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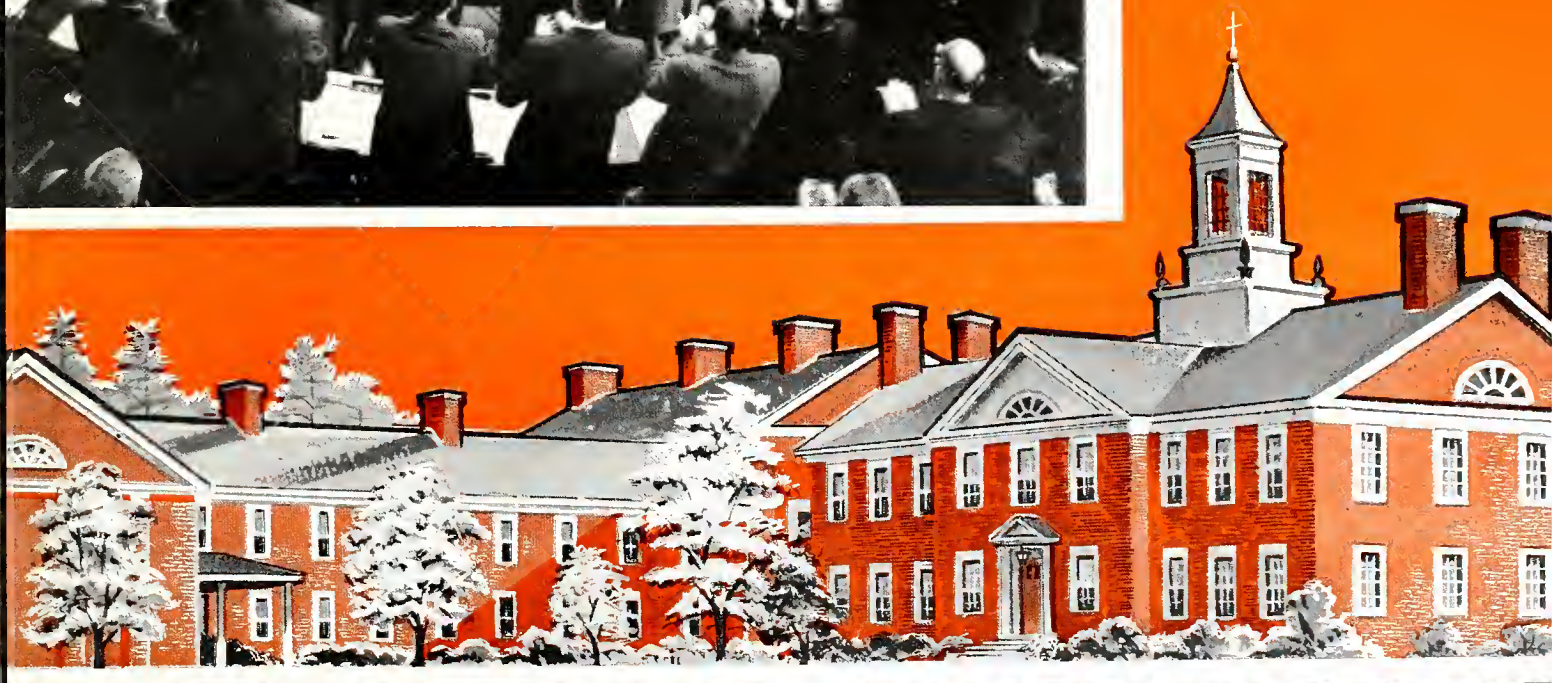
POPULAR GOVERNMENT



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POPULAR GOVERNMENT

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COVER

Our cover picture shows Governor Hodges leaving the dais after addressing a Joint Session of the 1959 General Assembly. Lieutenant-Governor Barnhardt and House Speaker Hewlett stand at the Speaker's rostrum.—Photo by Raleigh News and Observer.

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THE N. C. GENERAL ASSEMBLY OF 1959

By CLYDE L. BALL

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

The 1959 General Assembly of North Carolina convened at 12:00 noon, February 4, and adjourned *sine die* at 3:12 p.m., June 20. In the intervening period, 1880 bills and resolutions were introduced, of which 1403 were ratified. Of the bills introduced, 902 were public and 978 were local; of the bills ratified, 492 were public and 911 were local. Of the 67 local bills which failed of ratification, 24 came from three counties where there was some disagreement between the Senator and Representative from the county, or a disagreement between members of a multi-member House delegation.

The 1959 session was a busy one with respect to "legislative" matters, that is, matters of immediate concern to the members personally, as distinguished from matters of general State or local policy. Considerable time was spent in discussing measures designed to make the General Assembly a more effective instrument for making State policy.

Legislative Building Commission

The comfort of newly air-conditioned halls could not hide the fact that the historic Capitol simply does not have sufficient space to meet the needs of the General Assembly. The 1959 legislature took a major step toward providing adequate legislative quarters by creating a 7-member State Legislative Building Commission to institute plans to erect a new legislative building. An appropriation of $4,500,000 was made for the use of the Building Commission, which must report to each General Assembly. Possibly to remove the danger of executive encroachment on its space, or to prevent the new building from becoming simply a new Capitol, the bill specified that no plan should be made to include quarters for the Governor in the new building.

Travel Allowance

Service in the General Assembly has never been regarded as a means of earning a living; the prestige of the office, the chance to participate in making State and local policy, and the opportunity for public service are supposed to be the chief rewards of the office. Members are paid $15 per day for a period not exceeding 120 days, and up to $8.00 per day subsistence for each day of the period in which the legislature is in session. In addition members were, prior to 1959, entitled to travel allowance for one round trip per session between their homes and Raleigh. The 1959 General Assembly changed this limitation to authorize the travel allowance for one round trip every week, thus recognizing the fact that a member cannot properly discharge the responsibilities of his office without frequent trips back home to confer with his constituents, and also the fact that members of limited means may need to work over the week ends in their businesses, law practices, or other occupations. The travel allowance change was made retroactive to the beginning of the 1959 session. As a result travel expense payments, which amounted to $3,288 in 1957, rose to $49,626 for the 1959 session. The figure may be somewhat larger in the future, as not all members filed for the allowance this time.

House Rules

Parliamentary procedure has always been a trap for the neophyte in a legislative body. The House Rules complicated this trap by lacking any logical order or arrangement, and having no index whatsoever. For example, in the pre-1959 Rules, a provision governing the method of rescinding a standing rule was followed immediately by a rule requiring members, other than Quakers, to remove their hats upon entering the hall of the House. In 1957 the Speaker appointed an interim committee under the chairmanship of Rep. Uzzell of Rowan to codify and index the rules without substantive change. This committee, with the technical assistance of the Institute of Government, completely rewrote the Rules into an orderly code, prepared a detailed index, and reported its work to the 1959 House. The 1959 Rules Committee made minor changes in form and a few substantive changes, and the codified rules were then adopted by the House. Efforts on the floor to deny committees the right to hold private sessions, and to make it possible for a simple majority vote of the House to withdraw a bill from committee were unsuccessful. As subsequent sessions invariably build upon past rules, House members in the future will have a usable and understandable set of rules of procedure.

Interim Legislative Study Committees

Interim study commissions have been used extensively by the General Assembly in recent years. A total of ten such commissions reported to the 1959 session. Although the recommendations of many of these commissions were enacted by the General Assembly, there were indications that some members felt that study committees made up of members of the legislature would produce results more likely to be acceptable to that body. The rejection of the proposals submitted by the Constitutional Study Commission and the Court Study Committee (the latter committee was not created by the legislature and did not report to it formally, but the committee's work was received just as if it had been authorized by the General Assembly) was followed by the introduction of HR 1357 which would have created a study commission composed of seven representatives and four senators to give further considera tion to revision of the State Constitution. Earlier in the

session HR 62 had been introduced to create a commission composed of six representatives and three senators to study and make recommendations concerning the politically explosive question of the organization and function of the State Highway Commission. Both of these resolutions passed the House but died in a Senate committee.

Reapportionment and Redistricting

The General Assembly had two shots at reapportionment in 1959, but it took no action. HB 139 would have added a representative from both Alamance and Rockingham Counties and would have taken one from both Cabarrus and Pitt. A substantially identical bill has been introduced at every regular session since 1951, as the changes are based upon the 1950 federal census figures for North Carolina. The bill progressed somewhat farther than its predecessors—it received a favorable committee report in the House but was defeated by a vote of 61 to 50 on second reading. The proposed revision of the Constitution, embodying the recommendations of the Bryant Commission, would have made it the duty of the Speaker of the House to apply the apportionment formula after each federal census; this proposal was buried with the remainder of the revised Constitution.

The Bryant Commission's recommendation as to Senate redistricting never got off the ground. Senator Warren, a member of the Commission, led the way in eliminating the original language in committee. The Senate adopted a proposal which would limit each district to one senator before the entire proposal was shelved.

"Lobbying" by Executive Officials

By the very nature of the General Assembly—a noncontinuous body, meeting intermittently, without a permanent staff—it must depend upon the executive department for information and assistance in performing its functions. From time to time legislators complain that officers of the executive and administrative agencies overstep the bounds of proper assistance and exert pressures which would do credit to the most finished professional lobbyist. This feeling was reflected in SB 134 which would have prohibited chairmen and heads of State departments, agencies or commissions from doing any act which would require registration as a lobbyist under G.S. 120-40. The bill was reported unfavorably in the Senate.

State Auditor

The contest between executive and legislative departments was reflected in a move to make the office of State Auditor independent of any control except by the General Assembly, and to transfer to him authority over bookkeeping and disbursing procedures. The bill would have reversed action taken in 1955 which vested some functions theretofore performed by the Auditor in the Budget Bureau, and would have made the Auditor something of a State Comptroller and subject only to legislative authority. The bill was not reported by a House committee.

Miscellaneous

Convening Date. The House passed a bill which would have fixed the convening date of the General Assembly on the first Wednesday after the first Monday following the election of its members, and would have required that the meeting place be the State Capitol. A Senate committee reported the bill unfavorably. The January convening date was changed to February by Constitutional amendment approved by the people in 1956, but the amendment permits the date to be changed by statute.

Budget Report. A bill was introduced in the House to require the Director of the Budget to submit the proposed budget to members of the General Assembly at least 30 days prior to the convening date of the Assembly, thus giving members a month to study the budget before the session. The bill was killed in House committee.

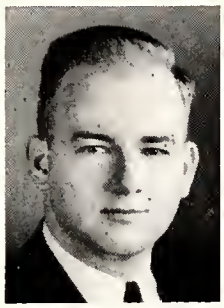
Special Sessions. HR 1226 and HR 1346 would have requested the Governor to call a special session in the fall of 1959 to consider Constitutional revision; the first resolution also would have included modification of the State judicial system in the call. Both resolutions died in House committees.

Sessions away from Raleigh. The 1959 General Assembly held two sessions away from Raleigh. One was held at New Bern April 8 to celebrate the formal opening of restored Tryon Palace, where the first General Assembly of North Carolina convened 182 years earlier. The other was held at Charlotte March 4, to give legislators a first-hand view of the problems and progress of larger cities as illustrated by the Queen City.

LEGISLATIVE BUILDING COMMISSION

The following persons have been oppointed to the Legislative Building Commission authorized by the 1959 General Assembly:

Edwin Gill, Raleigh
A. E. Finley, Raleigh
Oliver R. Rowe, Charlotte
Sen. Robert Morgan, Shelby
Sen. Archie Davis, Winston-Salem
Rep. Byrd. Satterfield, Timberlake
Thomas J. White, Kinston



STATE GOVERNMENT

By JOHN L. SANDERS

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Like its recent predecessors, the General Assembly of 1959 busied itself extensively with matters of state governmental organization. Bills originating with the Commission on Reorganization of State Government, with the state agencies, and with legislators themselves provided the legislature a substantial budget of proposals for the creation of new agencies, for the abolition of a few agencies which had lapsed into a mere paper existence, and for changes in the organization and functions of yet others.

Reorganization Commission Proposals

The third Commission on Reorganization of State Government saw almost all of its recommendations go on the statute books.[1] Most significant of the measures enacted on the Reorganization Commission's recommendation were the creation of a consolidated Department of Water Resources, appropriation of $4,500,000 for a new legislative building, and revision of the laws governing state land management. Further legislative endorsement of the work of the nine-member study group came in the creation of the fourth Commission on Reorganization of State Government to provide grist for the mill of the 1961 General Assembly.

Department of Water Resources

Recognizing the necessity for an increasingly active program of water resource conservation and development and the near impossibility of achieving the needed emphasis and coordination of this program while responsibility for its various phases remained decentralized among half a dozen state agencies, the Reorganization Commission proposed and the General Assembly enacted Chapter 779 (HB 33). This act created a Department of Water Resources under the general policy supervision of a seven-member Board of Water Resources and under the administrative control of a Director.

The Department takes over responsibility for water resource programs heretofore conducted by the Board of Water Commissioners (which is abolished), three divisions of the Department of Conservation and Development, the State Board of Health, and the State Stream Sanitation Committee (which is continued within the new Department).

A fuller discussion of the organization and functions of the Department of Water Resources will be found in the article entitled "Water Resources" in this issue.

1. For a full discussion of the recommendations of the third Reorganization Commission, see *Reorganization Commission Reports*, POPULAR GOVERNMENT, Dec. 1958, pp. 1-9.

State Land Management

In an effort to provide a more modern, business-like, and uniform system of managing and disposing of unallocated state lands, the Reorganization Commission recommended placing responsibility for administering these functions in the Department of Administration, subject to supervision by the Governor and Council of State. Chapter 683 (HB 57), drafted by the Commission and revised somewhat in the legislative process, is a general rewrite of the laws governing state lands. It vests in the Department of Administration (already the chief land agency of the State) responsibility for the management, control, and disposition of all state lands not assigned to any particular agency.

The ancient entry and grant system for disposing of the vacant and unappropriated state lands is abolished, as is the authority of the State Board of Education to convey the swamp lands owned by the State. Hereafter these lands, like submerged lands and lands acquired by the State at tax sales, will be sold by the Department of Administration with the approval of the Governor and Council of State in each instance, and conveyed by deed. The net sale proceeds will continue to go into the State Literary Fund.

A State Land Fund is created to finance a part of the land management activities of the Department of Administration. The Fund will be built up from service charges levied on property sales handled by the Department.

Efforts to inventory state-owned lands, a large part of which are now unidentified, will be assisted by the authorization given the Department of Administration and the boards of county commissioners to enter into joint contracts for the discovery and mapping of lands within the several counties. A double benefit is anticipated: the counties will find taxable land not presently listed for taxes, and the State will find lands not known to belong to any particular owner and therefore presumably still held by the State as sovereign. Chapter 712 (HB 492) authorizes each board of county commissioners to levy a tax not exceeding 5c on the $100 valuation to finance the county's share of the cost of such discovery activities.

Chapter 683 makes the Director of Administration the agent of the State to receive service of process in all legal proceedings brought by or against the State with respect to state lands. All legal proceedings on behalf of the State or its agencies with respect to state lands or the condemnation of land must henceforth be brought by the Attorney General upon complaint of the Director of Administration.

Extensive changes are made in the substantive rights of the State and of riparian owners with respect to land created by the filling-in of navigable waters, generally

to the advantage of private landowners. Procedures for obtaining easements to make fills in navigable waters are established, but such filling may not impede navigation or other public use of such waters.

Provision is made for the relaxation of central control of certain types of small-scale real estate business by permitting the Governor and Council of State to delegate to state agencies authority to negotiate for themselves certain classes of lease, right-of-way, and easement transactions which must otherwise be handled for them by the Department of Administration.

State Legislative Building

While the General Assembly, after a good deal of argument, concurred in the recommendation for construction of a long-needed state legislative building to house the General Assembly and its committees and employees, it reduced the amount appropriated for the purpose from the $7 million suggested by the Reorganization Commission to $4.5 million [Chapter 1039 (SB 352)]. The lower figure had been recommended by the Governor and Advisory Budget Commission, and will be provided from bonds issued on authority of the General Assembly. A seven-member State Legislative Building Commission was created [Chapter 938 (HB 35)] to oversee the location, planning, and erection of the proposed structure.

This subject is discussed at greater length in the opening article in this issue.

Succession to State Office

Concerned with the need for insuring continuity of government through provision for orderly succession to office, especially under emergency conditions of various types, the Reorganization Commission offered two bills to fill that need. Additional bills on the same subject came from other sources.

Chapter 285 (HB 24), drafted by the Commission, provides that where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of state government, he may also appoint an acting or interim officer to serve during the incapacity of the regular officer or during his continued absence, or during the existence of a vacancy in the office and pending the appointment of a successor to serve out the unexpired term. Such an acting officer would, during the period he serves, have all of the powers and duties of the regular officer whose place he fills. To the Governor is given the authority to determine when one of his appointees is physically or mentally incapable of performing his duties so that an acting successor may be appointed; the Governor also determines when such incapacity has ceased and the regular officer may resume his post.

Chapter 273 (HB 351), which was not a Reorganization Commission bill, authorizes the Commissioner of Banks, with the Governor's approval, to appoint a deputy commissioner whom the Commissioner may remove at his discretion. The Commissioner may delegate to the deputy commissioner authority to act on his behalf. In case of the absence, death, resignation, disability, or disqualification of the Commissioner of Banks, his powers and duties would, according to this act, devolve upon his deputy. However, since Chapter 285 (discussed above) was ratified four days *after* Chapter 273, the former act may repeal the conflicting provisions of the latter. If so the Governor, and not the Commissioner of Banks, would designate the acting successor to serve in case of the Commissioner's absence, death, resignation, or disability.

The second Reorganization Commission proposal, Chapter 284 (HB 23), applies only to those executive heads of state agencies and institutions regularly appointed by a board or commission. It empowers any such board or commission to appoint an acting or interim executive head of its agency or institution to serve during the incapacity of the regular officer, during his continued absence, or during a vacancy in the office and pending selection of a successor to serve for the unexpired term. Such boards and commissions are also empowered to determine when the executive heads of the agencies they govern are physically or mentally incapable of carrying on their duties, and when the capacity of such officers has been restored.

An additional feature of Chapter 284 amended G. S. 166-6 to empower the Governor, upon the declaration of war by Congress or when the Governor and Council of State find imminent danger of hostile attack on the State, to appoint acting heads of state agencies and institutions ordinarily chosen by a board or commission. A subsequently ratified act, Chapter 337 (SB 88), entirely rewrote G. S. 166-6 but did not bring forward the provisions added to that section by Chapter 284; therefore those provisions would appear to have been repealed by Chapter 337.

The proposed Constitution (SB 99, HB 226) included provisions resolving questions of succession to the governorship and other constitutional offices and fixing (or authorizing the legislature to fix) responsibility for the determination of issues of official incapacity. These provisions went down with the collapse of the whole effort at constitutional revision.

Utilities Commission

One of the few instances in which the Reorganization Commission failed to win full acceptance of its proposals came in the refusal of the General Assembly to reduce the size of the Utilities Commission from five to three members and to give the Commissioners the same retirement benefits as are enjoyed by Superior Court Judges. The Reorganization Commission's bills, SB 55 and HB 125, were not reported out of committee in either house because of legislative opposition to the reduction in size of the Utilities Commission.

A bill subsequently introduced and enacted as Chapter 1319 (HB 388) does give all five Commissioners six-year terms (previously three of them served six-year terms and two served four-year terms) and brings their salaries up to the level of those of Superior Court Judges ($12,000 a year), but does not directly tie the compensation of Commissioners to the pay scale of the judges as the Reorganization Commission proposed. It also prohibits the practice of law by Commissioners. Floor amendments removed all provisions for special retirement benefits for Utilities Commissioners, leaving them on the same footing as other state employees in this respect.

Bills not sponsored by the Reorganization Commission sought to give members of the Industrial Commission the same retirement benefits as Superior Court Judges (SB 326) and the same pay as members of the Utilities Commission (SB 488); both failed of enactment.

Chapter 400 (SB 56) embodies the Reorganization Commission's recommendation for clarification of the statutory statement of the duties of the Assistant Attorney General assigned to aid the Utilities Commission. An amendment was added in the course of legislative consideration providing that where the Attorney General intervenes in a proceeding and the Utilities Commission finds that there may be a conflict between the position of the Commission and that of the Attorney General, the Commission may (with the Governor's approval) employ private counsel to represent it. One object of this amendment is to avoid the infrequent situations where representatives of the Attorney General's office find themselves on opposing sides in the same case on appeal from the Utilities Commission to the courts, one attacking the Commission's order and the other defending it.

Public Records Management

Recommended as a means of orderly dealing with the problem of overflowing files of records in state offices, Chapter 68 (HB 26) clarifies and fixes in the State Department of Archives and History sole authority to conduct for state agencies a records management program, including operation of a records center or centers and a centralized microfilming program, activities which that Department has carried on for some years. The program involves the transfer of semi-current records from state offices to the records center, where they are retained for prescribed periods and then destroyed or transferred to the Archives for permanent preservation.

The obligation of public officials to aid the Department of Archives and History in preparing inventories of records in their custody and schedules governing retention or disposal of such records, and the corresponding duty of the Department to provide filing space for semi-current records and for non-current records of permanent value, are made matters of law rather than preference.

Interstate Cooperation

Chapter 137 (HB 25), prepared by the Reorganization Commission, does three things: It abolishes the inactive Governor's Committee on Interstate Cooperation. It reduces the membership of the Commission on Interstate Cooperation from 19 to nine members. It amplifies the statutory statement of the duties of the Commission to require it to study and advise the Governor and the General Assembly concerning interstate compacts and studies, publications, and services available from interstate service agencies and of interest to North Carolina, and to attend and report on appropriate regional and national conferences considering interstate problems of concern to this State.

Turnpike Authorities

The Carolina-Virginia Turnpike Authority and the North Carolina Turnpike Authority, created in the first years of the decade to build toll roads but inactive since early blighting of the hopes for such roads in this part of the country, were abolished by Chapter 25 (HB 27).

State Planning Board

The State Planning Board, active during the depression years and again immediately after World War II but dormant for the last 12 years, was abolished by Chapter 24 (HB 22).

State Board of Alcoholic Control

The only recommendation of the Commission on Reorganization of State Government which got nowhere at all called for the creation of the post of Director of Alcoholic Control. The Director, chosen for a four-year term by the State Board of Alcoholic Control with the Governor's approval, would have assumed the administrative duties now performed by the Chairman of the Board, while the Chairman would have become a part-time officer as are the other two Board members. The object was to separate the policy-making functions, which would have stayed with the Board, from the purely administrative functions, which would have been performed by the Director under the Board's supervision. Legislative reaction to this change was so unfriendly that the bill to implement it was never introduced.

Nor, for the same reason, was legislation introduced to carry out the Governor's recommendation for enlargement of the Board to five members.

New Agencies Created

In addition to the Department of Water Resources and the State Legislative Building Commission, previously mentioned, the 1959 General Assembly established about a dozen new state agencies to serve a variety of ends ranging from the development of atomic energy to the preservation of eighteenth century buildings.

The Atomic Energy Committee, created by Chapter 481 (SB 253), consists of 32 members appointed by the Governor for six-year overlapping terms and three *ex officio* members. This group is given the duty of advising on and coordinating the development and regulatory activities of the State relating to atomic energy, including cooperation with the federal government and with other states.

A seven-member Advisory Committee on Aviation, to be appointed by the Governor, was established by Resolution 70 (HR 1071) to advise the Governor "respecting various aviation problems."

The much-debated Firemen's Pension Fund will be governed by a Board of Trustees composed of two *ex officio* members and three appointees of the Governor [Chapter 1212 (HB 690)].

The State's two dozen occupational licensing boards were joined by yet another, the State Board of Sanitarian Examiners, which will control certification or licensing of sanitarians and may revoke or suspend certificates of sanitarians for misconduct [Chapter 1271 (HB 755)].

The North Carolina Stadium Authority was created by Chapter 917 (HB 918) to construct and operate a giant stadium on or near the State Fair Grounds. This activity will be financed by the issuance of tax-free revenue bonds.

The Research Triangle Planning Commission was added to the complex of organizations already engaged in promoting that enterprise by Chapter 642 (HB 590), and will prepare plans for the orderly and economical development of the Research Triangle area.

Chapter 993 (SB 430) creates the East Carolina Airport Authority as a vehicle for the joint effort of eastern counties and municipalities in establishing and operating an airport to serve that area.

Even as the State prepares to observe the centenary of the Civil War, it was found necessary to extend the

life of the Confederate Woman's Home at Fayetteville for another decade [Chapter 222 (HB 187)].

The current high interest in matters historical gave rise to four new commissions. The Historic Bath Commission of 18 members (15 appointed by the Governor) is authorized to acquire title to, restore, and maintain historic properties in and near the Town of Bath, oldest town in the State [Chapter 1005 (HB 257)]. The John Motley Morehead Commission will acquire, restore, and maintain "Blandwood," the Greensboro residence of Governor Morehead [Chapter 1308 (HB 1276)]. Programs commemorating this State's role in the Civil War will be planned and conducted by the North Carolina Confederate Centennial Commission [Chapter 323 (SB 185)]. The Carolina Charter Tercentenary Commission will plan a program of celebration over the granting of the Carolina Charter of 1663 [Chapter 1238 (SB 201)].

A proposal (SB 413) for the establishment of a Commercial Fisheries Commission, to which would have been transferred the functions of the Department of Conservation and Development relating to the promotion and regulation of commercial fishing, died in committee; however, the Reorganization Commission was specifically directed to study the need for such an independent agency [Resolution 71 (HR 1085)]. The suggested Advisory Committee for the Blind to advise on policy and procedural matters state agencies administering programs for the blind died in a Senate committee (SB 220).

Other Reorganization Measures

The long-heralded bill (HB 260) to double the size of the present seven-member State Highway Commission and to return to the practice of appointing each Commissioner from a different district rather than from the State at large, a move strongly opposed by the administration, failed on its second reading in the House. HR 62, calling for a study commission to examine and make recommendations on the relative merits of the present seven-member Highway Commission, chosen without reference to residence and committed to the statewide concept of Commission responsibility, versus the old fourteen-member Commission with each Commissioner appointed from a division and exercising considerable authority over highway policies within his division, had been adopted by the House earlier but never got out of committee in the Senate.

The bill (HB 411) to abolish the Department of Administration made a loud splash but left no ripples to mark its final resting place in the House Committee on State Government.

An informal proposal early in the session for the substitution of a Comptroller for the present State Auditor was apparently the stimulus for HB 580, which would have increased the authority of the Auditor by empowering him to prevent unauthorized expenditure of funds, prescribe all systems of accounts for state agencies (in cooperation with the Department of Administration), and approve the purchase of all new accounting equipment. It failed to emerge from a House committee.

Chapter 326 (HB 322) is the product of a compromise reached between the University of North Carolina Trustees and the State Board of Higher Education after a lengthy public hassle over the proper authority of the latter agency with respect to the University. While it makes several changes in the statutes prescribing the authority of the Board of Higher Education, it is still a matter of argument between the contending parties as to whether the changes in fact reduce the authority of the Board significantly. It does eliminate the authority of the Board to require abandonment by any institution of any existing educational activity over the institution's protest, except with specific legislative approval.

The proposal (HB 837) to bring the State Superintendent of Public Instruction more clearly under the policy supervision of the State Board of Education failed early in its career, as did the attempt (HB 925) to require that one-third of the members of the Textbook Commission be non-educators. HB 983, which was not reported by a House committee, would have by statute designated the Lieutenant-Governor *ex officio* Chairman of the State Board of Education, although the Constitution specifically gives the Board the power to elect its own Chairman [Article IX, Section 8].

The bill (HB 876) implementing the recommendations of a special study commission on selecting trustees of the University of North Carolina by allowing the Governor to appoint one-fifth of the 100 trustees (subject to confirmation by the General Assembly) sleeps dreamlessly in a House committee pigeonhole.

As will be noted at greater length later in this article, a Department of Civil Defense was substituted for the former Civil Defense Agency [Chapter 337 (SB 88)].

Among the more controversial measures of the 1959 session was Chapter 1292 (HB 1111), which empowers the North Carolina Milk Commission, whenever it finds after hearing and investigation that "an impending marketing situation threatens to disrupt or demoralize the milk industry in any milk marketing area or areas," to establish minimum prices at which milk may be retailed in such areas. The Commission has had, since its creation in 1953, authority to fix prices paid to milk producers for their product, but power to fix retail milk prices has heretofore been denied it.

The tremendous growth in the popularity of boating posed the need for Chapter 1064 (HB 773), which establishes a system for licensing and regulating the operation of motor boats on the waters of the State and gives the Wildlife Resources Commission the duty of administering these new functions. This act is dealt with in greater detail in the article on "Wildlife Enforcement."

The State Ports Authority was increased in size from seven to nine members by Chapter 523 (HB 522). This act also subjects real property transactions of the Authority to approval by the Governor and Council of State, although the Authority is authorized to take and convey title to real property in its own name, rather than in the name of the State.

Chapter 446 (HB 463) is a precautionary measure reenacting the statutes creating the Ports Authority and prescribing its powers to the extent that they were repealed by Chapters 269 or 584 of the 1957 Session Laws. Those acts created the Department of Administration and established uniform procedures for handling state land transactions.

An Insurance Commission, composed of the Commis-

sioner of Insurance and four part-time members appointed by the Governor and charged with the principal duty of approving proposed insurance rating schedule changes, would have been set up by SB 335. That bill got an unfavorable report in the Senate.

SB 408, killed by a House committee, would have given the petitioner seeking judicial review of any administrative decision under G. S. 143, Article 33, the option of filing his petition in the Superior Court of Wake County or in the Superior Court of the county of his residence. Now the petition must be filed in Wake County unless the decision came up on appeal to a state agency after initial decision by a local agency.

State Purchasing, Property, and Funds

Purchasing

Chapter 172 (HB 224) raises from $2,000 to $2,500 the maximum price which may be paid for a motor vehicle (other than a truck) by the State without prior approval of the Governor and Council of State.

Purchases and leases of supplies, materials, and equipment by the State and its agencies and subdivisions from the United States or from any governmental agency in the United States are exempted by Chapter 910 (HB 452) from the statutory requirements governing both formal and informal contract letting.

Advertisements for bids required by G. S. 143-129 must, under Chapter 392 (HB 479), be so published that at least seven full days will elapse between date of publication and date of opening bids. Under the same act, where three competitive bids have not been received from responsible bidders following advertisement as required by G. S. 143-129, readvertisement must be made. If the required three bids are not then forthcoming, the contract may be let to the lowest responsible bidder, though his be the only bid.

Chapter 1328 (HB 1057) requires that on all public construction contracts (except contracts for construction of roads, bridges, and their approaches), the balance due the prime contractor must be paid in full within 45 days after unconditional acceptance of the job by the owner, certification of completion by the architect, or occupancy and use by the owner. If final payment is not then made, the prime contractor is entitled to 6% interest per annum on the balance due, beginning the 46th day.

Under HB 659 (which received an unfavorable report in the House), heads of state agencies and institutions would have been allowed to make purchases from suppliers other than those awarded state contracts, whenever the quality and price of items on state contract could be equalled or bettered.

Property

Chapter 182 (SB 138) permits any state agency or institution insured by the State Property Fire Insurance Fund to secure through the Fund sprinkler leakage insurance, premiums for which must be paid by the requesting agency. Losses so covered will be paid out of the Fire Insurance Fund as are fire losses.

All state agencies and institutions are required by Chapter 1248 (SB 470) to acquire liability insurance on all state-owned motor vehicles under their control. Chapter 1326 (HB 950) imposes a like requirement on the General Services Division, which operates a central motor pool for Raleigh agencies.

Under HB 282, the State Property Fire Insurance Fund would have extended its operations to include fidelity and surety bonding of state employees, with the cost to be prorated among the participating agencies, and fidelity and surety policies now in force would have been cancelled. This bill was dealt an unfavorable report by a House committee.

Funds

Henceforth, state and local public funds may be invested in securities of federal home loan banks by authority of Chapter 1069 (HB 944). Investment of funds of the Local Governmental Employees' Retirement System and of the Teachers' and State Employees' Retirement System in shares of any building and loan association organized under North Carolina law or any federal savings and loan association with its principal office in this State was approved by Chapter 1181 (SB 589) to the extent that such investments are federally insured.

National Guard

Numerous changes, many of them of a minor or clarifying character, were made in the statutes governing the organization and discipline of the National Guard by Chapter 218 (HB 91). The qualifications for the office of Adjutant General were raised to require at least five years' commissioned service in active status in any United States armed forces component. The Adjutant General is authorized to appoint an assistant adjutant general for air national guard, and the new post may carry the rank of brigadier general. Several changes have the general purpose of conforming the organization and procedures of the Guard more closely to those of the armed forces of the United States.

Guardsmen incurring disease while on active duty suppressing domestic disorder or repelling invasion are allowed the pay of their grade or rank during inability to pursue their regular occupations, and Chapter 763 (HB 1062) extends the same benefits to Guardsmen injured under like circumstances.

The annual expense allowance to federally recognized National Guard units was raised from $1,500 to $3,000 by Chapter 421 (HB 377).

Chapter 453 (SB 287) gives National Guardsmen, when called out by the Governor under his constitutional authority, limited power of arrest—a power which they already had on such occasions, according to the North Carolina Supreme Court.

Civil Defense

The State Civil Defense Agency was reconstituted by Chapter 337 (SB 88). A Department of Civil Defense was established under a Director of Civil Defense, who is appointed by and responsible to the Governor. The former Council of Civil Defense, the governing authority of the Civil Defense Agency, has been abolished. A Civil Defense Advisory Council will advise the Governor and Director, on request, regarding civil defense matters.

The conditions giving rise to the emergency powers of the Governor were broadened to include not only the occurrence or imminent likelihood of enemy attack on the United States, but the occurrence of a natural dis-

aster of major proportions. These conditions may be found by the Governor and Council of State or by resolution of the General Assembly.

The Governor's emergency powers are themselves extended to include the power to assume direct operational control over state civil defense forces, to take property for civil defense purposes (with compensation to the owners), to evacuate the population of any stricken or threatened area and provide for their care, to relieve any public officer with administrative responsibilities under the Civil Defense Act for willful failure to obey any order or regulation adopted pursuant to that act, and to establish a system of economic controls over all resources, materials, and services in the State.

Chapter 337 also re-enacts the Emergency War Powers Act of 1943 (formerly GS 147-33.1 to 147-33.7), which expired by limitation in 1957.

Occupational Licensing

The General Assembly of 1959 acted on a score of bills affecting the occupational licensing area. Only one of these bills dealt with more than a single licensing board.

Perhaps of greatest interest is the act [Chapter 1271 (HB 755)] creating the State Board of Sanitarian Examiners. It will consist of six persons appointed by the Governor for four-year overlapping terms (four sanitarians, one local health director, and one public spirited citizen), plus three *ex officio* members (the State Health Director or his representative, the Dean of the School of Public Health of the University or his representative, and the Director of the Division of Sanitary Engineering of the State Board of Health).

The main duties of the Board will be to certify as registered sanitarians applicants who meet the educational and other requirements established by the act, and to exercise disciplinary authority over registered sanitarians. This act is discussed in more detail in the article concerning "Public Health."

Changes were made in the statutory qualifications for licensing osteopaths [Chapter 705 (SB 217)], certified public accountants [Chapter 1188 (SB 418)], land surveyors [Chapter 1236 (SB 64)], optometrists [Chapter 464 (HB 527)], physical therapists [Chapter 630 (SB 289)], veterinarians [Chapter 744 (HB 718)], and refrigeration examiners [Chapter 1206 (HB 476)]. In several instances the changes appear to relax previously existing requirements to some extent, particularly as to the licensing of persons coming to North Carolina from other states where they have been licensed to practice.

Chapter 1282 (HB 1003) provides that when the Council of the North Carolina State Bar orders a hearing on charges against a member of the bar and the lawyer charged so requests, the Council must advise the Supreme Court, which must designate a Trial Committee of three or more practicing lawyers to hear the cause. Thus an alternative forum is available to lawyers who do not wish charges against them to be heard by a committee of the Council. If the accused resides outside the state, hearings must be held in Wake County. The act is inapplicable to causes which had already been heard before a trial committee or which were pending on appeal to the courts when the act was ratified.

As introduced, HB 1003 would have eliminated the present right of an accused attorney to have his case heard before a jury upon appeal from the Council or Trial Committee to the Superior Court, and would have required the appeal to be heard instead by the judge sitting without a jury. It would also have made the findings of fact by the Trial Committee or the Council conclusive upon the court if supported by evidence, limiting the appeal to matters of law or legal inference. The present requirement that rules made by the Council or its committee for the hearing of cases conform to rules governing hearings before referees in compulsory references would also have been eliminated. These features were all stricken from the bill in the House.

To the boards subject to the Uniform Revocation of Licenses Act was added the State Board of Refrigeration Examiners by Chapter 1207 (HB 477).

All licensing boards are authorized by Chapter 1012 (HB 820) to bring their employees under the Teachers' and State Employees' Retirement System, the boards paying the employer's contributions and collecting the employee's contributions from their participating employees.

Among the measures which failed to complete the legislative journey were SB 96, which would have broadened the statutory definition of "structural pest control" for licensing purposes; SB 31, which sought to raise from $20,000 to $30,000 the maximum value of buildings or structures which can be erected by persons not licensed as general contractors; HB 514, strengthening licensing requirements for barbers, barber shops, and barber schools; HB 541, broadening the grounds for refusal or revocation of pharmacists' licenses; and HB 542, raising the standards governing the licensing of pharmacies.

New Studies Authorized

Interim study commissions continued to enjoy a high level of popularity with the General Assembly, although the fact that only eight such groups were created out of 15 proposed indicates the exercise of considerable selectivity on the part of the legislators. All commissions are to report to the 1961 General Assembly except as noted.

Commissions Created

For the fourth time in the last four regular sessions, the General Assembly established a Commission on Reorganization of State Government [Resolution 71 (HR 1085)]. Appointed by the Governor, the nine-member Commission is directed to study all state agencies

> . . . with the view of determining whether or not there shall be a consolidation, separation, change or abolition of one or more of these several agencies . . . in the interest of more efficient and economical administration.

Special directions are given the Commission to study the feasibility and advisability of creating a Commercial Fisheries Commission.

Another agency renewed for two more years is the Commission to Study the Cause and Control of Cancer, which has been active since 1957 [Resolution 78 (HR 705)]. Composed of ten medical people and ten laymen appointed by the Governor, the Commission will continue the study begun by its predecessor.

Public schools proved the most popular subject for formal study during the 1959-61 biennium, no less than three school study commissions and one special investi-

gation by the State Board of Education being provided for by legislative action.

Resolution 80 (SR 412) sets up the Commission for the Study of Teacher Merit Pay and Public School Curriculum which will, as the title indicates, inquire into teacher pay systems which take account of individual capacities and study the implementation of a revised public school curriculum. (Study of the curriculum itself has been under way for some time under sponsorship of the State Board of Education.) Of the 17 members of the Commission, five will represent the General Assembly, five the school profession, and five the public; two members will serve *ex officio*.

A bill (HB 425), which would have given the board of education of any administrative unit the option to operate the public schools of that unit on a four quarter basis died in a House committee, but the thought behind it lives on in Resolution 72 (HR 1117), establishing the Commission for the Study of a Twelve-month Use of Public School Buildings and Facilities for Public School Purposes. The Governor will appoint the five members of this agency, which will not only make the study suggested by its title but will evaluate the feasibility and practicability of an eleven-year, ten-month school system.

