, in issuing a special use permit or a conditional use permit, may require that street and utility rights-of-way be dedicated and that provision be made for recreational space and facilities. These conditions will be of particular importance where a special use permit is issued for an apartment development, a shopping center, or a similar type of large-scale unified development. The second makes clear that when a portion of the county is zoned (which must include initially at least 640 acres), it may later be enlarged with any amount of new territory.

At the same time, the new act tidies up the situation with respect to county zoning by eliminating the confusing provisions of the present Article 20 of Chapter 153, which applies only to counties having two or more cities with populations over 35,000 (in practice, Guilford County).

**Changes in Building Inspection Law.** The existing provisions governing creation of a county inspection department are carried forward in the new law with only minor changes. The law makes it a misdemeanor for anyone to undertake construction activity without a permit or for anyone to occupy a completed structure without a certificate of compliance. It allows an inspector to engage in the construction business outside his county's jurisdiction, so long as this is not inconsistent with his duties or with the interests of the county. And it incorporates the provisions of

present G.S. 153–9(47a) that require licensing of county electrical inspectors.

The separate subsections of the present G.S. 153–9 that provide for building inspectors, fire prevention inspectors, plumbing inspectors, and electrical inspectors are deleted in the new act, since their substance is included in the inspection department law.

**Regional Planning Commissions.** The existing provisions relating to Regional Planning Commissions and Regional Planning and Economic Development Commissions (G.S. Chapter 153, Article 23) are greatly abbreviated in the new act, without any real changes in the substance of the law.

## CHANGES IN MUNICIPAL PLANNING LAWS

At the same time that it was developing county planning laws comparable with those adopted for cities in 1971, the Local Government Study Commission was reviewing the municipal chapter for defects that had shown up after its adoption. Several of the changes it recommended to deal with these defects will be of considerable interest to municipal planners. These are embraced in three acts.

Chapter 426 (H 334) is an omnibus act making a great many typographical corrections as well as amendments of substance. In the planning field, it amended G.S. 160–360(f) to make clear that when a city extends its jurisdiction to an area regulated by a county or when a new town is incorporated, the same "transfer" rules apply as when the city annexes such an area—i.e., the county ordinances remain in effect for a period of up to 60 days, within which the city can take all necessary actions to adopt its own regulations for the area; this is designed to prevent a time gap in the regulation of such areas.

Second, it repealed the requirement in G.S. 160A–364 that all planning ordinances and amendments be recorded in the registry of deeds in order to be valid. While this requirement had certain advantages, the costs and inconvenience it entailed were found to offset them. It should be noted that G.S. 160A–373 *still* requires that subdivision regulations be filed with the register of deeds, and G.S. 160A–360(b) still requires recording of the ordinance specifying boundaries of a city's extraterritorial jurisdiction.

Third, the act clarified, without basically altering, the procedures in G.S. 160A–372 under which subdivision regulations may require the reservation of school sites.

Finally, the act brought G.S. Chapter 157A relating to Historic Properties Commissions into Article 19 of Chapter 160A, revised the membership provisions for such commissions and for Historic District Commissions, and specifically authorized joint city-county Historic Properties Commissions, Historic District Commissions, and Appearance Commissions.

Chapter 669 (H 340) dealt with a narrower but more fundamental problem. In the closing days of the 1971 General Assembly, a very confusing subsection [G.S. 160A–360(j)] was added to the municipal law that apparently made it necessary that all municipal subdivision-regulation, zoning, building inspection, minimum housing, historic zoning, appearance commission, and similar ordinances be readopted in order to retain their validity. Because this conflicted with G.S. 160A–2, municipal attorneys were uncertain what to do.

Chapter 669 has removed this uncertainty by validating any ordinance legally adopted before January 1, 1972, plus any ordinances adopted since that time that were not recorded under requirements of G.S. 160A–360(b) or 160A–364 or that were adopted without the city's adopting an ordinance defining its extraterritorial jurisdiction. (In Mecklenburg County the validation applies only to ordinances within city limits.)

Finally, Chapter 525 (H 427) dealt with another transitional situation—when territory was transferred from one unit's jurisdiction to another's. It added a new G.S. 160A–360(i) providing that whenever a unit acquires territory from the jurisdiction of another unit, any person with vested rights under a permit or other evidence of compliance with the surrendering unit's ordinances may exercise such rights as if no change had occurred. The acquiring unit may take any action regarding such permit that the surrendering unit could have, but otherwise the property is to be subject to the ordinances of the acquiring unit. Some litigation may be required to clarify the application of this new provision.

## ENVIRONMENTAL LEGISLATION

Local planning officials will be interested in several new laws that deal with particular aspects of the environment. Chief among these is Chapter 392 (S 244), which sets up mechanisms to control sedimentation and soil-erosion problems. This act repeals local enabling acts that authorized Forsyth County, Wake County, and Guilford County and their municipalities to adopt erosion-control ordinances and replaces them with a combination of state and local powers.

**Sedimentation Control.** Chapter 392 creates a North Carolina Sedimentation Control Commission in the Department of Natural and Economic Resources and directs that it develop, promulgate, and administer a comprehensive erosion- and sedimentation-control program. It is to adopt rules and regulations before July 1, 1974, governing "land disturbing activities" (which are defined to exclude farming, forestry, and surface mining controlled by the Mining Act of 1971); to assist and encourage local govern-

ments in developing their programs, including development of a model ordinance for their guidance; to approve the plans and programs of local governments; to assist and encourage other state agencies in similar programs; to develop techniques for sedimentation and erosion control that can be used by individuals; and to carry on related activities.

The act itself contains certain regulations of "land disturbing activities" that presumably will be over and above any regulations adopted by the Commission or local governments. These forbid such activities in close proximity to a lake or natural watercourse without a buffer zone, or the grading of slopes to an angle greater than the angle of repose for saturated soil conditions without adequate erosion-control structures. Further, they require that planting or other ground cover be provided on graded land within thirty working days after a grading phase is complete and that it be provided on any portion of a tract greater than one acre on which active construction is not taking place.

The act departs rather sharply from the tradition of authorizing local governments to regulate the use of land with a minimum of supervision from the state level. Instead, it sets up an intricate pattern of relationships in which ultimate power clearly resides in the state government. It begins by granting the state agency sole ("to the exclusion of local governments") jurisdiction over land-disturbing activities by state, federal, or local governments and by persons (a) having the power of eminent domain, (b) licensed by the federal government, or (c) financed in whole or in part by the state or federal governments. (It is an interesting question whether the last category would include all private developers operating under federally insured financial arrangements.) For all other land-disturbing activities, the state agency is to have "concurrent" jurisdiction with local governments.

Next, local governments apparently must submit their proposed program of control (including ordinances, policies, administrative agencies, etc.) for the Control Commission's approval. Approval can be granted only if the Commission finds that the proposed program equals or exceeds the standards of its model ordinance.

But most surprising is a provision that when the Commission finds that a local government is not administering and enforcing an approved program adequately, it is to give notice; and if corrective action is not taken within thirty days, the Commission is to assume enforcement responsibility until such time as the local government indicates its willingness and ability to resume this responsibility. The curious thing is that the Commission will apparently be enforcing the local ordinance, rather than its own regulations, during such period.

The act itself contains little specification of provisions that must be included in local regulations. However, it does require that they provide for reference of all applications to the appropriate Soil and Water Conservation District for its comments and recommendations before local action. The local decision must be communicated to the applicant within thirty days after he applied; in the event of modification or disapproval, he is entitled first to a public hearing and then to an appeal to superior court.

A full range of enforcement powers including civil penalties, criminal penalties, and injunctive relief is provided if state or local regulations are violated. In addition, provision is made for civil suits by injured individuals seeking damages, an injunction, an enforcement order, or a combination of such remedies.

**Septic Tank Regulation.** Another major act is aimed at an annoying problem that exists particularly in rural areas and particularly with mobile homes. Chapter 452 (H 296) greatly strengthens the powers of local health agencies to control sewage disposal from mobile homes or other dwellings in areas not served by either a public or a community sewage disposal system (which are adequately regulated elsewhere in the General Statutes).

The act requires that an improvements permit be secured from the local health department before commencing construction of a dwelling or moving either a mobile home or dwelling onto a site other than in a mobile home park. Field inspection and tests of the site are required before this permit can be issued.

Even then, the dwelling or mobile home cannot be occupied until the department determines that its sewage disposal system (septic tank or otherwise) has been properly installed. If the system has been properly installed, the department is to issue a certificate of completion.

To reinforce these provisions, the act provides that no other permit for construction on a conventional dwelling can be issued until the improvements permit has been issued; and no permit for electrical or other construction work on a mobile home or for location on a particular site can be issued until a certificate of completion has been issued. Furthermore, no electricity can be supplied to the structure until the local electrical inspector has certified to the company that the above requirements have been met. Finally, mobile home dealers are required to post a warning notice concerning these provisions at a conspicuous place in their sales offices and to supply each purchaser with a summary of the act prepared by state health officials.

This act will become effective on October 1, 1973.

**Floodway Regulation.** The 1971 General Assembly provided for the first time a system of state control over floodways, codified as Part 6, Article 21, G.S. Chapter 143. This act attempted to induce as much participation by local governments in the enforce-

ment process as was deemed feasible without sacrificing the state's interest in minimizing flood damage.

Basically, it worked as follows. It authorized local governments to request technical assistance and information from state and federal agencies so that they could determine the amount of floodway to be kept free of obstructions, and it directed the state's Board of Water and Air Resources to assist them in a variety of ways. On the basis of technical data received, local governments were to delineate floodways on an officially adopted map, filed with the register of deeds, the clerk of superior court, and the Director of Water and Air Resources.

Once this delineation was made, the state law prohibited the placing or construction of any artificial obstruction within a floodway (with stated exceptions) without a permit from the appropriate local government. Local governments were to adopt ordinances spelling out the procedures for issuance of such permits. The act itself set forth the penalties and enforcement provisions to be applied in case of violations.

Unfortunately, only an extreme minority of North Carolina's local governments responded to the challenge and actually delineated floodways within their jurisdiction (which was the same as their zoning jurisdiction). So now Chapter 621 (H 1143) has taken the next step. It authorizes the State Board of Water and Air Resources itself to delineate floodways "when the reach of a stream in which a floodway is determined by the Board to be needed exceeds the jurisdiction of a single local government" or where it determines that the floodway of a stream segment should be delineated and the responsible local governments have not acted. The act still leaves the responsibility for issuing permits for construction within floodways to local governments, however. (It might be noted that if local governments fail to act, the statute will itself prevent construction except for the stated exemptions; so it is in the interest of property owners to insist that local governments do provide for issuance of permits.)

A minor change in the act also adds railroads and railroad rights-of-way to the list of exempted uses within a floodway.

**Other Acts.** When the 1971 General Assembly enacted the Environmental Policy Act, it was evidently so unsure of its impact that it required the Governor to report experience under that law to the Legislative Research Commission together with recommendations as to its continuance, and set an expiration date of September 1, 1973. Some (but apparently not total) confidence has developed since that time, and Chapter 119 (S 23) extends the expiration date of the act to September 1, 1977. This affects local governments incidentally, since the act allows them to require environmental-impact statements from the developers of all projects affecting more than two acres.

Chapter 534 (H 297) established machinery for a state-level control system over oil pollution of water resources. One of its provisions is that it will not interfere with any local ordinances governing discharge into sewerage systems.

Chapter 619 (H 1114) makes an appropriation of $95,000 for 1973–74 to establish an environmental education and information program under the North Carolina Department of Administration, with the assistance of an advisory council.

## GOVERNMENTAL ORGANIZATION

Four acts stemming from the Local Government Study Commission will facilitate city-county consolidation or reorganization. Chapter 822 (H 329), which rewrote Chapter 153 of the General Statutes, includes an article providing for a city-county consolidation study commission and sets up the mechanics for putting a consolidation plan before the electorate. Chapter 537 (H 332) creates a new chapter of the General Statutes defining a consolidated city-county and stating its relationship to urban service districts within the city-county which perform particular functions or services in addition to or to a greater extent than those provided in the city-county as a whole.

Chapter 489 (H 330) and Chapter 655 (H 331) provide for an arrangement within existing counties and cities very similar to that of a city-county and its urban service districts. The former allows counties to create "service districts" in unincorporated areas for the purposes of beach-erosion control, flood and hurricane protection works, fire protection, recreation, sewage collection and disposal, solid waste collection and disposal, and water supply and distribution; in each of these districts, special taxes can be levied and bonds can be issued for the stated functions. The second act would allow cities to form service districts of the same type, except that their functions would include beach-erosion control, flood and hurricane protection works, downtown revitalization projects, drainage projects, and off-street parking facilities; many North Carolina municipalities will be particularly interested in the possibility of establishing such a district for downtown revitalization ("CBD renewal").

## OTHER LEGISLATION OF INTEREST

**Farm Taxation.** Planners have long been interested in the effects of tax policy on patterns of land development. It has often been charged that tax supervisors induced premature development of rural areas by revaluing farm properties as though they were used for urban purposes as soon as neighboring farms were subdivided or became industrial sites; this upward revaluation "priced the farmer out of

the market" and led him to sell his property for urban development, presumably before there was any real need for it.

In response to such charges, Chapter 709 (S 416) provides a new system of farm valuation. Individually owned agricultural, horticultural, or forestry land of stated characteristics will, on application of its owner, be classified and valued for taxation according to its current (rather than its potential) use. This will normally hold the taxes down and prevent pressure to develop the land for other purposes. But to guard against abuse by land speculators, the act also provides for parallel valuation according to current practice (presumably taking into account the land's potential for other uses), and taxes on any extra value beyond the classified value are treated as deferred taxes. If the owner disposes of the property or changes its use so as to make it ineligible for the special classification, these deferred taxes plus interest become due immediately. Furthermore, if the owner fails to notify the tax supervisor of disposal or change in use, he will be subject to an additional 10 per cent penalty. This act goes into effect January 1, 1974.

**Nature Preserve.** In the 1972 general election, the voters approved an amendment to the State Constitution (Art. XIV, Sec. 5) creating a State Nature and Historic Preserve in which land could be placed by state and local governments—essentially a legal status rather than a particular area. Once land was so dedicated, it could be removed for other uses only through legislation passed by three-fifths of the members of each house of the General Assembly. Chapter 443 (H 272) spells out the procedures under which dedicated land is to be accepted, and Resolution 84 (HJR 283) officially accepts into the Preserve all extant units of the state park system as well as thirteen state historic sites.

**Trails.** Chapter 670 (H 436) creates a new North Carolina Trails System, to be composed of state scenic trails, state recreation trails, and connecting or side trails. Administration of the system is to be centered in the Department of Natural and Economic Resources, with a nonpaid North Carolina Trails Committee for advice and assistance. The Department may designate trails on lands that it or another state agency administers, on lands owned by a political subdivision of the state, and on private lands as to which appropriate rights are obtained from the owner. The Department of Administration is authorized to acquire necessary property interests by gift, purchase, or exchange.

Chapter 545 (H 460) is a related act authorizing a North Carolina Appalachian Trail System to support the Appalachian Trail with access trails and others.

**Growth Policies.** Chapter 200 (S 489) officially brings North Carolina under the Southern Growth Policies Agreement. This agreement, among seventeen southern states, creates and staffs a Southern Growth Policies Board with responsibility for preparing and periodically revising a Statement of Regional Objectives to guide development in the region, making studies of problems, submitting recommendations, etc., with respect to matters of interstate or regional significance.

**Housing Corporation.** In 1969 the General Assembly provided for the creation of a North Carolina Housing Corporation, with broad responsibilities for furnishing financial assistance to developers and purchasers of housing for lower-income persons. After a test case sustained the constitutionality of this legislation, the Corporation went into operation, but the conditions of the bond market and other factors sharply restricted its activities. Early in this session a bill was introduced indicating that the Corporation had been a failure and providing for its abolition. This bill was sidetracked in committee, but Chapter 727 (H 1091), which indicated deep legislative displeasure with the lack of results from the Corporation's activities, was then enacted.

Chapter 727 dismissed all officers and employees of the Corporation within 30 days after its passage and provided for a turn-over of all its assets and liabilities to the State Treasurer, who was designated as trustee for the Corporation. Citing the current crisis in federal funding of low-income housing, the act authorized the State Treasurer (with the concurrence of the Council of State and the Attorney General) to issue up to $25,000,000 in bonds and to finance limited-income housing projects of public or private nonprofit agencies. And finally, it set up a study commission to review the state's role in the housing field and recommend to the General Assembly where it should go from here.

**Miscellany.** Chapter 720 (H 878) takes another whack at the abandoned-car problem by setting up a state program administered by the Department of Transportation and Highway Safety for the collection and disposal of derelict and abandoned motor vehicles.

A number of proposals were submitted calling for studies of or direct assistance to mass-transit programs. The only one adopted was Resolution 111 (SJR 568), which directs the Department of Transportation and Highway Safety to study mass-transit needs and alternatives for rapid intercity travel and to make recommendations to the Governor and the General Assembly.

Chapters 538 (H 519) and 539 (H 520) authorize counties and cities to regulate swimming, surfing, and littering in the Atlantic Ocean adjacent to their respective zoning jurisdictions.

Chapter 512 (H 514) amends the metropolitan sewerage district law to allow multi-county districts. Resolution 97 (HJR 1184) directs a legislative study

of the problems of small water and sewerage systems. Among the areas to be studied are "requirements and programs for the planning of area-wide water and sewer systems, as a part of the planning activities of the official 17 State Planning and Development Regions" and "regulation 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."

## LOCAL ACTS OF INTEREST

As usual, a considerable amount of 1973's planning legislation took the form of local acts applicable to only one or two units. One of the more interesting of these acts provides that all governmental units and agencies in Mecklenburg County (other than the six small towns) must submit any proposed capital project or acquisition or sale of real property to the Charlotte-Mecklenburg Planning Commission for its review and recommendations before taking action.

Winston-Salem, Forsyth County, Surry County, and municipalities in Surry secured legislation authorizing their zoning ordinances to provide for "special use districts." These districts, which would be created only on application of the owners of land included, would permit no development as of right; all development would be pursuant to special use permits and subject to the conditions imposed thereon. The acts specifically apply the *Allred* rule that anyone applying for a conventional zoning amendment must argue in general rather than specific terms. Greensboro adopted provisions of this type last year without specific statutory authority (which may not be necessary), and so far its experience has apparently been salutary.

Durham asked for and received authority to require site plans as part of rezoning requests and before building permits are issued, and to require compliance with approved plans. It also was authorized to increase the size of its board of adjustment (adding outside representatives to the usual five members) and its subdivision review board. The act authorizing the city-county planning commission for Winston-Salem and Forsyth County was amended to delete the mayor and county commission chairman as members.

The Town of Lake Waccamaw was granted planning, zoning, etc., power over all property within 2,000 feet of the high-water mark of Lake Waccamaw, in addition to the usual one-mile extraterritorial power.

Chapel Hill and Asheboro were added to the coverage of earlier special acts giving their redevelopment commissions greater latitude in disposing of redeveloped property.

The General Assembly took no final action on a general law authorizing municipalities to annex noncontiguous areas whose owners apply for annexation, but it passed special acts giving this authority to Carolina Beach, Jacksonville, Kure Beach, Nashville, Rocky Mount, Selma, and Wilmington. Wake County municipalities were empowerd to annex unincorporated "islands" within their existing limits.

## PENDING LEGISLATION

As indicated at the outset, some of the most significant legislation introduced has not been acted on finally by the General Assembly and will go over to the 1974 session. Only summaries of these proposals will be given in this article, but it is anticipated that a later article will analyze in more detail the issues that they pose.

**Land Policy Act.** HB 1180 SB 857 would be entitled the State Land Policy Act if passed. It would begin by creating a Land Policy Council composed of eight heads of state departments to work within the Department of Administration. Although given significant responsibilities for compiling data and making studies, the Council's main duties would be to develop and recommend to the Governor by July 1, 1975, both a State Land Policy and a State Land Classification System, together with recommended legislation to make them effective.

The State Land Policy would consist of principles, methods, standards, etc., to be followed by state agencies and local governments in such matters as acquisition, management, and disposition of public lands and the regulation of private lands in or affected by areas of particular public concern, new communities, large-scale developments, and projects of regional impact. It would be promulgated by an executive order of the Governor.

The State Land Classification System to be developed by the Council would provide for from four to eight land classifications, which would give emphasis to the relationships between land-use potential, physical and fiscal feasibility of providing public services to particular land, and equitable tax policies for each classification. The Council would develop definitions and standards identifying the types of land and issue directives to regional and local governments concerning the procedures for assigning classifications. Classification of land would probably be done by regional planning agencies as regional land-use plans, with review by a state agency to ascertain compliance with appropriate directives. A target date of January 1, 1979, is set for complete implementation of the system throughout the state.

**Coastal and Mountain Areas.** SB 614 HB 949 (coastal areas) and SB 951 HB 1348 (mountain areas) are virtually identical bills that would provide a significant degree of state intervention in the land-use planning and regulation of environmentally fragile coastal and mountain areas of the state.

The coastal area is defined to include all counties bounded by the ocean or a sound or bounded or

intersected by a major coastal river to the end of tidal influence. The mountain area would include all counties bounded or intersected by the Great Smoky Mountains, Blue Ridge Mountains, Brushy Mountains, or South Mountains, or draining into the Mississippi rivers system, or any part of which is over 2,500 feet above sea level.

Both bills would create within the Department of Natural and Economic Resources nine-member (Coastal) (Mountain) Resources Commissions consisting of citizens of the affected areas appointed by the Governor to make regulations and policy, plus much larger advisory councils containing representatives of all counties and some municipalities in the region, the regional planning agencies, and certain state departments.

In each area, an Area Management Plan would be prepared by the Department of Administration as lead agency, with assistance from other state departments. While the plan was being considered before adoption, it would be subjected to at least three public hearings, circulated to federal, state, and local agencies for comment, reviewed by regional councils of government, and finally adopted by the Governor. Following adoption, local governments would be expected to review their ordinances for consistency with the plan and make necessary modifications.

The most critical enforcement provisions have to do with areas of environmental concern designated by the Secretary of Natural and Economic Resources with the approval of the resources commission. The bills specify the criteria for these areas, which in the coastal area would include such lands as beaches, sand dunes, coastal marshlands, estuarine waters, etc. In the mountains they would include areas where the public has special rights, areas whose development would increase the danger of flooding or erosion or landslides, areas near the Blue Ridge Parkway or other state or national parks, areas above 3,000 feet, etc.

Within the areas of environmental concern, the Department of Natural and Economic Resources would be required to establish and administer a "one-stop" system of permits for development. The bills would establish findings required to justify denial or modification of permit applications together with procedural safeguards in the form of notice, hearing, and appeals to the courts.

**Lead Regional Organizations.** SB 290/HB 462 and SB 295/HB 369 would have dealt specifically with the powers of North Carolina's seventeen planning regions. The first, as modified by a committee substitute in the Senate, would require designation of a Lead Regional Organization in each region to coordinate planning and development among member governments, coordinate with the state, coordinate local governments with other public agencies, provide recommendations to state and federal governments concerning their policies on comprehensive planning in the regions, and encourage sound state and regional planning. Each LRO would be required to prepare and adopt comprehensive regional development plans. The LRO would review local plans submitted to it in light of its regional plans. It would continue its present "A-95 review" of local projects involving federal or state assistance.

In addition, SB 290/HB 462 would create a State Regions Advisory Commission to provide policies, guidance, and assistance for handling regional planning issues, interregional conflicts, and related matters.

SB 295/HB 369 would strengthen the LRO's staff and financial resources. It would appropriate annually to each LRO $10,000 plus 5 cents per capita for the citizens of the region (with a minimum of $20,000). It would transfer the professional planners of the Division of Community Services in the Department of Natural and Economic Resources to the Office of State Planning of the Department of Administration, and then physically locate them in the offices of the LROs (where they would remain state employees but be subject to the supervision of the LRO board). To handle these increased staffing needs, it would appropriate $500,000 annually to double the present number of state-employed planners, of which not over 15 per cent could be used for state-level administration; at least 50 per cent of the remainder would be used to provide free planning and management assistance to local governments.

**Land Conservancy Corporation.** SB 899/HB 1281 would attack another planning-related problem by creating a North Carolina Land Conservancy Corporation and empowering it to buy environmentally critical land; to preserve or aid in the preservation of natural areas of importance; and among other things, to loan funds to any county or municipal government for acquiring parks, recreational land, or other lands necessary for the furtherance of the public interest.

This bill was coupled with SB 900/HB 1282, which would authorize a vote of the people on whether to issue $50,000,000 in land conservancy bonds, the proceeds of which either would be made available to the Land Conservancy Corporation for its programs or, if it was not established, would be disbursed by the Department of Administration.