The Commission to Study the Public School Education of Exceptionally Talented Children [Resolution 69 (HR 973)] will investigate methods of discovering exceptionally talented children, of training such children within the public school system, and of mustering official and citizen support for such a program. Three of the members will be nominated by the Speaker of the House and two by the Lieutenant-Governor; these five, together with four other persons, will be appointed by the Governor.

The State Board of Education is directed by Resolution 73 (HR 1123) to study teacher evaluation, rating, and certification "with particular attention to methods by which some determination of the degree of quality exemplified by different persons may be made" and report its findings to the 1961 General Assembly. The Board is further directed to administer the National Teacher Examination or equivalent to all applicants for certification or for change in certification in any professional capacity within the school system.

Five persons appointed by the Governor will make up the North Carolina Grain Commission [Resolution 64 (HR 1041)]. Their job will be to study the agricultural loan programs for grain storage facilities and the means of developing maximum grain storage facilities in this State. The resolution authorizes the Commission, subject to approval by the Governor and Council of State, to make the job of chairman full-time.

The practice of confining wild animals as tourist attractions and the need for legislation correcting such practices will be the subjects of inquiry by a commission, three members of which will be appointed by the Speaker of the House and two by the President of the Senate [Resolution 79 (HR 1319)].

To inform itself on the feasibility of assisting the counties in acquiring voting machines, the General Assembly of 1959 created a five-member committee to look into the matter and report back in time for legislation to be enacted implementing its recommendations [Resolution 21 (SR 68)]. The bill (HB 825) drafted by that committee was reported unfavorably in the House.

Commissions Rejected

Renewal of one regular in the study commission field, the Tax Study Commission, was refused by the General Assembly (SR 401, HR 1348, and HR 1217). The first two resolutions were tabled in the Senate; the last was not reported by a House committee. The Commission would have continued studies of the revenue structure of the State begun in 1955.

The proposed Commission for the Study of the Organization of the State Highway Commission (HR 62) was favored by the House, but the resolution creating it never got out of committee on the Senate side.

Not only was a bill (SB 87) to abolish non-par banking disposed of with unusual dispatch; a proposed study of the subject by a special commission was killed in a House committee (HB 1143).

A Senate committee reported unfavorably a House-passed bill (HB 1154) creating a Commission to Study Social Deviances, a bland term for a variety of mental, physical, and social ills ranging from alcoholism and prostitution to hereditary defects and vagrancy, all of which would have been the subject of broad-scale two-year study conducted under the supervision of the Commission.

Introduced after failure to get favorable action on SB 21, prohibiting fire insurance companies licensed in this State from refusing to issue fire or extended coverage insurance on property in any county in the State, SR 407 made the grade in the Senate only to fail in a House committee. It would have authorized (but not required) the Governor, on recommendation of the Commissioner of Insurance, to appoint a commission to make a detailed study of the marketability of fire, lightning, windstorm, and extended coverage insurance offered for sale in this state, with emphasis on the refusal of insurance companies to sell insurance to property owners "who may be adversely affected by stringent underwriting requirements of insurance companies."

Introduced while it appeared that there was a reasonable prospect of legislative approval of some substantial measure of court improvement through constitutional revision, HR 1239 offered an alternative to action in the form of a State Judicial System Legislation Drafting Commission of nine members. This group would have been given the task of drafting legislation (not including constitutional changes) establishing a uniform inferior court system, an intermediate appellate court, and a uniform system of jury commissions, and giving rule-making power to the Supreme Court, for consideration by the 1961 General Assembly. It was never acted upon by the House committee to which referred.

After indefinite postponement of bills calling for revision of the Constitution in general and of the court system in particular, the House adopted HR 1357 to create a constitutional study committee composed of 11 legislators to give further consideration to the revision of the State Constitution and report to the 1961 session or to an extra session, should one be called to consider constitutional revision. The resolution was not reported out of the Senate Calendar Committee.

Income Tax of Individuals—Withholding and Paying Estimated Tax

Beginning in January 1960, employers will be required to withhold from salaries and wages paid their employees sums estimated to become due under the North Carolina Income Tax. Wages paid for agricultural labor and domestic service, and a few less familiar forms of compensation are not to be subject to withholding. Ordinarily, employers are to turn over their collections to the Commissioner of Revenue on a quarterly basis, but transient and seasonal employers will have to report every month.

Employers will be required to furnish their employees with withholding statements comparable with those used for Federal Income Tax purposes. To obtain credit for amounts withheld, employees will have to submit copies of those withholding statements when they file their annual state income tax returns.

Individuals receiving income from sources other than wages and salaries, whether as the sole source of income or in combination with salaries and wages, will be required to file declarations of estimated income by April 15, 1960, and every year thereafter, and will have to pay the estimated tax in four equal installments: at the time of filing on April 15, on June 15, on September 15, and on January 15 of the next year. An individual whose estimated gross income from farming amounts to at least two-thirds of his total gross income will be permitted to postpone filing his declaration until January 15 of the succeeding taxable year, but, in such a case, he will have to pay the full amount of the tax at the time he files his declaration. [Chapter 1259 (HB 12)].

Miscellaneous

Public employees, State or local, who are engaged exclusively in law enforcement or fire protection activities are forbidden by Chapter 742 (HB 118) to be members of any labor union which is or may become affiliated with any national or international union having for one of its purposes collective bargaining with governmental employers over wages, hours, or other conditions of employment. All existing collective bargaining agreements between any agency of the State or any county or municipality and any labor union are declared illegal and void. Violation of the act is made a misdemeanor, punishable in the discretion of the court. The State's "right to work" law is made inapplicable to State or local employees.

Under HB 695, the Commissioner of Labor would have been given the duty of making and enforcing rules providing for the safety of railway employees. The bill was reported unfavorably by the House Committee on Public Utilities.

Commission on Reorganization of State Government

Governor Hodges has announced the appointment of the following persons to the Commission on Reorganization of State Government:

Rep. George Uzzell, Salisbury, Chairman
Sen. Claude Currie, Durham
Sen. David J. Rose, Goldsboro
Rep. David M. Britt, Fairmont
Rep. Dwight M. Quinn, Kannapolis
Rep. Frank W. Snepp, Charlotte
Rep. H. P. Taylor, Jr., Wadesboro
Fred H. Weaver, Chapel Hill

North Carolina Commission on Interstate Cooperation

The following persons have been appointed to the newly-revised Commission on Interstate Cooperation:

Rep. James C. Bowman, Southport, Chairman
Paul A. Johnston, Director of Administration
Malcolm B. Seawell, Attorney General
George Randall, Chairman, Board of Paroles
Sen. Edwin Duncan, Sparta
Sen. S. Bunn Frink, Southport
Rep. Austin Jones, West Jefferson
Rep. Herbert Hardy, Maury

LEGISLATION OF INTEREST TO COUNTY OFFICIALS

By David S. Evans

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

[County officials will also want to read the articles on "Property Taxes," "Public Welfare," "Public Health," "Public Schools," "Public Personnel," "Election Laws," "Domestic Relations," "Water Resources," "Courts, Judges, and Related Officials," and "Law Enforcement." Legislation covered in those articles is not discussed here.]

County Finances

Chapter 250 (HB 270) authorizes counties to enter into continuing contracts, part or all of which may be performed in an ensuing fiscal year, if sufficient funds have been appropriated to meet payments due in the fiscal year in which the contract is made. This should be of particular assistance to counties desiring to enter revaluation contracts which will extend beyond the end of the current fiscal year, or desiring to lease office space for a period of years. Previously, such a contract could not legally be entered into unless sufficient funds were appropriated in the then current fiscal year to cover all payments to become due during the entire life of the contract.

Chapter 994 (SB 433) authorizes a board of county commissioners and a sanitary district board to agree upon a percentage (not to exceed 5%) of the sanitary district's taxes which the county may retain as reimbursement for the expenses of levying and collecting the district's taxes.

Chapter 712 (HB 492) authorizes boards of county commissioners to levy a special tax (not to exceed 5¢) for mapping the county and discovery of land not listed for taxes.

Chapter 1250 (SB 492) authorizes boards of county commissioners to take action to suppress riots or to handle any extraordinary breach of law and order which occurs or which threatens to occur within the county. In order to meet the costs of additional law enforcement personnel and equipment which may be required under such circumstances, the board is authorized to levy a special tax for the expenses thereof, and to issue bonds and notes and levy property taxes for their payment.

Chapter 308 (SB 216) authorizes counties and municipalities, acting jointly, to issue bonds for developing a water supply for domestic, municipal, industrial, and other purposes. County bonds are to be issued pursuant to the County Finance Act except for GS 153-80 (bond maturities), GS 153-82 (consolidated bond issues), and GS 153-103 (payment of bonded debt in installments). This Act does not permit the diversion of water from one watershed to another.

Chapter 445 (HB 310) levies a State license tax of $200 on each vehicle used to carry dry cleaning, pressing, or laundry work to be done by a dry cleaning or laundry plant which has not paid the state license tax. Counties, cities, and towns may levy a license tax on such vehicles not in excess of that levied by the State, but may collect this tax only if the state license tax, if due, has been first paid.

Chapter 1060 (HB 682) provides for distribution between the local governments involved of all payments received from the Tennessee Valley Authority in lieu of taxes. Previously, such payments have been divided between the State and local governments.

Chapter 989 (SB 350) authorizes boards of county commissioners, acting singly or jointly with other counties or cities, to spend such money as may be necessary to purchase and maintain rescue equipment and to finance the operation of a rescue squad or team to furnish services, either within or outside the boundaries of the county, in case of accident or other casualty or when circumstances reasonably require the services of a rescue squad or team

Chapter 1213 (HB 804) authorizes boards of county commissioners to cooperate with State and national soil conservation services and to appropriate non-tax revenues to promote this work. This Act applies to Alamance, Alexander, Anson, Ashe, Beaufort, Bladen, Brunswick, Cabarrus, Camden, Caswell, Chowan, Clay, Cleveland, Columbus, Craven, Cumberland, Dare, Davidson, Duplin, Edgecombe, Franklin, Gaston, Gates, Greene, Halifax, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Macon, Madison, Mitchell, Nash, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rowan, Sampson, Stanly, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Wayne, and Yadkin Counties.

Chapter 1069 (HB 944) authorizes the investment of county funds in securities issued by federal home loan banks pursuant to the Federal Home Loan Act of 1932.

County Records

Chapter 1162 (SB 101) authorizes the State Department of Archives and History to carry out a program of inventorying, repairing, microfilming, and storing county records of permanent value. The main purpose of this program is to provide a copy of these records for security purposes, in case the originals are destroyed by fire or otherwise. The expense of this program is to be borne by the Department of Archives and History, and State funds were appropriated for this purpose.

General County Authority

Chapter 1325 (HB 871) authorizes boards of county commissioners to fill vacancies appearing on said boards for

the unexpired term. Vacancies were previously filled by the clerk of Superior Court. This bill, as finally passed, applies only to 36 counties: Alexander, Anson, Avery, Brunswick, Burke, Camden, Caswell, Chatham, Chowan, Columbus, Duplin, Durham, Forsyth, Gaston, Gates, Graham, Greene, Haywood, Hertford, Johnston, Lenoir, Lincoln, McDowell, Montgomery, Nash, New Hanover, Northampton, Orange, Pasquotank, Pitt, Rockingham, Rowan, Stanly, Swain, Transylvania, and Yadkin.

Chapter 251 (HB 271) authorizes boards of county commissioners to prescribe the office hours, workdays, and holidays to be observed in the county offices and departments by officers and employees of the county. This clears up all doubt as to whether or not the county commissioners have authority to close the courthouse on Saturday.

Chapter 940 (HB 369) authorizes boards of county commissioners to appoint one or more building inspectors to enforce the State Building Code, county building regulations, and any other county or city ordinance relating to buildings. The commissioners may designate as inspector an inspector from another governmental unit (with the approval of its governing board), may create a joint inspection department, or may designate specified county employees to perform the inspector's duties. The boards are also authorized to make the necessary appropriations and to impose inspection fees. This act does not apply to Cherokee, Clay, Graham, Harnett, Macon, and Scotland Counties.

Chapter 290 (HB 269) authorizes boards of county commissioners to appoint a county fire marshal to serve at the will of the board, to fix the compensation of the fire marshal, to provide assistants and employees, and to designate his duties.

Chapter 369 (HB 301) provides that the raising or appropriation of money under the Local Development Chapter of the General Statutes may be approved by a majority of those voting in the election. Previously, such approval could be given only by a majority of all the qualified voters.

Chapter 1074 (HB 1064) authorizes boards of county commissioners, under certain circumstances, to create hospital districts without following the procedures set forth by existing statutes. When one hospital district already exists, or when a special tax levy for hospital purposes has been authorized in a portion of the county, the commissioners may, by resolution, create a hospital district consisting of the portion of the county not included in the existing hospital district or in the area in which a hospital tax levy has been authorized. After the creation of such a district, the commissioners may call for an election on the question of issuing bonds and levying taxes. Details concerning the election are set forth in the Act.

Chapter 1073 (HB 1048) imposes upon sheriffs the duty of issuing permits to purchase weapons, and the duty of selling or destroying confiscated weapons. This was previously the duty of the clerk of the Superior Court. This Act is applicable to only 59 counties.

Chapter 139 (HB 117) removes the one dollar limitation on the dog vaccination fee to be fixed by boards of county commissioners for rabies vaccination.

Health and Welfare

County officials will be interested in reading the articles on "Public Health" and "Public Welfare," with particular attention to Chapter 1124 (SB 243) authorizing the appointment of a special county attorney to handle certain welfare matters; Chapter 179 (SB 89) authorizing welfare payments in two or more equal monthly installments; and, Chapter 272 (HB 327) relating to legal settlement for purposes of the "County Poor Law."

Planning and Zoning

County officials will be interested in reading the article on "Planning," with particular attention to Chapter 1007 (HB 374) authorizing the county to regulate subdivision of land; Chapter 1006 (HB 372) authorizing the county to zone the area within the boundaries; Chapter 390 (HB 367) authorizing contracts with other planning boards for special planning assistance; and Chapter 327 (HB 370) authorizing contracts with the State for planning assistance.

Schools

County officials will be interested in reading the article on "Education," with particular attention to Chapter 524 (HB 572) authorizing the establishment of a County School Capital Outlay Reserve Fund; Chapter 764 (HB 1066) authorizing counties to pledge non-tax revenues to the repayment of a loan from the State Literary Fund; Chapter 525 (HB 649) authorizing counties to issue bonds and notes and to levy taxes to repay loans from the State Literary Fund; and Chapter 432 (HB 478) providing that school districts and school supplemental taxes will continue despite changes in the district lines when both districts have the same rate of tax.

Property Tax

County officials will be interested in reading the article on "Local Property Taxes," with particular attention to Chapter 704 (SB 162) establishing periodic revaluation of real property and requiring the levy of a special tax therefor.

Trends in Local Legislation

Seven new counties joined the twenty-seven already included in the provisions of GS 153-9 (43) which authorizes the levy of a special tax for the salary and expenses of farm and home demonstration agents, the county accountant, and the veteran's service officer. These seven new counties are Beaufort, Chapter 388 (HB 276); Carteret, Chapter 860 (SB 347); Greene, Chapter 724 (HB 875); Henderson, Chapter 625 (HB 786); Hoke, Chapter 394 (HB 523); Montgomery, Chapter 394 (HB 523); and Yadkin, Chapter 1317 (SB 502). In addition, three other counties received limited authority to levy special taxes for these purposes. Harnett County, which previously had authority to levy a three cent special tax for farm and home demonstration and three cents for the county accountant, was authorized to levy five cents for each of these purposes by Chapter 1318 (SB 508). Johnston County was included in GS 153-9 (43), insofar as the special tax for farm and home demonstration is concerned, by Chapter 64 (HB 84). Pamlico County was authorized by Chapter 875 (HB 1049) to levy up to five cents for farm and home demonstration, five cents for the county accountant, and one cent for the veteran's service officer.

Industrial development took a step forward as nine counties received authority to hold elections on levying

special taxes for this purpose, and four others received authority to make appropriations from other funds. The nine counties authorized to hold such elections are Anson, Chapter 1086 (HB 1220); Beaufort, Chapter 924 (HB 1105); Brunswick, Chapter 197 (HB 195); Martin, Chapter 666 (SB 341); and Rutherford, Franklin, Polk, Vance, and Edgecombe, Chapter 212 (HB 344). The four authorized to make appropriations are Bertie, Chapter 814 (HB 992); Catawba, Chapter 601 (HB 654); Edgecombe, Chapter 533 (SB 251); and Montgomery, Chapter 826 (HB 1023).

Fourteen counties received authority to pay certain delinquent taxes or the penalties and interest thereon into the general fund. The amount of time for which such taxes must have been delinquent before payment could be made into the general fund varied from county to county, some providing for payment into the general fund after being delinquent for a specified period of time and others providing that such taxes for a given year and all prior years be paid into the general fund when collected. These acts are local modifications to GS 153-9 (42) authorizing such transfer of taxes delinquent for two or more years, but there is some doubt as to the constitutionality of these statutes. The counties given this authority are Avery, Chapter 605 (HB 754); Chatham, Chapter 1111 (HB 1290); Clay, Chapter 984 (HB 1270); Edgecombe, Chapter 1097 (HB 1251); Franklin, Chapter 808 (HB 954); Graham, Chapter 833 (HB 1037); Harnett, Chapter 1338 (HB 1362); Hyde, Chapter 383, (HB 489); Macon, Chapter 607 (HB 779); Montgomery, Chapter 967 (HB 1178); Pitt, Chapter 675 (HB 920); Vance, Chapter 460 (SB 280); Warren, Chapter 397 (HB 554); and Wayne, Chapter 22 (SB 7).

The trend toward larger boards of county commissioners continued, as three counties received authority to increase the membership of their governing bodies. They are Brunswick, from three to five members, Chapter 773, (SB 388); Cleveland, from three to five members, Chapter 482 (SB 288); and Wake, from five to seven members, Chapter 792 (HB 841) and Chapter 1223 (HB 1314).

LEGISLATION OF INTEREST TO MUNICIPAL OFFICIALS

By GEORGE H. ESSER, JR.

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Unaccompanied by the fanfare of publicity given to withholding taxes, higher education, and constitutional and court reform, the package of bills designed to equip North Carolina's cities and counties to meet the challenges of urban growth was enacted by the 1959 General Assembly substantially as recommended.

Acting on the recommendations of two legislative study commissions—the Municipal Government Study Commission and the Tax Study Commission—the General Assembly:

1. Adopted a new system for the periodic revaluation of real property and the uniform assessment of both real and personal property, both measures designed to strengthen the local tax base.
2. Gave almost three-fourths of the state's counties the power to control subdivisions and to zone land outside the jurisdiction of cities and towns.
3. Gave cities and towns in 86 counties the power to annex land without referenda if specified conditions are met.
4. Gave cities and towns in 90 counties the power to zone land lying up to one mile from municipal boundaries.
5. Strengthened the powers of cities and counties to employ technical planning assistance and to cooperate with one another in providing such assistance.
6. Redefined State and municipal responsibilities for urban street systems so as to encourage joint planning and joint action to meet traffic needs in urban areas.

This article is not intended to provide a comprehensive analysis of the impact that this legislation may have on the future of city government and urban development in the state. That analysis should await exercise by the cities and counties of the new powers, for the permissive character of the legislation leads only to the conclusion that the General Assembly has provided a framework within which these powers can be exercised. How well they are exercised is up to the governmental units themselves.

Discussion of this legislation and other legislation of interest to municipal officials will be found in several of the articles in this issue of *Popular Government*. The property tax legislation is discussed under "Local Property Taxes." The planning and zoning legislation is discussed under "Planning." And other legislation of interest to city officials will be found in the articles on "Public Purchasing," "Public Personnel," "Election Laws," "Law Enforcement," "Motor Vehicles and Highway Safety," "Water Resources," "Courts, Judges and Related Officials," and "Education."

TABLE 1

LOCAL LEGISLATION AFFECTING CITIES AND TOWNS

Subject	No. of New Laws		
	1957	1959	No. of Bills Introduced but not Passed—1959
Structure and Organization			
Incorporation and Consolidation	11	13	0
Forms of City Government			
Providing for city manager	4	6	0
Changes in number and term of governing board members	21	22	2
Municipal Election Procedures	41	44	3
Pay of Governing Board Members	29	15	0
Appointment and Qualifications of Officials	8	6	0
Retirement and Civil Service	10	17	0
Charter Revisions	16	13	0
Sale of Property	40	18	1
Sub-Total	190	154	6
Municipal Finance and Fiscal Control			
Taxation and Revenue	21	14	2
Expenditures	9	6	0
Property Tax Collection	10	12	1
Special Assessment	15	7	0
Sub-Total	55	39	3
Planning, Zoning and Extension of Limits			
Planning and Zoning	22	17	0
Annexation	28	35	1
Sub-Total	50	52	1
Miscellaneous			
Streets, Traffic and Parking	4	4	0
Regulatory Powers, other	20	8	0
Police Jurisdiction	15	9	1
Local Courts	27	25	0
Sale of Wine, Beer, and Liquor	7	6	1
Other Municipal Functions	17	13	0
Miscellaneous	3	2	0
Sub-Total	93	67	2
Grand Total	388	312	12

Local legislation affecting cities and towns fell off about 20% in 1959, from a high of 388 new acts in 1957. There seems to be no particular reason for the decrease in volume, but Table 1 shows a comparison by subject matter between 1957 and 1959. Where local bills were considered to have some interest or significance, they have been touched upon in this and other articles concerning municipal legislation.

Extension of Corporate Limits

Perhaps there would have been no Municipal Government Study Commission created by the 1957 General Assembly had that body not had to settle several bitterly-fought annexation proposals, notably in Charlotte and Greensboro. As a consequence, in addition to recommendations in the areas of finance and long-range planning, the members of the Commission insisted on proposals which would permit satisfactory solution of annexation problems at the local level.

After extended study, the Commission issued a report on annexation in February, 1959, and these paragraphs summarize the Commission's basic approach:[1]

In short, the Commission rejected on the one hand the delegation of broad, general powers to cities and on the other the delegation to residents of the areas to be annexed or other agencies the right to impose a veto on reasonable annexation proposals by a city. And in so doing, the Commission came up with possibly the first comprehensive attempt to formulate specific standards defining "urban land" which should be within municipal boundaries.

Annexation by Petition.

The recommendations of the Commission were embodied in HB 506, 507, and 508. HB 507 simply rewrote GS 160-452 to clarify the procedure for annexation by petition, and was enacted without debate as Ch. 713, 1959 Session Laws. As rewritten, the section still requires the petition of 100% of the property owners in the area to be annexed, but no direct or indirect limitation on the size of the area to be annexed by this method is included. The petition procedure is set forth in the act, and just one notice of a public hearing is required instead of the four notices required under the old version.

Most important of the changes in GS 160-452 are these: (1) the governing board may fix the effective date of annexation at any time up to six months following the passage of the ordinance; (2) the word "contiguous" is defined so as to permit annexation of land which is separated from the municipal boundary by a street, creek or river, railroad right-of-way or lands owned by the municipality or some other governmental unit. In passing the ordinance the municipality is authorized to annex these "buffer" areas in order to permit annexation of the petitioners' land.

Annexation by Cities over 5,000.

The other two bills form the heart of the Commission's proposals. Two bills were introduced involving the same general procedure, but one applies to cities and towns having a population of 5,000 or more, while the other (HB 508) applies to towns having less than 5,000 population. The distinction is based on the Commission s finding in HB 506 that "new urban development in and around municipalities having a population of 5,000 or more persons is more scattered than in and around smaller municipalities, and that such larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve such scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this Section are to be attained."

Two major conditions are imposed on a municipality's power to annex. The first is that the land meet certain *standards of development.*

Standards of Development: This was a major hurdle for the Commission to cross. Other states have generally defined "urban land" by authorizing citizens to annex land which, for example, "may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole." No one but an appellate court can finally determine whether a specific proposal meets this vague and general test. As one member of the Commission remarked, "Any such approach would provide a field day for lawyers." So the Commission sought a set of specific standards which would express the intent of the General Assembly without requiring extensive judicial interpretation.

In view of the complicated formulae in the standards, many have wondered how they were developed. The simplest answer was provided by Representative H. P. Taylor in his explanation of the bills before the General Assembly: "The standards were derived from the experience of public health officials, highway, building and other engineers, developers and governmental officials working in all areas of municipal problems. They establish minimum standards of density above which we can reliably expect public health problems, demands for police and fire protection, street and drainage problems, fire and safety hazards, and traffic congestion. The standards were actually set somewhat higher than experienced officials would approve in order to protect land owners in the fringe. The idea was that if a city could be assured of being able to annex, it would not object to expanding services to

1. Municipal Government Study Commission, *Supplementary Report* (February, 1959), p. 9.

"To put it another way, in the vicinity of our growing cities all land (whatever its present use) has potential value for urban-type purposes. Land sold for residential, commercial or industrial purposes in an urban area brings a higher price than the same land in a rural area where agriculture is the highest and best use. In order to assure that land in urban areas is used effectively, such land must sooner or later receive municipal services. Rather than multiply many small and inefficient governmental units to supply these services as need arises—the pattern in many other states—we believe that the existing cities and towns should expand their service systems wherever practical. And the agency best fitted to determine the extent to which municipal facilities *can* be extended is the municipal governing board.

But the General Assembly should not delegate unlimited power to these governing boards. Exercise of discretion to extend corporate boundaries must and should be subject to general standards or limitations imposed by the General Assembly. And we think that the primary standards should be these: (1) that the land to be annexed is either developed for urban purposes or is reasonably expected to be so developed in the near future and (2) that the city give satisfactory assurances that services will be provided and made available to all the land annexed within specified periods following the effective date of annexation."

fringe areas prior to those areas reaching the standards of density set forth in this act."

In considering the standards themselves, it is important to note that there are three general standards which apply in all cases. That is, the entire area must be adjacent or contiguous to the city boundary, no part of the area to be annexed can be included within the boundary of another incorporated municipality, and at least one-eighth of the aggregate external boundaries of the area must coincide with the existing municipal boundary. The last provision is intended to discourage strip annexation for long distances along a highway.

In determining the applicability of the remaining standards, it is helpful to keep in mind the physical pattern of development outside North Carolina cities. Typically, new development grows up on either side of highways leading from the city. New subdivisions grow up on undeveloped land adjacent to streets and highways. Soon development stretches out along streets connecting radial highways, and the developing street system soon features congested development running along the streets and surrounding sometimes large areas of undeveloped land in the "hole" of the street "doughnut." Thus there may be large areas of undeveloped land lying between the city and areas needing or wanting services. And there may be large areas of undeveloped land waiting for streets and utility lines before the owners are ready to develop.

Under Ch. 1009 (HB 506), any part of an area to be annexed to a city having a population of more than 5,000 must meet one of the following five additional standards. Any one of them may apply to the entire area, or each of the five may be called into play in determining the total acreage to be annexed. A city can annex

One. An area having a total resident population equal to at least two persons for each acre of land included within its boundaries. Specific population density in a subdivision featuring one-half acre to acre lots will be higher than two persons per acre, but once land used for streets, recreational facilities, churches, schools, and commercial areas is included, the average density will drop. This standard will be particularly helpful in considering apartment projects where the land has not been subdivided so as to be included under Standard Two.

Two. An area having a total resident population equal to at least one person per acre and subdivided into lots and tracts such that (1) at least 60% of the total acreage consists of lots and tracts five acres or less in size and (2) that at least 60% of the total number of lots and tracts are one acre or less in size. A typical subdivision may not be completely developed but so subdivided that the individual parcels, either presently or in the near future, cannot be assured of satisfactory sanitation without public water and sewer supplies. The standard is so drawn that large undeveloped areas cannot be pulled in. For example, in a 100-acre tract, no one piece of land could be larger than 40 acres in size, and once provision is made for streets (typically 15 to 20% of land area), no single lot in the 100-acre tract could be larger than 20 to 25 acres. And the population requirement in practice would require that about thirty homes be constructed in any 100-acre subdivision before annexation would be possible.

Three. An area developed so that at least 60% of the lots and tracts in the area are used for residential, commercial, industrial, institutional or governmental purposes, and so subdivided that at least 60% of the total acreage exclusive of the acreage in use for commercial, industrial, governmental, or institutional purposes, consists of lots and tracts five acres or less in size. Many developed areas outside cities do not fit into simple classifications by use. The intent of this section is to permit a city to annex an area conaining predominantly commercial or industrial areas, or an area where residential development is mixed with commercial and/or industrial uses.

Four. Areas which meet Standards One through Three are defined as areas being used for "urban purposes." As pointed out above, annexation of such areas may leave the "hole in the doughnut," the undeveloped areas surrounded by land which meets the urban definition in Standards One through Three. Cities of 5,000 population or more are authorized *to annex undeveloped land which lies between the municipal boundary and an area meeting the definition in Standards One through Three so that such an "urban area" is either not adjacent to the municipal boundary or cannot be served by the municipality without extension of services and/or water and/or sewer lines through the undeveloped areas.* This statutory language definitely permits "bridges" of undeveloped land to be annexed, but it leaves open for interpretation in particular cases the extent of such "bridges".

Five. Cities are also authorized to annex land not meeting the definition in Standards One through Three if such land is adjacent, on at least 60% of its external boundary, to any combination of the existing municipal boundary and the boundary of an area or areas meeting the definition in Standards One through Three.

In effect, Standards Four and Five are designed to permit cities to annex land which is in the general urban community and is developed for urban purposes where, in order to establish physical connection with such land, annexation of undeveloped or sparsely developed land must be permitted.

General Comment: These are new definitions, new formulae, and although they have been critically examined and approved in principle by city planners, city engineers, city managers and developers in key cities throughout North Carolina, they must still stand the test of application. It may be that they need additional clarification on the basis of experience, but tentative application indicates that they will permit cities to annex those areas which are so developed that they do need services and should be within the city boundary. They do not permit annexation of undeveloped land *beyond* existing urban areas but which are ripe for development at the present time. On the other hand, the standards insure to cities that this land ripe for development may be annexed following development, and to this extent cities may now plan to extend water and sewer service to newly-developing areas without the fear that once having secured such services, newly-developed areas will resist annexation.

The standards require cities to do a great deal of preliminary work in determining acreage of land involved, degree of subdivision, and population. The statute provides some useful shortcuts in determining population and acreage, but under any circumstances much work is involved in determining the degree of land subdivision. This requirement, if the act is extensively used, should encourage better mapping in the vicinity of all cities and towns in the population class of 5,000 or more.

Some of the standards will inevitably be subjected to

judicial interpretation such as the size of the undeveloped "land bridges" which are permitted under the statute. On the whole, however, no state legislature has more completely attempted to define "urban land" and it will be interesting to see if these standards are practical in operation.

Ability to Serve: One of the chief obstacles to successful annexation in most cities has been the fear on the part of the landowner in the fringe area that services would not be provided commensurate with his added tax obligation. Most services are not provided by cities on a "benefit" basis, although streets and utility improvements commonly are, and the Commission was of the opinion that a city wishing to annex should demonstrate its ability and willingness to provide essential services as a condition to annexation.

Before annexation, a municipality is required under Ch. 1009 to make a thorough study and to prepare a report setting forth the following information:

1. A map showing the present and proposed boundaries. the location of present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls, and the general land use pattern in the areas to be annexed.

2. A statement showing that the area to be annexed meets the development standards set forth in the act.

3. A statement setting forth the plans of the city for extending to the area to be annexed each major municipal service performed within the city at the time of annexation, and specifically, plans for

a. The extension of police and fire protection, garbage collection, and street maintenance services on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. These plans are not required to call for fire protection of the same quality if water lines are presently not available in the area to be annexed, but the city is to provide "reasonably effective" protection until such lines are available.

b. The extension of major trunk water mains and sewer outfall lines into the area to be annexed so that after construction property owners in the area will be able to tap onto such lines according to the extension policies of the municipality in effect on the date of annexation. In other words, the municipality is not to be obligated to construct lines to the property line but merely to extend lines into the area so that properties can be connected in the same way that they already are connected in the city. For example, some cities extend all lateral lines at city expense, but other cities require the property owners to pay part or all of the cost of the laterals.

c. The timing of construction of the major trunk water mains and sewer outfall lines. The statute requires that the plans must provide for the letting of contracts within 12 months following the effective date of annexation. Since the effective date of annexation may be up to 12 months following the date of passage of the ordinance, the municipality may have up to 24 months from the passage of the ordinance to let the contracts for this construction. And this delay may be a valuable factor in financing the construction.

d. Financing all extensions of services in the area to be annexed.

The Annexation Procedure: The Commission adopted the point of view that the extension of corporate limits should be determined by legislative standards and should not be subject to a vote of the people in the area to be annexed, or to any sort of isolated political decision. At the same time the Commission recognized the necessity for a procedure that would, insofar as possible, protect the rights of owners of land annexed to the city.

The positive requirements for a detailed study and report of services to be provided are one feature of the procedure. Following passage of a resolution of intent to consider annexation and the fixing of a date for a public hearing not less than 30 days nor more than 60 days following passage of the resolution, the governing board must give wide public notice of the public hearing and, at least 14 days before the date of the hearing, approve the report of services described above and make it available to the public in the office of the municipal clerk. Furthermore, the municipality is authorized to prepare a summary of the full report for public distribution.

At the public hearing, following explanation of the report, any interested person may be heard. Then, the governing board must take action no earlier than seven days after the hearing and no later than 60 days following the hearing, and it may amend the plan for services or the description of the area to be annexed in any way that seems advisable on the basis of the evidence.

Insofar as passage of the ordinance is concerned, two points are worthy of note. First, in the ordinance itself the board must find that on the effective date of annexation the municipality will have funds appropriated in sufficient amounts to finance construction of any major trunk water mains and sewer outfalls found necessary in the report setting forth services to be provided; or, in the alternative, find that on the effective date of anexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction.

Secondly, the board is given the authority to fix the effective date of annexation up to twelve months from the date of passage of the ordinance, and if authority to issue bonds for financing water and sewer construction must be secured from the voters, then the effective date of annexation can be no later than the day following the statement of the successful result of the bond election.

Appeal Procedure: Property owners in the area to be annexed have two methods to insure their own protection First at any time within 30 days following passage of the ordinance, any property owner in the territory to be annexed may appeal to the Superior Court to review the annexation proceedings and determine whether the statutory requirements were in fact met. The statute provides for a speedy hearing and requires the court to remand the case to the municipal governing board (1) for the correction of procedural irregularities which may have materially prejudiced the substantive rights of any petitioner, or (2) for amendment of the boundaries if land which does not meet the statutory standards has been included, or (3) for amendment of the plan of services to be provided if the statutory requirements have not been met.

In the alternative, any property owner may, not sooner than one year following the effective date of annexation and not later than fifteen months from such date, apply

for a writ of mandamus to require the municipality to provide services which it has promised in its plan of services but which have not been provided.

Of course there may be an appeal from the Superior Court to the Supreme Court.

It will be said that the appeal procedure is calculated to slow up annexation proceedings. Certainly the statutes require more of the city than that the city merely have exercised "reasonable discretion." And certainly there are same areas where court interpretation of statutory language will be required. And certain it is that the act will be tested in court. On the other hand, if cities follow the statutory intent for a careful study of annexation, and if they follow through on the provision of services, a city should have no more to fear from court review than under today's conditions where a property owner may appeal to the court for a review of the reasonableness of the city's action.

Annexation by Towns Under 5,000: The procedure for municipalities having a population of 5,000 or less differs from the procedure for larger cities in that the declaration of policy states that new urban development in and around such municipalities "tends to be concentrated close to the municipal boundary rather than being scattered and dispersed as in the vicinity of larger municipalities, so that the legislative standards governing annexation by smaller municipalities can be simpler than those for large municipalities and still attain the objectives of the legislation."

The significant difference is found in the definition of urban land. The sole standard for small municipalities, other than the three general standards applying to the entire area to be annexed, is Standard Three. In the opinion of officials from smaller towns, this standard will be sufficient for the needs of smaller towns, involve less preparation in defining land to be annexed, and be easier to administer and to understand.

Local Legislation

Despite the publicity given these general laws, or perhaps because of a desire to accomplish annexation easily prior to the 1960 census, many cities and towns asked for and received annexation by legislative act. Annexations in 25 cities and towns were accomplished by legislative act, the largest in terms of area and population being High Point where just short of 20 square miles were annexed. In addition, a major annexation was approved for Asheville pending approval of the voters. All in all, 35 bills dealing with local annexation problems were passed.

Highway Legislation

Although the Municipal Government Study Commission generally concluded that the municipal tax base was sufficient to meet the demands of urban growth, if the property tax system were strengthened, it was concerned over the tremendous expenditures necessary to bring the urban highway system up to necessary standards.

The recommendations of the Commission, designed to make State-municipal partnership more effective in the planning and construction of urban streets, are embodied in Ch. 687 (HB 699). That bill accomplishes several objectives.

1. It more clearly defines, and to some extent expands, the jurisdiction of the State Highway Commission within municipalities. The State Highway System inside municipalities hereafter shall consist of "a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities." Heretofore, the types of streets to come under the State system were left to the sole discretion of the Highway Commission.

2. The Highway Commission shall be responsible for the construction and maintenance of such streets, but because such streets (although of primary benefit to the State in developing a state-wide coordinated system of primary and secondary streets and highways) also have varying degrees of benefit to the municipalities, the act directs that the respective responsibilities of the Highway Commission and the municipalities for the acquisition and cost of rights-of-way for State street improvement projects within corporate limits shall be determined by mutual agreement between the Commission and each municipality.

3. Each municipality, in cooperation with and perhaps with financial or technical assistance from the State Highway Commission, is directed to develop a comprehensive plan for a street system that will serve present and anticipated volumes of vehicular traffic in and around the municipality. Such plans are not to be based simply on present conditions but are to take into consideration prospects for economic and population growth in the community, and patterns of land development in and around the city. The plan is to provide not only for highways as such but for all methods of traffic control.

4. Following completion of the plan, the municipality and the Commission are to adopt the plan as the basis for future street and highway improvements in and around the city. And at the time of adoption, agreement is to be reached as to which of the existing and *proposed* streets and highways shall be a part of the State Highway System. From and after adoption, those streets and highways designated as State responsibility are to become part of the State Highway System. Provision is made for amendments to the plan.

5. With respect to any street improvement project on the State Highway System in and around a municipality, the Highway Commission and the municipal governing body are directed to reach agreement on their respective responsibilities for the acquisition and cost of rights-of-way for such project, taking into consideration the relative importance of the project to a coordinated state-wide system of highways, the relative benefit to the municipality, and the degree to which acquisition cost can be reduced or minimized by action by the municipality and/or the Highway Commission to acquire such rights-of-way well in advance of construction.

Since the requirement that every municipality pay at least 20% of the cost of acquiring right of way for any State Highway System project inside the municipality has been removed, those municipalities which had expressed resentment over heavy right-of-way bills for improvements deemed of no benefit to the municipality will henceforth be protected. They pay only if they agree in advance. On the other hand, the municipality which puts its head in the sand and agrees to pay nothing, whether or not the improvement has benefit to the municipality, will probably find that few improvements will be made on system streets within its borders.