Related bills, HB 524 and HB 523, would create a Land and Water Conservation Fund of $2,500,000 per year within the Department of Natural and Economic Resources to provide grants (on a 50–50 matching basis) to local governments for the purchase of parks, recreational, wilderness, and natural areas, green belts, and similar uses. Lands purchased would have to be maintained in perpetuity, operated and

maintained in accordance with accepted conservation and recreation principles, and made available to all residents of the unit.

**Land Sales Registration.** Although it does not affect them directly, local planning officials may benefit indirectly from the provisions of HB 642. This would regulate land sales involving twenty-five or more lots less than five acres in size, fundamentally through registration with the Secretary of State (along with detailed data concerning the project) and through a requirement that land purchasers be furnished a detailed property report.

## Overview

*(Continued from Page 11)*

act becomes effective for most private employers in the state on July 1, 1973, and will apply to public employers a year and 90 days later.

The State's minimum wage will be raised to $1.80 an hour effective September 2 (Ch. 802, H 154). The licensing acts for auctioneers (Ch. 552, H 1107) and for detectives and other private security agents (Ch. 528, H 1020; later amended by Ch. 738, H 1347) were rewritten with greatly expanded coverage. Several proposals were made to exempt newsmen from revealing confidential sources of information in court proceedings, but after one of these, S 160, failed its second reading in the Senate, no action was taken on any of the others (S 124, H 163, H 413).

# Public Schools, Community Colleges, and Universities

Robert E. Phay

The 1973 General Assembly can be labeled the education legislature: it appropriated more new money for education than any other legislature in history—$123 million. Kindergartens, ten-month employment for teachers, reduced class size, separate busing for elementary and high school students, new programs for disabled children, occupational education, and new longevity steps in the salary index were the major new programs funded. Other notable enactments from the eighty-plus education bills introduced include the amendments to the teacher tenure act, required written contracts for superintendents, authorization for a $300 million bond referendum for school construction, minimum 950 score on the National Teachers Examination (or equivalent) for professional employees, and a study commission on collective bargaining. These and other acts affecting public education are summarized in this article.

## APPROPRIATIONS

The 1973 legislature appropriated $688 million to operate the public schools for the 1973–74 school year. The major areas and programs that account for the increases are the following:[1]

*Kindergartens.* $12.3 million was appropriated to maintain the present 119 classes and add 522 new kindergarten classes next fall ($9.9 million of new money). Each school administrative unit will operate a minimum of two classes during the 1973–74 school year with new classes added each year as the state's school system gears up to a kindergarten program for all five-year-olds by September, 1978 (Ch. 603, H 127). The schedule set out in the statute, G.S. 115–359, is as follows:

| *Enrollment Date* | *Enrollment Percentage* (86,000 five-year-olds) |
|---|---|
| September, 1973 | Not less than 16% |
| September, 1974 | Not less than 25% |
| September, 1975 | Not less than 45% |
| September, 1976 | Not less than 65% |
| September, 1977 | Not less than 85% |
| September, 1978 | Not less than 100% |

Under recently adopted State Board regulations, the local school board will adopt its own selection procedure, which procedure is to assure that a broad cross-section of children is chosen for the limited number of spaces available.

*Ten Months for Teachers.* G.S. 115–157 was rewritten to increase the term of classroom teachers from 9.3 to 10 calendar months (cannot exceed 200 working days). Presumably this will give teachers 13 additional days for planning, in-service training, and study. In practice, it will add 9½ work days because holidays and vacation must be provided for in the 10 months. See discussion of school calendar.

Teachers will be paid at the end of each month

1. Most of the appropriated increases are authorized by the State Current Operating Appropriations Act (Ch. 533, H 50) and the State Capitol Improvement Appropriations Act (Ch. 523, H 49). Supplemental appropriations acts are cited separately in the textual description.

of service and will be given 1.25 days of paid vacation per month. Supervisors and principals not already employed on a twelve-month basis will be extended to twelve months. Janitors and maids also are extended to ten months. The legislature appropriated $33.4 million for these extensions of employment, which amount to a 7 per cent increase in annual income for teachers (Ch. 647, H 1097).

*Reduced Class Size.* $26 million was appropriated to reduce class size, which will provide 2,079 new teaching positions in the state. The class-size reduction is set out in G.S. 115–59.1. It provides that classes for grades 1–3 shall be limited to 26 pupils; grades 4–8 to 33 pupils; and high school grades to 35 students per class, or 150 students per teacher per day. The class size is based on average daily membership (ADM), which means a shift from average daily attendance (ADA). ADM will produce a larger student count than ADA. School boards must provide adequate classroom facilities to meet these standards (Ch. 770, S 536).

*Dual School Bus.* $3.2 million was appropriated to provide for separate systems of transportation for elementary school students and for junior or senior high school students. As the state phases in kindergartens, separate busing was thought necessary because younger children have shorter school days, long bus rides are particularly difficult for younger children, and younger pupils are often intimidated by older ones. G.S. 115–180 was amended to permit school boards that own and operate buses to establish separate systems. Funds are to be allocated to the local board by the state board (Ch. 586, H 791).

*Exceptional Children.* Two hundred new teachers to work with exceptional children—the gifted and talented, the mentally retarded, those with impaired speech or hearing, and other children with physical problems—were funded by the legislature. Funds also were appropriated ($865,000) to aid children with learning disabilities and to increase the grant-in-aid for the trainable mentally retarded from $765 to $855 per child (Ch. 580, H 549). An appropriation of $124,000 will provide tuition grants for children with multiple handicaps who must attend private schools or special schools out of state (Ch. 628, H 1317). (See section on students for details of these programs.)

*Teacher Pay.* The legislature provided a 5 per cent pay increase for school employees and a $250 per year raise in the index salary for teachers and supervisors with an A–13 or G–14 certificate.

*Drug Education.* A state drug education program to be established by the North Carolina Drug Authority was funded with $100,000. It provides for contracts with the State Board to provide training for public school teachers, counselors, and administrators and to introduce the subject into the school curriculum (Ch. 587, H 853).

*Statewide Assessment.* Funds were appropriated ($346,000) to continue the statewide assessment of sixth graders. A bill to require the testing of *all* sixth graders failed.

*Occupational Education.* The budget contains $5.8 million in new money to improve occupational education. It does not provide money for new programs but will provide 446 new teaching positions (10½ more months per position) to expand and improve the existing eight programs of occupational education.

*Replace Federal Money.* $1.3 million was appropriated to replace the federal money lost under Title V of ESEA. This lost federal money had employed people in data processing, statistics, and personnel under the State Controller and instructional program people in the Department of Public Instruction.

*Programs for the Deaf.* $521,765 was appropriated to the Department of Human Resources to establish preschool satellite programs for the deaf and educationally hard-of-hearing children (Ch. 630, H 1331).

*Instructional Supplies and Clerical Assistance.* Clerical assistance will be increased in the superintendents' offices by 35 per cent ($486,000 appropriated) while general clerical assistance was increased from $2.20 to $2.70 per student ($659,000) and the per student allotment for instructional supplies from $5.25 to $6.75 ($1.7 million).

*Assistant Principals.* $550,000 was appropriated to pay a supplement of $660 to assistant principals in schools with 25 or more teachers.

## TENURE ACT AMENDMENTS

The teacher tenure act of 1971 was the subject of several proposed pieces of legislation. Bills to postpone tenure and to abolish it failed. The one bill that passed almost failed because of a floor amendment in the Senate. The problems were worked out in a joint conference committee, however, and the bill was ratified the day before adjournment (Ch. 782, H 697).

The enacted amendments substantially rewrite the 1971 act; it represents the most significant change to the statutes governing school operation by this year's legislature. The changes made by these amendments have been analyzed in detail in a memorandum to school superintendents and in an article that will appear in the September issue of the NCAE's *North Carolina Public Schools.* (Copies of the memorandum can be obtained from the Institute on request.) The major changes made by the amendments are summarized below.

(1) *Redefines Teacher.* Teacher, a term that originally had included anyone holding a Class A certificate or better, is now defined as a person

(a) who holds at least a current, not expired, Class A certificate *or* a regular, not provisional or expired, vocational certificate, *and*

(b) whose major responsibility is to teach or directly supervise teaching *or* who is classified by the State Board of Education or is paid as a classroom teacher, *and*

(c) who is employed to fill a full-time, permanent position.

The new definition is more restrictive than the one in the original statute. All school employees who do not teach or directly supervise teaching *or* are not classified or paid as a classroom teacher are not "teachers" within the statutory definition. Thus such school employees as supervisors of transportation or cafeteria services are not eligible for tenure. [G.S. 115–142(a)(9).]

(2) *Redefines Demote.* Demote, which had meant any reduction in compensation and had applied to all tenured persons, is redefined to apply only to a person classified or paid as a classroom teacher. Furthermore, it does not include a reduction in compensation that results from the elimination of a special duty, such as that of an athletic coach, assistant principal, or choral director. [G.S. 115–142(a)(5).]

(3) *Defines Day.* The word day now means a school or work day. Saturdays, Sundays, and legal holidays are not days for the purpose of this act. Thus when the statute says that a probationary teacher whose contract will not be renewed must be given 30 days' notice before the end of the employment period, it means 30 work days, not 30 calendar days. [G.S. 115–142(a)(1).]

(4) *Pre-employment File.* The statutory amendments specifically permit school boards to maintain a file of pre-employment information about a teacher. This file is to be kept separate from the personnel file and need not be made available to the teacher. However, no data placed in this file may be introduced as evidence at a hearing on the dismissal of a teacher. [G.S. 115–142(b).]

(5) *Notice of Tenure Decision and Nonrenewal of a Probationary Teacher's Contract.* The original act placed no requirement on the school board to notify the teacher whether his contract would be renewed. School boards are now required to give a probationary teacher 30 work days' notice before the end of the employment period whether he will be re-employed. For teachers who have completed the three-year probationary period, notice of contract renewal confers tenure. [G.S. 115–142(c)(2) and G.S. 115–142(o).]

(6) *Leaves of Absence.* A new provision is added that permits a tenured teacher who is granted a leave of absence to return as a tenured teacher at the end of the authorized leave. [G.S. 115–142(c)(5).]

(7) *Administrative Tenure.* The original statute had granted administrative tenure or tenure in the position to all supervisors, principals, and directors of departments or the equivalent. The statute was rewritten to make "administrative tenure" applicable only to principals and supervisors of the instructional program. (See G.S. 115–142(a)(7) for a definition of supervisor, which was added to the statute.) Thus a tenured teacher who "has served in the position of a principal or supervisor in a particular position in the school system for three consecutive years shall not be transferred to a lower-paying . . . position without his consent" unless the board proceeds under the statute's dismissal procedure. [G.S. 115–142(d)(2).]

(8) *Reasons for Dismissal.* G.S. 115–142(e)(1) sets out the reasons for which a teacher may be dismissed. Two amendments were made to this section.

(a) Subsection "f" was rewritten to provide for dismissal for "Habitual or excessive [originally, "habitual and excessive"] use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes."

(b) A new subsection "m" was added that authorizes dismissal for "Failure to maintain one's certificate in a current status."

(9) *Suspension without Pay.* The original act did not permit a suspension without pay for "inadequate performance." This section is now rewritten to permit a board to dismiss a probationary or career teacher for inadequate performance, but it may do so only if the "teacher's performance is so inadequate that an emergency situation exists requiring the teacher to be removed immediately from his duties. . . ." Furthermore, the board may not remove for "inadequate performance" unless it gives written notice to the teacher that it plans to suspend him and holds a hearing not less than two or more than five days after such notice. The notice must include a statement of the reasons for the planned action. [G.S. 115–142(f).]

(10) *State Board Pays for Review Panel.* The original act did not specify who shall pay the compensation due the panel of the Professional Review Committee. The statute now states that the State Board of Education shall pay the panel members. [G.S. 115–142(g)(3).]

(11) *Dismissal Procedure Shortened.* The time limits provided by the original statute have been sharply reduced. The original act had permitted a delay for as long as 120 days (180 days if the panel extended its investigation) before the school board could act or conduct a hearing on the superintendent's initial recommendation for dismissal. The time has been reduced for most steps in the procedure.

(12) *Immediate Review of Superintendent's Recommendation.* The original act required the teacher who wanted a dismissal hearing to proceed with a panel of the Professional Review Committee before he could get the local school board to consider the superintendent's recommendation. The act was amended to permit the teacher to request an immediate review before the school board. If the teacher requests an immediate hearing, he forfeits his right to a panel hearing. [G.S. 115–142(h)(3).]

(13) *Private Hearing.* The original act had permitted either the superintendent or the teacher to have the hearing public. The statute was amended to require that the hearing be private. [G.S. 115–142(j)(1).]