The projected system meets all the requirements of a coordinated approach to the problems of solving the transportation problem in urban areas. Long-range planning is required. Agreement on respective responsibilities for right-of-way acquisition, construction and maintenance is required in advance, and general standards are set forth for guiding the Highway Commission and the municipal governing boards in fixing these responsibilities. But the act is not self-executing. It is absolutely dependent on cooperation, on successful negotiation, on sympathetic administration. It offers the opportunity for close and effective State-municipal cooperation. But it can as easily disappear into the morass of haggling and ineffective planning.

Governmental Structure and Organization

Incorporation

Seven new towns appeared on the scene as the result of 1959 legislation. Two were established following referenda required by legislation—Chocowinity in Beaufort County and Havelock in Craven County. The latter incorporation follows a long period of study and consideration in the community which has grown up outside the Cherry Point Marine Air Base.

Ocean Isle Beach in Brunswick County is another of the resort towns to be created with provision for participation by non-resident property owners in town affairs. The Governor is required to appoint the six-member town board following an advisory election. Board members are to serve for four-year staggered terms and the mayor is to be chosen by the board from its own membership for a two-year term.

Trent Woods, newly-incorporated in Craven County, is unusual in North Carolina but somewhat more familiar in other parts of the country. While the town is organized with a mayor and town board, the board is to have no authority to levy any taxes, and presumably few services will be provided. Similar examples of suburban communities incorporating to defeat annexation attempts by neighboring cities can be found in almost every state, though denial of the power to levy taxes is not usual.

Two Carteret County communities—Bayshore Park and Cape Carteret—were incorporated as was Barnardsville in Buncombe County.

Three other bills provided for consolidation of neighboring towns. Ch. 1144 (HB 1235) consolidates and merges the towns of Bertie and Windsor as of July 1, 1961. The other two consolidations require the affirmative vote of both affected towns to go into effect. Leaksville and Spray, in Rockingham County, have already conducted an election and consolidation was defeated. Ch. 882 (SB 426) authorizes a consolidation election to be held in Hazelwood and Waynesville in Haywood County at any time after June 1, 1960.

Ch. 187 (HB 254) repeals the charter of Selma Cotton Mills Village in Johnston County.

Forms of City Government

1959 legislation continues the trend toward adoption of the council-manager form of government and staggered four-year terms of office for North Carolina municipal governing boards.

The trend to the council-manager form of government is understandably most apparent in the smaller towns, since 26 out of 30 cities having a population of 10,000 or more persons have had a city manager for five years or more. Fourteen of the 25 cities with a population of from 5,000 to 10,000 now have a city manager, and Ch. 905 (SB 426) authorizes the governing board of Kings Mountain to call an election on whether "Plan D" should be adopted in that city.

Before this session of the General Assembly, 21 towns having a population of 2,500 to 5,000 still employed the mayor-council form of government, 10 had a town manager under a charter provision or adoption of Plan D, and three towns had employed a manager under authority of a town ordinance. As a result of recent legislation, both Canton and Brevard have approved the council-manager form of government by a vote of the people and Bessemer City has been authorized by legislative act to employ a manager. If Bessemer City exercises this authority, the balance will become 18 for the mayor-council form and 16 with managers.

Special legislation makes reshuffling of municipal governing boards—with particular reference to number of board members and term of office—relatively simple, and again more than twenty cities and towns made changes. Twelve moved to staggered four-year terms of office, although two of the acts (Morganton and Reidsville) provide that the staggered four-year term is subject to the approval of the voters. The other ten are Chadbourn, Fuquay Springs, Lillington, Randleman, Rockingham, Selma, Smithfield, Southport, Wake Forest, and Wallace.

Three charters were amended to provide for straight four-year terms of office—West Jefferson, Clyde, and Kings Mountain (subject to approval of voters). High Point, on the other hand, will move from four-year staggered terms of office to straight two-year terms as of 1961. As a part of the change, High Point is changing from election of two councilmen from each ward to election of one councilman from each of four wards with the remaining four members being those candidates who receive the next largest number of votes regardless of ward residence.

Other legislation placed before voters in Roanoke Rapids a choice between election of five commissioners at-large or one from each of five wards by voters at-large (presently three are elected from each of two wards by voters at-large); increased the number of commissioners in Bath and Conetoe from three to four and in Eureka from three to five; increased the number of aldermen in Rockwell from five to six but provided that the mayor should be elected from the board instead of by the people; increased the number of aldermen in Monroe from three to four and gave the mayor a vote on all matters coming before the board; and provided aldermen elected from wards in Concord should be voted on by all of the city's qualified voters instead of merely those in his ward.

Municipal Elections

Any one seeking an understanding of municipal election procedures in North Carolina must wade through literally hundreds of special acts, and 44 more were added to the confusion in 1959. Many of these acts make minor changes in primary and general election procedures, but six cities and towns added primary elections and three abolished them (Jacksonville, Smithfield, and Bridgeton). Five cities changed the date of the municipal election, four of them to adopt the traditional date of the Tuesday after the first Monday in May.

Pay of Governing Board Members

There was some decrease in the number of acts dealing

with pay of governing board members. These acts are discussed under the article entitled "Public Personnel."

Appointment and Duties of Officials

Cities and towns have generally had wide discretion in the appointment and fixing of duties for municipal officials and employees. Six acts dealt with this subject in 1959. Two are validating acts. One provides that the Winton police chief shall be elected by the town board instead of by the voters. Two make extensive clarifying changes in the organization of city government in Monroe and Hickory. And one permits a member of the town board in Enfield to serve as town clerk in addition to his other duties.

Charter Revisions

The number of basic charter revisions was curtailed in 1959. Only four cities adopted thoroughgoing revisions —Castalia, Greensboro, Spray and Statesville. The new Greensboro charter is of particular interest in that it contains a number of streamlining provisions not generally found in North Carolina city charters. It is worth study by other city attorneys.

Sale of Property

For a discussion of the legislation governing sale of property by municipalities, see the article on "Public Purchasing."

Municipal Finance and Taxation

After a very comprehensive study of the financial condition of North Carolina cities, the Municipal Government Study Commission concluded that the present municipal tax and revenue base was adequate to meet foreseeable demands and was as equitable as possible, providing certain changes in administration of the property tax recommended by the Tax Study Commission were made. The statutory changes recommended by that Commission were made, although the constitutional changes were not. For a full discussion of those new laws, see the article on "Local Property Taxes." It should be noted that while the recommendation of the Municipal Government Study Commission that no county be allowed to fix the ratio of assessed value to market value at less than 55% was not adopted, the law did provide that the county should consult with the governing boards of other political subdivisions in the county before fixing the ratio.

Whether or not these tax changes will strengthen the tax base in cities where revenue is desperately needed remains to be seen. Certainly the statutory framework provides the opportunity.

Ch. 1250 (SB 492) authorizes municipalities, as well as counties, to issue bonds and notes and to levy property taxes for the payment thereof to meet the expenses of additional law-enforcement personnel and equipment which may be required in suppressing riots or insurrections or in handling all extraordinary breaches of law and order which occur or threaten to occur in the municipality. This legislation was introduced and passed as the direct result of the Henderson strike.

Ch. 308 (SB 216), authorizing counties and municipalities to appropriate funds and issue bonds for developing jointly a water supply is discussed at length in the article on "Water Resources."

Local legislation in the area of taxation and revenue is not especially significant. One city, Hendersonville, obtained authority to exceed the general law statutory tax rate limit for general purposes of $1.50. Ch. 868 (HB 894) raises that city's limit to $1.60. Two bills eliminated charter provisions restricting cities to less than the $1.50 limit. All other legislation concerned with the power to raise money concerned technical procedures peculiar to the cities and towns involved and did not involve increased power to raise revenue.

Additional power to spend money is the subject of a handful of new bills. Oriental in Pamlico County and Newport in Carteret County were authorized to appropriate non-tax funds to the county board of education in their respective counties to help supplement the salaries of teachers in the town schools. While supplementary taxes levied by city residents on themselves for this purpose are quite common, the use of municipal funds is quite unusual.

Wrightsville Beach was given authority to issue bonds to build a new resort hotel. Ch. 1302 (HB 1243). Any attempt to sell these bonds will most certainly face a court test in view of the decision in *Nash v. Tarboro*, where Tarboro was denied the right to build a hotel approved by the General Assembly on the constitutional ground that construction of a hotel is not a municipal public purpose. Also in New Hanover County, Wilmington was given authority to issue revenue bonds to acquire, construct, improve and equip port facilities.

There was a handful of bills expanding and modifying special assessment procedures. Many of the larger cities using special assessment procedures extensively have found that the general law is not sufficiently comprehensive to cover all of the situations that arise in assessment administration. High Point, Salisbury and Burlington were among the cities securing additional procedural powers.

Miscellaneous Legislation

Three miscellaneous general laws are worthy of comment.

Ch. 349 (SB 38) provides for the continuity of local governmental units in emergency situations by authorizing any local governing body to designate alternate places inside or outside the territorial limits of the political subdivision as the emergency location of government. Therefore, after the Governor and Council of State have declared an emergency, action taken at such location is specifically authorized.

Heretofore cities and towns having a population of less than 15,000 have been limited to tracts of no more than fifty acres for cemetery purposes. Ch. 391 (HB 456) removes the limitation.

Some of the local legislation meeting the "miscellaneous" classification is of interest

ABC Elections: Four more cities were specifically authorized to hold elections on the establishment of ABC stores. Statesville, Mount Airy, Shallotte, and Gibsonville were given such authority.

General Regulatory Powers: Apart from the extensive zoning legislation, there were few cities seeking additional police and regulatory powers. Lumberton received specific authority to regulate the construction of both public and private swimming pools; High Point received special authority to force property owners to clear weeds, debris and trash from property; and five towns were made bird sanctuaries.

Street, Traffic and Parking: Two cities—Washington and Rockingham—were given special authority to regulate

parking on municipal off-street parking lots and other off-street areas used generally for free parking, and to tow away vehicles parked in violation of parking regulations. These acts are quite similar to the special authority obtained by Durham in 1957.

Other Functions: A number of miscellaneous bills affecting the performance of other functions in particular were passed. Among them was a bill authorizing the City of Charlotte to provide air transportation (helicopter) to any point within 65 miles of any airport owned by the city. Ch. 117 (HB 179). Another interesting piece of legislation from Charlotte creates a city-county recreation commission subject to approval by the voters of the area outside the city of a 5¢ tax rate levy for the support of recreation. The present Park and Recreation Commission in the city would be replaced by an 11-member commission, seven members to be chosen by the city council and four by the county commissioners.

Study Commissions: There were no state-wide study commissions created with responsibility to study matters of direct interest to municipalities. One local commission may have some significance. Ch. 696 (HB 880) creates an 11-member City-County Charter Commission in Durham to be composed of two county commissioners, two citizens chosen by the county commissioners, two city councilmen, two citizens chosen by the city council, and three other members chosen unanimously by the first eight. The duty of the Commission is to study the operations of city and county government, and it may submit to the voters by Feb. 1, 1961 a charter embracing one of three general alternative plans for the reorganization of local government in the county: (1) redefinition of city and county responsibilities, involving transfer of responsibility from city to county or county to city or the creation of joint agencies; (2) creation of a unified governing board to serve as the governing board for both the city and the county, each of which would retain separate corporate status; (3) a unified or consolidated city-county government with full responsibility for performing all the functions of the present city and county. For those interested in basic reorganization of city and county government, the act sets forth in some detail the outlines of each alternative plan.

WATER RESOURCES

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Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

In the months before the convening of the last General Assembly there was much talk of proposed legislation for a new State Department of Water Resources, small watershed development, motorboat regulation, State aid for municipal sewage disposal, local participation in Corps of Engineers development on the Upper Yadkin, and increased appropriations for shore protection and for preservation of the Outer Banks. As the dust of the 1959 Assembly cleared it was apparent that the proponents of these measures had succeeded remarkably well. All but one of them was adopted in some form, the lone exception—State aid for municipal sewage disposal—never having been formally presented for legislative consideration.

It is felt that the unusual amount of legislative activity in this field, and in particular the initiation of a new department of State government, justify the inclusion in a legislative issue of Popular Government, for the first time, of a separate article devoted to water resources.

Introduction

The principal measures to be discussed in this article are these:

The Department of Water Resources Act—Chapter 779 (HB 33)

The small watersheds law—Chapter 781 (HB 318)

The Corps of Engineers-local participation law—Chapter 308 (SB 216)

The motorboat regulation law—Chapter 1064 (HB 773)

The appropriations for shore protection and preservation of the Outer Banks—Chapters 1241 and 1039 (SB 318 and SB 352)

Also to be noted are acts affecting the drainage district laws, pollution of the Haw River, Cape Fear pilotage rates, and the Neuse River Authority law.

The New Department of Water Resources

Chapter 779 reorganizes the agencies of State government that have primary responsibility for use and disposal of water, and consolidates them into a new State Department of Water Resources. Affected agencies are: *first*, the State Board of Water Commissioners, which was abolished by the act, and its functions transferred to the new department; *second*, the State Stream Sanitation Committee, which, together with its administrative arm (the Division of Water Pollution Control), was transferred from the State Board of Health to the Department of Water Resources; and *third*, the State Department of Conservation and Development, whose water resources activities were transferred to the new department (involving, among other things, the abolition of the Division of Water Resources, Inlets and Coastal Waterways).

This legislation follows close on the heels of changes made in the organization of the State water agencies by the 1957 Assembly. A review of this legislation and intervening developments is needed for a full understanding of the new law.

1957 Legislation

The 1957 legislation (SL 1957, Chapter 1267) dealt with overlapping and duplication of work between the State Stream Sanitation Committee and the State Board of Health, and also between the State Board of Water Commissioners and the State Department of Conservation and Development. In the area of water conservation, it sought to eliminate program duplication by vesting sole responsibility in the Board of Water Commissioners for planning and for making policy recommendations, while giving sole responsibility to the Department of Conservation and Development for the conduct of hydrologic research and maintenance of a general source of water information. In the area of water pollution abatement, it sought to eliminate program duplication by making the Stream Sanitation Committee an independent unit within the State Board of Health and designating the Board of Health (through its Division of Water Pollution Control) as the administrative agent of the Committee. The Division of Water Pollution Control was made responsible not only for administering the provisions of the clean streams law (Article 21 of GS Chapter 143), but also for performing any other duties that might be assigned it by the Board of Health, relating to control of municipal, institutional and industrial sewage and waste disposal systems. The Board of Health was admonished to make such assignments as soon as practicable, in order to eliminate duplication of effort in these areas.

Duplication existed where protection of municipal water supplies was involved, in that both the Stream Sanitation Committee and the Board of Health were exercising authority to control pollution. The former was exercising powers derived from the clean streams law; the latter, powers derived from the public health code (GS Chapter 130). The authority of the Board of Health antedated that of the Stream Sanitation Committee and was not abrogated by the adoption of the clean streams law. However, the Board's authority was inadequate to deal effectively with all facets of water pollution problems of

contemporary industrial society, and its inadequacy, indeed, led to the movement for adoption of the clean streams law. Nonetheless the health code provisions continued to serve useful purposes and were, and continue to be, vigorously exercised.

On June 27, 1958, the Board of Health produced an assignment of functions in the form of a memorandum to local health directors and others. To the Division of Water Pollution Control was assigned the responsibility of administering the clean streams law, as well as pertinent provisions of the health code for major sources of pollution—municipalities and communities served by public or community sewage systems, as well as industries and federal installations—*in areas where streams have been classified* under the clean streams law. *Before classification of streams,* the health code would continue to be administered by the Sanitary Engineering Division; *after as well as before classification,* that division would administer all laws and regulations concerning sewage and waste discharges from enumerated establishments *not* served by public or community sewage systems. As will be pointed out, this division of functions was to be substantially preserved in the 1959 reorganization.

Legislative History

The proposal for an independent water resources department was officially launched by the Board of Water Commissioners during the summer of 1958, and shortly thereafter seconded by the Board of Conservation and Development. Somewhat later the third major agency involved, the Stream Sanitation Committee, signified its approval and the State Board of Health indicated it would not object so long as its public health responsibilities, especially for protection of domestic water supplies, were given adequate recognition. The proposal was then taken by the Board of Water Commissioners before the Commission on Reorganization of State Government which, after further study gave its approval and prepared a report spelling out its recommendations.[1] A bill was drafted to implement the report, and introduced as HB 33 (SB 20). The Joint Legislative Committee on State Government, to which it was referred, held a public hearing on the bill at which no opposition was expressed, and then assigned it to a subcommittee for further consideration. The subcommittee redrafted the bill, reorganizing some of its provisions and spelling out certain powers which had originally been incorporated by reference, but recommending only two material changes, the substance of which will be noted later. Passage of the bill was obtained without further amendments, after relatively brief floor debate and with no dissenting votes.

Content of the Act

Hitting only its high spots, there follows a brief review of the provisions of the new Department of Water Resources Act.

First, the act completely consolidates in the new department the functions of the Board of Water Commissioners and the water resources activities of the Department of Conservation and Development—including hydrologic research and maintaining a general source of water information; planning and formulation of water policy recommendations; administration of the well drilling, irrigation permit and emergency diversion laws; and development of navigable waterways, flood control, shore protection and other related programs, in cooperation with federal agencies.

Second, to a lesser extent the act brings within the fold of the new department the stream sanitation program. The Stream Sanitation Committee and Division of Water Pollution Control are transferred to the Department of Water Resources but retained intact. In the original bill, provision was made for eliminating the Stream Sanitation Committee as an independent entity on July 1, 1965, but this provision was deleted by the committee substitute. While the resulting arrangement—involving two policy making boards within a single department—may appear awkward, it is quite similar to the arrangement that has worked successfully for the past two years. The Stream Sanitation Committee will stand in essentially the same relation to the new department as for the last two years it has borne to the State Board of Health. The Committee will continue to administer the clean streams law and to exercise related powers under the health code. In the latter regard, the act attempts to transplant to the new setting the lines of authority (as between the Divisions of Water Pollution Control and Sanitary Engineering) adopted by the Board of Health in its June '58 memorandum, previously noted. One of the larger questions raised by the act is whether this transplant will be successful.

In the final analysis the most significant effect of the amalgamation of the stream sanitation program may be the availability to the new department of the large and competent staff of the Division of Water Pollution Control for work concerning water conservation as well as stream sanitation.[2]

Third, as pointed out in later discussion of legislation concerning small watersheds and Outer Banks protection, that legislation gave the Board of Water Resources certain supervisory powers with respect to small watershed projects, and certain powers with respect to the Outer Banks project.

Fourth, the act confers an unusual degree of administrative flexibility upon the new department. The Governor is left free to make appointments to the Board of his own choosing without regard to representation of particular interest groups. (A requirement of the original bill that municipalities, farmers and various industries be represented on the Board was eliminated in the committee substitute—a contribution of the State Government Subcommittee, which apparently had grown weary of the entreaties of various industries for separate representation.) The Board is required to appoint a full time

1. The Commission had previously heard recommendations for an independent navigable waterways commission, and had been favorably impressed. It apparently concluded that the aim of focusing greater attention upon navigation development could be achieved within the framework of a department of water resources, however, for its report stated: "We wholeheartedly agree that emphasis should be placed upon the development of North Carolina's navigable waterways. We are of the opinion that this can best be accomplished through the creation of a division of navigable waterways within a Department of Water Resources." 11th Report of the Commission on Reorganization of State Government, "Water Resources Management", (November, 1958), p. 4.

2. The Division of Water Pollution Control now numbers 36-½ employees, while the staffs of the Board of Water Commissioners and the Division of Water Resources, etc., number respectively four and eight. Under GS 143-357, added by the act, all of these personnel are transferred to the new department.

director and to create a division of water pollution control and a division of navigable waterways (the latter, as earlier suggested, the fruit of a previous proposal for an independent navigable waterways commission). Beyond this, the Board may create such other divisions and units as it wishes and may, but is not required to, create advisory committees composed of such members as the Board directs.

* * * * *

The enactment of Chapter 779 places North Carolina at the forefront of a movement underfoot in many states toward consolidation of State water resources agencies.[3] Few if any states have assembled within a single water ageney the functions of the new Department of Water Resources; rare, also, is the combination of independent departmental status and administrative flexibility granted by the new law.

Members of the new department will be pardoned if they bask briefly in the reflected splendor of their streamlined organization, for the road ahead is no easy one. There are nagging carry-over issues to be confronted, for example, the recurrent proposals to revamp the law governing rights to use water. The reorganization brings with it its own problems, notably those posed by the removal of the stream sanitation program from its accustomed habitat within the State Board of Health. New issues demanding early attention include the need for initiating and maintaining a vigorous program of navigation improvement, without in the process slighting other worthy programs. The department will be the focus of pressures from many groups of water users, pressures which promise to increase if recent population and industrialization trends hold. Because of its responsibility for liaison with federal water agencies, the department may well find itself thrust in the midst of federal interagency rivalries. In short, prospects for the new union include a short honeymoon and an uncertain, trying but exciting future.

The Small Watershed Act

A second major piece of water legislation is the small watershed act (Chapter 781—HB 318). Its basic aim is to establish enabling machinery that will permit farmers to co-operate with one another in the age-old struggle to capture the blessings of the water that falls upon and courses through their land, while minimizing its potential harm. It envisions a comprehensive effort to hold rainwater on the land where it falls, by means of a combination of soil conservation practices and land treatment measures, together with water control measures, such as making stream channel improvements and constructing small reservoirs for purposes of flood control and water conservation.

A portion if not all of the necessary legal authority existed under the soil conservation district law (GS Chapter 139). This authority is amplified by the new law, which adds powers for soil conservation districts to provide for flood prevention and conservation, utilization and disposal of water, and for the development of water resources, through works of improvement, preventive and control measures and other means. Keystone of the new act, however, is its provision for creation of watershed improvement districts within existing soil conservation districts, having all of the powers of soil conservation districts plus still missing) in the soil conservation district law.[4] A authority to levy benefit assessments to finance their activities—a vital element previously missing (and, indeed, watershed district may be established upon petition filed with the supervisors of the appropriate soil conservation district by at least 100 owners of land located within a proposed watershed district, or a majority of the landowners if there are a total of less than 100 of them in the area. There must then follow public hearings, a referendum among the affected landowners and approval of the petition by the soil conservation district supervisors. The supervisors are to approve a petition if they believe a proposed district holds promise of engineering, administrative and economic feasibility. They *may not* create a district unless the results of the referendum are favorable; if the results are favorable, they *may* do so, but are not compelled to.

A district once created would be governed by a three-member board of trustees, the initial members to be appointed by the supervisors and their successors to be elected by qualified electors residing in the district. Procedures for the conduct of elections and for levying and collecting assessments are spelled out in great detail by the act. Provision is also made for limited supervision of watershed improvement programs by the State Board of Water Commissioners and its successor, the new Board of Water Resources. This supervision would consist of: (1) periodic district reports to the Board concerning inflow and release of water into and out of the district reservoirs—to the extent funds to defray the cost of obtaining such information are made available to the district or supplied (voluntarily) by the district; (2) Board review of district work plans for construction of works of improvement, in the interest of assuring safe construction and furnishing some protection to downstream users; (3) subsequent Board review of actual operations of district projects, but *only if* their operation departs from operating plans submitted to the Board by a district together with its work plans; and (4) intermediate administrative review by the Board of land classifications made and benefit assessments levied by district trustees, this review to precede possible later resort to the courts.

An alternative method of carrying on watershed improvement programs under the direction of county commissioners and through existing county governmental machinery is set out in a separate article. County watershed improvement programs would be initiated through county-wide referenda and financed by county-wide ad valorem tax levies, in a maximum amount of 25¢ per $100 valuation.

Chapter 781 will probably find its principal application in conjunction with a federal aid program enacted by Congress in 1954 and familiarly known by its public law number ("Public Law 566"). Public Law 566 furnishes grants and loans for locally initiated small watershed

3. For an account of this movement see "State Administration of Water Resources" (1957) and "State Water Legislation, 1956 and 1957", both published by the Council of State Governments.

4. Existing soil conservation programs have been financed by a mixture of federal and State appropriations. Farmers have made their contributions largely in kind, by applying to their land recommended soil conservation practices and land treatment measures. Since no major structural improvements were involved such as those contemplated by the small watershed act, taxing or assessing powers were not felt to be essential.

improvement programs such as those contemplated by Chapter 781.[5] Without the promised federal assistance,

Legislative History

The legislative history of Chapter 781 begins with a predecessor bill having similar objectives but less detailed provisions, which was introduced in the 1957 General Assembly but was not reported out of committee (SB 308). In the summer of 1958 sponsors sought backing from the State Board of Water Commissioners for substantially the same bill. The Board gave its approval in principle, but appointed a subcommittee to consider certain objections that had been raised. Several months later the proposal emerged from this subcommittee with the addition of provisions for Board supervision, previously described, and much expanded election and assessment procedures. It was introduced in bill form in the Senate as SB 155 by Senator Rose and in the House as HB 318 by Representative Murphy, Newman, Whitmire, Buchanan, Braswell and others. A public hearing was held by the Joint Committee on Agriculture at which no unfavorable witnesses appeared. Senate passage of SB 155 was obtained with little discussion on April 24 after adoption of a number of committee amendments and two floor amendments, none of which significantly altered the bill. Several of the committee amendments were designed to make clear that the act was not intended to authorize diversion of water from one watershed to another nor to alter existing relative water rights of riparian owners. Other committee amendments (1) required that all work plans for works of improvement pursuant to the act (not merely those involving federal aid) be submitted to the Board of Water Resources; (2) required the Board in reviewing work plans to consider the effect on downstream water users of works of improvement and related structures within the watershed whether or not owned by the district that submitted the plans; (3) made clear that restrictions contained in the bill as to lands includible in soil conservation districts (and, by definition, in watershed improvement districts) were intended to apply to existing soil conservation districts as well as those formed in the future; and (4) provided that a referendum on creation of a district would not be required if petitions to establish the proposed district were signed by a majority of those owning land within its boundaries (this amendment was later deleted by the House). The floor amendment deleted a provision of the original bill that elections need not be held on petitions for inclusion of additional area in districts, and deleted a provision declaring the lien of watershed assessments superior to all other liens and assessments (the nature of this lien was amplified by subsequent House amendments).

In the House the bill was referred by the Committee on Agriculture to a subcommittee, chaired by Representative Braswell, which gave the bill exhaustive consideration and recommended a number of amendments, most of which dealt with details of procedure for creation of districts, classification of land for assessment purposes, and levying of assessments. The one change of substance added to the bill Article 3, establishing a method of prosecuting watershed improvement programs through the regular county government. These amendments were approved by the full committee and incorporated into a committee substitute for the House bill, which the House in turn adopted on May 18. On May 26 the House adopted clarifying floor amendments relating to hearings on creation of districts and mechanics of property classification and assessment. After an hour's debate, the much amended bill passed the House on second reading with four dissenting votes, and it passed on third reading May 27. On June 3 and 4 the Senate passed the House bill without further amendments.

* * * * *

Interest in watershed improvement programs in North Carolina is undoubtedly running high, as evidenced by a back-log of several millions of dollars of outstanding federal aid applications now pending. Enactment of Chapter 781, together with related amendments to the drainage district laws, hereafter discussed, should provide an outlet for this interest. Before moving on to other matters, however, a few general comments may be in order.

(1) While sponsors of the small watershed law may rightly consider its enactment a major achievement, only time can test the workability of this oft-amended, intensively scrutinized piece of legislation. Much will depend upon the willing cooperation of county officials and an understanding administration of supervisory controls by the Board of Water Resources. Much will depend also, it might be added, upon continued prosperity, for a general economic downturn during early stages of district organization could threaten the entire program.

(2) Provisions of the bill concerning review by the Board of Water Resources of work plans for district works of improvement deserve special mention. Of particular interest is the paragraph directing the Board to approve work plans if, in its judgment, they:

> "(2) show that the construction and operation of the proposed works of improvement (in conjunction with other such works and related structures of the district and the watershed) will not appreciably diminish the flow of useful water that would otherwise be avail-

5. Under Public Law 566 the United States offers to pay all project installation costs attributable to flood prevention purposes, and such part as the Secretary of Agriculture deems equitable of installation costs attributable to agricultural phases of the conservation, development, utilization and disposal of water or for fish and wildlife development. The Secretary is also authorized to furnish planning assistance and to make loans or advancements to local organizations to finance the local share of the cost of carrying out works of improvement. These federal assistance features are available only for programs carried on in watersheds of 250,000 acres or less, and including no single structure providing more than 5,000 acre-feet of floodwater detention capacity and 25,000 acre-feet of total capacity. Local sponsoring organizations are required to assume all other installation costs, to acquire without cost to the United States necessary easements, rights-of-way and water rights, to make arrangements satisfactory to the Secretary for defraying operation and maintenance expenses, and to submit satisfactory plans for repayment of loans or advancements. The local organizations must also obtain agreements to carry out recommended soil conservation measures from owners of not less than 50 per cent of the lands situated in the drainage area above each reservoir.
experience suggests, farmers are usually unable or unwilling individually or collectively to make the financial outlays needed for such work. Without state implementing legislation permitting creation of governmental subdivisions such as watershed improvement districts, with authority to levy taxes or assessments, it is impossible in most instances to satisfy the requirements of Public Law 566 for local assumption of maintenance, operation and other costs.

able to existing downstream water users during critical periods."

This paragraph appears not to detract from existing water rights, but rather to reinforce them by a form of administrative protection. The act as a whole shows no evidence of any intention to stray from existing water rights doctrines, indeed, several of its provisions declare expressly to the contrary. None the less, the enactment of a system of state wide *administrative* control over the utilization of water by a large class of citizens, though it be limited to reinforcement of current doctrines, is a noteworthy departure. The evolution of the administration of these controls will doubtless be watched with interest in many quarters, as will future efforts, if any, to enlarge upon this precedent.

(3) Also of considerable interest is an amendment to the present soil conservation district law contained in bill section 6 which excludes from the boundaries of existing soil conservation districts, as well as of districts yet to be formed, all "town or village lots" and "government owned or controlled land", as defined. (As to existing districts, this purports only to incorporate exclusions already contained in district charters.) The term "town or village lots" is defined to mean:

"Parcels or tracts on which no agricultural operations are conducted, or (being less than three acres in extent) whose production of agricultural products for home use or for sale during the immediately preceding calendar year was of less than $250.00 in value."

The term "government owned or controlled land" is defined to include:

"Land owned or controlled by any governmental agency or subdivision Federal, State or local."

By definition this section would also appear to require a similar exclusion from the boundaries of watershed improvement districts, which may be formed only *within* one or more soil conservation districts, except when excluded property owners consents to inclusion of their lands [GS 139-16, 139-18(a)]. Although in most cases the application of these exclusion provisions may be clear, borderline cases are likely to arise—especially where it is necessary to determine whether particular uses of rural lands should be considered "agricultural operations" and the lands thus excluded from district boundaries (and not subject to watershed assessments).

Local Participation in Army Engineers' Projects

Chapter 308 (SB 216) is concerned with another form of local-federal co-operation. It contemplates financial participation by counties, cities, and towns in reservoir projects of the Corps of Engineers, U. S. Army, which will provide municipal or industrial supply benefits.[6]

Chapter 308 empowers two or more counties and/or municipalities, under certain conditions, to issue bonds to meet their proportionate parts of the local share of the cost of such projects. (The bonds are to be issued, respectively, under provisions of the County and Municipal Finance Acts with prescribed exceptions.) Each of the local units involved must be located at least partly in the same river basin. Furthermore, the basin must be one upon which Congress has made appropriations for construction of a project referred to in the Water Supply Act of 1958. Finally, the combined sum of the bonds issued may not exceed in amount 30 per cent of the estimated cost of the project—a limitation corresponding to one contained in the Water Supply Act, limiting the portion of estimated project cost that may be allocated by the Corps of Engineers to anticipated future municipal and industrial water supply demands.

Section 2 of the act establishes a method for joint determinations by the participating local units of their proportionate shares of the cost, while section 6 attempts to provide for the contingency of multiple bond elections having divergent results.

The Federal Water Supply Act of 1958, mentioned above, gave the Corps of Engineers general authority[7] for the first time to include in its reservoir projects storage to impound water for present or anticipated demands for municipal or industrial water, and to take into account the estimated benefits of such storage in appraising project benefits and costs. (43 U. S. C. 390b; 72 Stat. 319 (1958)).

Before projects including such storage are constructed, state or local interests must agree to pay for the cost of such provisions—this requirement being what gave rise to the need for the North Carolina local participation law. The act sets forth liberal terms for repayment of the local share of costs, including maximum fifty-year payout period, and interest at the average rate on outstanding marketable Treasury obligations, except that no interest is to be charged for ten years or until the water supply is first used, whichever is sooner.

Legislative History

Chapter 308 appears to have grown out of efforts to finance the local share of costs of a projected Corps of Engineers flood control reservoir located on the Yadkin River near Wilkesboro. While the principal purpose of the proposed reservoir is flood control, the Corps was unable to justify construction unless it provided additional storage of water for release during drought periods to augment low stream flows. In a series of public meetings during 1958, representatives of the Corps made it clear that if the State or the affected localities could not give reasonable assurances of contributing approximately $1 millions to provide for low flow storage, there would be no dam.

Several possible vehicles for local participation were discussed, including formation of a water authority by the affected cities and counties under G.S. Chapter 162A. None of the alternatives appeared to be satisfactory. Some doubts were expressed concerning the constitutional authority of counties or cities to make the required commitments, and the possibility of seeking a constitutional amendment to remove these doubts was considered, but evidently discarded. In any event, on April 9 SB 216, billed as the solution to the Yadkin-local participation issue, was introduced by Senators Davis of Forsyth, Duncan of Alleghany and Reavis of Yadkin. During its brief legislative journey (it was ratified eight days after introduction) SB 216 attracted a single floor amendment in the Senate. The amendment,corresponding to a similar but more detailed one attached to the small watershed

6. Literally, the act contemplates local participation in projects of both the Corps of Engineers and the Bureau of Reclamation. The latter reference is of no current significance in North Carolina, however, since the operations of the Bureau historically have been limited to the seventeen arid westernmost states.

7. Prior legislation concerning *specific* projects accorded similar authority to the Corps of Engineers, for example, the authorization for Clark Hill Reservoir in 69 Stat. 28 (1955).

bill, provided that nothing contained in the act should be construed to permit the diversion of water from one watershed to another. In light of the act's requirement that each participating local unit be located at least in part within the drainage basin of the reservoir project, the amendment would seem to be of limited practical application.

* * * * *

Considering the confusion and misunderstandng surrounding early efforts of Wilksboro project backers shortly before convening of the General Asembly, the enactment of Chapter 308 doubtless came as a pleasant surprise to them. If, as seems likely, one of its immediate objectiives was to help clear the way for initial Congressional appropriations for construction of the Wilkesboro project, then this has apparently been achieved. For, since its passage, both Houses of Congress have adopted public works appropriations bills containing a recommended allocation of $1,000,000 to begin construction of the Wilkesboro project. S. Rept. 486 (to accompany H. R. 7509), 86th Cong., 1st Sess., p.15; 105 Cong. Rec. 9045, 9087 (June 5), 11928 (July 9). (As of this writing final action will require conference agreement on differing provisions of the two bills, and Presidential approval, an uncertain factor.) Achievement of the ultimate aim of effective local-federal co-operation on projects of this sort will turn upon matters beyond the reach of this bill--final approval of federal appropriations; painful negotiations of respective cost shares of participating localities; and troublesome legal issues, such as questions concerning the validity of local participation in border line cases where the existence of wide-spread public benefits is doubtful, and the problem of assuring that the contributing downstream localities will actually receive the benefits of low-flow augmentation releases.

Motorboat Regulation

A significant regulatory measure providing for the registration of motorboats and for the regulation of their equipment and operation was adopted as Chapter 1064 (HB 723). A detailed discussion of it will be found in the article concerning "Wildlife Protection".

Shore Protection and Preservation of the Outer Banks

Two important laws for protection of shore and beach areas were enacted. Chapter 1241 (SB 318) authorizes the Governor with the approval of the Council of State to allocate up to $150,000 from the Contingency and Emergency Fund during fiscal 1959-61 to supplement federal and local expenditures for construction of shore protective works. (The federal funds involved are provided under P.L. 520, 71st Cong., as amended; and P.L. 71 and 826, 84th Cong.) The State funds may not be allocated until local subdivisions have provided two-thirds of the non-federal share of the costs of any project.

As originally introduced Chapter 1039 (SB 352), the capital improvement act, appropriated $600,000 to the Department of Conservation and Development for Outer Banks survey and land acquisition. Senate committee amendments were adopted which spelled out details of the appropriation. As finally enacted, the act specifies that these funds be used for restoring, stabilizing, preserving and rehabilitating that portion of the North Carolina Outer Banks between Ocracoke Inlet and Cape Lookout, together with so much of Shackleford Banks as found to be necessary or reasonably to stabilize Barden's Inlet. It also authorizes the Department to make necessary surveys, acquire property, by purchase, condemnation or otherwise and to enter contracts in connection therewith. The moneys appropriated, plus any obtained from the federal government, are to be placed in a fund for disbursement in accordance with the act. Any surplus remaining after accomplishment of the purposes of the act is to revert to the General Fund. Finally, the act provides that:

> "if a water commission is created by the General Assembly . . . , the Governor may transfer [the appropriations] to the newly created water resources commission, and the duties and rights of the Department of Conservation and Development herein provided for shall then devolve upon such water resources commission." [Italics added]

Presumably these references to the "water commission" or "water resources commission" will be interpreted to refer to the new Department of Water Resources or its policy making organ, the Board of Water Resources.

Other Water Resources Legislation

Drainage Distriet Amendments

When committee assignments were announced for the last General Assembly it became apparent that the Drainage Committees had been quietly abolished. This was not to be an omen of despair for drainage legislation, however, for a total of eight bills amending the drainage laws were enacted during the session.

Of particular interest is Chapter 597 (HB 525), which enacted into law several amendments designed to permit drainage districts to qualify for assistance under Public Law 566 (discussed in connection with the small watershed act, above). These changes spelled out authority for drainage districts to construct "water retardant structures", permitted drainage districts to use services of the United States Soil Conservation Service in the preparation of required reports, maps, etc. in connection with such structures and other projects, and made maintenance provisions of the law (GS 156-93.1) applicable to water retardant structures. The act also authorized borrowing in anticipation of maintenance assessment revenues and (as amended by Chapter 1085—HB 1194) added GS 156-70.1 providing procedures for drainage viewers to notify land owners of areas needed for right-of-way purposes, and for submission by land owners of compensation claims for the taking of such areas. Thus, with little of the fanfare and contention that accompanied passage of the small watershed act, potential questions concerning eligibility of existing drainage districts for assistance under Public Law 566 were laid to rest and the drainage laws were made available as an alternative vehicle for prosecution of watershed improvement programs. It is noteworthy that these changes were enacted without the inclusion of provisions for supervision by the Board of Water Resources. It is also of interest that (under Chapter 597, if not previously) a drainage district can apparently compel landowners to grant the district needed easements and rights-of-way (in return for compensation), while it seems clear that watershed improvement districts were denied the power of eminent domain.

Other amendments to the drainage district laws included: (a) an increase in maximum permissible annual auditors' salaries from fifty dollars to two hundred dollars (Chapter 420—SB 250); (b) a requirement that petitioners for establishment of new districts constitute a

majority of benefitted resident landowners, or own three-fifths of benefitted land area—this too, perhaps motivated by Public Law 566 (Chapter 1312—HB 1341); (c) loosening of requirements concerning publication of notice for letting contracts and dates for final hearings on drainage viewer reports upon drainage district petitions (Chapters 806 and 807—HB 947 and HB 948); (d) a clarification of right-of-way acquisition procedures (Chapter 717—HB 723).

Haw River Pollution

SL 1955, Chapter 552, a special act concerning pollution of the Haw River by sewerage and industrial waste, was amended by Chapter 1075 (HB 1070). Sections 5 and 6 of the 1955 Act were made inapplicable to municipalities and others beginning actual construction of sewage or industrial waste facilities, approved by the Stream Sanitation Committee, not later than December 1, 1959 and placing them in operation not later than July 1, 1961. (Section 5 declares to be a misdemeanor the pollution, as defined, of the Haw River or its tributaries on and after January 1, 1960, while section 6 gives to persons damaged by any of the offenses prohibited by the act a civil right of action against the offender for injunctive relief or damages.) The apparent objective sought by the introducers of Chapter 1075 is to exclude from the application of Sections 5 and 6 of the 1955 law the cities of Greensboro, Burlington, and perhaps others—if they meet the specified deadlines for beginning construction and placing in operation projected sewage treatment plants.

Neuse River Watershed Authority

The Neuse River Watershed Authority law was amended to provide that non-voting advisory members of the Authority be appointed by the Governor, upon recommendation of the Authority, rather than two such members being appointed from each affected county by local authorities, as previously provided. Chapter 1130 (SB 266).

Cape Fear Pilotage Rates

Amendments were adopted to GS 76-13, revising the existing schedule of rates for pilotage on the Cape Fear River, fixing additional charges on vessels over 11,000 gross tons, requiring all vessels calling at either of the Cape Fear ports (for whatever reason) to pay full pilotage rates, and fixing the amounts of charges for additional enumerated services.

Others

Legislation affecting the State Ports Authority and involving a proposal for an independent Commercial Fisheries Advisory Board is discussed in the article on "State Government". Other related legislation of interest may be found in the articles concerning "Wildlife Enforcement" and "Public Health".

BOARD OF WATER RESOURCES

Governor Hodges has announced the appointment of the following persons to the Board of Water Resources:

J. R. Townsend, Greensboro (6-year term)
Dan K. Moore, Sylva (6-year term)
C. H. Pruden, Jr. Windsor (4-year term)
Glenn Tucker, Carolina Beach (4-year term)
P. D. Davis, Durham (2-year term)
Ben R. Lewis, Goldsboro (2-year term)
S. V. Stevens, Jr., Broadway (2-year term)

PLANNING

By PHILIP P. GREEN, JR.

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and Senate.

The 1959 legislative session was another banner one for city and regional planning. Centering around proposals of the Municipal Government Study Commission, a broad new set of statutory powers was made available to local governmental officials concerned with guiding the development of the state along desirable lines.

Of special significance among the new laws are those which (a) give counties and cities necessary authority to regulate development in areas outside existing city limits, (b) provide for joint planning of major streets by municipalities and State Highway Commission personnel, and (c) authorize a broader range of economic development measures.

In the discussion which follows, we shall deal first with laws strengthening the organizational status of planning in local governmental units. Then we shall deal in turn with the new regulatory powers, measures affecting the planning of major streets and highways, and economic development measures.

Organization for Planning

The General Assembly attacked three major problem areas relating to the organization of local planning programs: (a) regional planning, (b) technical assistance to lay planning boards, and (c) adequate enforcement personnel at the county level. In addition, Chapter 24 (HB 22) wiped the provisions for the long-defunct State Planning Board from the books.

Regional Planning

As urban-type development gobbles up hitherto rural areas and many of our major cities tend to grow together, it becomes increasingly apparent that planning should cover larger geographic areas if it is to be effective. Despite provisions in G.S. 153-9 (40) and 160-22 for county planning and for the creation of joint planning boards by agreement of local governmental units, almost all planning in the state to date has been by municipal planning boards.

The 1957 General Assembly took a major step forward when it created the Western North Carolina Regional Planning Commission, with jurisdiction in 12 western counties. In 1959 McDowell and Rutherford Counties were added to this commission's coverage. The 1959 General Assembly also added a second agency to engage in cooperative, region-wide planning, when it created the Research Triangle Regional Planning Commission composed of representatives of the cities of Durham, Raleigh, Chapel Hill, and of Durham, Orange and Wake Counties [Chapter 642, (HB 590)]. These two acts will serve as models for other regions in the state expecting significant growth in the near future.

At the county level, Chapter 1033 (HB 1195) creates a Carteret County Planning Commission composed of representatives of Atlantic Beach, Beaufort, Emerald Isle, Morehead City, Newport, and the county. The act provides fully for organizing, staffing and financing the commission and authorizes the county to adopt zoning, subdivision, and building regulations to carry out the plans which are adopted. Another special act brings Wake County under provisions of G.S. 153-9 (40), which authorizes creation of a county planning board.

Technical Assistance

A crucial factor in the success of most local planning efforts is the availability of professional assistance for the planning board. While the larger cities of the state have full-time planning staffs, the high cost (and actual scarcity) of professional planners makes it difficult for smaller towns to secure this assistance.

The 1957 General Assembly offered one solution to the problem, when it created the Division of Community Planning within the Department of Conservation and Development to channel federal matching funds to communities under 25,000 population which contract for technical assistance.

Two Municipal Government Study Commission proposals broadened this approach in 1959. Chapter 327 (HB 370) authorizes municipal, county and joint planning boards to contract with the State as well as with the federal government for such assistance. Chapter 390 (HB 367) authorizes planning boards to exchange the services of their staffs, under contract. Thus, a city planning board staff may now provide assistance to small towns in the area or to a county planning board. Both new laws require the concurrence of appropriate governing boards in any contracts which are made by the planning boards.

Enforcement Personnel

Counties wishing to control development in unincorporated areas have generally lacked authority to hire necessary enforcement personnel, although for many years G.S. 160-122 has provided for county electrical inspectors and G.S. 153-9 (47) authorized 12 counties to appoint plumbing inspectors prior to 1959.

Another Study Commission bill, [Chapter 940, (HB 369)] now authorizes all but seven counties to appoint building inspectors. These inspectors may enforce the State Building Code, any county building regulations adopted under G.S. 143-138 (b) or (e), and any county zoning ordinance. They are to operate in unincorporated areas and, upon request of the city council, may operate within a municipality.

For maximum organizational flexibility, the act permits designation of another county's building inspector; a municipal building inspector; the county fire marshal,

electrical inspector, or plumbing inspector; or any other qualified person, to fill this position. It also provides for the formation of joint building inspection departments.

Other laws authorize the appointment of a county fire marshal, [Chapter 290, (HB 269)] and add Cumberland and Wake counties to the list of counties which may appoint plumbing inspectors.

Regulatory Powers

The Municipal Government Study Commission was very much concerned with the problem of rapid, urban-type growth in unincorporated areas of the state. Such factors as the Interstate Highway System, the Research Triangle park, and decentralized industrial location are expected to add impetus to existing tendencies toward such development, and the possibility of acute governmental problems springing out of such growth is already apparent. Unfortunately, prior to 1959 there was almost no governmental machinery for guiding this development along sound lines.

The Study Commission proposals essentially took three forms: (1) granting counties authority to regulate this development, (2) granting municipalities additional regulatory authority over areas close to their boundaries, and (3) easing the difficulties attendant upon extension of municipal boundaries. The new laws covering the latter problem are described in detail in the article on "Legislation of Interest to Municipal Officials."

New County Powers

Although counties have had authority to establish planning boards since 1945, this power was largely negated by the absence of any power to adopt regulations carrying out their plans. This gap has largely been filled by Chapters 1006 (HB 372) and 1007 (HB 374), which enable counties to adopt zoning ordinances and subdivision regulations. However, 31 counties are exempted from the provisions of the former act and 26 from the latter.

The new zoning law is much the same as the municipal zoning enabling act (G.S. Chapter 160, Art. 14). It authorizes the county commissioners to zone (a) all areas of the county, outside municipal zoning jurisdiction, (b) any portion of such area containing at least 640 acres and ten separate tracts of land in separate ownership, and/or (c) with the agreement of the city council, any area within municipal zoning jurisdiction.

In order to make use of the law, the county commissioners must appoint a planning board to prepare the original ordinance and a board of adjustment to grant relief in hardship cases arising under the ordinance. If only a portion of the county is to be zoned, a zoning advisory commission must be named from among the residents of each area zoned.

The new law does not affect the six special acts under which particular counties could zone prior to this session, nor new acts granting such power to Carteret and Iredell Counties.

The new subdivision-control act is also closely similar to the municipal enabling act (G.S. 160-226 to 160-227.1). It authorizes the county commissioners to adopt land subdivision regulations covering (a) all of the county outside municipal subdivision-control jurisdiction and (b) with the approval of the city council, inside such jurisdiction as well.

Essentially, the act prevents registration of subdivision plats which have not been approved in accordance with the regulations. It provides that approval may be given by (a) the county commissioners, (b) the county planning board, or (c) the county commissioners upon the recommendation of the planning board. In any event, the plat must be referred to the district highway engineer, the county health director, and the county school superintendent for recommendations as to proposed streets and drainage systems, water and sewerage systems, and school sites.

Prior to this act only Forsyth and Durham Counties had subdivision-regulation authority. Carteret County received such authority in its special act this session.

New Municipal Powers

Recognizing that cities and towns have a special interest in regulating the areas immediately adjacent to their boundaries (particularly where there are no county regulations), the Municipal Government Study Commission submitted four proposals granting cities extraterritorial authority. Only one of these passed.

Chapter 1204 (HB 373) grants all cities over 2,500 population authority to zone for a distance of one mile beyond their boundaries (19 counties are exempted from provisions of the act). In order to exercise this power, the city council must double the size of its planning board or zoning commission and of its board of adjustment, with all of the additional members being residents of the outside area appointed by the county commissioners. The additional members will function only with respect to the zoning of the outside area. The act is similar to Raleigh's special act which was upheld in *Raleigh v. Morand*, 247 N.C. 363 (1957).

Special acts granted similar powers to Murfreesboro and Tryon, but a bill affecting Raeford died in committee. Minor modifications were made in existing acts under which High Point, Elizabeth City, and Goldsboro possessed extraterritorial zoning authority.

HB 488 and HB 371, under which the Study Commission proposed to grant cities over 10,000 population permission to fix the boundaries of their zoning and subdivision-regulation powers at not more than five miles beyond their limits, by agreements with their county commissioners, died in a House Committee. However, special acts did extend Charlotte's extraterritorial zoning, subdivision-regulation, and building-regulation jurisdiction over a larger area than heretofore.

HB 368 was another Study Commission bill which died in committee. The existing subdivision-control enabling act for cities and towns (G.S. 160-226 to 160-227.1) authorizes them to regulate subdivisions both within their limits and for a mile outside, but it exempts 53 counties from its coverage. HB 368 would have repealed these exemptions. Despite its demise, special acts applied the state act to Shelby and to municipalities in Beaufort, Rowan, Scotland, and Transylvania Counties.

Other Regulatory Acts

Two proposals of the Uniform Map Law Study Commission will be of particular concern to local planning agencies. Chapter 1235 (SB 61) provides in great detail the requirements which must be met by subdivision plats in order to be recorded, while Chapter 1159 (SB 63) requires additional "control corners" in new real estate developments. The former law exempts 29 counties, and the latter exempts three.

In the field of municipal zoning Chapter 434 (HB 491) modifies the so-called "20 per cent protest" provision of G.S. 160-176 so as to extend its provisions to property owners on either side of property proposed to be rezoned. Previously, only those to the rear or across the street from it came under this provision. A similar act modifies Raleigh's charter in the same manner. Mecklenburg County was added to the list of counties exempt from the "corner" proviso of G.S. 160-173, while another special act authorizes the Whiteville city council to fix rules of procedure for its zoning board of adjustment.

Other special acts provide for regulation of swimming pools in Lumberton; make the provisions of G.S. Chapter 160, Article 15 (the minimum housing standards law) apply to the Town of Whiteville; authorize Durham to condemn buildings which are fire or safety hazards or a public nuisance; and authorize Wilmington to adopt building, gas, heating, and electrical codes by reference.

Major Street Planning

Chapter 687 (HB 699), another Municipal Government Study Commission bill, is expected to give a major push to planning programs all over the state. Coming in the wake of nationwide recognition that new highways must be designed to fit into desirable patterns of community development, the act provides that "Each municipality, with the cooperation of the State Highway Commission, shall develop a comprehensive plan for a street system that will serve present and anticipated volumes of vehicular traffic in and around the municipality."

Upon adoption by both the municipal governing body and the State Highway Commission, the plan will have two functions: to delineate respective responsibilities of the municipality and the Commission for (1) right-of-way acquisition (the Commission is authorized to pay up to 100 per cent of the costs where necessary) and (2) street construction and maintenance.

The new act relies heavily upon the municipality's and the Commission's reaching agreement, but it makes provision for the cases where no agreement is had.

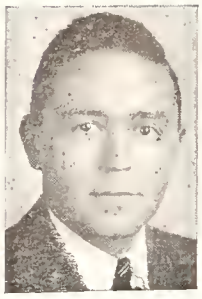
Other new acts of interest to planners are Chapter 1128 (SB 264), which authorizes the Highway Commission to acquire an entire lot or tract with the consent of the landowner, even though the entire amount of land is not immediately needed for right-of-way purposes; Chapter 1216 (HB 970), which reallocates the cost of constructing grade separations between the Highway Commission and railroads affected; and Chapter 560 (HB 652), which makes it a misdemeanor to place flashing, rotating, or other types of lights so as to hamper vision of, or mislead, motorists. HB 959, which would have regulated advertising along the National System of Interstate and Defense Highways, was killed by a House committee.

Economic Development

The steadily increasing interest in economic development of the state was responsible for a spate of new measures, most of them special acts applicable to particular localities. The wide range of such measures is illustrated by Chapter 613 (SB 207), authorizing business development corporations to borrow from financial institutions and from agencies established under the federal Small Business Investment Act; Chapter 915 (HB 827), making industrial education centers a part of the public school system; and Chapter 308 (SB 216), authorizing cities and counties to issue bonds for sharing the cost of water storage facilities for industrial, domestic, and other purposes.

Two sets of special acts are designed to furnish funds for industrial promotion and similar types of activity. The first authorizes the governing bodies of Bertie, Catawba, Edgecombe, and Montgomery Counties, the Town of Tarboro, and all towns in Bertie County to make appropriations for such purposes from surplus and non-tax funds. The second set of acts, applying to Anson, Beaufort, Brunswick, Edgecombe, Franklin, Martin, Polk, Rutherford, and Vance Counties, provides for an election on the levy of an industrial-development tax. If the election carries, provision is made for an industrial development commission to supervise the expenditure of funds collected.

A special type of inducement to new industry is the furnishing of water and sewer service to industrial sites. Continuing a trend of past years, this session of the General Assembly adopted special acts authorizing Alexander, Burke, and Forsyth Counties, and municipalities in Burke, to extend such facilities to rural communities and industrial sites. The Forsyth County act provides additional authority to develop the old county farm property as an industrial park.



LOCAL PROPERTY TAXES

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Chapter numbers used in this article refer to the 1959 Session Laws. Numbers preceded by HB or SB refer to bills introduced in the House and Senate.

Introduction

Property tax legislation occupied an unaccustomed place of prominence in the 1959 General Assembly, a status directly attributable to the interest in it displayed by the *Report of the Tax Study Commission of the State of North Carolina* issued in October 1958. Three sets of companion bills designed to effect the major property tax recommendations of that Commission were introduced: SB 161 (HB 332); SB 162 (HB 331); and SB 307 (HB 736). The first two sets were enacted with only minor revisions; the third set, by virtue of circumstances—particularly lack of time for adequate explanation—was postponed indefinitely by proponents.

Assessment Standards

As a result of its examination of existing property assessments in the counties of North Carolina the Tax Study Commission took the position that the Machinery Act's requirement of full market value assessment should be deleted from the law and, in its place, there should be inserted authority for each county to determine the percentage of market value at which it would uniformly assess all property.

Chapter 682 (SB 161) is designed to give effect to this recommendation by rewriting the first paragraph of G. S. 105-294 [Machinery Act §500]. The rewritten statute recognizes the practical difference between the appraisal and assessment processes. It retains the requirement that all property be appraised at its full market value, but instead of requiring that all property be assessed for taxation at the appraised figure, it allows each board of county commissioners annually to "select and adopt some uniform percentage of the amount at which property has been appraised as the value to be used in taxing property," that is, the value at which it will be assessed for taxation. "The percentage selected shall be adopted by resolution of the board of county commissioners prior to the first meeting of the board of equalization and review, and such percentage shall be known as the assessment ratio."

Recognizing that municipal corporations and special taxing districts have a strong interest in the assessment ratio a county adopts by reason of the fact that such units must accept assessment fixed by the counties in which they lie, Chapter 682 provides that before adopting an assessment ratio each board of county commissioners must give such units an opportunity to make recommendations "as to that assessment ratio which would provide a reasonable and adequate tax base in each such municipality or other taxing unit." While final decision as to a ratio remains the county commissioners' responsibility the statute requires them to give "due consideration" to such recommendations.

A copy of the commissioners' resolution setting the assessment ratio must be forwarded to the State Board of Assessment within ten days after adoption.

The effect of Chapter 682 is to give boards of county commissioners broad and flexible power in determining the level at which the property in their counties is to be assessed for tax purposes. Not only does it give them complete freedom in the selection of an assessment ratio, but it also permits them to change that ratio annually if they so desire.

With this new freedom, however, comes considerable responsibility. No longer is the assessment ratio to be a matter of unofficial and unrecorded policy. It now becomes a matter requiring annual decision and annual recording of that decision both in the board's minutes and with the State Board of Assessment. This single assessment ratio is legally binding in the assessment of all varieties and sorts of property—real and personal. A taxpayer dissatisfied with a tax valuation need no longer show that his property is assessed at a figure out of line with similar properties; he need merely show what the true market value of his property would be and that the tax assessment is in excess of the percentage of market value recorded as the county's official assessment ratio. In addition, the possibilities for use of these official ratios by the State Board of Assessment should not be ignored. In his *Summary of the Report of the Tax Study Commission* (1958), H. C. Stansbury wrote (p. 4):

> The recommendation that the percentage of market value at which property is to be assessed be reported to the State Board of Assessment is made by the [Tax Study] Commission in order to provide the State Board of Assessment with official information which the Board may use in assessing certain properties of public utilities such as rolling stock and rights-of-way of railroads and in the performance of its other duties.

Such use might extend to determination of the valuations to be certified by the State Board of Assessment to the local units of government for taxation.

Real Property Revaluations

Time Schedule

The Tax Study Commission's recommendations spoke firmly of the need for reasonably current and dependable assessments. They stressed the fact that revaluation of real property should be made a matter of established routine in every county and that postponement beyond

fixed reassessment years should not be permitted. Chapter 704 (SB 162) rewrites G. S. 105-278 [Machinery Act §300] to establish a definite scheduled date at which each county in the state is to conduct its next revaluation of real property. Each such revaluation is to become effective as of January 1 of the year indicated:

1961—Alamance, Edgecombe, Gates, Martin, Mitchell, Nash, Perquimans, Randolph, Stanly, Warren.

1962—Alexander, Anson, Clay, Craven, Duplin, Durham, Granville.

1963—Beaufort, Burke, Chatham, Davie, Graham, Hertford, Johnston, McDowell, Mecklenburg, Moore, Pender, Rockingham, Sampson, Scotland, Watauga.

1964—Avery, Camden, Cherokee, Cleveland, Cumberland, Guilford, Harnett, Haywood, Montgomery, Northampton, Wayne, Wilkes.

1965—Caldwell, Carteret, Columbus, Currituck, Davidson, Gaston, Greene, Hyde, Lee, Lenoir, Orange, Pamlico, Pitt, Richmond, Transylvania, Washington.

1966—Ashe, Buncombe, Chowan, Franklin, Henderson, Hoke, Jones, Madison, Pasquotank, Robeson, Rowan, Swain.

1967—Alleghany, Bladen, Brunswick, Cabarrus, Catawba, Dare, Halifax, Macon, New Hanover, Polk, Stokes, Surry, Tyrrell, Yadkin.

1968—Bertie, Caswell, Forsyth, Iredell, Jackson, Lincoln, Onslow, Person, Rutherford, Union, Vance, Wake, Wilson, Yancey.

In addition, Chapter 704 requires each county to hold revaluations regularly every eighth year following the initial revaluation established in this schedule. While a board of county commissioners is permitted to order a revaluation *earlier* than scheduled by the statute, such a change in the date of the first revaluation under the new statute would have the effect of establishing a new base year from which the particular county's octennial revaluation schedule must thereafter be computed. (Counties electing to accelerate their revaluation schedule must give prompt notice to the State Board of Assessment of their decision by furnishing that board with a copy of the resolution recording the decision.)

In the fourth year following a scheduled revaluation of real property by actual appraisal as required by G. S. 105-728 as rewritten by Chapter 704, Chapter 682 (SB 161) requires each county to review its *appraisal* values and "make whatever revisions are needed to bring them into line with current market or cash value." In doing this, however, the statute makes plain that it does not envision another revaluation by actual visitation and appraisal by stating that such revisions are "to be made horizontally only, by uniform percentages of increase or reduction rather than by actual appraisal and reassessment of individual properties." Once the appraisal figures have been adjusted in this way, "each county shall, for tax *assessment* purposes, apply the assessment ratio selected and adopted" for the particular year.

As Chapters 682 and 704 indicate, the General Assembly agreed with the feeling of the Tax Study Commission that revaluations of real property should be made as frequently as practicable and that the period between revaluations should be definite.

In its recommendations the Commission indicated that the requirement that property be revalued every four years was impractical and the the consistent action of the General Assembly in allowing postponements indicated that it was of the same mind. In summarizing the Commission's attitude on the eight-year interval recommended, H. C. Stansbury wrote (p. 6):

> It is believed that intervals of greater length than eight years would result in undue hardship upon some taxpayers and would greatly increase the number and severity of the distortions in assessed values . . . The proposal that the General Assembly fix a schedule for these revaluations is intended to avoid confusion and permit the maximum use of available qualified assessing personnel.

It is significant that the Tax Study Commission confined its recommendations in this area to statutory changes rather than constitutional amendments. It placed its reliance on the reasonableness of its proposals, on the hope that subsequent legislatures will not permit piecemeal destruction of the octennial pattern through local acts allowing postponement, and on the hope that boards of county commissioners will not seek special legislative permission to make exceptions of their counties. Thus, the Tax Study Commission manifested its faith in the worth of its own time schedule.*

As already pointed out, Chapter 704 permits any county desiring to hold a revaluation *earlier* than scheduled to accelerate its scheduled date by passing an appropriate resolution. In the past some counties have indicated an interest in securing the right to revalue on a continuous basis. (See, for example, the following chapters of the Session Laws of 1957: Chapter 745—Durham County; Chapter 885—Onslow County; Chapter 974—Alleghany County; and Chapter 975—Forsyth County.) It would seem that the provisions of Chapter 704 offer no obstacle to the installation of such a system. The commissioners need only pass an accelerating resolution annually, notifying the State Board of Assessment by sending that agency a copy of the resolution. In such a county the fourth year revision provisions of Chapter 682 would not be called into play. Selection of an assessment ratio would be no problem in view of the fact that Chapter 682 already permits annual revision.

Quality of Work

Carrying out another recommendation of the Tax Study Commission in language almost identical with that of the Commission's report, Chapter 704 (SB 162) amends G. S. 105-295 [Machinery Act §501] to prescribe minimum standards for a real property revaluation. It provides that each lot, parcel, structure, and improvement being appraised must be visited and observed by a competent appraiser. It also stipulates that prior to each revaluation the county tax supervisor must provide for the development and compilation of standard uniform

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* Article II, §29, North Carolina Constitution, entitled "Limitations upon power of General Assembly to enact private or special legislation," already provides, *inter alia*, that, "The General Assembly shall not pass any local, private or special act or resolution . . . extending the time for the assessment or collection of taxes . . . ." It would be possible to amend this section to read substantially as follows: "The General Assembly shall not pass any local, private or special act or resolution . . . *extending the time for assessment of property for purposes of taxation as established by general law*, or extending the time for the assessment or collection of taxes . . . ." Insertion of the italicized words would make plain the necessity for setting assessment schedules by laws applying in every jurisdiction.

schedules of values to be used in appraising real property. They must be prepared in sufficient detail to enable appraisers to follow them, and they must be made available for public inspection upon request.

Furthermore, Chapter 704 prescribes the preparation of a separate property record for each tract, parcel, lot, or group of contiguous lots, showing all the information pertinent to appraisal work required by various Machinery Act sections. "The intent and purpose" of this provision, according to the statute, "is to require that individual property records be maintained in sufficient detail to enable property owners to ascertain the method and standards of value by which properties are valued."

It is apparent that actual visitation and appraisal of each individual piece of real property by a "competent" appraiser will make for great improvement in the calibre of assessments. Poor appraisal work will be much easier to detect. "By reference to qualified assessing personnel [the word used in the statute is "competent"]," wrote Stansbury (p. 6), "it is not meant to imply that firms engaged in the business of appraising property on a contractual basis must be employed to achieve satisfactory results. There have been instances in North Carolina in recent years when properly trained, local personnel, working under the supervision of the local tax supervisor and using predetermined standards have done a professional job with commendable results."

This statement is, of course, accurate. But it would be unwise to underestimate the problems incident to obtaining the services of individuals competent to plan and carry out a revaluation program. Initially, boards of county commissioners must give serious consideration to the knowledge and experience of the people they name as county tax supervisors. In turn, tax supervisors must devote serious effort in selecting assessors. In all likelihood the requirements of the new statute will result in a greater outlay in salaries than many counties have been accustomed to making for appraisal work. And, admittedly, many counties will give serious thought to having their appraisals done on a contractual basis. But even then the need for able full-time employees in the tax supervisor's office will remain.

Determination of standards of value for appraisal prior to each revaluation program is essential for reliable results, but the responsibility it will place upon the county tax supervisor should not be minimized. Many supervisors are not experienced in developing such standards and will need training and help. The insertion of this requirement as to schedules of value must also be understood in terms of time. This work must be done before appraisals are initiated, and that fact alone should be sufficient warning to counties that they must start preparations for a revaluation at least two years before the date it is to become effective.

Financing Revaluations

It was the Tax Study Commission's belief that lack of adequate means of paying for revaluation work had been a major contributing cause to the habit of revaluation postponement manifested both in law and practice. The Commission's report said (p. 18), "Financing of real property revaluations should be placed on a permanent and fixed basis in all counties through uniform statewide legislation."

In Chapter 704 (SB 162) this recommendation was enacted into law. It amends G. S. 153-9 to make real property revaluation a "special purpose" for which counties may levy a tax in excess of the constitutional limit of 20c on the $100 of assessed valuation for general purposes. In addition, it adds a new section to Chapter 153 of the General Statutes requiring each county to levy annually (under the special purposes authority already mentioned) a tax which—when added to other available funds—is calculated to produce, by accumulation during the period between required revaluations, sufficient money to pay for revaluation by actual visitation and appraisal. Funds raised and set aside for this purpose must be placed in a sinking fund or otherwise earmarked and are not to be available for other uses. (It is plain that non-tax funds available for this purpose may be placed in this fund to supplement funds raised by the required special tax.) Any unexpended balance remaining in the revaluation fund following a required revaluation must be retained in that fund for use in financing the next scheduled revaluation.

The Tax Study Commission's "Specific Recommendations" pointed out that tax mapping as well as property appraisal should be designated a special purpose for which counties might levy a tax in excess of the 20c general purpose limitation of the Constitution. As a matter of practical administration, it is almost impossible to do competent tax appraisal work without adequate tax maps. Thus, while tax mapping was not included in Chapter 704 in specific terms, in all probability the special purpose tax for revaluation would be held to encompass the raising of funds for procuring tax maps of the area to be appraised. In addition, tax mapping was given special attention in Chapter 712 (HB 492), an act sponsored by those interested in the discovery of state-owned lands as well as lands not presently found on the county and municipal tax books. This act amends G. S. 153-9 to make "the expenses incurred in the mapping of lands of the county and the discovery of lands therein not listed for taxes" a "special purpose" for which a county may levy a tax up to 5c on the $100 valuation in excess of the 20c general fund limitation. Such a levy would of course, also be in addition to the required annual levy for revaluation.

The two special purpose tax authorities came into effect in sufficient time for use in making up county budgets for the 1959-60 fiscal year. In fact, the mandatory terms of Chapter 704 make it plain that each county should insert an item for revaluation in its new budget.

By making it mandatory that each board of county commissioners levy a tax to finance revaluation in every year's budget the legislature has relieved county commissioners of having to make the decision of whether to lay aside tax money for this purpose. For many boards this will be a welcome relief; when criticized by property owners, it will enable them to lay the blame for the tax at the feet of the legislature. At the same time, however, the new legislation leaves with each board of commissioners wide discretion in determining how large or how small this mandatory levy is to be. Each year each board will have to make this decision. Thus, a prudent board of commissioners will want to make an estimate at once of what revaluation will cost the particular coun-

ty. Knowing the probable total cost of the job, knowing that a substantial part of the money needed for the job must be available for expenditure in the year prior to the year in which the revaluation is to become effective, and knowing how many years remain available for amassing the money that will be needed, the commissioners can begin to plan intelligently how much tax to levy in each year's budget. An important factor that will have to be considered is whether funds other than those to be raised by the mandatory tax can be counted on to help pay for revaluation. Any such moneys, once they have been placed in the revaluation fund, are available solely for that purpose and can be taken into consideration in determining how much money will have to be raised by taxation. Boards of county commissioners will have to be careful to keep the revaluation tax levy at a relatively even level from year to year. Any tendency to levy an infinitesimal rate in the early years should be avoided; it will only mean that a heavy rate will be necessary immediately before the scheduled revaluation year. It is well to be aware that an irresponsible board of commissioners, by failing to plan the financing of a required revaluation, can embarrass a successor board, and if the successor board seeks legislative exemption from the state-wide schedule it is possible that the entire plan will be placed in jeopardy.

Classification and Exemption

Constitutional Proposals

One of the "Policy Objectives" recommended to the General Assembly and to local tax authorities by the Tax Study Commission read as follows (p. 18):

"The property tax base should be uniform throughout the State. In other words, regardless of the taxing unit in which an item of property happens to be situated, its taxable status should be the same; it should be taxable in all units or exempt in all units. Thus,

"A. All classifications of property should apply throughout the State. . . .

"B. All exclusions from the tax base should apply throughout the State.

"C. All exemptions should apply throughout the State.

"D. The General Assembly should not delegate to local units power to exempt, classify, or exclude from the tax base; such decisions should be made by the General Assembly for the State as a whole. The General Assembly should prohibit local use of the exemption and classification powers."

Having made these recommendations, the Tax Study Commission prepared working drafts of amendments to Article V of the North Carolina Constitution to put them into effect. The Commission then used two approaches to secure adoption of the amendments: First, it secured inclusion of its proposed drafts in the rewritten Constitution proposed by SB 99 and its companion bill, HB 226. In addition, the Commission secured introduction of a set of bills (SB 307 and HB 736) which would have submitted its proposed amendments to a vote of the people in the event the General Assembly failed to submit the rewritten Constitution in its entirety.

As a matter of history it may be of value to record the fact that the Tax Study Commission's proposals were not opposed in the legislative committees and subcommittees which studied the rewritten Constitution (SB 99), nor were they subjected to assault when the document was brought to the two houses for debate. In fact, the Senate passed the bill embodying the rewritten Constitution (SB 99) with the Tax Study Commission's proposals intact. In the House of Representatives the bill rewriting the Constitution was defeated, but the portions of the document carrying the Commission's proposals were not attacked during the floor debate. The bill was postponed indefinitely before its proponents had a chance to explain the revenue article.

Legislators concerned with securing enactment of the Tax Study Commission's constitutional proposals did not press for action on either of the separate bills (SB 307 or HB 736) so long as there was a chance that the rewritten Constitution might pass. The full rewrite (SB 99) cleared the Senate and was received in the House on June 8. Consideration was postponed until June 16. In the meantime, on June 11 the Senate Committee on Constitution gave a favorable report to SB 307 (one of the separate bills carrying the Tax Study Commission's recommendations for constitutional change) to have it ready should the House reject the complete constitutional rewrite. Pending determination of the House's attitude toward SB 99, the Senate took no action on SB 307. But when the House killed SB 99 on June 17 the Senate took up SB 307 on the following day and passed it on second reading by a vote of 32 to 13. Vote on third reading was deferred until June 19. On that date proponents of the measure had to evaluate at least four factors: (1) A feeling that in the wake of defeat of SB 99 there was a general attitude of opposition to any constitutional changes this year. (2) A strong desire on the part of members of the legislature to end the session and the possibility that such an attitude would lead to the defeat of any bill that might bring on prolonged debate. (3) The fact that some senators who voted for SB 307 on second reading explicity reserved the right to oppose the bill on third reading—largely because of a fear that it might bring into direct question the "seaport" exemptions granted by G. S. 105-297 (10), (14), and (17)—and might thereby make it impossible to muster the three-fifths vote necessary for passage in the Senate. (4) The chance that an outright defeat of these proposals in the current session of the legislature might hinder their chances of success should they be proposed again in 1961. On the basis of these considerations, proponents of SB 307 secured its indefinite postponement in the Senate on June 19, the day before adjournment.

Changes in Exemption Statutes

Property Used for Educational Purposes. Until enactment of Chapter 521 (HB 289), G. S. 105-296(4) [Machinery Act §600(4)] granted exemption to the real property of educational institutions according to the following standards:

(1) The key exemption was that granted to: "Buildings. . . . wholly devoted to educational purposes, belonging to, actually and exclusively occupied and used for public libraries, colleges, academies, industrial schools, seminaries, or any other institutions of learning."

(2) The statute also granted exemption to:

(a) "The land actually occupied" by buildings granted exemption.

(b) "Such additional adjacent land owned by such libraries and educational institutions as may be reasonably necessary for the convenient use of such [exempted] buildings. . . ."

(c) "Buildings [on the additional adjacent land granted exemption] used as residences by the officers or instructors of such educational institutions."

Under the terms of Chapter 521 very little change is made in the key exemption indicated as "(1)", above. The word "actually" as descriptive of occupancy has ben deleted, and the word "museums" has been inserted in the illustrative list of institutions of learning, but neither of these amendments can be said to work any basic change in the statute's coverage. On the other hand, the phrase exempting land in item (2)(b), above, has been altered substantially. The requirement that the institution's additional land be *adjacent* to its buildings to warrant exemption has been removed from the statute. While the Supreme Court had been somewhat liberal in its interpretation of what constitutes "adjacent" as used in this statute, the word still had some strength. See *Harrison v. Guilford County*, 218 N. C. 718, 12 S.E. (2d) 269 (1940). Its removal apparently removes all restrictions on location of the institutions's "additional land" so long as the additional land is "reasonably necessary for the convenient use of [the exempted] buildings.'

The specific exemption in item (2)(c), above, has been dropped from the statute in favor of a broader exemption covering "such other buildings and facilities located on the premises of such [educational] institutions as may be reasonably necessary and useful in the functional operation of such institutions." The word "premises" again emphasizes the fact that adjacency is no longer a factor in determining exemption. And presumably the term "functional" as used here would be given its standard dictionary meaning: pertaining to or connected with the natural, proper, or characteristic action, office, or duty of an educational institution.

But perhaps the most significant change in this statute appears in a proviso attached to the subsection: "Provided, however, that the exemption of this subsection [granted to real property of educational institutions] shall not apply to any institution organized or operated for profit, or if any officer, shareholder, member, or employee thereof or other individual shall be entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services." This was a direct attempt to exclude "schools operated for profit" from the real estate exemption. Such an objective has long been discussed by property tax administrators, but it had been left untried for fear that any such limitation might have the effect of taxing educational institutions deserving of exemption. There was a danger of throwing out the baby with the bath. It is possible that the 1959 amendment will achieve a workable solution to this problem. What constitutes "reasonable compensation for services" is a peculiar problem to be left for decision by property tax assessors, but it seems plain that the legislature has seen fit to establish this as the test of exemption for them to administer. In passing it is worth noticing that no change was made in G. S. 105-297(3) [Machinery Act §601(3)] granting exemption to the personal property of educational institutions, in all probability on the ground that exemption of the personal property of such institutions is governed by whether it is located in exempted buildings. The building issue having been settled, no issue is raised as to the personalty, and thus the exclusion of real property belonging to "schools operated for profit" from the exemption would work an automatic exclusion of the personal property in such buildings from any exemption contained in G. S. 105-297 [Machinery Act §601].

Property Used for Religious Purposes. The statutes have long granted exemption to real property owned by religious bodies and used for purposes of worship; they have also granted exemption to the residence of ministers of churches. See G. S. 105-296(3) [Machinery Act §600(3)]. From time to time, however, interesting problems have arisen with regard to the breadth of this exemption. For example, what of the real property of a corporation organized and operated on a non-profit basis for the purpose of publishing an official newspaper of a given religious denomination? This seems clearly not to have been exempted. But what about the residence of a clergyman named editor of such a publication by the denomination to which he belongs? Again, the general view has been that the statute does not afford it exemption. It seems to have been a related problem that led the 1959 General Assembly to enact the portion of Chapter 511 (SB 97) which adds a new subsection to G. S. 105-296 [Machinery Act §600] granting exemption to:

> Buildings with the land upon which they are situated, together with the additional adjacent land reasonably necessary for the convenient use of such buildings, lawfuily owned and held by churches or other religious bodies or organizations, and used for the general or promotional offices or headquarters of such churches or religious bodies or organizations.

It will be observed that the language used in this new subsection parallels that already found in Subsection (3): The exemption is keyed in the first instance to "buildings . . . lawfully owned and held by churches or other religious bodies or organizations, and used for the general or promotional offices or headquarters of such churches or religious bodies or organizations," one of the uses clearly not covered by the statute before amendment. Secondarily, the new subsection grants exemption to the land upon which the exempted buildings are located and also "the additional adjacent land reasonably necessary for the convenient use of" the exempted buildings so long as it is owned by the exempted agency.

It should be noted that the General Assembly did not amend G. S. 105-297(2) [Machinery Act §601(2)], the section granting exemption to the personal property of churches and religious bodies, to effect exemption of personal property used in church headquarters and promotional offices. In view of the language of this statute it is questionable whether personal property located in such buildings is entitled to exemption. Note that exemption is allowed only for:

> The furniture and furnishings of buildings lawfully owned and held by churches or religious bodies, wholly and exclusively used for *religious worship* or for the *residence of the minister* of any church or religious body, and private libraries of such ministers . . . . [Italics added.]