(14) *Procedural Rights of Superintendent.* The original act had limited the procedural rights of the superintendent at the hearing before the board of education. The statute was amended to give the teacher and the superintendent the same procedural rights, particularly with respect to the introduction of evidence and cross-examination of witnesses. [G.S. 115–142(j)(3) and –142(k)(1).]

(15) *Subpoena Powers.* The original act had given the school board the power to subpoena people but not documents. The statute was amended to authorize the subpoena of papers and records as well as people. [G.S. 115–142(l)(3).]

(16) *Payment for a Teacher's Witnesses.* The original act had required the board to pay for mileage and per diem for up to ten witnesses for the teacher. The statute was amended to reduce the board's financial responsibility to the costs of not more than five of the teacher's witnesses. The statute further provides that the board shall not pay these costs for any witness who is an employee of the board or who resides in the county in which the dismissal originates. However, the board must reimburse an employee for any loss of compensation incurred because he is subpoenaed to testify before the board in a dismissal hearing. [G.S. 115–142(l)(3).]

(17) *Letter of Resignation.* The original act had required only teachers with a Class A certificate or better to give notice of resignation (45 calendar days' notice). The statute was amended to provide that all teachers must give not less than 30 *work* days' notice before resigning. [G.S. 115–142(o).]

(18) *Tenure Extended to Teachers in Special State Schools.* G.S. 115–142 was extended to cover all teachers in the state's special correctional institutions (Ch. 315, S 699). [G.S. 115–142(p).]

## TEACHERS AND OTHER SCHOOL EMPLOYEES

Much of the legislation affecting school employees—ten months' employment, amendments to the tenure act, and pay increase—is discussed under other headings. In addition to these changes, several others that directly affect teachers can be noted.

*Procedure for Reducing the Employment Term of Occupational Teachers.* A new statute, G.S. 115–142.3, sets up a procedure separate from the tenure act for reducing the term of employment of an occupational education teacher. The procedure requires that the school board notify the Department of Public Instruction 90 days and the teacher 60 calendar days before the date the board intends to reduce the teacher's term. The reasons for the proposed action must be given in the notice to the teacher. Within 15 calendar days after the teacher receives the notice, he may request a hearing, which must be held within 20 calendar days after the teacher requests it. The teacher must be given at least 10 days' notice of the date of the hearing.

At the hearing the teacher may be accompanied by a representative of his choice and may present evidence to show that the reduction is unjustified or arbitrary. After the hearing, the board must notify the teacher of its decision (Ch. 780, S 913).

*Vacation.* G.S. 115–157 provides that all school employees shall be given 1.25 days of annual vacation leave for each month of employment. The school board shall designate when the vacation can be taken, which must be at a time when students are not in regular attendance. Vacation days cannot be used to extend the term of employment and are not cumulative from one year to another (Ch. 647, H 1097).

*Sick Leave.* The State Board of Education has been authorized by G.S. 115–11(13) to provide for sick leave not to exceed five days per year. This section was rewritten so that the State Board must provide "a minimum of five days per school term of sick leave with pay for all public school employees . . . ." (Ch. 675, H 957). School term presumably means school year.

*Retirement.* Probably the most important new fringe benefit to school employees was the change in the retirement statutes to permit retirement after thirty years of service (Ch. 242, H 497).

*Teacher Injured by Violent Episode.* The 1971 General Assembly enacted G.S. 115–159.1, which authorized full payment of salary for any teacher disabled from an "episode of violence" during the course of his employment. This section was rewritten to broaden its coverage to injuries incurred in activities incidental to employment; the options for time of recovery is changed so that the teacher may receive

full salary for the shorter of these periods: one-year continuation of disability, or the period during which he is unable to engage in employment due to injury (formerly, for remainder of school year or continuation of disability). The rewritten statute also defines episode of violence (but does not limit it to the definition) to mean any act of violence directed toward school buildings or facilities or to any teacher or student by any person (Ch. 753, S 736).

*Teacher Licensing and Practice Act.* The 1971 General Assembly directed the Legislative Research Commission to study the desirability of establishing a commission to regulate the preparation, licensing, and practices of teachers. The LRC study resulted in a bill (SB 119–HB 150) that would establish an advisory commission on teacher preparation and licensing with substantial voice in the development of licensing standards for teachers, accreditation standards for teacher education institutions, and performance standards for teachers. This bill and another relating to teacher licensing (S 735) were never reported out of the education committees to which they were sent. It is likely, however, that they will get top priority by the NCEA when the legislature reconvenes in January.

*Minimum NTE Score.* The first major controversy in education to surface in the 1973 General Assembly concerned the State Board of Education's elimination in the fall of 1972 of the 950 minimum score on the National Teachers Examination for teacher certification. After numerous bills had been introduced on the subject and the House had passed unanimously a resolution calling for its education committee to study the problem (HR 430), the legislature amended G.S. 115–153 to add a statutory requirement that the State Board of Education either maintain the NTE's 950 score or set an equivalent minimum score for teacher certification (Ch. 236, S 323).

## STUDENTS

One could label all legislative actions dealing with schools as actions affecting students, the direct beneficiaries and users of schools. There are, however, several enactments that deal specifically with such student issues as enrollment, conduct, and learning problems. Several of these, e.g., kindergartens and dual transportation, were discussed under appropriations. The following enactments are also noteworthy.

*Bus Transportation.* In addition to the appropriation that will fund a dual bus transportation system for elementary and upper grade children, the Senate adopted a resolution directing a study of the problem of children forced to stand while riding on school buses because of the buses' inadequate seating capacity. The resolution states that over 42,000 children who ride school buses are not provided necessary seat spaces. The resolution directs the Legislative Services Commission or the appropriate senate standing committee to study the problem and report a recommendation to the General Assembly by January 1, 1974 (SR 887).

*Children with Learning Disabilities.* A new program with an appropriation of $865,000 was established for educating children with learning disabilities. A new section on learning disabilities is to be established in the Department of Public Instruction. It will include a supervisor for testing and pupil classification who will, in cooperation with existing testing services, test and evaluate all children of compulsory-attendance age in order to identify those with learning disabilities. In addition, the three regional centers staffed by the Department are to have a consultant to help establish programs for disabled children in the local school systems. Local school superintendents may submit program proposals or funding requests for current programs to the Department of Public Instruction's section director. An approved program or request will be funded by the State Board from the Nine Months' School Fund (Ch. 580, H 549).

*Grants for Exceptional Children.* The exceptional child (defined as the seriously emotionally disturbed, those with a severe learning disability or handicapped in sight and hearing, those with multiple handicaps, the mentally retarded) has been a neglected person in the public school program. The 1971 General Assembly, recognizing North Carolina's inability to train and educate all of these children adequately, established a grant program to finance their education in private or out-of-state education facilities when suitable facilities are not available in the state's public schools. Codified as G.S. 115–315.7 through –316.12, the program authorized grants up to $1,200 per child. The 1973 legislature increased the maximum grant to $2,000 per year per child and, more important, appropriated $124,000 for the grants (Ch. 628, H 1317). The 1971 legislature that enacted the original legislation failed to appropriate any money to fund the grants.

## SUPERINTENDENTS

G.S. 115–39 was amended to provide that the superintendent must have a written contract stating the term of office and the conditions of the agreement. The statute now requires a copy of this contract to be filed with the State Superintendent before the employment term begins (Ch. 446, H 1125).

The statute as amended describes the procedure that a local school board must follow in employing a superintendent. Presumably a school board whose superintendent is in the middle of a term that began before this amendment requiring a written, filed contract is not required to put the terms of the em-

ployment in writing and send it to the State Superintendent. To avoid any question of not complying with the statute, however, the board and superintendent may want to sign a written contract. If that is done, the Attorney General's opinion is that the parties may add conditions similar to those set out in the model contract developed by the NCEA and the NCSBA. This may be done even if new terms, other than the length of term as approved by the State Board, are added to the original agreement.

In addition the legislature amended G.S. 115–44, the statutory procedure for employing assistant and associate superintendents, to require a copy of these contracts also to be filed with the State Superintendent (Ch. 733, H 1126). G.S. 115–44 already had required written contracts for these personnel.

## SCHOOL BOARDS

*School Calendar.* In implementing the ten-month employment period for teachers, school boards are required by G.S. 115–157(a) to adopt regulations designating the legal holidays and the times when vacations may be taken, which shall not be when students are scheduled for regular attendance. In addition the board shall designate that part of the 10 months that is not already set aside for classroom teaching, holidays, or annual leave that shall be work days. The majority of boards will adopt a 1973–74 school calendar that begins on August 15 and ends on June 14, so that the school year will include nine legal holidays, 12 ½ days of paid vacation, and 196 ½ work days. In developing the school calendar, boards are required to consult with school personnel (Ch. 647, H 1097).

*Class Size.* G.S. 115–59.1 requires school boards to maintain the class size limits noted earlier. If classes exceed the maximum size permitted, the board shall correct the excess, transferring teaching positions between schools if necessary. Boards must provide adequate facilities to meet these new standards.

*Others.* Two bills that would have increased school board authority and one that would have reduced it failed to be enacted. A Senate bill authorizing boards to control access to student records was given an unfavorable report by the House Calendar Committee, and a bill that would have prohibited disorderly conduct by any person or group of persons at any public or private educational institution is still in a House Judiciary Committee. A third bill that would have reduced board authority over property was killed in the House and is discussed in the next section under property.

## PROPERTY

Two significant bills were introduced affecting school property—one was ratified and the other failed. The ratified act authorizes a statewide referendum on $300 million in bonds for school construction (Ch. 657, H 415). If the electorate approves the issue next November, the state will be authorized to sell $300 million in school construction bonds, the proceeds from which would be allocated by the State Board of Education to local school boards for capital improvements. The local school board can use the money "for the construction, reconstruction, enlargement, improvement, repair and renovation of public school facilities, and for the purchase of equipment essential to the effective operation of the facilities." Funds also may be used to retire existing school bond indebtedness if the State Board decides that the local unit does not need new or enlarged facilities. The amount each local unit will receive is set out in the act and is based on its average daily membership for the 1971–72 school year.

If the bond referendum passes, each school board must submit a plan of school organization and expenditure of funds. If the State Board approves the plan submitted, it is to make the funds available to the local unit. The State Board is to receive $750,000 of the funds to pay for expenses incurred in the preparation and sale of the bonds and for educational surveys, research, and technical assistance to local administrative units.

The second property bill of note failed. It would have amended G.S. 115–126 to provide that when public school property is sold, the proceeds of the sale would be paid to the county commissioners and deposited in the general fund (S 272, H 339). The bill also would have provided that when school property is not used for school purposes for five years or more, the county commissioners may declare it unnecessary or undesirable for school purposes and take title to the property by adopting and recording a resolution to that effect. The bill, strongly opposed by the State School Boards Association, received an unfavorable report in the House.

## FINANCE

The important changes in school finance were changes made in the statutory chapters on taxation and county finance rather than in those on schools. Two changes worth noting are the elimination of the assessment ratio (Ch. 695, S 147) and the revision of the necessary expense doctrine (Ch. 803, S 333).

The first and most significant change was the repeal of the county's authority to assess property for taxation at less than full appraisal value, i.e., the authority to adopt an assessment ratio. The taxation statutes in Chapter 105 were rewritten to require, effective January 1, 1974, that property 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.

The second change concerned statutory changes to the necessary expense doctrine to implement the new finance article of the State Constitution. Since 1868 the North Carolina Constitution has contained a necessary expense limitation. For many years it applied to schools, requiring that there be voter approval before locally levied and collected taxes could be spent for operating schools. Through a series of court decisions, the necessary expense limitation was held inapplicable to taxes levied for schools, but the issue with respect to supplementing the school program without voter approval was litigated as recently as two years ago. Under the new constitutional provision and the implementing statute, G.S. 153–65, the county may levy property taxes without restriction "to provide for the county's share of the cost of kindergarten, elementary, secondary, and post-secondary public education."

The only change to the school finance statutes of Chapter 115 was an amendment to G.S. 115–78, the statute that sets out the objects of expenditure for the operation of schools. The sections dealing with the current operating and capital outlay funds were amended to permit inclusion in the budgets for these funds appropriations for "interscholastic, intrascholastic, or intramural athletic or physical education programs," including purchase of fields, bleachers, and structures for this purpose (Ch. 796, S 319).

### COLLECTIVE BARGAINING

The teacher's right to engage in collective bargaining has been the subject of proposed legislation for the last several sessions. This session was no exception, except that this time an introduction received legislative approval.