Proration of Exemptions. It often happens that an agency whose real property is generally entitled to exemption will erect a building larger than it needs for the

primary work of the agency, the work or use which constitutes the purpose justifying exemption. For example, a fraternal order may build a large structure in which it locates its lodge rooms, space for a theater, and a number of offices for public rental. Under G. S. 105-296(6) [Machinery Act §600(6)] exemption is granted to:

> Buildings, with the land actually occupied, belonging to . . . any benevolent, patriotic, historical, or charitable association used exclusively for lodge purposes by said societies or associations . . . .

Some years ago in considering such a factual situation the Attorney General pointed out that in the case of *Piedmont Memorial Hospital v. Guilford County*, 218 N. C. 673 (1940), at page 679, the Supreme Court "appears to suggest that a building used partly for charitable purposes and partly for commercial purposes might be appertioned as to its valuation so that the portion used for charitable or lodge purposes might be tax exempt, while that used for commercial purposes might be subject to ad valorem taxation. It will be observed, however," as the Attorney General pointed out, "that in that case the judgment of the lower court that the entire tax which was paid under protest be refunded was reversed, the Court stating:

> 'That portion of the judgment appealed from, which declared plaintiff's real property exempt from taxation, must be held erroneous and the judgment ordering refund of the amount paid under protest is reversed.'

It will also be noted that in the case of *Odd Fellows v. Swain* [217 N. C. 632 (1940)], although a portion of the building was used for lodge purposes, there was no suggestion that a portion of the valuation represented by the space used for lodge purposes be exempt from taxation." In summary, the Attorney General said: "I have not been able to find a case in which the Supreme Court has passed squarely upon the question of appertioning part of the building for purposes of exemption and taxation according to use. . . . However, the Court has many times reiterated the rule that exemptions from taxation are to be strictly construed against the exemption and in favor of taxation. . . . Applying the rule of strict construction against exemption and in favor of taxation so often employed by the Court, I am of the opinion that since the building in question is not used 'exclusively for lodge purposes,' the entire property is subject to ad valorem taxes. . . ." [Letter of the Attorney General to W. A. Johnson, February 27, 1950.]

It was to settle this kind of problem that Chapter 511 (SB 97) added to G. S. 105-296 [Machinery Act §600] a new subsection as follows:

> Notwithstanding any of the other provisions of this section, when any building and additional adjacent land necessary for the convenient use of said building belongs to an organization enumerated in subdivisions (3) through (7), or (10) or (12) of this section and a part thereof is devoted to the purposes for which an exemption from *ad valorem* taxes would be allowed by said subdivisions if the entire building and grounds were exclusively used for such purposes, then such property shall be exempt from *ad valorem* taxes to the extent of that *pro rata* part so used.

The subdivisions referred to by number grant exemption to real property of religious, educational, veterans, patriotic, benevolent, and charitable organizations, to non-profit hospitals, and to the headquarters or prometional buildings of religious groups. Under the new subsection, if the property is of the kind that would be entitled to exemption if exclusively used for one of the exempting purposes the part so used is granted exemption on a *pro rata* basis. Presumably such proration will be computed on the basis of the value the part of the property used for exempting purposes bears to the value of the property as a whole.

ELECTION LAWS

By HENRY W. LEWIS

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Chapter numbers used in this article refer to the 1959 Session Laws. Numbers preceded by HB or SB refer to bills introduced in the House and Senate.

The 1959 changes in the statutes governing the conduct of primaries and general elections were all of a technical or corrective nature. Since they form no general pattern it will be simpler to discuss each of them as a separate topic.

County Board of Elections

Pay of Chairman: Heretofore the statute has provided for paying members of the county board of elections at the rate of $15 per day, but a separate provision provided for paying the chairman $10 per day. This inconsistency has been removed; the statute now provides for paying the chairman a per diem of $15. [Chapter 1203 (HB 78)].

Board Meetings: The first meeting of the county board of elections has heretofore been held on the seventh Saturday before the primary. This meeting has been advanced to the ninth Saturday before the primary. [Chapter 1203 (HB 78)].

Registration of Voters

Duties of Registrar: While the registration books are in his hands, the registrar has a duty to let them be copied upon application by any candidate or political party chairman. If he prefers to do so, the registrar may furnish a copy of the registrations in his precinct to one seeking them rather than permit a copying. In this event, the registrar has heretofore been entitled to charge a fee of 1c per name. G. S. 163-115 has now been amended to raise the fee to 2c per name. [Chapter 883 (HB 724)].

Qualifications to Register: Apparently to insure that the statutes specify what has heretofore been the standard interpretation, appropriate changes have been made in G. S. 163-123 and G. S. 163-126 to state that a person who will be qualified by age or residence to vote in a general election for which a particular primary is held, may register in the regular registration period before the primary, if otherwise qualified, and vote in that primary as well as in the next general election. In such cases, however, the voter is not entitled to register on the day of the first or second primary. [Chapter 1203 (HB 78)].

Notices of Candidacy in Party Primary

Filing Time: Closing time for filing notice of candidacy has been changed from noon on the sixth Saturday before the primary to noon on Friday preceding the sixth Saturday before the primary. [Chapter 1203 (HB 78)].

A recurring problem is what should be done in cases in which one who has filed his notice of candidacy dies before the primary is held. A new statute has been enacted [Chapter 1054 (HB 76)] to deal with this problem. It provides that upon receiving notice of such a death the appropriate board of elections is to proceed as follows: (1) If more than one candidate remains in the running for the particular office the name of the deceased candidate is to remain on the ballot, and if the highest number of votes in the primary is cast for the deceased candidate, all candidates are to be rejected, and the proper party executive committee is to make the nomination. If no candidate receives a majority, the candidate receiving the highest vote is to be declared the party nominee without a second primary. (2) If only one candidate remains in the running after the death of the other candidate, the elections board must reopen the filing period for an additional five days if it is of the opinion that there is sufficient time left in which to print or re-print the ballots. If there is not sufficient time the board must proceed as it would in cases in which more than one candidate is left in the running. See (1), above.

Pledge of Party Loyalty: Persons filing for nomination in a party primary are required to sign a "pledge of party loyalty" at the time they file. Heretofore, this pledge, after stating the individual's party affiliation, has carried a simple statement that the signer pledged himself to abide by the results of the primary and "to support in the next general election all candidates nominated" by his party. Cases have arisen in which unsuccessful primary candidates have sought write-in support in the succeeding general election. To meet this situation, the pledge of party loyalty has been expanded to include a statement by the candidate that, if defeated in the primary, he will not run for any office as a write-in candidate in the next general election. [Chapter 1203 (HB 78)].

Filing Fees: Fixing the amount of the fee to be deposited by a candidate for an office compensated by fees has not always been a simple matter. Heretofore, G. S. 163-120 has provided that in such cases a candidate must pay a flat filing fee of $5 to the county board of elections unless the official holding the particular office received more than $500 during the year next preceding the primary, in which case the candidate was to pay a fee equal to 1% of the total amount actually collected by that official in fees. This has now been removed from the statute, and the following schedule of fees has been substituted for those filing notices of candidacy for offices compensated on a fee basis:

County commissioners—$10; county board of education—$10; sheriff, clerk of superior court, register of deeds—$40, plus 1% of the income of the office above $4,000; any other county office on a fee basis—$20, plus 1% of the income of the office above $2,000.

Township constable—$10, plus 1% of the income of the office above $1,000.

Justice of the peace—$10, plus 1% of the income of the office above $1,000.

If a county or township officer is paid partly by fees and partly by salary, the filing fee is to be 1% of the

first annual salary received (not including any fees). [Chapter 1203 (HB 78)].

The Voting Process

Marking Write-In Ballots: If a voter desires to vote in a general election for a person whose name does not appear on the ballot, he must strike out one of the names printed on the ballot as candidates for the particular office, and then, in the space below the deleted name, the voter must write the name of the person for whom he desires to cast his vote for that office.

Heretofore, in the event the voter has not checked the party circle at the top of the ballot, it has been necessary for him to indicate his choice of the write-in by inserting a cross mark to the left of the name he has written in. G. S. 163-167 and G. S. 163-175 have been amended to delete the requirement that the voter make a cross mark before the name written in to have his write-in vote counted. [Chapter 1203 (HB 78)].

Assistance to Voters in General Elections: Each political party participating in a general election is entitled to have official "markers" present at the polls to help voters entitled by law to receive aid in voting. The markers selected must be bona fide residents of the precinct in which they are appointed to serve, and the statute provides that they must possess good moral character and "the requisite educational qualifications." Heretofore the statute has said nothing more. Under the terms of a 1959 act, elected officials and candidates for office are made ineligible for appointment as markers, but other governmental employees are specifically declared to be eligible. [Chapter 616 (HB 196)].

Watchers, Challengers, and Observers in General Elections: Each political party with candidates on the general election ballot is entitled to name two "watchers or challengers" for each polling place. These watchers must be of good moral character, and the precinct registrar and judges may reject appointees for good cause and require other appointments. Under a new statute it is provided that watchers and challengers in general elections must be qualified electors of the precinct for which they are appointed to serve. [Chapter 616 (HB 196)].

Voting Machines: The 1959 General Assembly adopted a resolution authorizing the appointment of a committee of legislators (two senators; three representatives) to study and make recommendations to the legislature on the feasibility of the State's assisting counties in the purchase or rental of voting machines. [R. 21 (SR 68)]. This committee was named, and it presented its recommendations in the form of a bill, HB 825. Under its terms county boards of elections having the approval of their county boards of commissioners would have been authorized to enter into contracts for the purchase of voting machines "upon an installment plan of ten equal annual installments . . . on the basis of one voting machine for each voting precinct having a total registration in such precinct of five hundred electors, and one additional voting machine for each additional five hundred registered electors or major fraction thereof in a precinct." When purchased, the State would have paid one-half of each installment from the Contingency and Emergency Fund. Counties still paying for voting machines already obtained would have had half their remaining installments paid by the State. This bill, however, never reached the floor for consideration. It was reported unfavorably by the House committee to which it was referred.

Counting and Recording Votes

Accounting for Ballots: After an election the precinct registrar and judges customarily return the ballots to the boxes from which they were taken as soon as they are counted. They lock the box, and sometimes, as an added precaution they seal the box. For many years G. S. 163-136, dealing with primary elections as distinct from general elections, has required the precinct officials to seal the ballots in the boxes after the count and place their signatures on the seal. Under a 1959 act, following a general election the precinct officials are required to return the ballots to the proper boxes, lock the boxes, and place a seal (bearing the signatures of the registrar and judges) around the top of each ballot box. Locks and seals (with instructions for their use) are to be furnished by the chairman of the county board of elections, and each precinct return form is to carry a certificate signed by the registrar that after the ballot count the boxes were properly locked, sealed, and signed before the registrar and judges left the polling place. Wilful failure to comply with these requirements is made a misdemeanor. The sealed boxes are to remain in the custody of the registrar subject to the orders of the chairman of the county board of elections as to disposition. [Chapter 1203 (HB 78)].

Certifying Results: On the second day after the primary or election the county board of elections is required to "open the returns and canvass and judicially determine the results of the voting. . . . The said county board of elections shall have the power and authority to judicially pass upon all facts relative to the election, and judicially determine and declare the results of the same." [G. S. 163-186]. The board is then required to prepare and sign abstracts or statements of the results according to forms prescribed by statute, and, in case of offices to be canvassed on a state-wide basis, must send duplicate copies of the abstracts to the State Board of Elections. [G. S. 163-87, -88, -89.] In a general election the county board of elections is to declare the candidate having the highest number of votes to be elected. When the board "shall have completed the canvass, they shall judicially determine the result of the election in their county for all persons voted for, and proclaim the same at the courthouse door with the number of votes cast for each." [G. S. 163-91.]

This is the statutory procedure for canvassing and determining the results of an election. To the chairman of the county board of elections, under G. S. 163-92, falls the responsibility for furnishing certificates of election to successful candidates. Such certificates would presumably be evidence of the determination of their election already made by the elections board itself. In 1955 the General Assembly added a proviso to G. S. 163-92 to the effect that if an election "contest is properly pending before a county board of elections or on appeal from a county board to the State Board of Elections, either after a primary or a general election, the said *county board of elections* shall not certify the results of the

primary or election for the office in controversy until the contest has been finally decided by the county or State Board of Elections." This qualification, as indicated by the italicized matter, is directed toward the action of the board in certifying the results, but this seems to have been an imprecise usage; it probably refers to the action of the chairman of the board. In this connection, it should be noted that the statutes themselves contain no provisions concerning the time within which election results may be contested or appealed, but the State Board of Elections has promulgated rules on the subject. Broadly speaking, those rules in some cases allow appeals to be taken as much as five days after the results have been canvassed and determined by the county elections board. That being the case, it would be possible for the chairman of a board, under G. S. 163-92, to issue a certificate of election before the time for noting an appeal from the elections board's certification of the results had expired, so long as no such appeal had actually been taken. The 1955 proviso handled the case where the appeal had been taken before the chairman issued his certificate, but it did not cover the situation in which an appeal is noted within the time allowed for appeals but after the board chairman has issued a certificate of election. Apparently the 1959 amendment to G. S. 163-92 was intended to take care of this situation. [Chapter 1203 (HB 78)]. It adds to the 1955 proviso the words italicized below:

> Provided, that where an election contest is properly pending before a county board of elections or on appeal from a county board to the State Board of Elections, either after a primary or a general election, the said county board of elections shall not certify the results of the primary or election for the office in controversy until the contest has been finally decided by the county or State Board of Elections, *or until at least five days after the results of the election have been officially certified and public notice given of the results and no contest or appeals have been filed with the county board of elections contesting the official declared results.*

Tie Votes in Primary Elections

In primary elections the results are normally determined by majority vote rather than by mere plurality. This standard, in cases of multiple candidates and multiple offices, leads to the necessity for developing formulas for computing what constitutes a majority. This is dealt with in G. S. 163-140. This section was expanded by the 1959 legislature to cover the complementary problem of tie votes in primaries as follows:

(1) In the event of a tie vote between two candidates for legislative, county, or township office in the first primary, a recount is to be made and the results declared by the county board of election. If the recount results in a tie a second primary is to be held on the prescribed date unless one candidate files notice of withdrawal within three days after the recount.

(2) In the event of a tie vote in a primary between two candidates for a district or state office or for United States senator, no recount is to be held for that reason, but a second primary is to be held unless one candidate files notice of withdrawal within three days after the results of the first primary are delared.

(3) The proper executive committee of the proper political party is to select the nominee in accordance with G. S. 163-145 if the second primary in the two situations outlined results in a tie vote.

(4) In case of a tie vote between more than two candidates, no recount is to be held, but all candidates must run in a second primary.

(5) In case one candidate receives the highest number of votes (but short of a majority) in the first primary and two or more candidates tie for second place, unless all but one of the tied candidates withdraw within three days after the results are declared, the board of elections is to declare the candidate with the highest number of votes to be the party candidate. If all but one of the tied candidates withdraw, and the remaining candidate demands a second primary, a second primary must be held between him and the candidate who received the highest number of votes. [Chapter 1055 (HB 77)].

Accounts of Candidates

The Corrupt Practices Act imposes upon candidates and their supporters certain duties to report contributions and expenditures. Under the terms of G. S. 163-193 every person who seeks party primary nomination for the State Senate (from a single-county district), for the House of Representatives, or for any county office, must file two sworn statements with the clerk of superior court in the county of his residence. The first of these statements must be filed ten days before the primary, and it must contain an itemized account of all expenditures made by him or which he knows to have been made by anyone for him, and of all contributions made to him directly or indirectly. The second statement containing the same information is to be filed within twenty days after the primary. Both are to be in the detail required by G. S. 163-194. Chapter 1203 (HB 78) requires the chairman of the county board of elections to send written notice that these reports must be filed "to each candidate in a primary election who filed a notice of candidacy with said chairman," and who had opposition in the primary. Unopposed primary candidates do not have to be notified.

PUBLIC PURCHASING

By Warren Jake Wicker

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Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

The 1959 General Assembly adopted seven acts making changes in the general laws controlling purchasing by local governments in North Carolina and ratified some 35 local bills in the purchasing area.

The acts making changes in the general law included three of the four proposed by the purchasing agents of the State and endorsed by the North Carolina League of Municipalities, the County Commissioners Association, and the Municipal Finance Officers Association. As in previous sessions, the key proposal to fail of enactment was the one designed to permit local governments to buy from State contractors (HB 454). In the past, proposals of this type have usually called for purchasing by local governments under State contracts. In contrast, HB 454 simply provided that the regular competitive bidding procedure might be eliminated on any purchase by a local government from a State contractor at the State contract price. All such purchases were to be optional with both the local government and the contractor, and the State Division of Purchase and Contract was not to be involved in any way. This proposal too, however, raised fears among local suppliers and their opposition led to its defeat in committee.

The changes approved are discussed briefly below:

Formal Contracting Procedure

Two changes were made in G. S. 143-129, the section of the General Statutes which contains the chief requirements with respect to formal purchasing contracts.

Chapter 910 (HB 452) rewrote the last two paragraphs of GS 143-129 to allow the State and local governments to purchase apparatus, supplies, materials, or equipment from any other governmental unit or agency in the United State on a private basis. [The authority applies also to purchases falling within the informal contracting limits as well as larger ones which would otherwise call for the formal procedure.] This is an extension of authority which has previously applied only to purchases from the federal government and its agencies. It is expected that this authority will make it much easier for local governments to buy surplus or used equipment from other governmental units. It will be especially helpful in the purchase of equipment which is used for the most part only by governmental units. For example, this change (together with another on the sale of property described below) would make it easy for City "A" to buy a used street sweeper from City "B". The two cities could simply negotiate on the matter. Prior to the adoption of this legislation, City "A" could have purchased a used street sweeper only by calling for sealed bids, and City "B" could not have offered its surplus sweeper to City "A" since the law required that bids also be received on the *sale* of surplus property.

The second change was made by Chapter 392 (HB 479) and extends by one day the period between the first advertisement of proposals and the earliest date on which bids may be opened. The previous requirement was that there must be at least one week between the advertisement and the opening of the proposals. Thus if a proposal was advertised on the 1st, the opening of bids could take place on the 8th. The statute now requires that there be at least seven full days *between the date of the advertisement and the opening of bids.* This means that if the advertisement is now made on the 1st, the opening cannot take place until the 9th of the month.

Informal Contracts

Since the 1957 Session of the General Assembly, GS 143-121 has required that informal contracts be awarded to the "lowest responsible bidder" after securing informal bids. [Informal contracts are those involving an expenditure of more than $200 but less than $2,000 in the case of purchases and less than $3,500 in the case of construction and repair projects.] Chapter 406 (HB 455) changed the standard for awarding informal contracts to make it the same as the standard for formal contracts. The statute now directs that informal contracts be awarded to "the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract." Thus, greater discretion is now permitted in the awarding of informal contracts.

Sale of Municipal Property

One of the important changes in the authority of municipalities to dispose of property has already been mentioned—that granted by Chapter 862 (HB 453), which rewrote GS 160-59, and which allows municipalities to dispose of surplus personal property to other governmental units in the United States at a private sale. It is this change, together with the purchasing change already discussed, which will facilitate the exchange of property between governmental units.

Chapter 862 also shortened the period of notice which must be given before a public sale of personal property. Before the passage of Chapter 862, municipalities could sell real property only at auction and after 30 days' notice. Personal property could be sold either at auction or on sealed bids and after the same notice. Under this Chapter, personal property may be sold on sealed bids after only one week's notice.

Continuing Contracts for Counties

Counties are now authorized to enter into continuing contracts, "some portion of which or all of which may be performed in an ensuing fiscal year" by Chapter 250

(HB 270), if funds are sufficient to meet the required outlays for the fiscal year in which the contract is made. Thereafter, appropriations are to be made each year for the outlays under the contract in that year. With this legislation counties now have the same power to enter into continuing contracts which cities and towns have previously had under the provisions of GS 160-399 (d).

Minimum Number of Bids on Construction Contracts

G.S. 143-132 has long provided that construction and repair contracts which cost more than $15,000 shall not be awarded unless at least three competitive bids have been received from reputable and qualified contractors. This requirement has at times posed a problem in that on relatively small projects it is sometimes difficult to obtain three bids. In such cases in the past, the Attorney General has advised re-advertisement for bids and suggested that the contract be awarded after the second advertisement even if less than three bids were received. This procedure was enacted into law by Chapter 592 (HB 479) which amends GS 143-132 to require a second advertisement in such cases and then authorizes the awarding of the contract if only one acceptable bid is received after the second advertisement.

State Gasoline Tax Exemption

Gasoline used in "public school transportation" has been exempt from the State gasoline tax under the provisions of GS 105-499. Chapter 155 (SB 18) amended this section to provide that this exemption from the gasoline tax shall apply to gasoline used for other forms of school activities, to gasoline used by libraries, and to make it clear that the exemptions apply to city school systems as well as to county systems.

Payment to Contractors

Chapter 1328 (HB 1057), to be designated as GS 143-134.1, requires the State and any political subdivision to pay interest on unpaid balances due prime contractors on any construction project (except roads, highways, bridges and their approaches) if the balance is not paid within 45 days of the completion or acceptance of the work.

Any prime contractor whose work (a) has been accepted by the owner, (b) has been certified by the architect or designer as completed in accordance with plans and specifications, or (c) is being used by the owner for purposes for which the project was constructed, is entitled to receive final payment within 45 days of such acceptance, approval, or use. Interest at the rate of six per cent per annum runs on the unpaid balance from the 46th day until final payment is made.

Interest on the unpaid balance is not required to be paid if there is a conditional acceptance and a reasonable sum is retained pending final completion of the project, or if completion of the project is delayed because of the fault of the contractor and occupancy or use is made prior to final completion.

Local Acts

As noted before, there were some 35 local acts relating to the procedures to be used by particular local governments in the acquisition or disposal of property.

About two-thirds of these were concerned with the sale of property and provided for exemption from general law provisions regarding the sale of property. Thirteen acts authorized certain cities, counties or school boards to transfer described property to private persons at a private sale. In some cases the sale price was set and in others this was left to the discretion of the governing board. Five special acts involved the transfer of property between governmental units, and four others provided for the lease or exchange of property on a negotiated basis.

Three cities secured special legislation with respect to the application of the formal contracting procedure in their cases. Greensboro's charter amendment (Chapter 1137) permits the use of the informal contracting procedure on purchasing contracts not involving more than $3,000. This compares with the general law maximum of $2,000. Fayetteville had a charter provision which required the use of the formal procedure if an expenditure of $1,000 or more was involved. This was repealed (Chapter 542) to bring the city under the higher general law limits. Spray's charter revision (Chapter 669) calls for the use of the formal contracting procedure on expenditures of $1,000 or more and also provides that such contracts shall be awarded to the "lowest responsible bidder," thus making the standard of award more restrictive than that found in the general law.

High Point secured authority (Chapter 831) to sell personal property at a private sale and without advertisement or notice if the value of the property at the time of sale does not exceed $2,500. This act, of course, gives the city much more freedom in the disposal of personal property than is allowed generally under the provisions of GS 160-59 discussed above.

The limits on mileage payments to officers and employees was increased in three cases. Acts affecting Alamance and Columbus Counties (Chapters 1299 and 214 respectively), provide for members of the boards of commissioners in those counties to be reimbursed at the rate of 10¢ a mile. And the Greensboro charter revision (Chapter 1137) authorizes the city council to set the rate of reimbursement to employees for the use of their personal cars. Under the general law, GS 147-8 and -9, the maximum rate which may be paid is seven cents a mile.

And finally, school boards in four different counties secured special acts to permit them to undertake construction and repair work through their own forces beyond the $15,000 limit imposed by GS143-135. New limits established in the various acts ranged from $30,000 to $50,000.

PUBLIC PERSONNEL

By Donald B. Hayman

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and Senate.

Salary and retirement bills affecting teachers and State employees and a bill outlawing union membership among certain municipal employees attracted public attention during the 1959 General Assembly. Although these bills made the headlines, they represented only a small percentage of the total number of public personnel bills adopted. Actually, 15 per cent of all bills introduced and 18 per cent of all bills ratified concerned some aspect of State, county or municipal personnel administration. Personnel bills accounted for 294 of the 1,880 bills introduced and 244 of the 1,338 ratified.

The local personnel bills ratified represented approximately one-fourth of the 876 local bills. An analysis of the ratified bills reveals that 115 changed the salaries of one or more public officials or employees, 59 altered a public retirement fund or group insurance plan, and 40 revised the fees collected by local officials. The 114 compensation acts represented a reduction from the 158 compension acts passed by the 1957 General Assembly.

Compensation

State Employee Compensation

The voters in 1956 amended the State Constitution to provide that members of the General Assembly shall be paid a subsistence allowance. Under existing legislation members of the General Assembly were allowed travel expenses for one round trip per session.

Chapter 939 (HB 58) authorized the payment for travel expenses incurred by members of the General Assembly for up to one round trip each week during a regular or special session. The expenses allowed are the same as established by law for members of State boards and commissions.

Salary Increases. Chapter 1053 (HB 9) appropriated funds for general across-the-board salary increases for teachers and State employees. Teachers salaries were raised 5 per cent contingent upon the availability of funds. Full-time, permanent State employees subject to the State Personnel Act were granted a one step increase. In addition $500,000 was appropriated for each year of the biennium for adjusting the salaries of employees subject to the Personnel Act.

Subsistence Allowance. Chapter 1053 (HB 9) increased the maximum subsistence allowance for in-state travel to $9.00 a day and for out-of-state travel to $12.00 a day.

Four groups of State employees sought monthly subsistence allowances similar to the allowance provided highway patrolmen by the 1957 General Assembly. Chapter 1320 (HB 399) authorized a $25 a month subsistence allowance for driver license examiners in addition to the subsistence allowance and expenses allowed State employees when in travel status.

The attempts to provide similar allowances for wildlife protectors, driver license hearing officers and SBI agents died in the House.

County Employee Compensation

The 1959 General Assembly passed 88 county salary acts. This total was the same as ratified in 1953, but it is lower than the 103 ratified in 1957 and the 135 ratified in 1951. Each of the acts required or authorized higher salaries or expense allowances for one or more county employees.

The 1959 General Assembly authorized or directed salary increases for county commissioners in 25 counties. When considered with the increases granted in 1957, 55 of the 100 boards of commissioners have received salary increases since January, 1957. Sixteen of the 1959 acts provided for the chairman of the board to receive a salary. The new salaries for part-time chairmen ranged from $300 a month plus travel and $20 a meeting in Guilford to $62.50 a month plus travel and $10 for up to six special meetings in Davie. Eleven of the acts provided a salary for board members. As of July 1, 1959, 65 chairmen and members of 53 boards of commissioners were receiving a monthly salary for their public service.

The compensation of the chairman and/or the members of the boards of commissioners of the following counties was increased or authorized to be increased: Alamance, Alexander, Burke, Catawba, Columbus, Cumberland, Davidson, Davie, Edgecombe, Franklin, Gaston, Haywood, Guilford, Jackson, Jones, Lincoln, Moore, Nash, New Hanover, Pitt, Randolph, Richmond, Rutherford, Stokes and Vance.

Salaries of the three constitutional department heads (clerk of court, register of deeds, and sheriff) in 24 counties were or may be substantially increased as the result of acts passed by the 1959 General Assembly. A tabulation of the mandatory increases adopted by the legislature reveals that 45 officials in 15 counties will each receive increases averaging $643 a year. The counties in which increases were authorized for the clerk, register of deeds and sheriff were as follows: Alamance, Alexander, Beaufort, Burke, Davie, Forsyth, Franklin, Harnett, Henderson, Iredell, Jackson, Lenoir, McDowell, Macon, Madison, New Hanover, Northampton, Pasquotank, Person, Randolph, Richmond, Rutherford, Stokes and Vance.

The act applicable to the Forsyth County clerk of court, register of deeds, and sheriff is most unusual. It provides that the incumbent officials shall receive $12,000, $8,000 and $11,500 respectively, but that their successors in office shall receive only $8,000, $6,000, and $8,000 respectively.

Other county officials receiving salary increases included

the sheriffs of Columbus, Guilford and Polk counties, the registers of deeds in Guilford and Moore counties, the clerk of court in Hyde, the county attorney in Graham, and the judge and solicitor of recorders court in Harnett, New Hanover, Rutherford and Vance. The sheriff and clerks of court in Wake County will receive increases effective July, 1960.

Local acts authorized a 15 per cent increase for all officials and employees in Henderson County and a 10 per cent increase in Northampton and Randolph.

Salary Home Rule Increased. Prior to the 1959 General Assembly, 31 boards of county commissioners had authority to set the salaries of all elective and appointive officials and employees; and the board of commissioners of 13 other counties had the authority to set the salaries of all appointive officials and employees.

The 1959 General Assembly adopted legislation providing that county commissioners of seven additional counties may henceforth set the salaries of both elective and appointive officials. These counties include Carteret, Catawba, Chowan, Currituck, Craven, Duplin and Wayne. The legislature also authorized the county commissioners of Harnett and Polk counties to set the salaries of their appointive officials. The authority of the Alamance commissioners to set the salaries of elected officials was repealed.

The commissioners of 16 counties may now set the salaries of appointive officials and employees, and the commissioners of 37 counties now have authority to set the salaries of both elected and appointive officials and employees.

One of the provisions of most of the home rule salary acts is that the fees charged and salaries paid county officials shall not be increased or decreased more than 20 per cent in a fiscal year nor more than 20 per cent in any fiscal year as compared with the preceding fiscal year. Chapter 376 (HB 435) repealed this limitation as it applied to Montgomery County.

Compensation of Municipal Officials

Sixteen acts passed by the 1959 General Assembly increased the compensation of a mayor and/or aldermen. Unlike the 47 municipal salary acts ratified in 1957, most of the salary acts were applicable to smaller cities and towns. Exceptions were of course the acts setting the salary of the mayor of Shelby at $10,000, the mayor of Winston-Salem at $4,800, and a maximum salary of $3,600 for the mayor of Fayetteville.

Other legislative acts provided an annual salary of $600 for the mayors of Mocksville, Newton and Spruce Pine, $360 for the mayor of Southport and $300 for the mayors of Candor and Stanley.

Salaries of aldermen were set at $360 a year in Wadesboro, $300 in Sanford and Spruce Pine, $200 in Mocksville, $180 in Garner, Kernersville, and Stanley, and $120 in Southport.

Union Membership Illegal

Chapter 742 (HB 118) forbids all full-time State, county and municipal employees engaged exclusively in law enforcement or fire protection from participating in certain union activities. Such employees are forbidden to be members of or to promote the organization of any labor union affiliated with any national or international union which has as one of its purposes the collective bargaining with public employers over hours, wages, or working conditions.

A second provision of Chapter 742 (HB 118) is to declare illegal any agreement or contract between any State or local governing authority or agency and any labor organization.

Any violation of this act is declared to be a misdemeanor, and upon conviction, plea of guilty or plea of *nolo contendere* shall be punishable in the discretion of the court.

The act also provides that the State right to work act, Article 10 of GS Ch. 95, shall not apply to any public employees, to the State, or to any county or municipality.

Civil Service

The General Assembly passed four acts pertaining to State and local civil service systems.

Chapter 1233 (SB 10) provides that certain employees of State and local civil defence offices shall be subject to the N. C. Merit System Act when Congress appropriates federal funds for the cost of personnel and administration for the State and local civil defense organizations. State and local civil defense directors, board members, custodial, and professional non-administrative personnel are exempt as are local civil defense offices who do not desire to secure federal matching funds for personnel and administrative costs.

Chapter 115 (HB 174) establishes a three-member civil service commission for the members of the Hendersonville police and fire departments. The commission is authorized to give tests, certify eligibles, conduct investigations, hold hearings, and make rules governing all aspects of personnel administration. If an employee shall appeal his removal, suspension or discharge, the Commission shall hold a public hearing and make a report of its findings. The recommendations of the Commission can only be disapproved by a two-thirds vote of the governing body.

The act prohibits political discrimination or favoritism or the use of political influence to secure appointment or salary increase, and classified employees are prohibited from making or soliciting political contributions or engaging in any political activity.

Other acts repealed a provision of the Raleigh Civil Service Commission Act which required that applicants possess the right of suffrage, and a provision governing the New Bern Civil Service Board which authorized examinations only once every two years.

Working Hours

The legality of the five day work week need no longer disturb clerks of court or boards of county commissioners. Chapter 251 (HB 271) provides that the board of county commissioners of any county may prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the county.

Two bills which would have affected the working hours of employees of the State Highway and Public Works Commission died in committees. SB 228 would have given State highway employees a holiday on election day except in case of emergency work. HB 938 would have required the State Highway Commission to pay straight time for all work beyond 45 hours a week.

Workmen's Compensation Coverage

Considerable confusion has existed as to whether certain county and municipal officials, i.e. county accountant,

city clerk, etc., were covered under the present Workmen's Compensation Act. There was additional concern because the act excluded full-time city elected and county officials. This exclusion appeared inequitable to the officers concerned after the 1953 amendments which extended workmen's compensation to corporation executives and full-time State elected and appointed officials.

Chapter 289 (HB 252) amended the Workmen's Compensation Act to cover all officers and employees of municipal corporations and political subdivisions of the State except elected officials. However, a governing body may bring officers elected by the people under workmen's compensation by adopting an appropriate resolution.

Group Insurance

The use of fringe benefits by private employers as a recruiting device has not gone unnoticed in city halls and county courthouses. The 1953 and 1955 General Assemblies acted to permit group life, group hospitalization, and group accident and health policies to be issued which were partially or entirely paid for by the local employing governmental unit.

Chapter 95 (HB 119) amended GS 160-200 (25) to permit cities to insure the lives of city employees under group insurance plans up to $5,000 per person. A $2,000 limit had been included in the section since it was adopted in 1923.

Chapter 287 (HB 194) amended GS 58-210 reducing the minimum number of employees who can be covered under a group life insurance policy from 25 to 10.

Chapter 813 (HB 982) authorizes Raleigh to purchase $10,000 life insurance on any or all employees of the city against death by accident arising out of and in the course of their employment. Such insurance would be in addition to existing workmen's compensation coverage, and Raleigh is authorized to pay all or part of the premium.

Retirement and Social Security

The fifty-five retirement acts passed by the 1959 legislature established a new record for the General Assembly. Twenty-two acts pertained to social security, the retirement of State employees or one of the state-wide retirement systems. Five acts amended county retirement plans; 13 acts involved one of the municipal retirement systems; and 15 acts established or amended a local peace officers' relief association.

Social Security. The coverage of all State and local employees under social security became a near possibility with the passage of three acts by the 1959 General Assembly.

Chapter 1178 (SB 365) appropriated funds to provide for retroactive social security coverage to January 1, 1956 for Justices of the Supreme Court and Judges of the Superior Court. Chapter 618 (HB 433) authorizes social security coverage of State employees belonging to the Law Enforcement Officers' Benefit and Retirement Fund. Actual coverage will be dependent upon a referendum of the officers. Chapter 1169 (SB 259) appropriated $460,946 to cover the officers' and the State's retroactive contributions to January 1, 1956.

Unlike the previous plans which have been adopted for integrating social security with the Teachers' & State Employees' Retirement System, and local retirement systems, social security benefits for both judges and law enforcement officers will be in addition to existing retirement benefits.

Chapter 1020 (HB 1020) amended GS 135-20 to provide that justices of the peace and township constables are not eligible for social security coverage as public employees.

State Employees Retirement. Chapter 1240 (SB 225) amended GS 7-51 to permit persons who have served 15 years as Attorney General, Supreme Court judge, or Superior Court judge to qualify for judges' retirement benefits. Chapter 1319 (HB 388) provides that members of the Utilities Commission shall be entitled to the same retirement benefits as are provided for Superior Court judges.

A unique act, Ch. 1184 (SB 399), authorizes the Contractors Licensing Board to expend funds as it deems necessary to provide retirement and disability compensation for its employees.

Eight acts made minor changes in the Teachers' and State Employees' Retirement System. Chapter 1263 (HB 329) permits civilian employees of the national guard to become members of the retirement system when funds become available. Chapter 1012 (HB 820) authorizes employees of the occupational licensing boards to become members.

Chapter 620 (HB 485) amends GS 135-5 to provide that effective July 1, 1960 employees 65 years of age shall be automatically retired and employees reaching 65 subsequently shall be retired on July 1 following such birthday. Upon the recommendation of the employer and with the approval of the board of trustees such members may continue in service for one additional year following each such recommendation and approval.

Chapter 620 also provided for the State effective July 1, 1959 to match the employees' contribution to age 65, and to provide all retired employees with 20 or more years of service a retirement allowance of $70 a month before the selection of an optional allowance. Retirement allowances to retired members who have not selected an optional allowance will be increased 15 per cent or $15 whichever is less and allowances to retired members who have selected an option will be increased a comparable amount during their lifetime.

Local Governmental Employees Retirement

Chapter 491 (HB 597) rewrote portions of the Local Governmental Employees' Retirement Act to correspond with provisions of the Teachers' and State Employees' Retirement Act. GS 128-27(b1) was inserted to provide that contributions of employees retiring after July 1, 1959 shall be matched until age 65 and that their prior service credit will be increased 25 per cent.

Chapter 1179 (SB 366) authorizes the board of county commissioners of a county to elect that employees of the county welfare department or employees of county health and welfare departments become members of the Local Governmental Employees' Retirement System even though other county employees are not brought under the system.

Firemen's Pension Fund. Chapter 1212 (HB 690) established a North Carolina Firemen's Pension Fund as the fund established by the 1957 General Assembly had been declared unconstitutional. The 1959 fund is similar in most details to the 1957 fund.

Membership in the pension fund is open to all firemen who belong to a fire department (1) which is classified as not less than class "9" or class "A" and "AA," (2)

which operates fire equipment valued at $5,000 or more, and (3) which hold drills not less than four hours monthly. Eligible firemen must drill 36 hours each calendar year. The number of volunteer firemen eligible in a department is limited to 25 volunteers per department plus one for each 100 persons served by the department.

Members of the fund who have served 30 years as firemen may become eligible for a pension of $36 a month at age 55 or as much as $50 a month if they wait until 60 or after to retire. Pension payments will not begin until January 1, 1960, but firemen who retire prior to that date may receive a pension commencing as of that date if they have contributed $60 to the fund. No person shall be eligible for a pension until his official duties as a fireman have terminated.

Firemen now eligible for membership have until June 19, 1961 to apply for membership. All persons who subsequently become firemen have 12 months in which to apply. Firemen not now eligible but who become eligible within five years may become members and receive full credit for all service if they contribute $5 for each month since the effective date of the act.

Chapter 1211 (HB 689) levied a 1 per cent tax on gross premiums collected on fire and lightning insurance contracts other than those written on property in unprotected areas and other than marine and automobile policies. Chapter 1273 (HB 785) appropriated money from the general fund for each year of the biennium to finance the firemen's pension fund.

County Retirement Funds. Four of the five county retirement acts involved minor statutory changes. The fifth involved an innovation in county retirement practice. Chapter 1329 (HB 1089) authorized the county commissioners of Mitchell County to levy a $.01 special tax for the purpose of supplementing retirement benefits of retired county officials and employees.

Municipal Retirement Funds. The General Assembly authorized two new supplementary municipal retirement funds to be established, and one existing fund to be abolished. Chapter 201 (HB 295) authorized the Town of Morganton to establish a retirement fund by ordinance on a solvent actuarial reserve basis. Chapter 810 (HB 974) established the Henderson Firemen's Supplemental Retirement System to be financed principally from excess funds from the local firemen's relief fund. Chapter 680 authorized the High Point Firemen's Pension and Disability Fund to be merged with the Local Governmental Employees' Retirement System.

Chapter 133 (HB 343) increased salary deductions from 2 to 3 per cent and increased benefits paid by the High Point Police Pension Fund.

Chapter 723 (HB 865), among other changes, provided that monthly disability benefits paid by the Charlotte Firemen's Retirement System be reduced by the amount of workmen's compensation received during the previous calendar month. Chapter 301 (HB 430) amended the Gastonia Supplemental Pension Fund to reduce service requirements for retirement and to provide for an election to determine if a 2 per cent salary deduction shall be started.

Local Peace Officers' Relief Associations

Eight new local peace officers associations were established by the General Assembly. New associations were established for each of the following counties: Chowan, Cumberland, Franklin, Granville, Pasquotank, Perquimans, Vance and Warren.

Eight new local peace officers' associations were establishing 24 local peace officers' funds. Most of the funds have as their principal purpose the purchase of group life and hospitalization insurance. Three of the funds increased the current costs which finance the funds from $1.00 to $1.50. Chapter 1142 (HB 1223) contains the unique provision that all surplus funds remaining at the end of the year except officers' initiation fees and dues shall be paid to the Franklin County general fund.

EDUCATION

By Joseph P. Hennessee

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Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Public Schools

North Carolina's public school laws, stable in the main since the enactment of the School Machinery Act of 1939, remained essentially stable through another session of the General Assembly. Revised and recodified in 1955 along lines suggested by the Commission on the Revision of the Public School Laws created by the 1953 General Assembly, amended in the 1956 Special Session to reflect the thinking of the Pearsall Committee and modified in some respects by the 1957 Session, the public school laws came in for only minor adjustments and changes this year. Although each change possesses its own special significance, the changes taken together make no important difference in the general pattern of our school laws. The combined changes continue a long standing pattern of gradual development and strengthening of our public school machinery.

General Provisions

Only two changes were made in the General Provisions of the public school laws codified in Subchapter I of GS Ch. 115. Chapter 573 (HB 480) makes the term "secondary school", for purposes of Title V of the National Defense Education Act of 1958 (Public Law 85-864) applicable to grades seven through twelve. Chapter 915 (HB 827) adds vocational schools designated as industrial educational centers conducted for adults as well as for mature high school students to the classification of public schools. This will permit adults as well as regularly enrolled high school students to acquire industrial and vocational skills which are required by an expanding industrialization of the State. It recognizes the responsibility of the State to prepare its citizens for making a better livelihood.

Administrative Organization

The law, prior to amendment by the 1959 General Assembly, provided that special meetings of the State Board of Education could be called by the secretary upon the approval of the chairman. Chapter 573 (HB 480) permits the chairman to call special meetings of the Board and requires that he call a special meeting upon request of any five members of the Board. The same act provides that the provisions of *GS 115-53* (liability insurance and waiver of immunity as to torts) are not applicable to claims for damages caused by the negligent acts or torts of public school bus drivers while driving school busses the operation of which is paid from the State Nine Months' School Fund; and that pending the filling of a vacancy in the office of county or city superintendent of schools the local school board, with the approval of the State Superintendent and the Controller of the State Board of Education, may temporarily assign the duties of superintendent to an employee of such school board. Prior to the enactment of this change the assignment of the duties of superintendent, in such instances, was subject to the approval of the Superintendent and the State Board of Education.

School District Organization

Heretofore some doubt has existed as to whether changes in district lines between and among districts which have voted the same supplemental tax would have the effect of abolishing such tax or such taxing districts. Chapter 432 (HB 478) makes it clear that changes in district lines between and among districts that have voted the same supplemental tax will not have the effect of either abolishing such tax or such taxing districts. Chapter 573 (HB 480) provides that petitions to enlarge a special tax district or a city administrative unit by permanently attaching contiguous property must be signed by the persons who are the owners of the property and by the taxpaying members of the families living on the property on the date on which the petition is filed. For the purpose of such a petition, persons or corporations which own only an easement in such property are not considered to be owners. Actions or defenses based on the invalidity of such transfers and actions to test the validity of such transfers must be commenced within sixty days after the approval of the transfer of such contiguous property by the State Board of Education.

Revenue for the Public Schools

A question of long standing as to whether a county or city board of education, as the case may be, or a board of county commissioners has the final say as to when a contract for the purchase of a school site may be executed and as to the amount that may be expended for the site has been resolved by Chapter 573 (HB 480). This act provides that no contract for the purchase of a school site may be executed or any funds expended therefor without the approval of the board of county commissioners as to the amount to be spent for the site. In case of disagreements between the two boards the disagreement is to be settled in the manner provided in *GS 115-87* (disagreement or refusal of the county commissioners to levy taxes). The same act permits the inclusion of funds for educational television in the school budget when authorized by the General Assembly, the State Board of Education, or county or city boards of education when the funds are available. Chapter 524 (HB 572) permits county and city boards of education to establish capital reserve funds in anticipation of future school construction needs and to include in the capital outlay budget sums appropriated

for payment into such capital reserve funds. Procedures for making withdrawals from and for accounting for funds in the capital reserve fund and the manner in which such funds may be invested are set forth in detail. Chapter 573 (HB 480) clarifies the requirements as to fidelity bonds by requiring bonds in "such amounts" rather than in "such a manner" as boards of education may deem sufficient to protect school funds or property. Chapter 915 (HB 827) permits the allocation of current expense funds for the operation of industrial education centers on the basis of a budget approved by the board of county commissioners rather than upon a per capita enrollment basis. Another provision of Chapter 573 (HB 480) would require a countersigning officer to sign warrants as specified when each warrant is accompanied by an invoice, statement or other basic document which satisfies the countersigning officer that the issuance of such warrant is proper.

Chapter 227 (HB 263) liberalizes the provisions governing loans from the State Literary Fund by permitting such loans when the State Board of Education finds that loans in accordance with *GS 115-101* would not be practical and that a dire emergency exists in the local school unit requesting such a loan.

Chapter 764 (HB 1066) permits a county or city board of education which has obtained a loan from the State Literary Fund under the above emergency conditions to pledge, with the approval of the board of county commissioners, available non-tax revenues for repayment of such loans and modifies the manner in which repayment of such loans is to be made.

Special Local Tax Elections for Local Purposes

Administrative school units within a county which have not previously voted a supplemental school tax may now combine with other administrative school units within a county to vote a county-wide school supplement under provisions of Chapter 573 (HB 480), which permits countywide elections as to whether a special tax shall be levied and collected on all taxable property within the county. Proceeds of such a tax, when levied, are to be allocated among the different administrative school units within the county on a per capita enrollment basis as determined by the State Board of Education. This countywide election device, apparently inaugurated in the same manner as other supplemental tax elections, would permit an administrative school unit which had heretofore refused to vote a supplemental tax or in which it was doubtful that such an election would carry to combine with another administrative school unit within the county which already had or was expected to favor such a tax and vote a countywide supplement. The advantages or disadvantages of this provision, according to one's individual preferences, are immediately obvious. Chapter 573 (HB 480) clarifies the provisions of *GS 115-117* so as to permit any administrative school unit or other school area as well as a school district having a total population of not less than 100,000 to levy a maximum supplemental tax of 60¢ per $100 valuation.

School Property

Chapter 1372, S.L. 1955 permitted a board of education to reject a bid at any sale or resale of personal property and readvertise the property for sale, or sell it at private sale at a price in excess of the highest price bid at the public sale, whenever in the opinion of the board the highest bid at the public sale was not adequate. Chapter 573 (HB 480) makes this provision applicable to sales of real as well as personal property provided that the private sale of such real or personal property is consummated within one year from the date of the first public offering of the property. Private sales of real property made before May 1, 1959 are validated, provided such sales otherwise meet these requirements. Chapter 324 (SB 198) authorizes county and city boards of education to dedicate portions of their lands as rights-of-ways for public streets, roads or sidewalks.

Employees

Johnny may not know how to read but henceforth he should know that under provisions of Chapter 1016 (HB 931) teachers are specifically authorized by statute to use reasonable force in the exercise of their lawful authority to restrain or correct pupils or to maintain order. Nor will friends (or parents) in high places, *i.e.*, members of local school committees or boards of education, protect his anatomy from the lawful exercise of such reasonable force, since school boards and committees are prohibited from establishing or continuing any rules to the contrary. In those cases where reasonable correctional force proves inadequate or would not prove sufficient protection, Chapter 573 (HB 480) will permit district and building principals to dismiss as well as suspend pupils who wilfully and persistently violate school rules, who may be guilty of immoral or disreputable conduct or who may be a menace to the school. Suspensions and dismissals in excess of ten days duration or during the last ten days of the school year are subject to the approval of the applicable superintendent and all suspensions and dismissals must be reported to the superintendent as well as to the attendance officer.

Chapter 1294 (HB 1142) requires county and city boards of education to investigate and report inaccuracies in school attendance records, take necessary actions to establish and maintain correct records and to make reports of their findings and actions to the State Board of Education. Upon a finding by the State Board of Education that inaccurate attendance records have resulted in an excess allotment of funds for teachers' salaries beyond that which would have been justified on the basis of correct attendance figures, the administrative school unit affected may be required to refund such excess to the State Board of Education. This measure as originally introduced would have required the refund to the State Board of such excess in allotment of funds for teachers' salaries.

The 1957 General Assembly in seeking to avoid a recurrence of a school fire tragedy such as occurred in Surry County during the 1956-1957 school term passed a series of three measures. Chapter 843, S.L. 1957, prescribed certain duties of a principal relative to the regular inspection of school buildings and the holding of fire drills. Chapter 844, S.L. 1957, set forth detailed provisions for the reduction of fire hazards and the protection of life and property in the public schools. Chapter 845, S.L. 1957, required the Commissioner of Insurance, the State Superintendent of Public Instruction and the State Board of Education to provide an instructional pamphlet for conducting fire drills, to provide for teaching fire prevention (and provide a text book for such a course) in col-

leges and schools and to require principals to hold monthly fire drills under regulations of the Insurance Commissioner, State Superintendent and the State Board of Education. Chapter 573 (HB 480) modifies these provisions to require that fire drills "simulate" rather than "assimilate" evacuation of a building under varying conditions; delete provisions that failure of a principal to perform duties in regard to inspection of school buildings and holding of fire drills may be considered malfeasance in office; add a provision that wilful failure to perform any of the duties of these provisions, as modified by the 1959 act, constitutes a misdemeanor punishable by a maximum fine of $500; repeal provisions relating to reduction of fire hazards in school facilities and substitute provisions setting forth duties of principals regarding fire hazards; and require that school buildings be inspected every four months.

School Transportation

Prior to the commencement of each school year the principal of each school to which a school bus has been assigned has been required to prepare and submit to the superintendent of schools a plan for a definite route for each school bus assigned to the school. Chapter 573 (HB 480) requires that each school bus route plan include all designated stops for receiving and discharging pupils. Chapter 909 (HB 407), codified in GS Chapter 20 (Motor Vehicle Laws) rather than in the public school laws, permits the driver of a vehicle on a divided highway constructed with a space or barrier separating the roadways to proceed without stopping upon meeting or passing a school, Sunday school or church bus stopped in the opposite roadway and engaged in loading or discharging passengers. This amendment makes no change in the law which requires an overtaking vehicle to stop for a stopped school, Sunday school or church bus. Motorists traveling on regular dual lane roads or on multiple lane roads without physical barriers or space separating the roadways are still required to stop upon meeting or overtaking a school, Sunday school or church bus which is stopped to load or discharge passengers. Another provision of this act makes it unlawful for any principal or superintendent of any school, in routing a school bus, to authorize the driver of any such bus to stop and receive or discharge passengers upon any highway which has been divided into two roadways where passengers would be required to cross the highway to reach their destination or to board the bus, except that passengers may be discharged or received at points on such highways where pedestrian and vehicular traffic is controlled by adequate stop and go traffic signals.

Instruction

Chapter 1196, S.L. 1953, established a program of noncredit instruction in driver training and safety education in the public schools and provided for the transfer of twenty-five thousand dollars ($25,000) for each year of the biennium from the appropriation out of the Highway Fund for the Department of Motor Vehicles, Highway Patrol, Driver's License and Safety Promotion to the State Department of Public Instruction to be used for the salary and other expenses of supervisory personnel necessary to carry out the program. These provisions were carried forward into the 1955 School Law Revision (Chapter 1372, S.L. 1955). The adoption of Chapter 682, S. L. 1957, which added an additional $1 to the annual registration fee for motor vehicles to provide funds for financing a program of driver training and safety education in the public schools made the initial method of financing the supervision of a driver training and safety education unnecessary. Chapter 573 (HB 480) deleted the provision transferring twenty-five thousand dollars ($25,000) annually from the funds appropriated for the Department of Motor Vehicles to the Department of Public Instruction.

Chapter 693 (HB 840) permits the State Board of Education to adopt two basal readers for grades four to eight inclusive and provides that textbooks adopted in accordance with applicable provisions of the statutes shall be used by "the" rather than by "all the" public schools in the State. Chapter 915 (HB 827) changes the statutory reference from the "Federal Board of Vocational Education" to the "United States Office of Education" to reflect a change in the official designation of that agency.

Business, Trade and Correspondence Schools

Chapter 573 (HB 480) substantially strengthens the regulation of business, trade and correspondence schools. Major changes require that all corporations chartered under laws of a state other than North Carolina and all persons, partnerships and associations of persons not resident of this State who operate business, trade or correspondence schools in this State meet the statutory requirements as to licensing and bonding of solicitors; provide that before a license may be issued to the solicitor of an out-of-state business, trade or correspondence school such school must meet the same requirements as to bonding as resident schools; and make such schools responsible for the acts, representations and contracts made by their solicitors. Solicitation without a license is made a misdemeanor punishable by a minimum fine of $100, a maximum imprisonment for thirty (30) days, or both.

Public Schools Study Commissions

Various facets of the public schools will come in for special study by three study commissions and by the State Board of Education during the coming biennium. Resolution 80 (SR 412) creates a seventeen (17) member Commission for the Study of Teacher Merit Pay and Public School Curriculum. This Commission will inquire into the controversial area of teacher pay systems based on teacher ratings of individual capacities and study the implementation of a revised public school curriculum. Resolution 72 (HR 1117) established a Commission for the Study of a Twelve-month Use of Public School Buildings and Facilities for Public School Purposes. In addition this Commission is directed to study the feasibility of establishing and operating the schools on an eleven-year, ten-month term basis. Resolution 69 (HR 973) creates a Commission to Study the Public School Education of Exceptionally Talented Children. It will seek methods of discovering exceptionally talented children and the training of such children within the public school system.

Resolution 73 (HR 1123) directs the State Board of Education to study teacher evaluation ratings and certification with particular attention to methods to determine the degree of quality exemplified by different persons and to report back to the 1961 General Assembly. In addition the State Board is required to administer

the National Teacher Examination or its equivalent to all applicants for certification or for change in certification in any professional capacity within the school system.

II. HIGHER EDUCATION

Unlike 1957 in which the General Assembly enacted several major pieces of legislation affecting the development and well being of our State-supported system of higher education, such major legislation was conspicuous by its absence this year. In 1957 the General Assembly strengthened the law of escheats, provided a uniform plan of organization for State-owned colleges outside the University System, provided a plan of organization and operation of community colleges throughout the State, established a revolving fund for the construction of dormitories and other self-liquidating facilities at State-owned institutions, authorized the boards of trustees of the Consolidated University and other State-operated colleges to issue revenue bonds to finance the construction of needed dormitory facilities, and provided a system of student-loan scholarships to encourage students to prepare for and enter into the teaching profession. By way of contrast, only two measures relative to our system of higher education were passed by the 1959 General Assembly.

State Board of Higher Education

The first of these, Chapter 326 (HB 322) was designed to resolve differences arising between the Board of Trustees of the Consolidated University on the one hand and the Board of Higher Education relative to their respective roles in the control and management of the Consolidated University and in its future development. Heralded widely as a compromise agreed on beforehand by the boards of trustees of the University and other State-supported colleges and by the Board of Higher Education, all parties concerned professed to have emerged the winner. Friends of the Board of Higher Education reportedly view the changes wrought by the 1959 legislation as a legislative approval of the role that the Board has played in the development and management of our system of higher education. Friends of the Consolidated University, on the other hand, point to these same changes as proclaiming and protecting the role of the Board of Trustees of the Consolidated University in the management of the internal affairs of the University.

An examination of Chapter 326 (HB 322) which rewrites Article 16 of GS Chapter 116 (State Board of Higher Education) discloses that the specific purpose of the Board of Higher Education is to plan and promote the development of a coordinated system of higher education rather than to promote the development and operation of such a system. The Board is required to seek the cooperation of institutions in planning a system to serve all higher education needs of the State and encourage a high standard of excellence in all institutions, each operating under the direction of its own board of trustees.

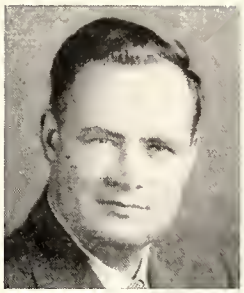
Several changes have been made in GS 116-158 (Powers and duties generally of the State Board of Higher Education). Under these changes the Board of Higher Education is authorized to "allot" rather than "determine" the major functions and activities of each institution of higher education and its authority in prescribing practices and procedures for institutions of higher education is limited to statistical reporting practices. Another change provides that the Board may not require an institution to abandon an existing educational activity where an institution objects to such abandonment until the decision of the Board is approved by the General Assembly. Originally the Board was authorized to require that institutions conform to plans of the Board.

As originally written the Board was authorized to recommend biennial budget expenditures for each institution to the Director of the Budget and the Advisory Budget Commission. As rewritten the Board is authorized to review and appraise budget requests of institutions and make its recommendations thereon together with advice as to whether such requests are consistent with the primary purposes of each institution and with functions allocated to it by statute or by the Board. In the event that there is a reduction in the requested appropriation by the Director of the Budget the Board is required to consult with the president of each institution and recommend revised budgets. Originally, in such cases, the Board was empowered to consult with the officers of such institutions and adopt revised budgets. The requirement that the Board hold hearings on budget requests prior to hearings before the Advisory Budget Commission has been deleted.

Requests by institutions for transfers and changes as between objects and items of budget must now be submitted to the Board for approval before being presented to the Director of the Budget. The Board originally was authorized to make final decisions regarding such requests. The final change deletes the requirement that the Board hear the chancellors and presidents of institutions of higher education before it takes final action in the exercise of its authority to allot major functions, prescribe statistical reporting practices, and make plans for the development of a system of higher education.

To Strengthen the System of Education in the Institutions of Higher Learning

An unheralded provision contained in Chapter 1182 (SB 390) may prove of major importance in the field of higher education. Under provisions of this Act, emphasis on curriculum is placed upon the pursuit of knowledge and the disciplines of the mind and the youth of North Carolina are summoned to dedicate themselves to a crusade of intellectual self-improvement. The Act purports to establish basic minimum requirements of scholarship below which no institution shall fall, and empowers the trustees of each institution to implement the Act by appropriate measures. The power to implement the Act by appropriate measures apparently carries with it the power to establish basic minimum requirements of scholarship. The full significance of this provision must await its implementation by the boards of trustees of the various institutions.



PUBLIC HEALTH

By Roddey M. Ligon, Jr.

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

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

Public Health Administration

G.S. 130-17(b) previously required local boards of health to publish in a newspaper having general circulation within the area over which the board has jurisdiction, once a week for two successive weeks, any rules and regulations adopted or amended by such boards. Such publication was found to be rather expensive in some instances where the regulations were voluminous. Chapter 1024 (HB 1084) deletes the requirement that the regulations be published verbatim, and substitutes a requirement that there be published a statement setting out the title of the regulations together with a statement indicating that they have been adopted or amended, that a copy is posted at the courthouse door of each county within the jurisdiction of the board of health, and that a copy is on file in the office of each health department under the jurisdiction of the board of health. This Act does not apply to Franklin County, and therefore regulations adopted by the Franklin County Board of Health must still be published verbatim.

In connection with the publication of the title, and the statement that such regulaions have been adopted or amended, and where copies may be found, Chapter 350 (HB 61) amends GS 1-597 (which relates to newspapers which may carry legal notices) to provide that publication of notices required by law in counties having no newspaper qualified for legal advertising may be made in a newspaper which is published in an adjoining county, or in a county within the same judicial district, if the clerk of the superior court finds as a fact that such newspaper otherwise meets the requirements of GS 1-597 and has general circulation in such county.

Chapter 802 (HB 884) authorizes any municipality having a municipal board of health to fix the method of appointment or selection of the members of said board of health. It further provides that the mayor and city manager (if there be one) shall be *ex officio* members of the board, and that the remaining members of the board shall consist of three members of the municipal governing body, two licensed physicians, and one licensed dentist.

Chapter 481 (SB 253) authorizes the Governor to appoint "The Atomic Energy Advisory Committee", to consist of 35 members, including the State Health Director, at least one radiologist, one nuclear physicist, one radiation physicist, one public health physician, one dentist, and one sanitary engineer. The chairman of the Committee is authorized to appoint subcommittees, one of which is to be a subcommittee on medicine and public health, and another is to be a subcommittee on radiation standards. The subcommittee on radiation standards must include one public health physician and one sanitary engineer. The Committee is to evaluate studies, recommendations, and proposals of the several departments and agencies and is to act as an advisory and coordinating group in the development and regulatory activities of the State relating to atomic energy, including cooperation with other states and the United States. The State Board of Health is specifically authorized to adopt reasonable rules and regulations relating to the use, storage, transportation and disposal of radiation, radiation machines, and radioactive materials so as to provide protection against hazards from radioactivity and ionizing radiation. The State Board of Health is also authorized to require registration of all persons, firms, corporations, associations, and institutions who possess or use such machines or materials. The State Board of Health is further authorized to provide an inspection service and an advisory service, to make surveys, to sponsor educational programs on approved radiation protection practices, and to do all other acts deemed desirable in providing an effective protection program. The regulations of the State Board of Health must be approved by the Governor and shall not impose standards more restrictive than the radiation standards established by the Atomic Energy Act of 1954, amendments thereto, and regulations issued thereunder. Violations of the Board of Health regulations constitute a misdemeanor, and the Board is authorized to obtain injunctions to prevent such violations.

Vital Statistics

In the area of vital statistics, two bills were passed. Chapter 492 (HB 601) establishes a procedure for determining the place of birth of persons who have been abandoned in North Carolina. It provides that a person who was abandoned by his parents in North Carolina (when the names of such parents and the place of birth are unknown) may file a petition with the clerk of the superior court of the county in which he was abandoned. The petition is to set forth the facts and request the clerk to hear the evidence and find the facts concerning the abandonment, the name or assumed name of the petitioner, the date and place of birth of the petitioner, and the name of the person or persons standing *in loco parentis* to the individual. The clerk is to find such facts as the evidence may warrant and, if there is insufficient evidence to establish the place of birth, it is to be conclusively presumed that such person was born in the county where he was abandoned. The clerk is to enter such judgment and is to certify the same to the State Office of Vital Statistics where it is to be recorded wih a copy going to the register

of deeds of the county in which the petitioner was abandoned.

The second bill in this area, Chapter 986 (SB 223), authorizes registers of deeds to take acknowledgements, administer oaths and affirmations, and to perform all other notarial acts necessary for the registration or issuance of certificates relating to birth, death, or marriages, and validates such acts taken by the registers of deeds prior to June 16, 1959.

HB 304, which would have established a procedure whereby a person born in a foreign country (one of whose parents is an American national having a legal settlement in this state) and not having a duly recorded certificate of birth could obtain such certificate, failed to pass.

Sanitary Districts

Two new laws in this area relate primarily to the annexation of additional territory to an existing sanitary district. Chapter 1189 (SB 432) rewrites the procedure for extending the boundaries of a sanitary district. Under this chapter it appears that adjoining territory can be annexed in accordance with the procedure prescribed by this chapter if a majority of the voters in the proposed additional territory vote to come within the sanitary district, and 15% of the resident freeholders within the district do not petition to have an election; or, if an election is held in the proposed additional territory and in the existing sanitary district, and both groups vote in favor of the annexation.

Chapter 415 (SB 183) validates all actions and proceedings heretofore taken in the appointment or election of any members of any sanitary district board, and all actions and proceedings heretofore taken (by the State Board of Health or any officer or representative thereof and any board of county commissioners and any sanitary district board) for the purpose of annexing additional territory to any sanitary district.

Chapter 1189 (SB 432), in addition to rewriting the procedures for the annexation of additional territory to a sanitary district, amends GS 130-123 (relating to the creation of a sanitary district) by requiring that the petition submitted to the board of county commissioners must be signed by 51% or more of the resident freeholders in the proposed district (the law had required the signature of freeholders, without stating that they must be resident freeholders).

Chapter 994 (SB 433) authorizes the board of county commissioners of any county containing a sanitary district, upon agreement with the sanitary district board, to include in the tax levy for such sanitary district an amount (not exceeding 5% of collections) to reimburse the county for the expenses of levying and collecting such taxes. Once the county commissioners and the sanitary district board agree upon a percentage of the collections to be deducted by the counties for the purpose of reimbursement, such percentage of collections shall remain the same until revised or abolished by further agreement between said boards.

Compulsory Polio Vaccination

By the enactment of Chapter 177 (SB 5), North Carolina became the first state to make polio vaccination compulsory. That Chapter provides that the parents, guardian, or any person *in loco parentis* of any child in North Carolina between the ages of 2 months and 6 years shall have administered to such child an adequately immunizing dose of a prophylactic agent against poliomyelitis which meets the standard approved by the United States Public Health Service for such biological products, and which is approved by the State Board of Health. Such parents, etc., of a child who has not previously received such vaccination must present the child to a licensed physician and request such vaccination. If such parents, etc., are unable to pay for the services of a private physician and for such prophylactic poliomyelitis agent, they must present the child to the county physician or to the local health director, who shall administer such prophylactic agent without charge. The physician administering such agent must submit a certificate of such vaccination to the local health director with a copy going to the parent, etc. No principal or teacher is to permit any child to attend a public, private or parochial school without such certificate or some other acceptable evidence of the child's vaccination against poliomyelitis. Two categories of children are exempted from these requirements. First, if any physician licensed to practice medicine in North Carolina certifies that such vaccination may be detrimental to the child's health, such child shall not be required to be vaccinated until it is found that such vaccination is no longer detrimental to his health. Second, children whose parents, etc., are bona fide members of a recognized religious organization whose teachings are contrary to the practices required by this Chapter are not required to be vaccinated and no certificate for admission to school is to be required as to them. This Chapter provides that the vaccine necessary for immunization under this section shall be purchased and furnished to the local health directors by the State Board of Health and that the cost of such vaccine is to be paid from the Contingency and Emergency Fund for the fiscal year in which such expense is incurred, by and with the approval of the Governor and the Council of State.

The Attorney General has already given an opinion as to the appropriate interpretation of certain portions of this Chapter. It is his opinion that (1) the portion of the law requiring vaccination before entering school relates to six year olds entering school for the first time next fall, and does not apply to older children who have been to school before; (2) there is no authority in this particular law to provide free vaccine for older children, but only for such children as are covered by this law; (3) the law does not require that a parent who is unable to pay for the vaccination first present his child to a physician and then be referred to the health director. (The parent may take the child directly to the health director without first consulting a physician in such cases); and (4) the question of the ability to pay is one that would have to be decided by the parent and the health director, and that ordinarily a statement by the parent that he is unable to pay would be sufficient evidence to authorize the free vaccination unless the health director has personal knowledge leading him to believe that free treatment would not be in order. He indicates that this is primarily a matter of health department policy to be worked out and followed in a practical manner.

Cancer

One bill relating to cancer passed, and two failed to pass. The bill which passed, Resolution 78 (HR 705), com-

mended the members of the Commission to Study the Cause and Control of Cancer in North Carolina together with the North Carolina division of the American Cancer Society, the Medical Society of North Carolina, and the State Board of Health, and provided for the continuance of this Commission during the next biennium.

HB 544, which would have made additional appropriations to the State Board of Health in order to expand its cancer control, cancer diagnosis, and cancer treatment programs failed to pass. Also, HB 545, which would have provided grants and aid to students who enter the field of cytotechnology, failed to pass.

Tuberculosis

Prior to Chapter 351 (HB 110), persons with tuberculosis in the infectious or communicable stage could not be issued a marriage license. This Chapter relaxes that provision by authorizing the issuance of a marriage license to persons who have active tuberculosis if such person (and the proposed marriageable partner if he has active tuberculosis) shows evidence of being under treatment for tuberculosis and both persons are known to the local health department and sign an agreement to take adequate treatment until cured or "protected", and (1) the female applicant is pregnant and it is necessary to protect the legitimacy of the offspring; or, (2) there is a living child of the parties and it is necessary to protect the legitimacy of such child; or, (3) it is necessary to validate a marriage which took place prior to the illness of the applicants and was later found to be invalid because of some technicality which is not a bar to marriage in North Carolina.

Rabies

Two bills were enacted by the General Assembly relating to the vaccination of dogs against rabies. Chapter 139 (HB 117) amends GS 106-372, which authorizes the board of county commissioners to fix the fee which rabies inspectors are to collect from the owner of each dog vaccinated, by eliminating the requirement that such fee shall not exceed one dollar. Chapter 352 (HB 116) deletes the fifty cents per dose limitation which the State Board of Agriculture may charge rabies inspectors for furnishing rabies vaccine and metal tags, and authorizes the Department of Agriculture to charge the state cost of the vaccine, metal tags, and handling and postage.

Sanitation

Chapter 1271 (HB 755) creates a State Board of Sanitarian Examiners and provides for the registration of qualified sanitarians. The State Board of Sanitarian Examiners is to be composed of the State Health Director, or his authorized representative; the Dean of the School of Public Health, University of North Carolina, or his duly authorized representative; the Director of the Division of Sanitary Engineering, State Board of Health; and four sanitarians, one local health director, and one public spirited citizen to be appointed by the Governor. The members of the Board are to serve four-year staggered terms. Members of the Board are to receive ten dollars ($10.00) per diem plus travel expenses while performing duties required by this Chapter, and the Board is authorized to employ necessary personnel, but the total expenses of the Board may not exceed the income therefrom. The Board is authorized to adopt necessary rules and regulations to provide for its efficient operation. The Board is required to certify as a registered sanitarian one who passes an examination given by the Board, pays a fee not to exceed twenty dollars ($20.00), and satisfies the Board that he is at least 21 years of age, of good moral character, a citizen (or has declared his intentions of becoming one), has received a degree from a four-year educational institution acceptable to the Board (with a major in biological and/or physical science), and has had three years experience under the supervision of a registered sanitarian (or equivalent supervision) in the field of environmental sanitation or two years such experience plus one year of graduate study in sanitary science. The Board is also required to issue a certificate of registration to any person who, prior to July 1, 1960, submits to the Board satisfactory evidence that he was performing functions as a sanitarian on January 1, 1960, and pays to the Board a fee not to exceed ten dollars ($10.00). Comity registration is provided for. This Chapter requires annual renewal of registration and the payment of a renewal fee as determined by the Board but not to exceed ten dollars ($10.00), and authorizes a two dollar ($2.00) late renewal fee. Suspension and revocation of registration is provided for in cases of conviction of a felony, fraud, or perjury in obtaining registration, habitual use of habit forming drugs, habitual drunkenness, defrauding the public, and failing for a period of over six months to renew one's certificate but continuing to represent himself as a registered sanitarian during that period. This Chapter prohibits one from offering his services as a registered sanitarian or representing in any way that he is a registered sanitarian unless he is a holder of a current certificate of registration (such false representation or any violation of the Chapter is a misdemeanor punishable in the discretion of the court), and injunctions are authorized to prevent violations of the Act. The effective date of this Chapter is January 1, 1960.

Chapter 707 (SB 303) makes certain amendments to Article 26, Chapter 106 (relating to the inspection of ice cream plants, creameries, and cheese factories) and to Article 29 of Chapter 106 (relating to the inspection, grading and testing of milk and dairy products). GS 106-246 is amended to add milk shakes and semi-frozen dairy products to, and to delete frozen custard from, this list of specific products which must be made in places kept in a sanitary condition. GS 106-248 is rewritten to require that whole milk, sweet cream, ice cream milk mix, and other mixes shipped into North Carolina from other states and used in the manufacture of frozen or semi-frozen dairy products sold or processed in North Carolina must comply with standards of purity, sanitation and regulations of the State Board of Agriculture, and must carry a tag or label showing the name of the product, the name and address of the processor, and the date of pasteurization. Prior to this amendment this section applied only to whole milk, sweet cream, and ice cream milk, and only required that the grade or standard of quality of the product be shown on the label. GS 106-253 is amended to prohibit the use of the words "cream", "milk", "ice cream", or similar terms in connection with any frozen or semi-frozen dessert manufactured, sold or offered for sale and not in fact made from dairy products in accordance with the standards of the State Board of Agriculture. Previously this section applied only to frozen desserts. GS 106-254 is amended to

specify that the five-dollar annual inspection fee to be paid by the maker of specified frozen or semi-frozen dairy products who disposes of such products at retail only does not apply to conventional spindle-type milk shake mixers but does apply to milk shake dispensing and vending machines operating on a continuous or automatic basis. GS 106-267.1 is rewritten to require persons who sample (as well as those who test) milk or cream for purposes of determining butter-fat content (when such milk or cream is paid for on the basis of the amount of butterfat contained therein) to obtain a license from the Commissioner of Agriculture.

Chapter 619 (HB 464) makes three clarifying amendments to Article 16 of Chapter 130 relating to the regulations of the manufacture of bedding. The definition of bedding is amended to make it clear that "quilt" is included within such definition; GS 130-173 is amended to make it clear that no person shall manufacture any bedding unless a tag of durable material approved by the State Board of Health is securely sewed thereto; and, GS 130-176 is amended to make it clear that no person is to sanitize any bedding unless he is exempted by other provisions of this Article, until he has secured a "sanitizer's license" from the State Board of Health.

Chapter 622 (HB 628) makes certain amendments to Article 24 of Chapter 130 relating to mosquito control districts. GS 130-211 (b) is amended so as to authorize boards of county commissioners, when a proposed mosquito control district lies entirely within one county, to determine that the maximum tax levy which will be authorized if the district is created will be less than 35 cents per $100 dollars assessed valuation, in which case such lesser amount must appear on the ballot when the question of the creation of the district is submitted to the voters. If the voters approve the creation of the district in such cases, neither the board of county commissioners nor the mosquito control district board of commissioners may levy a special tax for mosquito control purposes exceeding the amount which appeared on the ballot. GS 130-213 is amended to provide that when a mosquito control district lies solely in one county and embraces the entire county, the board of county commissioners (rather than the mosquito control district board of commissioners) may choose to levy the special tax authorized for mosquito control purposes. GS 130-220 is added to authorize the dissolution of mosquito control districts which have no outstanding indebtedness upon the petition of 51% of the resident freeholders within the district, and with the approval of the board of county commissioners and the State Board of Health after notice and a public hearing.

Chapter 1125 (SB 254) amends GS 77-14 (which makes it a crime to fail to remove upon seven days notice any obstructions in streams, creeks, ditches, etc. whereby the natural and normal drainage of any farm or agricultural land is impeded) by making that section applicable to any land whatsoever, rather than only farm or agricultural land.

For a discussion of legislation creating a new State Department of Water Resources, amending a special act concerning pollution of the Haw River, and adding authority for counties, cities and towns, acting jointly, to issue bonds for developing water supplies in connection with Corps of Engineers' projects, see the article entitled "Water Resources".

HB 1118, providing for the regulation of the sanitation of agricultural labor camps, and HB 1274, regulating the transportation of migrant farm workers, both failed to pass. If a local board of health found that the regulation of the sanitation of agricultural labor camps was necessary for the protection of public health, such board might have authority to adopt regulations establishing such sanitation standards under the provisions of GS 130-17.

Hospitals and Mental Health

Chapter 1074 (HB 1064) provides an alternative method for the establishment of hospital districts. It authorizes boards of county commissioners, by resolution, to create a hospital district without following the procedure set out in G.S. 131-126.31 and 131-126.32 when a hospital district already exists within the county but does not include the entire county, or when a special tax levy for hospital purposes has been or is authorized as to a portion of the county. The new hospital district so created is to embrace all of the county area outside of the existing district or outside of the area where the existing hospital tax levy is authorized. After the establishment of a hospital district by resolution, the commissioners are authorized to call an election on the question of the issuance of bonds and levy of taxes without any petition therefor, and the details as to notice, registration for, and holding of such elections are provided.

Chapter 877 (HB 1129) amends GS 131-126.31 (which requires at least 500 of the qualified voters of a territory to petition for the creation of a hospital district) to provide that a hospital district may be established in those territories which have less than 1100 qualified voters resident therein upon petition of 250 qualified voters of such territory.

Chapter 623 (HB 660) authorizes boards of county commissioners, subject to approval of the voters of the county, to convert a county tuberculosis hospital into some other medical or nursing facility upon determination by the board of county commissioners that the operation of such hospital for tubercular patients is no longer necessary or desirable. Such tuberculosis hospital may be converted to a general hospital; hospital or medical institution for the treatment of specific diseases, illnesses or deformities; institution for the treatment and care of the chronically ill or of convalescent patients; nursing home; or some similar institution or facility. Provisions are made for the appropriation of funds, levy of a special tax not to exceed ten cents on the $100 dollar valuation, and the issuance of bonds for the maintenance, operation, and capital improvements to such facility.

Chapter 1002 (HB 52) makes several amendments to the various sections in Chapter 122 of the General Statutes of North Carolina dealing with hospitals for the mentally disordered. They include: an amendment to GS 122-6 which deletes the reference to admission of epileptics, but authorizes the Hospitals Board of Control to admit to any of the institutions under its control "epileptics who are mentally disordered"; an amendment changing the title of the Superintendent of Mental Hygiene to "Commissioner of Mental Health"; an amendment to GS 122-33 to authorize the superintendent or business manager of "each hospital or training school" to appoint employees as policemen (rather than only Caswell Training School); an amendment to GS 122-46 to provide that if a person committed to a state hospital is not admitted within

thirty days, such order of commitment shall be void; an amendment to GS 122-57 to provide that commitment in the case of sudden or violent mental disorder, pending an adjudication, may be for a period not to exceed 20 (was 10) days; an amendment to GS 122-63.1 to provide that when a patient is committed in this state on the basis of a commitment in some other state, the superintendent of the state hospital in this state is authorized to hold such patient for a reasonable length of time, not to exceed thirty days, and commitment in this state must take place within this thirty day period; an addition of GS 122-85.1 to provide that persons on parole from a penal institution who become mentally disordered shall be committed, in accordance with the provisions of GS 122-46, to the appropriate state hospital and, an addition of GS 122-87.1 to provide that whenever an indictment pending against one confined in a state hospital is terminated other than by trial, such patient is to be treated as if he had been committed under the provisions of Article 3 of Chapter 122.

Chapter 1003 (HB 60) makes North Carolina one of the states that has entered into the interstate compact on mental health. This compact sets out a procedure whereby a person with mental illness or mental deficiency may be eligible for care and treatment in an institution in a state other than his state of residence, where a clinical determination indicates that the care and treatment of such patient would be facilitated or improved. The compact also provides for the transfer of patients, for such purposes between states which have entered into the compact.