There were two introductions on the subject—a bill and a resolution. The bill would have set up a collective bargaining procedure for all public employees. Upon introduction, it was referred to a House Judiciary Committee, where it remained for the duration of the session (H 1070).

The resolution met with more success; it was adopted. It creates a seventeen-member legislative study commission that is "to consider legislation regarding relations between professional school employee associations and school boards and . . . [the need for] orderly procedures governing relationships between them. . . ." The commission is to report to the Governor on or before January 15, 1974 (HR 1254—Res. 101).

### LOCAL SCHOOL BOARD ACTS

Over 65 local acts affecting the operation of local school boards were introduced; 40 were ratified into law. The bills dealt with a variety of topics, but the most common subjects, as in the 1971 General Assembly, were election procedures and compensation for board members.

The consolidation of two or more school administrative units was the subject of only one bill, the lowest number of such bills for many sessions. That bill authorized the merger of the Wilson County and Elm City school boards (Ch. 321, H 877).

### CONCLUSION

This summary of school legislation indicates why the 1973 General Assembly can be called the education legislature. Such long-sought goals as public kindergartens, extended teacher terms, and improved programs for the disabled child will become a reality. These newly funded programs represent long-sought objectives of educators. The combination of factors that made it possible is not likely to reoccur soon; how soon will in large part depend on how well the teachers, administrators, and governing boards use the new resources they have been given to improve the education of North Carolina's children.

## Community Colleges

The community college system continued to receive good treatment from the General Assembly. A total of $84 million was appropriated to operate the state's system of community colleges and technical institutes, including $14.3 million for increased enrollment, $2.1 million for new programs, and $5.2 million to provide an 8.1 per cent salary increase for faculty (Ch. 533, H 50). This represents an increase of approximately $27 million in operating money. In addition, $25.4 million in matching capital outlay funds (Ch. 637, H 307) and $14 million in equipment funds were appropriated (Ch. 533, H 50). The total appropriation of $123 million represents almost double the $64 million given to the system for the fiscal year just ending.

The number of community colleges was increased from 15 to 17 by this legislature. Mitchell College, formerly a private junior college in Iredell County, was made a community college (Ch. 576, H 380), and the college transfer program was added to Craven Technical Institute to make it a comprehensive community college.

The program and service of the system's institutions were increased, with new authorization for off-campus instruction. G.S. 115A–5 was amended to permit community colleges and technical institutes to teach extension courses at convenient locations away from the institution's campus (Ch. 768, S 394). Part-time students are to be charged tuition representing a pro rata portion of the regular tuition rate for a full-time student. However, uniform registration fees, in lieu of tuition charges, are to be charged students enrolled in courses financed primarily from state funds. (The State Board of Education set $2 as

the registration fee to be charged by all institutions for these courses.) The act also authorizes the State Board of Education to waive the tuition—which it did at its June meeting—for these courses for volun-did at its June meeting—for the courses for volunteer firemen, law enforcement officers, and prison inmates.

The legislature also said that no state-appropriated funds are to be used to support general adult education extension courses (avocational and recreational courses) (Ch. 533, H 50). These courses may, however, be supported from other sources, including local tax funds, registration fees, foundation grants, etc.

To encourage institutions to provide services over a wider geographical area and to support financially those institutions now serving larger areas of the state, the legislature provided that institutions serving more than four counties are to be called regional institutions and are to receive more state funds (Ch. 590, H 888). A new subsection, G.S. 115–18(a)(3), was added to provide a formula for computing this increased state aid. It is based on the population of counties served by the regional institution.

# Higher Education

Major controversy over higher education arose in every legislative session of the sixties, culminating in the restructuring of higher education in the adjourned session of October, 1971. By comparison the 1973 session was quiet. Higher education was given a respite from the turmoil of legislative conflict at least for one year. The return of the General Assembly next January, however, will bring a showdown on whether the one-year medical school at East Carolina University will be expanded.

*Appropriations*

For the first time in North Carolina history, a unified budget for all the public senior institutions of higher education and for general administration, including aid to private institutions, was submitted to the General Assembly. The legislature accepted the unified budget concept and appropriated $202 million, including $6 million for aid to private institutions for the annual operation of higher education, a substantial increase over the just-completed fiscal year. This appropriation will permit the UNC Board of Governors to fund their top fifteen priorities.

The legislature also appropriated a total of $89 million for capital outlay purposes. This includes an appropriation to the Board of Governors of $7.5 million which it had not requested as a reserve to establish an additional degree-granting medical school (Ch. 562, H 1123). The original appropriation bill provided for a $25 million appropriation, and it is generally recognized that the $7.5 million appropriation is only a beginning. Although some sought to have the money appropriated specifically for the East Carolina medical school, no school is specified. It is clear, however, that many legislators intended that the money be used at East Carolina.

*Election of UNC Governors*

The 1973 General Assembly elected the first group of eight governors to the 32-member UNC Board of Governors to be selected by the legislature. In accordance with G.S. 116–6, the Senate elected one woman, one person from a minority race, and two at-large members, while the House elected one Republican and three at-large members (Res. 75).

On June 30, 1973, all elected and appointed members of the sixteen boards of trustees went out of office. On July 1, 1973, they were superseded by 16 new boards of trustees, each (except the School of the Arts) composed of eight members elected by the Board of Governors and four members appointed by the Governor, all for overlapping four-year terms, and the president of student government.

*Eligibility for Resident Tuition*

G.S. 116–143.1(b), the statute setting out eligibility for in-state tuition at state-supported institutions of higher education, was rewritten to change the requirements for classification as a resident for tuition purposes (Ch. 710, H 326). Before its amendment, the statute required a person to live in North Carolina for at least twelve months preceding his first enrollment or re-enrollment at a state university to attain resident status qualifying him for the in-state tuition fee. The amendment eliminated the provision that prohibited time spent in residence as a student from being considered as satisfying the twelve-month requirement. A similar provision recently was declared unconstitutional by the United States Supreme Court in *Vlandis v. Kline*, 41 U.S.L.W. 4796 (U.S. June 11, 1973). To be classified a resident, a student now need only prove that his presence in the state during the twelve-month period "was for purposes of maintaining a bona fide domicile rather than for purposes of mere temporary residence incident to enrollment in an institution of higher education. . . ." The amended act avoids the constitutional infirmity of permanent classification of certain students who move from other states to North Carolina to establish a residence and should pass constitutional muster under the *Vlandis* decision. Since the Supreme Court in *Vlandis* also noted with approval a University of Minnesota twelve-month durational residency requirement, that part of the statute should withstand constitutional scrutiny.

The amended statute also provides that if a student can show that his parents are bona fide domiciliaries of the state, that fact is prima facie evidence that he is a resident; as a corollary, an out-of-state domicile of a student's parents is prima facie evidence that he is a nondomiciliary.

*Deposits*

G.S. 116–143 was amended to repeal the requirements imposed by the 1971 General Assembly that

each state institution of higher education collect deposits from entering and returning students (Ch. 116, H 487). These deposits, which were nonrefundable if the student did not give timely notice to the school that he would not attend, were $100 for incoming students and $50 for returning students. The requirement of a nonrefundable $10 application fee was also repealed.

*Traffic and Parking*

The statutes in Chapter 116 that govern the registration and use of motor vehicles on the campuses of specified institutions was rewritten to make them applicable to all sixteen campuses of the University and to grant to the institutional boards of trustees greater power to regulate traffic, parking, and registration of vehicles on and around their campuses (Ch. 495, H 1190). Although all existing traffic regulations promulgated under the former statutes remain in force until modified by the individual boards of trustees, G.S. 116–42 was rewritten to authorize each institutional board of trustees to adopt ordinances for the control of pedestrian and vehicular traffic on university property, to fix speed limits, and to make it unlawful to operate any vehicle on campus without a permit. Boards also may require parking permits, install parking meters, and build parking garages. Specified institutions were authorized in a new G.S. 116–42.2 to regulate parking on named streets as long as the regulations do not conflict with town ordinances. Boards are authorized to set fines, graduated according to the seriousness of the offense, for violation of any of these ordinances; a violation of an ordinance, unless the institution's board indicates otherwise, is a misdemeanor that may be punished by a $50 fine or 30 days in jail.

Sanctions that the board may impose for repeated violations or for refusal to pay fines are revocation of registration permits and termination or suspension of enrollment or employment by the university. The University also can institute a civil action for debt against the offender, as well as attach a lien to the car if it is removed. Fines are to be retained by the institution and used to defray the costs of administering the ordinances, to provide bus service, or for other parking and traffic purposes.

The statute requires public notice of all traffic and parking ordinances, including filing a copy in the offices of the President and the Secretary of State.

*Revenue-Bond Anticipation Notes*

To make floating bonds for such things as student housing, recreational facilities, and continuing education buildings less of a financial burden, G.S. 116–191 was amended to provide for issuance of revenue-bond anticipation notes by the UNC Board of Governors, subject to the approval of the Advisory Budget Commission (Ch. 662, H 1289). These notes, which must mature within two years of the date of issuance, may pay interest rates not exceeding 8 per cent. The proceeds from the notes may be used only for the purposes for which the bonds are to be issued. They may be sold at public sale, and the board may put whatever limitations on their issue it deems necessary.

One question this amendment poses is whether the bonds it provides for replace the temporary bonds originally authorized by G.S. 116–191 as anticipatory notes to the regular bond issue. Apparently so.

*State Support for Private Institutions of Higher Education*

To aid private institutions of higher education, the 1971 General Assembly enacted a plan of public financial assistance for those private institutions in North Carolina that are accredited by the Southern Association of Colleges and schools and are not seminaries, bible colleges, or similar religious institutions (G.S. 116–19 through –22). The financial-aid plan has two distinct parts, but only the first was funded by the 1973 General Assembly. An appropriation of $1.6 million was made to the UNC Board of Governors to fund this first part, which will contract with individual private institutions to pay the school a fixed sum for each North Carolina resident enrolled as a full-time undergraduate for the regular academic year. The second part, set out in G.S. 116–20, is to provide a monetary inducement to private institutions to increase the number of North Carolinians already enrolled. No appropriation was made for this purpose.

The appropriation is intended to provide up to $200 for each full-time North Carolina student enrolled at a private institution as of October 1, 1973. The total amount needed for this purpose is over twice as much as the $1.7 million the Board of Governors had requested. In return for this money, the school must agree to provide and administer scholarship funds for "needy" North Carolinians in an amount at least equal to the amount paid to the school that fiscal year.

The financial aid program initiated by the 1969 General Assembly for the medical schools at Duke and Wake Forest Universities was continued and enlarged (Ch. 533, H 50). An appropriation of $1.425 million was made to the UNC Board of Governors for disbursement to the schools for the education of physicians. State support was increased from the 1971 level of $3,000 to $5,000 for each North Carolina resident enrolled on November 1, 1973. Of each $5,000, the school must place $500 in a fund for tuition remission to "needy" North Carolina students. A ceiling of $1,500 per student per year is set on scholarships from this fund. The Board is to insure that the funds are used for medical instruction and not for religious or other nonpublic services. It also is to encourage the schools to orient students toward personal health care in North Carolina, with emphasis on family and community medicine.

# SOCIAL SERVICES

Mason P. Thomas, Jr.

### Legislative Program of State Board of Social Services

The State Board of Social Services approved fifteen bills for introduction in the 1973 General Assembly. This proposed legislation did not contain major policy or program changes; it was designed primarily to clarify existing state statutes or to modify state law to conform with recent federal changes. Eight of the bills passed (S 596, S 597, S 598, H 933, H 934, H 935, H 1010, H 1273). Six were pending in committees of the Senate or House when the General Assembly adjourned in May—S 595, to clarify limitations on eligibility for AFDC; H 932, to authorize the State Board to contract with state and federal agencies; H 1108, rewriting Part 1, Art. 3 of G.S. 108, dealing with licensing of charitable solicitation; H 1228, to subrogate the county to rights of recovery of recipients of assistance from the State Fund for Medical Assistance; H 1229, dealing with child custody in child-abuse cases; H 1232, making it a misdemeanor to abuse the food stamp program. One of the most significant bills failed: S 649 (rewriting G.S. Ch. 52A to update the Uniform Reciprocal Enforcement of Support Act) passed the Senate but received an unfavorable report in the House Calendar Committee on May 11. Under the rules, this legislation (pending since 1971) cannot be reintroduced in January 1974 unless the House rules are suspended (which requires a two-thirds vote in the House). Thus, it appears that North Carolina's reciprocal support procedures will not be updated until the 1975 session of the General Assembly.