Chapter 1028 (HB 1131) changes the names of the several state hospitals and training schools as follows: "State Hospital at Raleigh" is changed to "Dorothea Dix Hospital"; "State Hospital at Morganton" is changed to "Broughton Hospital"; "State Hospital at Butner" is changed to "John Umstead Hospital"; "Caswell Training School" is changed to "Caswell School"; "Butner Training School" is changed to "Murdock School"; and, "Goldsboro Training School" is changed to "O'Berry School".

Chapter 1001 (HB 51) amends GS 35-3 to authorize the clerk of the superior court to appoint a guardian for a person certified by the superintendent of a state training school (as well as by a superintendent of a hospital for the insane) as insane.

Chapter 1278 (HB 921) authorizes the transfer of certain capital improvement funds from the Goldsboro Training School to the State Hospital at Goldsboro for the purpose of constructing a building for tubercular patients.

Miscellaneous

Among the bills of interest to public health officials which passed are included the following:

Chapter 1165 (SB 139) makes certain amendments to the statutes relating to student loan funds administered by the North Carolina Medical Care Commission. It amends GS 131-212 to make the recipient of a loan to study medicine, dentistry, pharmacy, or nursing agree to serve in a rural area one year for each academic year for which the student receives a loan (the law did require four years of such service), and to allow the Medical Care Commission some discretion in determining what is a rural area by allowing said Commission to designate an area as rural when it considers such area to meet the spirit and intent of the student loan program. This Chapter also authorizes the Medical Care Commission to cancel loan contracts for cause it deems sufficient (in which case the student must repay the loan at 4% interest), and to permit students under the rural service program or state hospital program to liquidate their obligations under either program (subject to the approval of the Medical Care Commission and the State Hospitals Board of Control).

Chapter 630 (SB 289) makes several amendments to Article 18 of Chapter 90 of the General Statutes of North Carolina which regulate the practice of physical therapy.

Chapter 1206 (HB 476) amends the statutes relating to the State Board of Refrigeration Examiners to provide that an employee of the State Board of Health rather than a member of the State Board of Health shall be a member of the Board of Refrigeration Examiners, and provides for the registration of persons under certain circumstances without an examination.

Chapter 1019 (HB 1016) changes the membership of the Eugenics Board by adding the chief medical officer of the State Hospitals Board of Control and by deleting one of the two chief medical officers of an institution for the insane.

Miscellaneous bills of interest to public health officials which *failed to pass* included SB 403 which would have made it unlawful for merchants, laundries, dry cleaners, and others to sell, transfer, or deliver articles of merchandise or clothing in plastic bags; HB 619 which would have provided that any occupational disease (besides those now listed) arising out of and contracted in the course of employment and resulting from the cumulative effect of continued exposure to risks and conditions usual in the nature of employment, shall be deemed an occupational disease within the meaning of the Workmen's Compensation Act; HB 1154 which would have created a commission to study social deviations, including juvenile delinquency, drug addiction, sexual delinquency, mental illness, habitual criminals, and alcoholism, with particular emphasis on the recidivist or repeating offender; and HB 1359 which would have directed the Advisory Budget Commission to consider appropriations for nursing scholarships and aid to nursing schools.

For a discussion of Chapter 1162 (SB 101) authorizing the State Department of Archives and History to conduct a program of inventorying and microfilming county records, see article on "Legislation of Interest to County Officials." For a discussion of Chapter 1196 (SB 496) relating to medical treatment of self-inflicted injuries by prisoners, see article on "Penal-Correctional Administration." For a discussion of Chapter 337 (SB 88) relating to the reorganization of the state civil defense organization; Chapter 1248 (SB 470) relating to liability insurance for state-owned motor vehicles; and, Chapter 68 (HB 26) relating to authority of the State Department of Archives and History to conduct a records management program for state agencies, see article on "State Government."

PUBLIC WELFARE

By Roddey M. Ligon, Jr.

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB are the bill numbers of bills introduced in the House and in the Senate.

[Many public welfare matters are of interest to county officials generally, and they will be included in the article on "Legislation of Interest to County Officials". Likewise, the articles on "Domestic Relations," "Public Health," and "Public Personnel" will be of interest to readers of this section.]

Although it is difficult to pigeon hole into appropriate classifications the various bills concerning public welfare, for convenience the bills will be discussed under the headings of Public Welfare Administration, Public Assistance Matters, Confederate Widows and Pensions, and Miscellaneous.

Public Welfare Administration

Four bills dealing generally with the area of public welfare administration were passed by the 1959 General Assembly. One bill falling in this general area failed to pass. Chapter 320 (SB 90) amended GS 108-12 so as to authorize a board of county commissioners to pay the members of the county welfare board a per diem not to exceed ten dollars (was five dollars) and actual expenses while attending official meetings. Although some counties had already been paying the county welfare board members a per diem of ten dollars, the county could not receive federal participation in that payment above five dollars as the law only authorized a payment of up to five dollars. Under the present formula, the federal government will pay about three dollars and sixty cents of the ten dollars per diem.

Chapter 1179 (SB 366) adds GS 128-37.1 to authorize the board of county commissioners of any county, under such rules and regulations as the Board of Trustees of the North Carolina Local Governmental Employees' Retirement System shall establish, to elect that employees of the county welfare department may be members of the North Carolina Local Governmental Employees' Retirement System, and provides that such membership may be elected jointly with county health department employees as provided under GS 128-37.

Chapter 1254 (SB 506) makes all rules and regulations adopted by the State Board of Public Welfare which deal with the eligibility of persons for grants of old age assistance, aid to dependent children, or aid to the permanently and totally disabled, or with the determination of the amount of such grants, subject to the approval of the Director of the Budget and the Advisory Budget Commission.

Chapter 1255 (SB 511) amends GS 108-11 so as to provide that any county welfare board member is authorized to inspect and examine any records on file in the office of the county superintendent of public welfare or in the custody of any caseworker or agent of the county superintendent of public welfare, if such records pertain in any manner to any application or applicant for public assistance. A member of a county welfare board obtaining information from such records is prohibited from disclosing it. This Chapter provides that if its provisions are held by the Attorney General of the State of North Carolina to be in conflict with federal statutes relating to the disclosure of information, it is to be null and void.

Public Assistance

Six bills falling generally in the area of public assistance passed, and four failed to pass.

Chapter 1239 (SB 219) provides for the appointment of a personal representative for a recipient of public assistance, without requiring a jury trial, bond, or court costs. It provides that if an applicant for or recipient of old age assistance, aid to the permanently and totally disabled, or general assistance, or payee in the case of aid to dependent children, is unable or otherwise fails to manage properly the assistance payments, to the extent that deprivation or hazards to himself or others results, or, in the case of aid to dependent children, the payment is not being used for the children, a petition may be filed by the superintendent of public welfare with the domestic relations court or with the clerk of superior court of the appropriate county. The petition is to request the appointment of a personal representative for the purpose of receiving and managing the public assistance payments for such recipient or payee. The court is to give notice to the applicant or recipient, make findings of fact without a jury, and enter an order appointing some responsible person as personal representative for the purpose of managing such funds if the court finds that the applicant or recipient is unable or fails to manage said funds properly. The personal representative so appointed is to serve without bond, in the discretion of the court, and without compensation, and is to be responsible for receiving the monthly assistance payment and using the proceeds for the benefit of the recipient. The personal representative is to be responsible to the court for the faithful discharge of the duties of his trust. All costs of court with respect to such proceedings are deemed to be waived. From an order appointing or removing such personal representative, an appeal may be had to the judge of the superior court who shall hear the matter *de novo* without a jury. Findings of fact under the provisions of this Chapter are not competent as evidence in any case or proceeding dealing with any subject matter other than that provided for by this Chapter.

Chapter 668 (HB 678) takes a different tack from the Chapter discussed above insofar as aid to dependent children payments are concerned. This Chapter adds GS

108-63.1 to provide that when a county board of welfare determines that the recipient of assistance payments granted under the Aid to Dependent Children Article has not used such assistance to provide food, shelter, clothing, and other necessities which are required for the care and support of the dependent child or the needy relative with whom such child lives, then the county welfare board is to enter an order requiring the county superintendent of public welfare to supervise the expenditure of such assistance payments. Such supervision may include conferences with the recipient, preparation of monthly budgets for the recipient, requiring reports on expenditures by the recipient, and otherwise directing the expenditures in accordance with such budgets. This Chapter also requires notice of such order to be given to the recipient and authorizes the recipient to request a hearing before the county board of welfare, and authorizes an appeal from the county board of welfare to the State Board of Allotments and Appeal. Such request for a hearing or appeal stays the enforcement of the Board's order. The decision of the State Board of Allotments and Appeals, on appeal, is final. The county board of welfare is authorized to terminate the order at any time, but the order is to continue until terminated by the county welfare board or reversed by the State Board of Allotments and Appeal, on appeal to said Board. If the Secretary of Health, Education, and Welfare notifies the State Board of Public Welfare that further payments of federal funds to the State for aid to dependent children will not be made because the procedures required by this Chapter are prohibited by federal statutes or regulations, then no county board of welfare or county superintendent is to take any further action under this Chapter.

For a discussion of Chapter 1210 (HB 631), providing for an investigation of mothers of illegitimates, or those who receive aid to dependent children grants, to determine if there is evidence of criminal abandonment or non-support, see article on "Domestic Relations."

GS 108-73.17 previously limited the payment of funds from the "pooled fund" for the hospitalization of public assistance recipients to hospitals licensed by the Medical Care Commission. As the jurisdiction of the Medical Care Commission to license hospitals covers only the State of North Carolina, this meant that payments from the "pooled fund" could not be made for the hospitalization of any recipient in another state. Chapter 180 (SB 91) changes this by authorizing payments from the "pooled fund" to hospitals licensed by the Medical Care Commission, or licensed or approved according to the laws of another state.

Chapter 272 (HB 327) amends the law concerning legal settlement. GS 153-159 previously required residence in a county for a period of one year before one was deemed to be legally settled in that county for purposes of the "county poor law" (Article 13, GS Chapter 153). If one moved from one county to another county in the state, he did not acquire settlement in his new county of residence until he had been there for a period of one year. This Chapter amends GS 153-159 to provide that if one is settled in one county in North Carolina and then moves to another county in North Carolina, he acquires legal settlement in his new county of residence after three months. Thus, his new county of residence becomes responsible for any help he might receive under the "county poor law" after three months residence in the new county.

Chapter 715 (HB 587) prohibits the payment of public assistance funds for the care of any person residing in a nursing home or home for the aged which is owned or operated wholly or in part by any member of the State Board of Public Welfare, a county board of public welfare, a board of county commissioners, or by any official of the state or county departments of public welfare, or by any person related by blood (closer than the third degree of kinship) to such board member or official, or by the spouse of such board member or official or relative. This Chapter becomes effective on January 1, 1960.

Chapter 179 (SB 89) amends 108-30 (relating to old age assistance) and GS 108-59 (relating to aid of dependent children) so as to authorize the county boards of public welfare, when it appears that the interests of the recipients of such assistance will be better served by smaller payments at more frequent intervals, to make such payments in two or more equal installments in each month. This Chapter does not amend the statutes relating to aid to the permanently and totally disabled, but the State Board of Public Welfare appears to have authority to authorize county boards to make bi-monthly payments in those cases also, as the General Statutes have never specifically required monthly payments in those cases. The statutes under which the aid to the permanently and totally disabled program is administered provide that such program is to be administered as provided for in the rules and regulations of the State Board of Public Welfare.

Two bills relating to the old age assistance lien law failed to pass. HB 1001 would have specified that an action could be instituted under the lien law (in those cases where the recipient's real property is occupied as a homesite by the surviving spouse, by a minor dependent child, by the recipient, or by a dependent adult child of the recipient who is incapable of self support because of mental or physical disability) within the three year period after termination of occupancy or use of said property as a homesite by the aforementioned persons. SB 84 would have spelled out the order of payment of claims out of the proceeds of an action to foreclose or to enforce the lien followed by the appointment of a commissioner and the sale of the land, and would also have specified that no real property could be sold as a consequence of foreclosure of the lien when such property was being occupied as a homesite by the persons mentioned in the discussion of HB 1001 above.

Bills which would have shifted the counties' share of taxes for old age assistance and aid to dependent children to the State failed to pass. SB 41 would have deleted GS 108-24 which requires the counties to levy a tax sufficient to raise such amount as is found necessary to supplement the State and federal funds available for expenditure in such county for old age assistance, and SB 42 would have deleted GS 108-53 which requires the levy of a tax sufficient to raise such amount as is found necessary to supplement the State and federal funds available for expenditure in such county for aid to dependent children.

Confederate Widows and Pensions

Two bills relating to the pensions of Confederate widows and two bills relating to the Confederate Woman's Home passed. Chapter 1327 (HB 957) authorizes the Governor

and Council of State to allot additional funds from the Contingency and Emergency Fund for completion of a renovation project at the Confederate Woman's Home at Fayetteville. Chapter 222 (HB 187) extends the corporate existence of the Confederate Woman's Home from January 1, 1960 to January 1, 1970.

Chapter 181 (SB 95) provides that any widow of a Confederate soldier who is qualified to receive a pension from North Carolina under the provisions of Article 2, GS Chapter 112, may continue to receive such pension even though she is eligible for and receives a pension from some other state or from the United States. GS 112-19 has provided that a widow of a Confederate soldier who lived with such soldier for a period of five years prior to his death (the death of the soldier having occurred since the year 1899) is to be placed on the class B pension roll. Chapter 1004 (HB 264) also authorizes such widow to be placed on the class B pension roll if she lived with such soldier for any period of time, provided a child was born to the marriage.

Miscellaneous

GS 108-3 (15) previously made the inspection and licensing of boarding homes, rest homes, and convalesent homes for the aged and infirm permissive except for those which cared for two or more persons who obtained services from the county departments of public welfare, or were supported in whole or in part by public welfare funds. Chapter 684 (HB 227) makes mandatory the licensing of all such homes which care for two or more persons and makes the operation of such homes without a license a misdemeanor. This Chapter exempts from the licensing requirements any facility licensed by the Medical Care Commission under the provisions of GS 131-126.1 (3) unless the facility receives public welfare funds. This Chapter becomes effective on January 1, 1960. It carries out a recommendation of the Commission on the Study of Nursing Homes and Homes for the Aged.

Chapter 1019 (HB 1016) changes the membership of the Eugenics Board by adding the chief medical officer of the State Hospitals Board of Control, and by deleting one of the two chief medical officers of an institution for the feeble minded or insane.

For a discussion of Chapter 1124 (SB 243) relating to the appointment of a special county attorney to handle certain types of cases of public welfare interest, see article on "Domestic Relations."

Bills concerning public welfare which failed to pass include HB 1171 which would have amended GS 108-14 relating to the responsibilities of the county superintendents of public welfare with respect to juvenile court cases; SB 113 which would have provided for the sterilization of "grossly sexually delinquent" persons in certain instances; HB 170 which would have amended GS 14-320 so as to allow clerks of the superior court to consent to the placing of infants in foster homes; SB 220 which would have created an advisory committee for the blind, consisting of five blind persons, whose duty it would have been to advise state agencies charged with the administration of programs for the blind on matters of policy and procedure; and, SB 221 which would have prohibited discrimination in the employment of personnel by the state because of partial or total blindness, unless normal eyesight was indispensable in the performance of the duties of such person.

An Institute on Administration for Superintendents of Public Welfare was held at the Institute of Government, August 26, 27, and 28. Fifty-one Superintendents of Public Welfare from all sections of the state attended.

Third Annual Conference

for

LOCAL HEALTH DIRECTORS

Institute of Government

November 13 and 14, 1959

Legal aspects of Public Health will be discussed

DOMESTIC RELATIONS

By Roddey M. Ligon, Jr.

Assistant Dircetor of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina; HB and SB numbers are the bill numbers of bills introdueed in the House and in the Senate.

[Readers interested in this section should also check the articles on "Public Welfare," "Public Health," and "Legislation of Interest to County Officials."]

Divorce

One bill dealing with divorce matters passed, and two failed to pass. Chapter 1058 (HB 604) adds GS 50-18 to provide that in any divorce action allegation and proof that the plaintiff or the defendant has resided or been stationed at a military installation or reservation, or at any other location pursuant to military duty, within the State for a period of six months next preceeding the institution of the action shall constitute compliance with the residence requirements set forth for divorce. In such cases, however, personal service must be had upon the defendant or service must be accepted by the defendant, within or without the State, as provided by law. Also, upon request of the defendant or the attorney for the defendant, the court may order the plaintiff to pay necessary travel expenses from the defendant's home to the site of the court in order that the defendant may appear in person to defend the action.

This Chapter raises an interesting question. Will a divorce granted under the provisions of this chapter, where neither party is actually domiciled in North Carolina, be entitled to full faith and credit in other states? In the famous case of *Williams v. North Carolina*, 317 U. S. 287 (1942), the United States Supreme Court held that the jurisdictional basis for divorce is domicile. "Domicile of the plaintiff . . . is recognized in the *Haddock* case and elsewhere . . . as essential in order to give the court jurisdiction which will entitle the divorce decree to extraterritorial effect . . ." When the same case was again before the Supreme Court, 325 U. S. 226 (1945), the Court stated "judicial power to grant a divorce—jurisdiction strictly speaking—is founded on domicile." The holdings in the *Williams* case have led many to conclude that domicile of one party in the divorcing state is an indispensable pre-requisite to a valid divorce entitled to full faith and credit in all states. The Restatement, Conflicts of Laws, Section 111 provides: ". . . a state lacks jurisdiction to dissolve a marriage where neither spouse is domiciled in the State."

The supreme courts of at least three states have disagreed with the proposition that domicile is an indispensable pre-requisite to a valid divorce decree. Two of these involved statutes very similar to Chapter 1058. The most recent of these cases is the New Mexico case of *Wallace v. Wallace*, 320 P. 2d 1020 (1958). The appellant contended that a divorce granted by the lower court was invalid as neither party was domiciled in New Mexico at the time the court undertook to grant the divorce. The court had assumed jurisdiction under a New Mexico statute, §22-7-4, 1953 Compilation, which provided: "... persons serving in any military branch of the United States Government who have been continuously stationed in any military base or installation in the State of New Mexico for such period of one (1) year, shall for the purposes hereof, be deemed residents in good faith of the state and county where such military base or installation is located." The New Mexico Supreme Court held the divorce to be valid holding that the United States Supreme Court did not say that domicile was the only relationship between a state and its litigants which authorized the granting of a divorce, but that domicile was only one basis for such jurisdiction. They stated: "It is within the power of the Legislature to establish reasonable bases of jurisdiction in divorce actions other than domicile."

The Supreme Court of Kansas has also upheld the validity of a divorce based on a statute similar to Chapter 1058. See *Craig v. Craig*, 56 P. 2d 464, and *Schaeffer v. Schaeffer*, 266 P. 2d 282. Alabama has a similar statute, Ala. Code 1940, Title 7, §96(1).

A New York court in the case of *David-Zieseniss v. Zieseniss*, 129 N.Y.S. 2d 649 (1954) held a divorce valid under a statute, New York Civil Practice Act, Section 1147(2), which provided that a divorce may be granted if the parties were married in New York although neither is domiciled there when the action for divorce is commenced. On the other hand, the Supreme Court of Alabama held in *Jennings v. Jennings*, 36 So. 2d 236, that an Alabama statute permitting the granting of a divorce on the basis of consent of the parties to jurisdiction was unconstitutional. Likewise, the United States Court of Appeals in *Alton v. Alton*, 207 F. 2d 667 (3rd Cir. 1953), held that a state's exercise of jurisdiction to alter the marital status of domiciliaries of a sister state, solely on the basis of general appearance of both spouses in the rendering state's divorce proceedings, would violate due process.

Thus, these cases indicate that a general appearance by both parties is insufficient to grant jurisdiction, but that something more (such as residence on a military installation for a specified period of time, or marriage within the state) may be sufficient, even though the parties are not domiciled in the state.

The United States Supreme Court has not passed on the specific question of whether domicile is an indispensable pre-requisite to jurisdiction in divorce cases, or only illustrative of the kind of factor which creates a legitimate interest in a rendering state sufficient to

constitute a proper jurisdictional basis for divorce; and, if the latter, whether six months residence on a military installation is such a legitimate interest. Until these questions are passed on by the United States Supreme Court, the validity of a divorce granted pursuant to the authority of Chapter 1058 would seem to be questionable.

The two bills relating to divorce which failed to pass were HB 280 which would have reduced the number of years of separation required for absolute divorce in the cases of incurable insanity from five years to three years, and HB 177 which would have required uncontested divorce actions in the superior court to be tried without the intervention of a jury (but a jury would have been required for such divorce actions tried in any court inferior to the superior court).

Marriage

Three bills relating to the marriage laws passed. One was Chapter 351 (HB 110), discussed in the article entitled "Public Health". Chapter 338 (SB 174), amends GS 51-6 so as to require the marriage license to be signed by the register of deeds of the county in which the marriage is intended to take place. Previously the license could be signed by the register of deeds of the county in which the marriage was to take place or by the register of deeds of the county of residence of either of the two persons to be married. The third, Chapter 334 (HB 493) amends GS. 51-18.1 so as to authorize the register of deeds to correct the names of parties to a marriage when such names are incorrectly stated on a return or certificate of an officiating officer, upon receipt of an affidavit signed by the parties accompanied by an affidavit of at least two other persons who know the true names of the persons. This section already authorized the correction of errors in the names appearing upon the application for the marriage license and the marriage license itself.

Husband and Wife

Three bills relating generally to the area of husband and wife passed, and two failed to pass. Chapter 512 (HB 384) adds GS 39-13.3 to provide that any conveyance of real property, or any interest therein, by a husband or wife who has previously executed a valid and lawful deed of separation (which is recorded in the county where the land lies and which authorizes the husband or wife to convey realty or any interest therein without the consent or joiner of the other) shall be valid to pass such title as the husband or wife may have to his or her grantee. This authority is terminated when the deed of separation so recorded and registered is cancelled by both parties and duly witnessed by the register of deeds, or when an instrument in writing cancelling the deed of separation, properly executed and acknowledged by said husband and wife, is received in the office of the register of deeds. This Chapter does not apply to pending litigation.

Chapter 404 (HB 161) adds GS 41-2.1 to provide that a deposit account may be established with a banking institution in the names of two persons who are husband and wife, with certain incidents discussed below, when both parties have signed a written agreement (either on the signature card or by separate instrument) expressly providing for the right of survivorship. The incidents of such deposit account are: (1) either the husband or wife may add to or draw upon any part or all of such account; (2) during the lifetime of both such husband and wife, the deposit account is subject to their respective debts to the extent that each has contributed to the unwithdrawn account (in case their respective contributions are not determined, the unwithdrawn fund is to be deemed to be owned by both equally); and, (3) on the death of either husband or wife, the survivor becomes the sole owner of the entire unwithdrawn deposit subject to the claims of the creditors of the deceased and to governmental rights. This Chapter defines banking institution to include commercial banks, industrial banks, building and loan associations, savings and loan associations, and credit unions; and defines deposit account to include time and demand deposits in commercial and industrial banks; installment shares, optional shares and fully paid certificates in building and loan and savings and loan associations; and deposits and shares in credit unions.

Chapter 1306 (HB 1260) adds GS 52-12.2 so as to validate all contracts between a husband and wife coming within the provisions of GS 53-12 and executed between June 10, 1957 and June 20, 1959 and which are in all respects regular except for the failure to comply with the requirement of a private examination of the wife. This Chapter does not affect pending litigation.

The two bills in this area failing to pass were SB 103 which would have provided for the creation of a family homesite and limited the conveyance thereof, and HB 449 which would have validated the mortgage or sale (between the dates of March 5, 1935 and January 1, 1959) of estates held by the entireties where the husband or wife, or both, became mentally incompetent in accordance with the provisions of Article 4 of GS Chapter 35.

Adoptions

Two bills relating to adoptions passed, and one failed to pass. Chapter 340 (HB 397) amends GS 48-21(c) so as to authorize the adoptions court to waive the interlocutory decree and the probationary period, and to grant a final order of adoption upon receipt of the report required by GS 48-16, when the child is by blood a great grandchild of the petitioners (this is already authorized when the child is by blood a grandchild, nephew or niece, or stepchild of the petitioner, or when the child is at least 16 years of age and has resided in the home of the petitioner for five years prior to the filing of the petition). Chapter 561 (HB 696) amends GS 48-21(a) to provide that no adoption proceedings completed prior to April 1, 1959 are to be invalid because of the entry of the final order of adoption earlier than one year from the date of the interlocutory order.

SB 152, which failed to pass, would have validated all past adoption proceedings except where litigation concerning the validity of a proceeding was pending.

Uniform Reciprocal Enforcement of Support Act

One bill amending the Uniform Reciprocal Enforcement of Support Act passed, and one failed to pass. Chapter 1123 (SB 218) makes several amendments to this Act. Previously, when this State was the "initiating State," the action had to be commenced in the superior court or in a domestic relations court. This Chapter changes that by authorizing such proceedings to be

initiated in any court of record in this State having jurisdiction to determine the liability of persons for the support of dependents in any criminal proceeding (such courts already had jurisdictions when this State was the "responding State"). GS 52A-10.1 is amended by this Chapter to make it the duty of the official who prosecutes criminal actions for the State in the court acquiring jurisdiction to appear on behalf of the plaintiff (heretofore the prosecutor only appeared on behalf of the plaintiff when the State was the "responding State"). This Chapter also adds GS 52A-8.1 to provide that whenever a county in this State furnishes support to an obligee, the county has the same right to invoke the provisions of the Act as the obligee to whom the support was furnished (in order that the county may secure reimbursement for such support and obtain continuing support). This provision does not, however, apply to children owing a duty of support to their parents.

HB 1161, which would have provided for inter-county application of the Uniform Reciprocal Enforcement of Support Act, failed to pass.

Miscellaneous

Chapter 1210 (HB 631), which adds to GS Chapter 15 a new article 15A to be entitled "Investigation of Offenses Involving Abandonment and Non-support of Children," is discussed in the article entitled "Criminal Procedure."

Chapter 794 (HB 846) increases from $500 to $1,000 the amount of money which the clerk of the superior court is empowered to disburse, upon his own motion without the appointment of a guardian, for the maintenance of any indigent child or person *non compos mentis*, as provided for in GS 2-53.

Chapter 745 (HB 734) rewrites GS 18-90.1 so as to make it unlawful for any person, firm or corporation to sell or give to any minor under 18 years of age any alcoholic beverage (was only beer and wine); unlawful for any minor under 18 years of age to purchase any alcoholic beverages; and, unlawful for any person to aid or abet a minor under 18 years of age in purchasing any alcoholic beverage. Prior law made it unlawful to sell or give certain types of alcoholic beverages to minors, but this appears to be the first legislation making it unlawful for the minor to purchase such products.

Chapter 198 (HB 241) appropriates the sum of $75,000 to the North Carolina Board of Correction and Training to renovate and alter certain surplus properties at the North Carolina Sanitarium at McCain to provide facilities for training approximately 150 students.

Chapter 1284 (HB 1015) amends GS 110-39 so as to make it a misdemeanor for an adult to contribute to the delinquency of a minor and to authorize prosecution for such misdemeanor without such minor having been previously adjudged delinquent, as was required under this section previously. This Chapter also specifies that a prior adjudication of delinquency or neglect shall not preclude a subsequent proceeding against any person who thereafter contributes to any condition of delinquency or neglect. Lastly, this Chapter amends the portion of GS 110-39 making it unlawful to permit a child to associate with vicious, immoral, or criminal persons, by requiring that such permission be given knowingly or wilfully.

Chapter 1124 (SB 243) authorizes the board of county commissioners of any county, with the approval of the county board of public welfare, to appoint a special county attorney who is to serve as legal advisor to the county superintendent of public welfare, the county board of public welfare, and the board of county commissioners in public welfare matters, and provisions for his compensation and other expenses may be made in the special tax levy for county welfare administration. Such special county attorney is to: (1) represent the county, the plaintiff, or the obligee in all proceedings brought under the Uniform Reciprocal Enforcement of Support Act, and he is to exercise continuous supervision over compliance with any order entered in any proceeding under that Act: (2) perform all duties required by the Old Age Assistance Lien Law (by the direction of the board of county commissioners and with the approval of the county attorney); (3) appear as special prosecutor on behalf of the State and make all necessary investigations preliminary thereto in connection with the preparation and prosecution of criminal cases involving abandonment and non-support falling within the provisions of Article 40 of GS Chapter 14; (4) investigate, institute, prepare, and prosecute as special prosecutor, with the solicitor of any court of record, all proceedings under GS Chapter 49 entitled "Bastardy"; and, (5) perform such other duties as may be assigned to him by the board of county commissioners. Such special county attorney is authorized to call upon any county board of public welfare or the State Board of Public Welfare for such information as is necessary for the proper performance of his duties.

Bills falling generally in the domestic relations area which failed to pass included SB 248 which would have made it unlawful to give birth to two or more illegitimate children; HB 381 which would have completely rewritten Article 12 of GS Chapter 33 relating to gifts of securities and money to minors; SB 428 which would have amended GS 14-41 and 14-42 relating to the crimes of abduction of children and conspiracy to abduct children so as to make the offense apply to children under 16 (now 14), and would have made the offense apply when the child resided with the custodian or agent of a court under court order even though the alleged abductor or conspirator was a parent and even though the child left voluntarily; HB 1154 which would have created a commission to study social deviances, including juvenile delinquency, drug addiction, sexual delinquency, mental illness, habitual criminals, and alcoholism; and, SB 128 which would have submitted to the voters a constitutional amendment giving concurrent jurisdiction to the superior court and inferior courts of all criminal actions of which original jurisdiction is now or may hereafter be vested in courts of justices of the peace or in other courts inferior in jurisdiction to the superior court.

CRIMINAL PROCEDURE

By Roy G. Hall, Jr.

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Chapter numbers refer to the 1959 Session Laws of North Carolina. HB and SB numbers are bill numbers of bills introduced in the House and in the Senate.

[For other articles in this issue which deal with criminal matters of interest to judges, solicitors and law enforcement officers, see "Criminal Law", "Motor Vehicles and Highway Safety", "Penal-Correctional Administration" and "Domestic Relations"]

Law Enforcement Powers and Jurisdiction

Chapter 453 (SB 287) is a measure spawned this spring by industrial strife at Henderson. As introduced in the Senate it would have given to officers and men of National Guard units ordered out by the Governor to help local law enforcement officers maintain law and order the powers of a sheriff to arrest and execute criminal process. However, as amended in the House and enacted into law, Chapter 453 provides that when members of the National Guard are called out by the Governor pursuant to constitutional authority (Article XII, §3 of the Constitution of North Carolina) "they shall have such power of arrest as may be reasonably necessary to accomplish the purpose for which they have been called out." This is considered by many to be merely declaratory of the existing law. Article XII, §3 of the Constitution authorizes the Governor to call out the militia "to execute the law, suppress riots or insurrections, and to repel invasion." Certainly militia lawfully called out to preserve the peace at the site of a bitter labor-management dispute would have the powers and authority necessary and proper to fulfill the purpose for which they were called out. See *Ex parte Moore*, 64 N. C. 802, 807-8 (1870). In any event, National Guardsmen performing such duty would have authority to arrest to prevent breaches of the peace, for G. S. 15-39 makes it the duty of "every person present at any riot, rout, affray or other breach of the peace" to suppress and prevent it, and if necessary for this purpose, to arrest the offenders. The Supreme Court in *State v. Mobley*, 240 N. C. 476, 482 (1954) approved the following definition of breach of the peace: "any violation of public order or disturbance of the public tranquillity by any act or conduct tending to provoke or incite others to violence." The Court also approved the following statement from *American Jurisprudence:* "A breach of the peace may be occasioned by an affray or assault, by the use of profane and abusive language by one person toward another on a public street and in the presence of others, or by a person needlessly shouting and making a loud noise." Therefore, G. S. 15-39 seems tailor-made for use by the National Guard at scenes of violence such as the Harriet-Henderson Mill gates and access roads.

Chapter 42 (HB 17) authorizes the President of Western Carolina College to appoint campus law enforcement officers, who are given the authority of peace officers on the campus, in addition to the authority to transport arrested persons to jail in Sylva or to the proper judge for bail determination.

Chapter 1183 (SB 392) clarifies G. S. 69-2, which relates to the authority of the Commissioner of Insurance to investigate, arrest, and initiate prosecution in unlawful burning cases. As amended, the Commissioner or any deputy appointed to conduct investigations of burning cases may arrest and take other action by way of initiating prosecution as outlined in G. S. 69-2. Formerly, the section gave to only the Commissioner the power of arrest, etc., without reference to his deputies, through whom, of course, the Commissioner has acted in most if not all of the investigations and arrests under G. S. 69-2 and following sections.

Chapter 35 (HB 63) amends G. S. 122-98 to extend the territorial jurisdiction of the special Butner police officers to property formerly a part of the Camp Butner Hospital site which has been acquired from the State Hospitals Board of Control.

Chapter 614 (SB 343) authorizes the superintendent of the Wayne County Memorial Hospital to appoint special policemen from among "discreet employees" of the hospital. These special police officers may arrest for violations of state law committed in their presence in the buildings or on the grounds of the hospital and are given "all the powers of policemen of incorporated towns." By implication, such powers may be exercised only upon hospital property.

A measure pertaining to arrest which failed to pass but is worthy of mention nevertheless is SB 119. In the form in which it failed to pass this bill would have given Highway Patrolmen in uniform with badge displayed authority to arrest motor vehicle operators on the highways without a warrant upon receiving from another officer by radio, telegram, teletype or telephone (1) a description of the operator, (2) information that the operator had violated the motor vehicle laws in the presence of the calling officer, and (3) the nature of the violation. It would also have given Highway Patrolmen in uniform with badge displayed authority to arrest without a warrant any person at the scene of a motor vehicle accident who the officer has reasonable grounds to believe, after personal investigation, had committed a crime at the scene. However, the law remains unchanged that officers may not arrest without a warrant for a misdemeanor unless it is committed in the arresting officer's presence, i.e., unless he himself perceives its commission through one or more of his five senses.

Extradition

Chapter 271 (HB 287) amends G. S. 15-80 to provide that waivers of all proceedings incidental to extradition may be executed before a clerk of Superior Court. Formerly, extradition could be waived only before a judge of a court of record. The amendment also fixes it as the duty of the clerk before whom extradition is waived to inform the fugitive of his rights and, after execution of the waiver, to direct the officers having the fugitive in custody to deliver him to the agents of the demanding state for transportation back to the state where he is wanted.

Chapter 127 (HB 144) adds to G. S. 15-203 a sentence authorizing the Director of Probation to apply directly to the Governor for requisitions for extradition of defaulting probationers. Formerly, such applications had to be directed to the "prosecuting attorney of the county" (in practice considered to be the district solicitor) as provided by G. S. 15-77(II).

Abandonment and Non-Support Investigations

A much-amended measure of considerable interest to solicitors of both superior courts and lower courts is Chapter 1210 (HB 631), ratified June 19 in the wake of the failure of the ill-fated sterilization bills (HB 248 reported unfavorably May 29, and SB 113, reported unfavorably April 22) and of the bill making giving birth to two or more illegitimate children a misdemeanor (SB 248, tabled June 17). Chapter 1210 seeks to curb violations of G. S. 14-326 (mother's abandonment of children), G. S. 49-2 (non-support of illegitimate children) and G. S. 108-76.1 (new section making mis-use of welfare funds a misdemeanor) by giving the district solicitor authority to investigate mothers receiving aid to dependent children as shown by reports made by the State Board of Public Welfare to the solicitor. The measure creates a new article in Chapter 15 of the General Statutes entitled "Article 15A. Investigation of Offenses Involving Abandonment and Non-Support of Children," consisting of new sections G. S. 15-155.1 and 155.2.

G. S. 15-155.1 requires the State Board of Public Welfare to report to each district solicitor the names and addresses of all mothers residing in his district who receive aid to dependent children, identifying the unwed mothers and the number of children born to each.

G. S. 15-155.2(a) authorizes the district solicitor to conduct the aforementioned investigations based upon the reports he receives under 15-155.1 (as introduced, the mandatory "shall" was used but as amended and ratified the permissive "may" appears). In conducting these investigations, the district solicitor is authorized to call upon (1) county or state boards of public welfare for "personal, clerical, or investigative assistance. . ." and for access to pertinent records, (2) boards of county commissioners for ". . . legal or clerical assistance . . ." and (3) the solicitors of any lower courts in the district for "personal assistance." In case of assistance by a lower court solicitor, consent of the county commissioners is required, in which case the commissioners shall fix and provide for the lower court solicitor's compensation. Although the county is to pay for services rendered by the lower court solicitor, the literal language of the enactment applies to city court solicitors as well as to county court solicitors.

Under 15-155.2(b) the investigating solicitor who has reasonable grounds to believe that a violation of G. S. 49-2, 14-326, or 108-76.1 has occurred or that any other offense has been committed "shall" submit a bill of indictment to the grand jury of the county in which he believes the offense is being or has been committed.

What of possible jurisdictional conflicts between lower courts and superior courts? Section 15-155.2(b) vests exclusive jurisdiction in the superior courts of violations discovered as a result of these investigations, "notwithstanding any other provision of law, whether general, special or local," but a Senate floor amendment added a proviso that nothing in the act is to be construed to take from the lower courts any authority or responsibility vested in them by existing law, nor shall the district solicitor be compelled to again prosecute an offense already disposed of by the lower courts. Coming as it does after the language giving superior courts exclusive jurisdiction in both point of time in legislative history and in physical location in the statute, the proviso no doubt takes precedence.

If, as a result of the investigation, the solicitor believes the mother receiving aid or the mother of the illegitimate child is suffering from mental illness or mental defect within the meaning of G. S. 122-35.1, he is to make the affidavit provided for by G. S. 122-42 (affidavit to clerk of Superior Court requesting commitment for observation or other examination, looking to commitment to the State hospital).

Section 4 of Chapter 1210 creates an uncodified provision prohibiting the disclosure of any information, record, report, memorandum, etc. relating to or connected with the mother or father of any illegitimate child or relating to any illegitimate child unless the solicitor is of the opinion such disclosure is required in the prosecution or performance of his duties under the new

Another uncodified section in the act provides that if federal funds for aid to dependent children or other public assistance programs are withheld from North Carolina because any procedure in the new act is prohibited by the Social Security Act or other applicable federal statute or regulation, no person or agency shall take any further action pursuant to such prohibited procedure.

Gaston and Mecklenburg Counties are excluded from the operation of the provisions of Chapter 1210.

Venue

A measure of interest to district solicitors was introduced as Senate Bill 46 and passed and enrolled as Chapter 21. This enactment amends G. S. 15-217 to provide that post-conviction hearings brought by a prisoner to question the constitutionality of the proceedings which resulted in his being sentenced to confinement shall be commenced in the superior court of the county in which his conviction occurred. Formerly, such post-conviction hearings could be commenced either in Wake County *or* the county of conviction. Because of the situs of Central Prison, the district solicitor for the district which includes Wake County was required to represent the State in large numbers of such proceedings where he had no first-hand knowledge of the trial circumstances

complained of by the petitioner. The amendment has the salutary purpose of ensuring that the solicitor who represented the State at the trial which resulted in the petitioner's incarceration will also represent the State in the post-conviction hearing.