### Study by House Social Services Committee

The House of Representatives adopted House Resolution 115 on February 1, 1973, directing the House Committee on Social Services to investigate the Aid to Families with Dependent Children program (hereafter called AFDC) and the incentives and opportunities for recipients of AFDC to work. The Committee was directed to report its findings to the House of Representatives by April 1, 1973, which it did in a written report filed on the due date. During this two-month study period, the Committee held weekly public hearings at which a number of professionals and others appeared to provide information about the problems of implementing the federally established Work Incentive Program (hereafter called WIN)—including WIN-I, required by amendment to the Social Security Act in 1967, and WIN-II, established by the Talmadge amendments of 1972. The Committee's report made eight recommendations to the 1973 General Assembly as follows:

1. Appropriate sufficient state funds to pay 100 per cent of budgeted need in AFDC cases rather than the current level of 86 per cent of budgeted need.

2. Increase the financial incentives for absent fathers to support their children in AFDC cases by allowing the family to keep the first $30 per month contributed by the father plus one-third of any amount he contributes over $30 without allowing such payments to be considered resources in determining the amount of the AFDC payment.

3. Increase the number of jobs listed with the Employment Security Commission by expanding the categories of listings and by requiring all state agencies to list all job openings.

4. Seek any necessary changes in or waivers of federal regulations and provide AFDC recipients with more financial incentives to secure employment by continuing financial assistance at the same level for two months after they go to work.

5. Reduce the number of forms and the amount of paperwork required to administer the AFDC program and WIN–II, so that there will be more professional time to work with the needs of individual recipients.

6. Require technical schools and community colleges to provide more job training for AFDC recipients.

7. Increase the availability of day care for children of WIN–II participants who need day care for their children in order to be able to go to work.

8. Direct the State Board of Social Services to conduct a thorough study of the current cost of living for the purpose of updating the base standard for subsistence payments for those who receive public assistance.

The Committee also identified other areas where changes are needed, including more financial incentives for AFDC recipients to work, development of public service employment for AFDC recipients when jobs are not available in the private sector, and provision of a standard allowance to cover variable items (such as rent, utilities, heat, etc.) in order to reduce the rate of errors in AFDC payments. The Committee also recommended in its report that it be designated an interim study committee to continue studying the complex issues related to the social services program, with a view to making further recommendations or proposing legislation to the General Assembly when it reconvenes in January 1974. The House Social Services Committee is not one of the interim study committees.

Four of the Social Services Committee recommendations were subjects of House resolutions or legislation. HR 1077 directs the State Board of Social Services to make a thorough study of the current cost of living in North Carolina, using the resources of the Office of State Budget, with a view toward revising the standard public assistance budget (established more than twenty years ago; last changes made in 1970). The Board is directed to report its findings to the Joint Appropriations Committee of the General Assembly and to the House Social Services Committee in January 1974. HJR 1233 directs the State Department of Social Services and the Employment Security Commission to take steps to reduce the forms and papers and various administrative procedures in administering the AFDC program and WIN–II and to report to the General Assembly in January 1974 concerning their efforts and progress. Ch. 715 (H 1231) requires every state agency to list every job opening occurring within the agency (including a description of the duties and salary range) with the Employment Security Commission within ten working days after the opening occurs and to report to the Commission within five working days when an opening has been filled.

The most far-reaching legislation adopted as a result of the Committee's leadership was Ch. 714 (H 1230), which implements its recommendation concerning exemption of certain support payments of absent parents in determining eligibility for AFDC. The bill amends G.S. 108–38 to exempt certain contributions by parents in determining eligibility for AFDC when parental absence is one of the reasons for eligibility. The county department must disregard the first $30 and a third of any amount over $30 provided by that parent for any calendar month. The new law applies only when the parent's support payments are provided for under a court order or judgment or a contract on file with the county department of social services. Since this amendment to G.S. 108–38 may be contrary to federal law and/or policy, the General Assembly enacted Ch. 826 (H 1362) in its closing hours to provide that the amendment is not effective if the Secretary of Health, Education and Welfare determines that the amendment does not comply with the requirements of federal law for the state plan for AFDC.

**Repeal Lien Law**

Under former G.S. 108–29, the receipt of Aid to the Aged and Disabled (hereafter called AAD) created a claim against personal property or the estate of a recipient and a lien against any real estate owned by the recipient to the extent of the public assistance received. Ch. 204 (H 36), effective on its ratification on April 16, 1973, repeals all sections of G.S. Ch. 108 dealing with the claim and lien (G.S. 108–29 through –37.1), so that receipt of AAD will not create a claim or lien after April 16, 1973. However, the act does not apply to claims and liens created before its effective date, so that claims or liens established before April 16 are entitled to enforcement as heretofore provided by statute. This change is not so drastic as it seems at first glance. Under federal law, the AAD program will terminate on January 1, 1974, when this categorical public assistance program will be absorbed by the Supplementary Security Income program (hereafter called SSI), to be administered through the Social Security system throughout the United States. It will no longer be a state or county program (except where supplementation or medical services are required), and the federal program contains no provision for a claim or lien.

### New General Assistance Program

When AAD is absorbed in the Social Security program as of January 1, 1974, the maximum monthly payment will be $130.00, which will not meet all the special and medical needs of some aged or disabled needy persons. For example, monthly rates for boarding home care vary from $205–$225. The legislative solution to this need for supplementation of the new federal program is contained in Ch. 717 (H 1273), effective July 1, 1973, which establishes a permissive General Assistance program that counties may implement if they wish. The legislation uses the terms "general assistance" in a confusing way, for it specifies five types of needy aged or disabled persons that are to be covered, but it does not cover general assistance to other persons or to AFDC recipients. The new law states that "general assistance" may be granted to persons who would have been eligible for AAD before January 1, 1974, but do not qualify under SSI after January 1, 1974, including: (1) needy spouses; (2) essential persons; (3) certain disabled persons; (4) those persons who need supplemental payments in boarding homes, rest homes, and convalescent homes for the aged or infirm; (5) those who need attendant care at home. The law contains the following significant clause: "Nothing in this Part should be interpreted so as to preclude any individual county from operating any program of financial assistance using only county funds." Thus counties are free to operate traditional general assistance programs from county funds as in the past.

The State Board of Social Services requested that this new general assistance program to supplement SSI be financed by the state and counties on a 50–50 basis. Apparently the appropriations bill provides financing on this basis. It appears that most counties will need to supplement SSI and that they will be under economic pressure to participate in the new program. If they do participate, they must administer the program under the rules and regulations of the State Board of Social Services, renamed the Social Services Commission after July 1, 1973.

### Exempt Resources in Determining Assistance

Some AFDC or other public assistance recipients participate in rehabilitation plans in which they receive funds to reimburse them for expenses they incur in participating in the program, such as transportation for on-the-job training programs or the cost of going to a training facility. Under previous law, such funds would be included in their public assistance budget as a resource, thus reducing the amount of the public assistance payment. Ch. 716 (H 1245), effective when ratified on May 23, 1973, exempts such funds from being considered as a resource in the public assistance budget. It provides: "Financial assistance and in-kind goods or services received from a governmental agency, or from a civic or charitable organization, shall not be considered in determining the amount of assistance to be paid any person under Chapters 108 and 111 of the General Statutes provided that such financial assistance and in-kind goods and services are incorporated in the rehabilitation plan of such person being assisted by the Division of Vocational Rehabilitation of the Department of Human Resources or the Vocational Rehabilitation Program of the Commission for the Blind." This new law is broadly worded and may require some interpretation by the personnel administering AFDC and aid to the blind.

### Legal Settlement Abolished

The Local Government Study Commission proposed a revision of G.S. Chapter 153 (previously titled *Counties and County Commissioners*) to the 1973 General Assembly that was adopted (Ch. 822, H 329), effective February 1, 1974.

This new law abolishes the old Poor Law concept of legal settlement, relates county responsibility for needy persons to legal residence, and establishes new rules for determining how legal residence is acquired. It repeals Art. 13 of G.S. Ch. 153, which deals with *County Poor*, including former G.S. 153–159, which defines legal settlement, and former G.S. 153–160, which provides for return of an indigent person to his county of legal settlement. Under new G.S. 153–257, entitled *Legal Residence for Social Service Purposes*, legal residence in a county determines which county is responsible for financial support of a needy person who meets the eligibility requirements for a public assistance or medical care program offered by a county or for other social services required by the person.

When the new law becomes effective on February 4, 1974, legal residence will be determined under the rules contained in G.S. 153–257 as follows:

1. A person has legal residence in the county where he resides, except as modified hereafter in the new law.
2. A person does not acquire legal residence in a county by virtue of being resident in a hospital, mental institution, nursing home, boarding home, confinement facility, or similar institution or facility located in that county.
3. A minor has the legal residence of the parent or other relative with whom he resides. If he does not reside with a parent or relative and is not in a foster home, hospital, mental institution, nursing home, boarding home, educational institution, confinement facility, or similar institution or facility, he has the legal residence of his mother, or if her residence is not known, then the legal residence of his

father; if neither parent's residence is known, the minor is a legal resident of the county in which he is found.

4. A legal residence continues until a new one is acquired, either within or outside this state. When a new legal residence is acquired, all former residences terminate.

New G.S. 153–257(c) states: "This section is intended to replace the law defining 'legal settlement.' Therefore any general law or local act that refers to 'legal settlement' is deemed to refer to this section and the rules contained herein." In line with this general concept, Ch. 742 (S 596), effective October 1, 1973, amends G.S. 108–40 to clarify that a person may apply for public assistance in the county where he resides.

**Financing Social Services in County Government**

A new provision of the North Carolina Constitution [Art. V, sec. 2(5), effective July 1, 1973] prohibits the General Assembly from authorizing any local government to levy property taxes without voter approval "except for purposes authorized by general law uniformly applicable throughout the State." The thrust of this change is to eliminate the old "necessary expense" limitation and to authorize the General Assembly to decide for which governmental purposes property taxes may be levied without a vote of the people.

Ch. 803 (H 333, proposed by the Local Government Study Commission) becomes effective July 1, 1973. In general, the old "necessary expense" doctrine is replaced by a property tax rate limitation applicable to certain county government purposes by new G.S. 153–65. The thrust of this new legislation is to authorize counties to levy property taxes for eight county government purposes, including the federal- and state-mandated categorical public assistance programs required by G.S. Chapters 108 and 111 and their administration, (includes AFDC, AAD, aid to the blind, medical care for eligible needy persons) without a vote and without any restriction as to rate or amount. For most other county government purposes, the new law imposes a rate limitation of $1.50 per $100 appraised value of property subject to taxation before application of any assessment ratio, or an effective tax rate limitation of $1.50 per $100. Thus the social services programs subject to the $1.50 rate limitation include public assistance programs not required by G.S. Chapters 108 and 111, including the new optional general assistance program established by Ch. 717 (H 1273) to supplement SSI and operation of a county home. As a practical matter, the $1.50 rate limitation is not a strict limitation on taxing authority of county commissioners because the $1.50 limitation is far beyond the typical current effective tax rate of 25 to 30 cents per $100 for those purposes subject to the $1.50 limitation.

**Definition of Dependent Child**

Ch. 743 (S 597), effective October 1, 1973, amends G.S. 108–24 to clarify the definition of a "dependent child" in Art. 2, G.S. Ch. 108, including the AFDC program. Under former law, a dependent child included a minor living in foster care or a child-care institution. The new law narrows this definition to include a minor who has been eligible for AFDC who is now living in a foster-care facility or child-caring institution.

**Eligibility for Foster Care After Age 18**

G.S. 108-66 requires that the General Assembly appropriate funds to the State Foster Home Fund to provide foster care for "needy children" placed in foster homes by county departments or social services. Since the age of majority is now 18, there were legal problems in paying for foster care of persons after they reach this age. Ch. 645 (H 935), effective on ratification on May 22, clarifies that persons aged 18 to 21 are eligible for foster care from State Boarding Home Fund, but imposes limits on this eligibility. Such persons must be regularly attending and successfully pursuing a course of study leading to a high school diploma or its equivalent, or a course of study at the college level, or a course of vocational or technical training designed to fit the person for employment.

**WIN Changed to Conform to Talmadge Amendments**

Ch. 744, (S 598, effective October 1, 1973, amends G.S. 108–39.1 to change the emphasis from special work projects to job training and to eliminate the special work projects panels appointed by the Governor in order to conform to recent federal law changes.

**Change in List of Recipients Furnished by State to County**

Former G.S. 108–45(b) required the State Department of Social Services to furnish the county auditor semiannually with a list of public assistance recipients, including addresses and amounts of monthly payments. The former law prohibited publication of this information in any newspaper or periodical and use of the information for any commercial or political purpose. Since the State Department has been providing the county auditor with a copy of the check register containing this information for the county each month, the requirement of the semiannual list seemed unnecessary. Ch. 721 (H 933), effective July 1, 1973, rewrites G.S. 108–45(b) to require the Department of Human Resources to furnish each county auditor a copy of the recipient check register each month. The new law eliminates the provision prohibiting publication in a newspaper or periodical, but it does prohibit the register or information contained therein from being used for any commercial or political purpose; it includes a provision that violation of that section is a misdemeanor.

### County Boards of Social Services

G.S. 108–11(b) provides for expansion of a three-member county board of social services to a five-member board, but some confusion has arisen over exactly when the board becomes a five-member board —when the county commissioners appoint the additional member or when the State Board does so. Ch. 724 (H 1018) amends G.S. 108–11(b) to clarify that the five-member board becomes effective when the additional members have been appointed by both the county and the state.

Ch. 454 (H 811), effective when ratified on May 11, 1973, authorizes the board of county commissioners of any county with a population over 325,000 persons (apparently only Mecklenburg) "to assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the Board of County Commissioners all powers, responsibilities and duties of any such commission, board or agency." The law applies specifically to a county board of social services and to "any other commission, board or agency appointed by the board of county commissioners and/or acting under and pursuant to authority of the board of county commissioners of said county." The board of county commissioners may exercise this authority only after a public hearing held after 30 days' notice to the public through a newspaper with general circulation in the county. The act also authorizes the board of commissioners to appoint advisory committees to study and "develop community support and cooperation in activities conducted by or under the authority of the Board of County Commissioners of said County." While this new law applies specifically to the county board of social services, it is doubtful that the county commissioners could legally assume the functions and authority of such a board because G.S. 109–9 requires that one or two of its members, depending on whether the board has three or five members, be appointed by the state.

### Nursing Care Costs

Two bills were enacted that deal with the crisis in providing nursing-home care for eligible needy persons who require it—one dealing with four months of the 1972–1973 fiscal year, and the other with the 1973–75 biennium. Ch. 544 (H 456), effective when ratified on May 17, 1973, authorizes the Office of Social Service, Department of Human Resources, to make payments from 1972–73 appropriations to pay the nonfederal share of skilled nursing-home care between March 1, 1973, and June 30, 1973, up to $18.50 per day. This would apparently include retroactive payments for nursing-home care provided before the effective date of the bill. Ch. 573 (H 591) effective July 1, 1973, provides that the nonfederal share of the cost of nursing-home care over $18.50 per day shall be paid by the counties, up to a total allowable cost of $25 per day. This bill repeals Ch. 1242, 1971 Session Laws, which required the counties to pay the nonfederal share above $14 per day and limited allowable costs to $18.50 per day.

### Rates in Homes for Aged

Ch. 817 (S 824), effective when ratified on May 24, contains legislative findings that rates in homes for the aged were based on the actual average cost of services as determined by a study adjusted through 1971. The legislation expresses an intent to authorize the use of available funds to adjust the rates to offset the increased costs due to increases in minimum wages. The bill amends G.S. 108–27 to authorize the State Department of Social Services to use available funds to meet increased rates in licensed homes for the aged resulting from increases in minimum wages after April 15, 1973. The Appropriations Act (Ch. 533, H 50) includes funds to provide for a 5 per cent cost-of-living increase in monthly rates of homes for the aged effective July 1, 1973, and a further increase effective September 2, 1973, to reflect the increase in minimum wages under state law.

### Intermediate Care

Ch. 644 (H 934), effective when ratified on May 22, 1973, amends G.S. 108–60 to authorize payments from the State Fund for Medical Assistance to intermediate-care facilities (a facility for a person too infirm to be cared for in a home for the aged, not requiring care in a nursing home).

### Juvenile Probation Services

While legislation that is pending to implement Phase Two of state government reorganization would have given the Department of Social Rehabilitation and Control statewide responsibility for juvenile probation and after-care, the portions of the bill dealing with Social Rehabilitation and Control were not enacted. This portion of the reorganization bill (S 533, H 749) is pending for interim study in state government committees of both the House and Senate. Two other bills (H 1255, H 1349), also pending for interim study in the Judiciary II Committee of the House, provide organizational alternatives for legislative consideration. H 1255 would implement and expand the state government reorganization proposal to consolidate juvenile probation, community-based services, and training school administration in three youth divisions of the Department of Social Rehabilitation and Control; H 1349 would establish a Division of Juvenile Probation and After-Care within the Administrative Office of the Courts. Ch. 815 (H 1358), effective when ratified on May 24, 1973, provides a temporary statewide juvenile probation and after-care program for nine months of the 1973–74 fiscal year beginning September 1, 1973; it authorizes the Ad-

ministrative Office of the Courts to provide all juvenile probation and after-care services in all judicial districts. County departments of social services continue to have the legal responsibility for juvenile probation and after-care in the sixty-one counties not served by the court counselor program or a special federal project between May 24, 1973, and September 1, 1973. See the article entitled *Juvenile Corrections* in this issue for more details.

**State Government Reorganization—Phase Two**

Ch. 476 (H 1127), effective July 1, 1973, is a long (188 pages), complicated bill to further implement state government reorganization in three principal state departments (Cultural Resources, Human Resources and Revenue). The basic thrust of the "Executive Organization Act of 1973" as it affects social services is to consolidate power in the Secretary, who is to have all management functions specified by the bill, including "planning, organizing, staffing, directing, coordinating, reporting, and budgeting" (Sec. 14, Ch. 476). The Secretary is responsible for preparing and presenting of the budget for the principal Department of Human Resources. The Secretary is authorized to adopt regulations (consistent with law, with rules of the Governor, and with rules of State Personnel Board) for administration of the department, conduct of employees, and distribution and performance of business and governing records and property.

The new law changes both terminology and the authority of the State Board of Social Services, the State Department, and the Commissioner of Social Services. The State Board will become the Social Services Commission (composed initially of the seven members of the State Board of Social Services) to consist of seven members appointed by the Governor for six-year terms. The Commission will have a chairman, appointed by the Governor, and a vice-chairman, elected by the Commission from its members. The Commission is authorized to adopt rules and regulations (the phrase "adopt policies" has been deleted from the law) for federal categorical public assistance programs and has substantially the same authority as the former State Board of Social Services in adopting rules and regulations governing child placement, licensing (maternity homes, boarding homes, rest homes, homes for the aged, child-care institutions, jails and confinement facilities, charitable solicitation) and for payment of day care for needy children. The Commission has no appointive authority over personnel. The law creates a fifteen-member Board of Human Resources for the principal department (including the chairman of the Social Services Commission, six other state commission or council chairmen, eight members appointed by the Governor, and the Secretary of Human Resources, who is a member and chairman ex officio). This Board is advisory to the Secretary on matters referred to it by the Secretary and is to aid the Secretary in developing major programs and recommend priorities for programs within the principal Department.

The former State Department of Social Services will become the Social Services Division, Department of Human Resources. The Social Services Division will be divided into sections (each headed by a chief) and branches (each headed by a head) and units (each headed by a supervisor). The office of Commissioner is abolished; the former statutory powers and authority of the Commissioner are given to the Secretary of Human Resources. The Social Services Division will be headed by a Director, who has no statutory power. Thus, the influence and power of the Director of the Social Services Division will depend on what authority is delegated to the Director by the Secretary.

The principal Department of Human Resources now includes thirty-one former separate units of state government—including Health, Social Services, Mental Health, Medical Care Commission, Blind Commission, Vocational Rehabilitation, Council on Mental Retardation and Developmental Disabilities, Coordinating Council on Aging, Governor's Advocacy Council on Children and Youth (formerly the Governor's Advocacy Commission on Children and Youth, transferred from the Department of Administration), and others. With the Governor's approval, the Secretary may establish or abolish any division within the Department. The Secretary may also establish or abolish other administrative units to achieve economy; establish or abolish positions, transfer personnel between positions; and change duties, titles, and salaries.

**Appropriations**

The amount of state funds appropriated for social services is important, for it determines the level of funding for the social services for the next fiscal year and the amount of matching funds required from the counties. The Department of Social Services, Department of Human Resources, requested a total state appropriation of $83,062,982 for fiscal year 1973–74; the General Assembly appropriated $71,386,110 (Ch. 533, H 50), which represents 85.94 per cent of the requested funds. The funds are to be allocated as follows:

| | |
|---|---|
| Office of Social Services | $32,544,405 |
| Child Welfare, Day Care Services | 1,844,219 |
| Medical Assistance Programs | 36,997,486 |
| Total | $71,386,110 |

The bill contains a special provision (Sec. 7) indicating that appropriations for Medicaid are intended for both public assistance recipients and medically needy persons according to the following schedule:

| *Services* | *Payment Rate* |
|---|---|
| 1. In-patient hospital | Allowable costs |
| 2. Out-patient hospital | 90% of allowable costs |
| 3. State mental and TB hospitals | Allowable costs (nonfederal share to be funded 100% by the state) |
| 4. Nursing homes | Allowable costs up to $18.50 per day (non-federal share paid 85% by state, 15% by counties; counties to pay all nonfederal cost above $18.50 as authorized.) |
| 5. Drugs | $2.00 service fee per prescription, plus cost of drug |
| 6. Physicians, chiropractors, dental, optical services | 90% of allowable usual and customary charges |
| 7. Home health | Allowable costs |
| 8. Medicare buy-in | Actual costs |
| 9. Public health clinics, ambulance services, pre-21 screening, hearing aids | Allowable costs |
| 10. Mental health clinics | Allowable costs (federal portion only; nonfederal share covered by state/local operating funds) |

The bill expresses a legislative intent that the state will pay 85 per cent and counties 15 per cent of the nonfederal costs of applicable services listed except as otherwise specified.

The same section of the Appropriations Bill further requires that recipient co-payments for services under Medicaid be implemented as allowed by federal regulations as shown in Table I.

Other details of the Appropriations Act have significant implications for state and county officials. The base budget for social services was generally approved as submitted, except that $96,294 was removed from Aid to County Welfare Administration; this sum had been budgeted to cover a portion of the cost of providing juvenile probation services through county departments. Additional state funds were appropriated to increase AFDC payments from 86 per cent to 100 per cent of budgeted need under the standard budget allowances, which requires some $1,716,332 in additional matching funds from the counties. The state formerly would pay half the board of a child in a licensed foster home up to a maximum monthly rate of $80; this maximum allowable rate has been increased to $100. States funds were also appropriated to cover the projected increase in AFDC caseload and average payments, requiring the counties to provide some $2,274,430 in matching county funds.

**Table I**

| Service | Categorically Needy | Medically Needy | Eligibility Co-payment for Each Occasion of Service |
|---|---|---|---|
| In-patient Hospital | | x | $2.00 |
| Out-patient Hospital | | x | 2.00 |
| Physicians | | x | 2.00 |
| Drugs | x | x | 1.00 |
| Dental | x | x | 2.00 |
| Chiropractors | x | x | 2.00 |
| Optical Services | x | x | 3.00 |
| Public Health Clinics | x | x | 1.00 |
| Mental Health Clinics | x | x | 2.00 |

Additional state funds to maintain Medicaid at its current level will require some $1,412,255 in matching county funds.

The level of federal matching in the federally supported categorical public assistance programs (AAD, AFDC) and Medicaid will be cut from 72.84 per cent in the 1972–73 fiscal year to 70.01 per cent in the 1973–74 fiscal year under applicable federal formulas. This reduction required additional state-level appropriations for these programs; the categorical public assistance programs (financed at approximately 70 per cent federal funds, 15 per cent each state and county funds) will require some $1,000,703 in county funds; Medicaid—financed at approximately 70 per cent federal, 24.5 per cent state (85 per cent of the nonfederal share), and 4.5 per cent county (15 per cent of the nonfederal share)—will require some $546,313 in additional county matching funds.

The counties will have to spend less in fiscal year 1973–74 for AAD (a saving of some $4,512,461 in county funds) because much of the cost of this program will be absorbed in the federal SSI program beginning January 1, 1974. However, this saving is offset somewhat by the cost of the new general assistance program adopted by the General Assembly to supplement SSI (Ch. 717, H 1273) to cover certain financial needs of AAD recipients not covered by the new federal program, which will be financed on a 50–50 basis by the state and counties, as follows:

| Purpose | Amount of County Funds |
|---|---|
| 1. Cost of care in homes for aged for SSI recipients | $ 828,330 |
| 2. Attendant care for SSI recipients | 601,044 |
| 3. Financial aid for essential persons and needy spouses not eligible for SSI | 174,732 |
| 4. Aid to certain disabled persons not eligible for SSI | 1,139,364 |
| Total amount of offset | $2,743,470 |

The new intermediate nursing-home care program authorized by Ch. 644 (H 934) and funded by state-level appropriations will require $778,302 in county matching funds. State funds to expand the dental services available under Medicaid will require $218,890 in matching county funds. The General Assembly also appropriated state funds to extend Medicaid eligibility to children in the custody of a county department of social services, which will cost some $27,000 in county funds. The counties will save $278,905 in county funds by implementation of the co-payment requirements specified in Sec. 7 of the Appropriations Bill, outlined above. The net effect of the state-level appropriations is to require $7,102,853 in additional county funding for various social services programs.

# The State Tax Structure

Charles D. Liner

Only a few of the scores of bills introduced in the General Assembly to change or repeal state taxes were ratified. Some of them were referred to committees for further study, however, and are likely to receive further consideration in 1974. The large number of bills led to several resolutions to conduct studies of the tax structure, none of which passed.

## CHANGES ENACTED BY THE GENERAL ASSEMBLY

The following changes were approved by the General Assembly:

*Income Tax.* Before January 1, 1973, persons receiving retirement or retainer pay as a result of service in the United States armed forces could exclude up to $1,250 of this pay from their gross income. Effective January 1, 1973, this exclusion was increased to $3,000.

Parents or guardians of severely retarded persons, defined as persons whose intelligence quotient (IQ) falls below forty (40), were granted an exemption from net income of $2,000 in addition to other exemptions to which they are entitled. To qualify as a parent or guardian of a severe mental retardate, one must provide over half of his support.

*Inheritance Tax.* Inheritance tax exemptions applicable to widows were made also applicable to surviving husbands effective July 1, 1973.

*Gift Tax.* The exemption for gifts was increased from $25,000 to $30,000.

*Highway Taxes and Fees.* The schedule of rates applicable to "private haulers" was made applicable to "contract carriers, flat rate common carriers, and exempt for hire carriers." In effect, rates for the latter types of carriers were reduced between 47 per cent and 75 per cent, depending on weight. The heaviest trucks received the largest percentage rate reduction.

One-eighth of 1 per cent of gasoline tax revenues, excluding revenues from 1 cent of the tax that are reserved for retiring highway debt, were allocated to the Department of Natural and Economic Resources for the purpose of building and maintaining artificial reefs for the benefit of fishermen.

*License Taxes.* An exemption from chain-store city license taxes was given to those stores that are called chain stores merely because of the manner in which they operate or because the kinds of merchandise sold are controlled by lease or by contract.

*Insurance Tax.* Premiums paid for certain pension, annuity, or profit-sharing plans were exempted.

## BILLS REFERRED TO COMMITTEE

The following bills were referred to committees for possible action in 1974:

*Income Tax.* HB 255 would increase the income tax exemption for each dependent from $600 to $750.

HB 303 would make the North Carolina income tax on individuals, estates, and trusts conform more closely to the federal income tax base. The state individual income tax would, with a few important exceptions, use federal definitions and terms in com-

puting next taxable income. The schedule of rates on net taxable income would be the same as under present law. Net taxable income would be computed as for the federal income tax except that interest on nonfederal public debt would be added and interest on federal debt would be subtracted from adjusted gross income on the federal return (there also would be several minor differences related to losses and dividends from small business corporations). An individual or a married couple that filed a joint return (joint returns are not allowed under present law but would be allowed under this bill) would have the choice of (1) taking a standard deduction of 15 per cent of North Carolina adjusted gross income not to exceed $2,000 ($1,000 for married persons filing separately), (2) claiming a "low income allowance" of $1,300 ($650 for married persons filing separately) in lieu of standard or itemized deductions, or (3) itemizing deductions according to federal rules and definitions. The North Carolina personal exemption would be $750 instead of the present $600.

SB 347 would exempt from taxation any income received by civilian or armed forces personnel while in a "missing" status during the Vietnam War unless the person was absent without leave (AWOL) during this period. This would include prisoners of war.

HB 731 would provide for child-care deductions of not more than $10 per week if such care is for the purpose of being gainfully employed. Child-care expenses are not deductible under present law.

SB 305 and HB 388 would revise the individual income tax rate schedule as follows:

| *Net taxable income* | *Present rate* | *Proposed rate* |
|---|---|---|
| Up to $2,000 | 3% | 3% |
| Above $2,000 but less than $4,000 | 4 | 4 |
| Above $4,000 but less than $6,000 | 5 | 5 |
| Above $6,000 but less than $10,000 | 6 | 6 |
| Above $10,000 but less than $14,000 | 7 | 7 |
| Above $14,000 but less than $18,000 | 7 | 8 |
| Above $18,000 but less than $22,000 | 7 | 9 |
| Above $22,000 | 7 | 10 |

HB 607 would permit carry-over of the amount of certain charitable contributions that exceeds 15 per cent of adjusted gross income.

SB 885 would allow a food sales tax credit against state income taxes equal to $14 times the number of allowable personal exemptions claimed exclusive of exemptions for age, blindness, student dependents, or severely retarded dependent. Each credit of $14 would equal the amount of the 4 cents sales tax on $350 worth of food. If a wife did not have sufficient income to require tax filing, the husband would be allowed to claim her exemption on his tax return.

SB 391 and HB 539 would provide a $3,000 ($2,000 by amendment) exclusion from gross income for retired persons.

*Sales and Use Tax.* Medicines sold on prescription of physicians and dentists are now exempted from the sales tax. SB 50 would also exclude these kinds of medicines:

—medicines compounded, processed, and blended by druggists for retail sale;

—drugs or medical supplies sold by physician or hospitals in connection with treatments or to physicians or hospitals;

—dental supplies, dentures, and other dental devices;

—ophthalmic instruments sold to physicians and opticians.

SB 680 also would make other kinds of medicines exempt from the sales tax. Nonprescription drugs intended for human use would be exempted, but cosmetics and toilet articles would not be exempted regardless of their ingredients.

HB 451 would exempt from the sales tax the sale of tangible personal property sold by any permanently disabled person. Sales by blind merchants operating under the supervision of the Commission for the Blind are exempt under present law.

HB 377 would reduce the 3 per cent state sales tax rate to 2 per cent for the following foods and products:

—"essential" foods for home consumption (fruits, vegetables, meat, dairy and poultry products, canned goods, and other foods and food products except the following: prepared meals or foods sold or served on or off the premises by restaurants, cafes, cafeterias, hotel dining rooms, drug stores or other places where prepared meals are sold; popped popcorn; malt and vinous beverages; soft or carbonated drinks, sodas, or beverages; candies or confectioneries; and medicines, tonics, and preparations in liquid, powdered, granular, tablet, capsule or pill form sold as dietary supplements);

—packaged food products sold off the premises of the retailer;

—prepared meals sold to permanent roomers of boarding houses when the charge for these meals is included in the weekly or monthly charge for the room;

—coffee and other foods sold through vending machines at places with no facilities for serving prepared meals; and

—prepared meals furnished to employees of restaurants, cafes, cafeterias, hotel dining rooms, drug stores, or other similar places as part of their compensation.

HB 387 and SB 304 would exempt certain foods from the sales tax—generally the same foods as those covered by House Bill 377.

HB 870 would exempt coin-operated laundry services from the sales tax.

HB 931 would raise the sales tax exemption on funeral expenses from $150 to $600.

Airplanes, railway locomotives and cars, motor

vehicles, and boats are now taxed at the special rate of 2 per cent. SB 691 would permit the sale of outboard motors to be taxed at 2 per cent instead of the present 3 per cent rate.

HB 1141 would eliminate the $120 tax limit on sales of goods subject to the 2 per cent sales tax and the $80 tax limit on goods, mostly farm supplies, subject to a 1 per cent sales tax.

Sales of newspapers by street vendors and newsboys are now exempt from taxation. HB 1243 would also exempt house-to-house sale of magazines.

*Excise Taxes.* SB 505 would specifically exempt both frozen and unfrozen fruit juice and natural vegetable juice concentrates from the soft-drink tax.

HB 181 would repeal the soft-drink tax.

SB 150 and HB 182 would repeal the cigarette tax.

HB 187 would change the formula for distribution of revenues from the 2 per cent surtax on sale of alcoholic beverages. It would limit the amount going to the state to 50 per cent of these revenues.

## Election Law

*(Continued from Page 29)*

fraction thereof residing in the county, based on the last decennial census. Each committee member is also entitled to cast all the votes allotted to his county, but if more than one member are elected from each county, each casts an equal share of the votes allotted to the county.

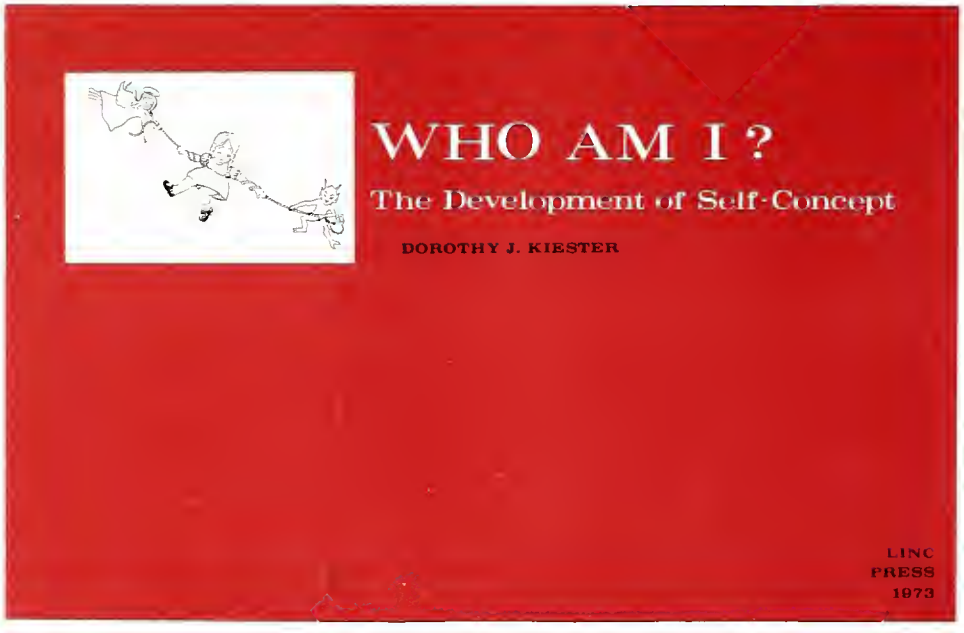
To conform the terms of elected municipal officers to the provisions of the municipal elections law, the legislature (Ch. 470, S 616) provided that the terms of municipal officers elected in 1970 for terms to expire in 1974 are reduced to expire in 1973, when their successors in office are elected and qualified under the municipal elections law (under that law, municipal officials are elected in the fall of 1973). The terms of municipal officers elected in 1972 for terms to expire in 1976 are reduced to expire in 1975, when their successors are elected and qualified.

Also with respect to city elected officials, Ch. 609 (H 729) provides that they shall possess the qualifications set out in Article VI of the State Constitution and that, when the city is divided into electoral districts for the purpose of electing members of the city council, council members shall reside in the districts they represent. The act also provides that when any elected city officer ceases to meet the constitutional requirements for holding office or ceases to reside in the electoral district he was elected to represent, his office is deemed vacant.

The legislature provided (Ch. 54, H 311) that when a vacancy occurs in the board of county commissioners, (a) if the county is divided into districts for the election of board members, the person appointed to fill the vacancy must be a resident of the same district as the vacating member, and (b) if the vacating member was elected as the nominee of a political party, the person appointed to fill the vacancy must be a member of the same party.

Finally, the legislature provided (Ch. 502, S 891) for the election of soil conservation district supervisors. Three supervisors in each soil conservation district will be elected on a nonpartisan basis (by plurality vote; there is no primary or run-off) beginning at the time of the county elections for fall, 1974. The election will be conducted by the county board of elections, and no absentee ballots are permitted. The two persons with the highest number of votes in the 1974 elections will hold office for four years; the person with the next highest number of votes will hold office for two years; and their successors will serve for four years each. Ch. 502 has provisions for notices of candidacy and filing fees, times for taking office, eligibility of voters, and organization of the board of supervisors (which is composed of appointed as well as elected members).

# NEW BOOKS

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