Another venue provision enacted by the 1959 General Assembly of interest to superior court judges and solicitors was enrolled as Chapter 424 (SB 110). This measure added a paragraph to G. S. 15-200 vesting in the resident judge of superior court or judge of superior court holding courts in, or judge commissioned to hold courts in, the district in which a probationer resides or in which he has violated the terms of probation concurrent jurisdiction with such judges of the district in which he was placed on probation to issue warrants for his arrest, to discharge him from probation, and to continue, suspend, extend, terminate or revoke probation and invoke the sentence which was suspended, and to enter judgments appropriate to such action. Formerly, such action could be taken only by such judges in the judicial district in which the probationer was placed on probation. The amendment further provides that the judge in his discretion may return the probationer for hearing and disposition to the district in which he was placed on probation, and that such transfer is mandatory if the probationer requests it.

Proving Municipal Ordinances

Except in cases of appeals from a mayor's court, proving the existence of a municipal ordinance has been a problem if the city had not printed or published its ordinances in book form. G. S. 160-272 provides that city codes and ordinances printed or published in book form by authority of the city governing board shall be admitted as evidence of the ordinance. G. S. 8-5 provides that in case of appeals from a mayor's court, a copy of the ordinance involved certified by the mayor shall be *prima facie* evidence of the existence of the ordinance. What if G. S. 8-5 has no application and the ordinance violated is not printed or published in book form? In the past it has been necessary to produce the town records, the official in charge of those records, and prove the passage of the ordinance and its contents. *Toler v. Savage*, 226 N. C. 208 (1946).

The following italicized portion of the second sentence of G. S. 160-272 was added by Chapter 631 (SB 290):

> All printed ordinances or codes or ordinances published in book form by authority of the governing body of any city *or copies of such ordinances duly certified by the city or town clerk or mayor under the official seal of such city or town* shall be admitted in evidence in all courts and shall have the same force and effect as would the original ordinance.

There has been felt for some time a need for relaxing the cumbersome method of proving unprinted or unpublished ordinances required by *Toler v. Savage, supra*. The use of "such" in the 1959 amendment, however, plainly refers back to "printed ordinances," "codes" and "ordinances published in book form." Although the need—if any—for providing that certified copies of printed or published ordinances shall be admissible evidence is certainly not as great as the need for relaxing the method of proving unprinted or unpublished ordinances, it is probable that the amendatory language has provided for the former rather than the latter.

Suspended Sentence Appeals

Chapter 1017 (HB 963) creates a new section in Chapter 15 of the General Statutes, §15-180.1, which allows the convicted defendant under a suspended sentence to eat his cake and have it too. Under prior law a convicted defendant under a judgment which suspended the execution of sentence upon stated conditions was on the horns of a dilemma if he desired to appeal his conviction to the Supreme Court: (1) If he consented to the suspension of sentence (by complying with one or more terms or otherwise), he waived his right to appeal, *State v. Hairston*, 247 N. C. 395 (1957); *State v. Canady*, 246 N. C. 613 (1957); *State v. Lakey*, 191 N. C. 571 (1926), leaving open for appellate review at some future date only the questions whether he had violated the terms so as to authorize invocation of the sentence, and whether the terms or conditions of suspension were reasonable. *State v. Griffin*, 246 N. C. 680, 682 (1957); *State v. Cole*, 241 N. C. 576, 582 (1955). (2) If he evidenced his nonconsent to the suspension by taking an appeal, he thereby waived the right to accept the terms later, and upon affirmance of the conviction, the case would be remanded for entry of proper judgment (i.e., a sentence not suspended). *State v. St. Clair*, 246 N. C. 183 (1957); *State v. Miller*, 246 N. C. 608 (1957); *State v. Ingram*, 243 N. C. 190 (1955).

The new section 15-180.1 provides "In all cases in the inferior and in the superior courts of this State a defendant may appeal from a suspended sentence under the same rules as from any other judgment in a criminal case." The section states as its purpose that the defendant does not waive his acceptance of the terms of suspension of sentence by giving notice of appeal, but simply takes the position that there was error of law in his conviction. This statute, therefore, allows the defendant to appeal from the superior court to the Supreme Court, and losing out on appeal, to accept then the terms upon which execution of the sentence was suspended. Apparently there was no intention to change the rule that consent to or compliance with the terms of suspension constitutes a waiver of the right to appeal.

The effect the section is intended to have upon appeals from the lower courts to the superior courts is far from clear. G. S. 15-177.1 (dating from 1947) provides in unequivocal language that in cases of appeal from a justice of the peace or other inferior court to superior court the defendant shall have a trial "anew and *de novo* by a jury . . ." It is fixed in the law of this State that trial *de novo* in superior court means a new trial, from beginning to end, on both law and facts, without regard to plea, trial, verdict or judgment below, and that the superior court judgment entered in event of conviction is independent of any judgment which was entered below. *State v. Meadows*, 234 N. C. 657 (1951). Furthermore, if there was no jury trial in the inferior court, the constitutional guaranty of trial by jury (Art. I, §13) is satisfied only by trial *de novo* in the superior court, where all criminal trials are by jury. *State v. Pulliam*, 184 N. C. 681 (1922); *State v. Lytle*, 138 N. C. 738 (1905).

Repeal of statutes by implication is not favored in the law and certainly not where such a vital principle as trial *de novo* is involved; therefore, it is unlikely that the language of new section 15-180.1 will have the effect of providing for appeals from suspended sentences to

the superior courts on questions of law (as in case of appeals to the Supreme Court) instead of for trial *de novo* as provided by G. S. 15-177.1.

A companion suspended sentence measure which failed, HB 964, would have required the district solicitor to give the defendant 48 hours notice before praying for invocation of suspended sentence and also to serve upon the defendant a bill of particulars specifying the time, place and manner in which the terms of suspension were alleged to have been violated by the defendant.

Solicitors and Solicitorial Districts

Two changes were made in G. S. 7-68, which since 1937 has divided the State's 100 counties into 21 solicitorial districts. Now there are 23 such districts, for Chapter 1168 (SB 247) redistricted Cumberland, Hoke, Robeson and Bladen counties into new District 9 (Cumberland and Hoke counties) and District 9A (Robeson and Bladen counties), and Chapter 1175 (SB 322) redistricted Gaston and Mecklenburg counties into new District 14 (Gaston) and new District 14A (Mecklenburg). The Governor is authorized to appoint to new Districts 9A and 14A solicitors who shall hold offices under the appointment until the processes of popular election fill the offices at the general election of 1960.

Two important bills relating to the prosecution of crime which did not pass were SB 98 and SB 423. SB 98 and HB 240 were identical measures which would have (1) given the Attorney General administrative supervision over district solicitors and assistant solicitors, (2) authorized conferences called by the Attorney General to discuss solicitorial duties, (3) required solicitors to aid the Attorney General in performance of his duties, (4) placed district solicitors on a full-time basis; (5) required the State to provide office facilities and clerical assistance for the solicitors, (6) authorized the Attorney General to appoint assistant solicitors and fix their salaries, and (7) required the Attorney General to recommend redistricting to the General Assembly when district workloads were seriously out of balance. After amendment, SB 98 was tabled in the Senate; HB 240 received an unfavorable committee report in the House.

Senate Bill 423 failed to pass second reading in the Senate. This measure would have authorized the district solicitor to appoint for one year terms assistants paid by the State and subject to the control of the district solicitor to aid him to prosecute the dockets in his district, but a finding by the Chief Justice that the courts of the district in question had been in session over 175 days a year for the trial of criminal cases would have been required as a condition precedent to the appointment authority.

CRIMINAL LAW

By L. Poindexter Watts

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For related legislation, see discussions under "Criminal Procedure," "Courts, Judges, Related Officials," "Motor Vehicles and Highway Safety," "Penal-Correctional Administration," and "Wildlife Protection." This last category covers not only changes in the fish and game law but the new act relating to registration of motorboats and regulation of boating.

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

The General Assembly was not particularly receptive toward criminal law changes during its 1959 session. In December 1958, the Institute of Government questioned judges, solicitors, sheriffs, and police chiefs as to legislative changes in criminal law and procedure thought desirable. These answers were laid before the Legislative Committee of the North Carolina Police Executives Association at the time it was formulating its legislative program. The major proposals the Association decided to sponsor were analyzed in Hall and Watts, *Some Changes in Criminal Law and Procedure Suggested by the North Carolina Police Executives Association* (Institute of Government, April, 1959). Of the Association's eight major proposals, only one was introduced (it passed); of two bills introduced that were similar to Association proposals but varying in important details, one passed and one failed. Of the numerous suggestions received from officials concerned with the administration of criminal justice, only a handful of the ideas expressed were embodied in legislation. The suggestions of these officials are collected in the appendix to the above cited publication.

Bombings and Bomb Hoaxes

Of the criminal law bills introduced, the one whose introduction was presaged most dramatically was Chapter 555 (SB 23). From the beginning of the school year up to the time of the Christmas holidays in 1958 there were over 50 bomb hoaxes in North Carolina. The disruption of school classes and the psychological effect on students, in addition to the burden these hoaxes placed on law enforcement and safety officials, led the Governor to recommend that making a false bomb report be punished as a felony.

As introduced, the bill would have added a new article on bombings and bomb hoaxes to Chapter 14 of the General Statutes, with hoax offenses punishable by a fine of not less than $500, or by imprisonment up to ten years, or by both fine and imprisonment. The Senate committee considering the bill reported a substitute which struck out the section on bombings of schools and churches, as GS 14-49 and -50 already cover bombings and conspiracies to bomb in general, and reduced the punishment for hoaxes to a misdemeanor punishable in the discretion of the court.

The recommendation of the Police Executives Association had been that rather than punish bomb hoaxes as such there be drafted a statutory misdemeanor offense of making false reports of any kind designed to induce more than routine or administrative action by law enforcement or fire department authorities or other officials who may deal with public emergencies. The Police Executives did suggest, though, that false reports likely to arouse public fear or disorder be made a felony. A related suggestion, also not introduced, was designed to close up some possible loopholes in the existing language of GS 14-49 and -50 defining bombings and conspiracies to bomb.

In its final form Chapter 555 (SB 23) added two new sections, GS 14-69.1 and -69.2, to the article of the statutes on Arson and Other Burnings. The first section covers false reports that a bomb or incendiary device is located in any structure, vehicle, aircraft, or watercraft. The next section outlaws the hoax of secreting, placing, or displaying anything that would cause others reasonably to believe it to be a bomb or destructive device. The law, in addition, increased the punishment under GS 14-273 for interrupting or disturbing schools from an offense within the jurisdiction of a justice of the peace to a misdemeanor punishable in the discretion of the court. For a discussion of the applicability of GS 14-273 to various types of bomb hoaxes, see Hall & Watts, *op. cit. supra*, at 7-11.

"Storebreaking" and Larceny

Superior Court Solicitors may well hail Chapter 1285 (HB 1042) as the most important piece of criminal legislation passed by the General Assembly this year. Under our breaking and entering statutes, intent to commit a felony has traditionally been one of the essential elements of the crime. At common law, all larceny, including petit larceny, was technically a felony. Thus, to break and enter with the intent to steal anything—no matter how small its value—would result in satisfying the requirement that a felony be intended at the time of the breaking and entering.

In order to preserve the old law as to burglary and larceny from the person, GS 14-72, making larceny of goods of a value not over $100 a misdemeanor, had provided that the section should not apply to (1) larceny from the person or (2) larceny from the *dwelling* by breaking *and* entering.

The offense set out in GS 14-54, often called "storebreaking," is designed to supplement the law of burglary. It applies to breaking *or* entering rather than the break-

ing *and* entering required to prove burglary. It is not restricted to dwellings but punishes breaking or entering any of a fairly extensive list of buildings, including uninhabited houses and any "building where any . . . personal property shall be." It also covers dwelling houses broken or entered other than by burglarious breaking (i.e., entering without any breaking or breaking during the daytime). To be a felony there must be intention to commit a felony or other infamous crime within the building broken or entered; and this ingredient was complemented in 1955 by the additional specification that the offense would be a misdemeanor if the breaking or entering is wrongfully done but without intent to commit a felony or other infamous crime.

Until recently no trouble was caused by the fact that there had to be an intention to steal property worth more than $100 before there could be a felony conviction for breaking or entering buildings other than dwellings under GS 14-54. It could almost always be inferred that anyone breaking or entering to steal would intend to take as much as he could get, no matter how small the value of the goods he actually succeeded in taking. The implications of at least two recent cases, however, led some to believe the North Carolina Supreme Court might begin to hold the State to a stricter standard of proof as to the statutory element of felonious intent on the part of the defendant at the time of breaking or entering. See *State v. Andrews*, 246 N.C. 561 (1957), and *State v. Cook*, 242 N.C. 700 (1955). Two different bills were introduced in 1959 to make "storebreaking" a felony no matter how small the value of the property intended to be stolen.

HB 1256, which failed, would have amended GS 14-54 directly to make its felony punishment applicable to one who breaks or enters with intent to commit a felony *or* to commit larceny. The bill which did pass, Chapter 1285 (HB 1042), has the unfortunate effect of adding a few new technicalities to an area of law already replete with them. The new law, effective on its ratification date of June 20, amends GS 14-72 so that its $100 dividing line between felonious and misdemeanor larceny would not apply to larceny from any of a certain list of buildings by breaking *and* entering. From a mechanical standpoint, the list of buildings was merely inserted after the word "dwelling" on the sixth line of GS 14-72 as it is presently printed in the General Statutes. The list of buildings inserted is identical with the list set out in GS 14-54 except for the omission of "uninhabited house" from the amendment to GS 14-72.

As a substantive matter, it may make little difference that the misdemeanor-larceny dividing line is abolished only when there is both a breaking and an entering. Cases of entering without any breaking are probably fairly rare. Yet the apparent thrust of the bill was to make GS 14-72 and 14-54 parallel; this was not done and the difference created may well serve as a trap unless all the judges and solicitors handling breaking and entering offenses under either GS 14-53 or -54 are extremely careful.

Unlawful Burnings

Arson, properly speaking, refers only to the common law crime of willfully and maliciously burning the dwelling house of another. The burning of other buildings is covered under several felony statutes in the article of the General Statutes on Arson and Other Burnings. *State v. Long*, 243 N.C. 393 (1956), pointed out that there was nothing in the burning article to prohibit the burning of an uninhabited house, and that GS 14-67 only applied to attempts to burn such houses. The 1957 General Assembly corrected this by making GS 14-67 apply to burnings as well as attempts to burn. The legislation of this session, Chapter 1298 (HB 1188), more logically switches the offense of burning an uninhabited house to GS 14-62 by inserting such a structure among the list of buildings enumerated there. GS 14-67 is amended to become again simply a statute to punish as a felony *attempts* at arson or unlawful burning. In the process, the list of structures covered in GS 14-67 was expanded until it will now serve as an omnibus statute to cover attempts as to every type of building elsewhere listed in the article on Arson and Other Burnings.

Public Drunkenness

As usual, a large number of counties tinkered with their punishments for public drunkenness under the various subsections of GS 14-335. At least eight counties had legislation introduced on this subject, either to punish public drunkenness or to change their already existing punishment. The counties are: Person—Chapter 13 (HB 15); Caswell—Chapter 96 (HB 207); New Hanover—Chapter 217 (SB 182); Duplin—Chapter 267 (SB 171), Cleveland—Chapter 403 (SB 245); Durham—Chapter 575 (HB 536); Beaufort—Chapter 757 (HB 922); Avery—Chapter 823 (HB 1010); New Hanover—Chapter 907 (SB 459). Of the two acts concerning New Hanover County, the first one put the offense within the jurisdiction of a justice of the peace, whereas the second one provided increased punishments for second and third offenses.

Of interest in this connection is the recent Supreme Court case of *State v. Dew*, 248 N.C. 188 (1959, holding GS 14-335 to be merely a codified conglomeration of various local laws. The issue in the case had turned on whether there was any statewide law prohibiting public drunkenness as such, as distinguished from special offenses such as GS 14-334 punishing drunk and disorderly conduct in a public place or street. The court rejected the argument that the statute had become general since a large majority of counties have brought themselves under the substantive effect of GS 14-335 and that the differences in grouping counties under it referred merely to permissible local variations of punishment under a general statute.

Another argument in the case was that GS 18-51 was a general law prohibiting public drunkenness. In rejecting this contention, the court held that the reference to being intoxicated or displaying of liquor at athletic contests or other public places must be restricted to other public places similar to athletic contests. By virtue of this recent interpretation, there is apparently nothing in the law to prohibit public display of liquor anywhere other than at athletic contests and similar places, and in a wet county it would seemingly be lawful to keep ABC whiskey open in an automobile on the road. Query as to what might be places similar to athletic contests? Although the decision in *State v. Dew* was handed down before the General Assembly went into session, there was no legislation passed to modify its ruling in any way.

Beer and Unfortified Wine

Before the passage of Chapter 745 (HB 734), it was

a crime to sell or give beer or unfortified wine to minors under 18, but it was not a crime for the minors to purchase such beverages. The bill amends GS 18-90.1 to correct this situation as well as to cover the selling or giving to such minors alcoholic beverages stronger than beer or unfortified wine. Actually, GS 14-331 already covered giving intoxicating drinks or liquors to minors under 17; GS 14-332 forbade sale to minors under 21 by dealers in intoxicating drinks or liquors; and GS 18-46 proscribed sales to minors by county ABC stores. The only element newly added is the prohibition of casual sales of alcoholic beverages to minors between 17 and 18 by those who do not ordinary keep them for sale, but even here such a sale to anyone of any age by other than ABC store personnel would be an unlawful sale under both GS 18-2 and -50.

Under GS 18-78.1 in the past, a person having a license to sell beer or unfortified wine on his premises has been prohibited from permitting consumption on the premises of any alcoholic liquors he was not licensed to sell. Chapter 745 also amends this section to prohibit the licensed seller from knowingly (newly added as an element) permitting the consumption of alcoholic liquors the sale or possession of which is not *authorized by law*. Thus, in a wet county, a person selling beer or wine on his premises can now allow consumption of ABC whiskey by his patrons without worrying about the revocation of his license.

Possession outside the home in a non-ABC county, of course, remains an offense.

It was once thought that even though possession of ABC alcohol in restaurants or nightclubs in ABC counties was not illegal per se that public display of intoxicants in such places would be an offense under GS 18-51. As restaurants or nightclubs hardly seem to be places similar to athletic contests, however, it appears the language in the case of *State v. Dew* discussed above leaves little ground for such prosecutions.

Sale of Beer and Wine Near Churches or Schools

The 1959 Session has produced the usual quota of special acts prohibiting the sale of intoxicating liquors within a certain distance of some particular school or church. Chapter 476 (HB 213) (Wilkes County), for example, prohibits the sale of beer and wine within one mile of a certain school and a certain church. Chapter 565 (HB 806) (Forsyth) would draw a circle with a two-mile radius around its church, but discreetly exempted from the ban that part of another county that happened to fall within the circle. Chapter 772 (SB 377) (Alleghany) increases the distance to two and a half miles surrounding a certain school. As a comparison, Chapter 633 (HB 829) (Caswell) authorizes the county commissioners to shut down all commercial establishments within one quarter mile of a church during the period of church services on Sunday and for an hour before and after.

Fortune Telling

Another popular criminal bill among the counties was one which brought various counties under the provisions of GS 14-401.5, prohibiting phrenology, palmistry, fortune telling, or clairvoyance. By 1957, a slight majority of counties had already brought themselves under this legislation, and Chapter 428 (HB 188) (Currituck) and Chapter 1018 (HB 976) (Avery, Davie, McDowell, and Surry) boosted the total. Pitt County had originally been included in HB 976, but was later deleted. Instead Chapter 926 (HB 1120) was drafted to set out as a local bill the gist of GS 14-401.5, but with an exemption in favor of free holders who had been resident in the county for at least 15 years.

Stimulant Drug Controls

Although the Federal Food and Drug Act is the dominant law regulating sale of drugs under prescription, certain drugs subject to abuse have parallel state regulations imposed on them so that state law enforcement officers may have jurisdiction. In 1955, Article 5A of Chapter 90 of the General Statutes was enacted relating to the control of barbiturate drugs. Chapter 1215 (HB 866) brings also under the controls set out in that article stimulant drugs such as amphetamine, as well as making a few technical modifications in the article. Amphetamine is probably best known to the public under the trade mark Benzedrine or as "bennies," the term usually denoting tablets or capsules containing amphetamine or some similar stimulant drug. Other names given amphetamine capsules are "yellow jackets" or "goof balls."

Telephone Threats and Abuse

Chapter 769 (HB 158) makes it a misdemeanor punishable in the discretion of the court for one without revealing his true identity to make any telephone call either threatening violent personal injury or destruction of property or using vulgar, obscene, or lewd language which if published would bring "such person" into public contempt or disgrace. The word "such" would refer to the person *calling* as a matter of technical grammar. If this interpretation is correct, the law forbids callers to use anonymously over the telephone language they would be ashamed to use in public. If the actual intent was that "such" refer to the person *called*, the object would be to eliminate vulgar, profane or obscene abuse that would be slanderous if published. Use of the technical word "published" raises the possibility this was intended. Comparison of the language of the act with GS 14-394, which may have served as a model for the drafters of the committee substitute of this bill, strengthens this idea. Present GS 14-196.1 punishes profanity or vulgarity used to females over the telephone, but the new act applies to all. The new act, of course, is not merely a profanity statute, but is also directed toward threats and intimidations over the telephone. In the realm of profane language one interesting local bill, Chapter 407 (HB 504) (Burke County), incorporated the elements of GS 14-197 as to use of profane and indecent language on public highways into a new GS 14-197.1 punishing such language uttered in any public place.

Anti-Litter Laws

A recent case, *State v. Brown*, 250 N.C. 54 (1959), ruled the former wording of GS 14-399 an unconstitutional exercise of the police power in that the screening from view of users of the highway of junk yards or refuse grew out of esthetic considerations. The statute made it a misdemeanor punishable by a fine up to $50 to place or leave garbage, trash, refuse, scrapped automobiles or trucks within 150 yards of a hard surfaced highway outside of an incorporated town *unless* there was a fence shielding the view of highway users. It was, incidentally,

under this law, from which 35 counties were exempted, that the State Highway Commission posted its signs warning that throwing trash on the highway would bring a fine up to $50. There was some room for doubt whether the wording covered the highway-trash situation.

As now amended by Chapter 1173 (SB 315), GS 14-399 would clearly prohibit throwing trash on the highway as well as cover some junkyards, As changed it applies in all 100 counties. The section as rewritten flatly prohibits the placing or leaving of trash, garbage, refuse, scrapped automobiles or scrapped trucks *on* the right of way of any state highway or public road outside of incorporated towns.

Clay County's anti-litter law, Chapter 73 (HB 191), prohibits the throwing of garbage-type refuse in streams or along county roads or city streets, and can readily be supported as a health measure. High Point's Chapter 778 (SB 455), on the other hand, may give somewhat more pause. It authorizes the city by ordinance to require owners of property to remove weeds, undergrowth, debris, trash, or other offensive matter or thing. If the owner, after notice, does not remove the matter, the city is empowered to do so and the cost of removal is to become a lien on the property. In the case of a municipality, esthetic considerations may well not be the exclusive reason for exercising power of this sort, however, and the application of the *Brown* decision is hardly certain here.

Superficially similar to the anti-litter legislation, but based on a different concept, is Chapter 657 (HB 684) (Cherokee) which declares it a public nuisance to leave a dead animal longer than 24 hours on the surface of the ground or in a stream, drainage ditch, or other body of water.

The two bills regulating abandoned boats on certain stretches of the Pasquotank and Chowan Rivers, Chapter 948 (HB 1053) and Chapter 1153 (HB 1316), provide that it is a misdemeanor to abandon a boat for longer than 60 days. On notice of the sheriff to the person responsible, there will be a duty to remove the abandoned boat sooner than 60 days.

Possession of Explosives

As introduced, Chapter 549 (HB 468) would have made it unlawful throughout the state to possess explosives without a permit from the sheriff. As amended on the floor, however, the legislation was limited to Vance, Franklin, Granville, and Warren Counties.

Chapter 902 (SB 425) authorizes the New Hanover County Board of Commissioners to regulate by ordinance the firing of weapons in populous areas of the county outside the municipalities as well as the use and control of dynamite and other explosives.

GS 14-414 defining prohibited "pyrotechnics" includes generally all fire works and explosives used for exhibition or amusement purposes except for explosive caps not over .25 of a grain for toy cap pistols. Twenty-three counties did not join in making the exception in favor of caps for toy pistols under Chapter 674, 1955 Session. Chapter 310 (HB 303) and Chapter 1151 (HB 1312) amend the 1955 law to delete Randolph and Buncombe Counties from the list of twenty-three so that toy caps may be lawfully sold or used there.

Miscellaneous

Chapter 172 (HB 224) amends GS 14-249 to raise the normal limit to be paid out of the public treasury for official motor vehicles other than trucks from $2,000 to $2,500. Unless there is special approval of the Council of State, it is a misdemeanor for an official of the State, of a county, or of an institution or agency of the State to pay more than the stated amount.

A number of bills were introduced on the subject of regulation of going-out-of-business sales and advertising in connection with them. Two proposals to make such regulation statewide failed: HB 422 and HB 458. A number of counties, though, brought themselves under the provisions of GS 66-76 through -84, which codified local legislation that applied to 19 counties. The successful bills in this area were: Chapter 240 (HB 247) (Cumberland); Chapter 1287 (HB 1074) (Burke, Cabarrus, Catawba, Cleveland, Craven, Durham, Gaston, Pitt, Randolph, and Forsyth); Chapter 928 (HB 1159) (Alamance); Chapter 1251 (SB 495) (Halifax); Chapter 1089 (HB 1234) (Forsyth, Catawba, New Hanover, and Guilford). These bills apparently became quite popular and at least one or two counties brought themselves twice under the same legislation or under varying bills.

One of the more controversial bills in the criminal law area, SB 113 (identical with HB 248), provided for sterilization of grossly sexually delinquent women. Shortly before the Senate committee reported its bill unfavorably, SB 248 was introduced to make fathering or giving birth to two or more illegitimate children a misdemeanor. Even after an amendement to make the act apply only to mothers and to provide relief in cases of multiple births and legitimation, the bill ended by being tabled in the House.

WILDLIFE ENFORCEMENT

By L. Poindexter Watts

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Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Legislative interest in wildlife bills ran high this session as in several previous ones. A surprising percentage of all wildlife bills introduced were ratified. One of the early bills was ratified by March 27 as Chapter 166 (HB 127) and represented a major clarification in the law for Wildlife Protectors. In its final form the bill amended GS 20-125(b) and 20-130.1 to permit all vehicles owned by the Wildlife Resources Commission and operated exclusively for law enforcement purposes to be equipped with red lights and sirens or other emergency equipment.

Among the bills that did not pass, perhaps the outstanding group were the several local bills and at least one general one to extend permanent hunting and fishing licenses without cost to residents over 65.

Changes in the Game Law

Shooting Preserve Hunting Licenses

Chapter 304 (HB 46) amends GS 113-95 to add a new type of hunting license. This new license will be good only in controlled shooting preserves, but can be used there in lieu of any other license. Although there are no restrictions as to who can buy such special controlled shooting preserve hunting licenses, in practical effect this license was designed for use by nonresidents. Residents of North Carolina would find it cheaper to hunt in controlled shooting preserves on any of the various resident licenses, as an annual state resident hunting license would cost only $4.10. This new special license will cost $5.25 annually, which is substantially less than the $15.75 to be paid for a nonresident hunting license.

This controlled shooting preserve hunting license should not be confused with the $50 annual license for operating a shooting preserve which was imposed by the 1957 General Assembly.

Inspection of Hunters' Guns

Wildlife Protectors have long been enforcing the provisions making it unlawful to hunt certain animals or birds with unplugged shotguns capable of holding more than three shells. This is an offense under the federal regulations governing the hunting of migratory game birds, and these regulations have been adopted by the regulations of the Wildlife Resources Commission. The use of such guns is also an offense under GS 113-104 when upland game birds, squirrels, or rabbits are being hunted. Another restriction on hunters' guns is the one prohibiting the use of shotguns larger than number ten gauge in the taking of game animals or game birds.

Although the power to arrest for the above violations may have carried with it the implied authority to inspect shotguns, the General Assembly in Chapter 207 (SB 151) has decided to make this point absolutely clear. The act amends GS 113-104 to make it unlawful for anyone hunting wild birds and animals with a gun to refuse to surrender it for inspection upon the request of a duly authorized officer. The statute literally says the refusal is unlawful when wild birds *and* animals are being hunted, but the court would very likely construe this to mean the refusal offense also occurs when either birds *or* animals are being hunted, so as to effectuate what is the obvious purpose of the statute.

Noose-Type Snares

In some counties noose-type animal snares have accounted for the killing of an unusually large number of foxes. These snares, usually made of wire, have a plastic or rubber joint that will not allow the noose to loosen around the neck of the animal, and the more it struggles the tighter the noose gets. A person releasing the snare must use two hands. Generally choking the animal caught to death, these snares also trap a number of dogs. Protests in the areas where they are heavily used, and fears that small children might be caught and killed, have led to the enactment of Chapter 500 (SB 258). The act amends GS 113-104 to make it unlawful to possess, sell, or offer for sale any noose-type commercially-manufactured snare by which an animal may be entangled and caught.

Local Gun or Deer Regulation

For Gates County, the major effect of Chapter 169 (HB 203) is to make it unlawful to hunt with rifles larger than .22 caliber. The actual wording of the statute bans hunting with "firearms other than shotguns and rifles of .22 caliber or less." Under the general game law, pistols and weapons other than rifles, shotguns not larger than number ten gauge, and certain types of bow and arrow were illegal for taking *game* animals or birds, but the Gates County law applies no matter what is being hunted. Although the local act did not specify any prohibited size of shotgun, it is thought that the general law on this point would apply when game animals or birds are being taken. Punishment for a violation of the act can be up to $50 fine or 30 days in prison, or both. The "or both" part of the statute has the effect of taking the offense out of the trial jurisdiction of a justice of the peace.

In Scotland County, Chapter 1143 (HB 1231) varies the approach to the problem of firearms limitation. The offense created applies only to the hunting of deer with a rifle of a larger bore than .22 caliber. Its punishment provision is the same as that for Gates County's act, again denying trial jurisdiction to justices of the peace.

Granville County now has a law, Chapter 459 (SB 241), to make it illegal to hunt, take, or kill or attempt to hunt, take, or kill deer by the use of firearms from the right of way of any public highway, roadway, or

other publicly maintained thoroughfare in that county. The grounds of Camp Butner in Granville County support a sizeable deer population, and this undoubtedly accounts for the passage of the legislation. The act in terms only makes it "unlawful" to violate its provisions, but under GS 14-3 as it is construed this makes the offense a misdemeanor punishable by fine or imprisonment or both in the discretion of the court.

The above three acts for Gates, Scotland, and Granville Counties raise a serious question concerning the power of the Wildlife Protectors to arrest for violations of these acts. None of them purports to amend any part of the Game Law of 1935 which is codified in Chapter 113 of the General Statutes, and they appear simply as local legislation regulating hunting. Wildlife Protectors have an extremely limited arrest jurisdiction; one ruling of the Attorney General opined that they were not peace officers and distinguished the case of *State v. Ellis*, 241 N.C. 702 (1955), as applicable not only to a peace officer but to "one clothed with the powers of such officer." *State v. Ellis, supra* at 705.

By virtue of GS 143-247, Wildlife Protectors and others acting for the Commission have the duty to "enforce all the provisions of this article [Game Law of 1935] and any other laws now in force or hereafter enacted for the protection of wild birds and animals, and shall exercise all necessary powers incident thereto." GS 113-91(b). If this were the only portion of the game law relating to enforcement powers, it could very easily be construed to confer on Protectors the power to arrest for any breach of any law enacted for the protection of wild birds and animals. The Wildlife Resources Commission, however, employs many others besides its law enforcement officers (Protectors) who can in a real sense be said to be "enforcing" laws enacted for the protection of wild birds and animals. Adding to this fact the specific grant of power in GS 113-91(d) "to execute all warrants issued for violation of *this article*" [emphasis added] and "to arrest without warrant any persons committing a violation of *this article* in his presence, or upon reasonable grounds to believe . . ." [emphasis added], it could be argued from a narrow point of view that the only arrest powers granted in GS 113-91 were for violations of the Game Law of 1935. Foxes are game animals, yet the separate article of the statutes regulating hunting them has its separate grant of enforcement power as to local and county laws on the subject. GS 113-112.

If the more narrow interpretation of a Wildlife Protector's power to arrest is correct, enforcement of the new hunting laws in Gates, Scotland, and Granville Counties would have to be by the sheriff and other peace officers with a general arrest jurisdiction in those counties. As a comparison, note the precautionary jurisdictional grant in the Chowan River act below and the grant added by amendment to a 1955 local act as discussed in the section on "Hyde County Waterfowl."

That part of the Chowan River lying between Gates and Hertford Counties is off limits to deer hunters who like to shoot deer from their boats. Chapter 298 (HB 202) makes it unlawful to take deer with the aid of any boat or other floating device in or within 100 yards of the river from the Virginia line down to the Chowan County border on the Gates County side and from the Virginia line down to the Bertie County border on the Hertford County side. The act does not apply, however, to the transportation of hunters or their legally taken game on the river. Rather confusingly, there is an exemption as to tributaries or creeks lying within the 100 yard area on either side of the river. As the act applies to the taking of deer with the *aid* of boats, the exemption would literally seem to allow taking deer with the aid of boats only when the *deer* are in the creeks or tributaries. But the hunting regulations prohibit the taking of deer swimming or in water to its knees. The language of the chapter, however, is ambiguous enough to support the more reasonable interpretation: that deer may be shot from boats when the boat is on a creek or tributary rather than the river itself. Punishment can be either a fine ($50 to $100) or imprisonment (30 to 60 days). Wildlife Protectors are specifically given authority to enforce the provisions of the act.

Local Fox Hunting Legislation

Although foxes are game animals, control of fox hunting has traditionally been on a county-by-county level by virtue of local acts. The general law provides that foxes may be taken with dogs even during closed season, and the regulations open the season for foxes any time the season is open for another game animal or bird, except that local legislation as to seasons is to prevail. There are no general laws or regulations setting bag limits on foxes.

Of six local laws concerning fox hunting passed in 1959, four expressly amend GS 113-111 (permitting the taking or killing of foxes at any time by any lawful method in specified counties) to add counties or parts of counties. Chapter 535 (HB 80) and Chapter 570 (SB 327) add Greene and Forsyth Counties to the list. Chapter 544 (HB 687) (Sampson) adds a proviso applying to red foxes only—and it also adds bobcats to this fox statute. The proviso for Moore County added by Chapter 536 (HB 328) opens the season at all times for both grey and red foxes but only in Bensalem, Sheffields, Ritters, Deep River, and Carthage Townships. Chapter 545 (HB 701) does not purport to amend GS 113-111, but makes it lawful to hunt and take foxes with gun or dog at any time during the year in Fruitville Township in Currituck County plus all of the county lying south of the Intracoastal Waterway. Jurisdiction of Wildlife Protectors in such a case as this is clear because of GS 113-112.

Chapter 739 (SB 391) repeals the local act formerly setting out fox seasons in Chatham County and thus makes the general law apply to that county.

Hyde County Waterfowl

Chapter 1054, 1955 Session, placed a 4:00 p.m. quitting time on the shooting of migratory waterfowl in Hyde County except for Ocracoke Island and within ten miles of it. The act was local and did not purport to effect a local amendment of any part of the game law in Chapter 113 of the General Statutes, thus leaving some doubt as to whether enforcement of this act was within the limited jurisdiction of Wildlife Protectors. See the discussion of this question under the section on "Local Gun or Deer Regulation," above. Chapter 878 (HB 1254) adds a section to the 1955 act to confer jurisdiction specifically upon Wildlife Protectors.

Chapter 1303 (HB 1245) authorizes the Wildlife Resources Commission to close or otherwise modify the season bag limits and use of blinds in hunting migratory waterfowl in Hyde County on the written recommendation

of the Director of the United States Fish and Wildlife Services.

Our hunting regulations already incorporated the general federal ones governing migratory waterfowl, but the above act was passed to cover a special situation. The U.S. Fish and Wildlife Service operates a game refuge at Lake Mattamuskeet in Hyde County, and follows an unusual policy of allowing public hunting on portions of the refuge. The hunting must be done within restrictions imposed by the federal authorities, but the Wildlife Resources Commission is in actual charge of regulating the hunting done. There are a number of blinds in the hunting area, and an employee of the Commission manages them, issues permits, and furnishes guides. The usefulness of the new legislation in the light of these facts is self-evident.

Loon Hunting Resolution

Resolution 74 (HR 1262) recites that although the migratory bird commonly known as the loon is protected at all times by a treaty between the United States and Canada, the natives of Carteret County in particular have long hunted the loon and the loon additionally works a hardship on commercial and sports fishermen by destroying large numbers of fish. The resolution memorializes North Carolina's Senators and its Congressional Delegation to make every effort to have the treaty amended to legalize the hunting of loons. The open season recommended is either during the regular waterfowl hunting season or, preferably, in the months of April and May when loons are most destructive to the commercial fisheries.

Changes in the Fish Law

Fishing from Highway Bridges

There is nothing in the fish law to make fishing from a bridge illegal. The General Ordinances of the State Highway Commission forbid fishing from, or loitering on, any bridge on the State highway or county road system. Jurisdiction to enforce this prohibition apparently would lie with members of the Highway Patrol rather than with Wildlife Protectors. The object of this ordinance is not the protection of wild birds and animals, and it is not one of the fisheries laws.

Chapter 405 (HB 231) has inserted a new section, GS 113-154.1, into the statutes governing fishing. This statute simply makes it lawful in all counties but Carteret for one to fish with hook and line from the walkways, sidewalks, or catwalks of any State Highway Commission bridge, provided that such walks are either at least four feet wide or are located outside the main guardrail of the bridge.

The interpretation and jurisdiction effects of the new act are ambiguous. The license requirements of GS 113-143 apply to any and all methods of hook and line or rod and reel fishing; it is not certain whether the General Assembly by mentioning only hook and line fishing intended that fishing by rod and reel from bridges should remain unlawful. It is doubtful that a Wildlife Protector would have any jurisdiction to arrest anyone fishing from a walkway less than four feet wide where there was no guardrail or to arrest anyone fishing from a bridge with rod and reel. The argument might be made that enacting this permission in the fish-law portion of the statutes implies statutory adoption there of the general prohibition against fishing from bridges, but this interpretation is undermined by the specific provision of the new act making it unlawful to fish from the draw spans of bridges. Wildlife Protectors would apparently be able to arrest for this last offense as it is codified in the fisheries portion of Chapter 113 of the statutes, though the argument could be made that its purpose was highway safety and not one of the "fisheries laws" over which Protectors have been given arrest jurisdiction under GS 113-141.

Fishing with Nets on Sunday

Before this session of the General Assembly, one of the stiffest punishments in the entire fish and game law was prescribed by GS 113-247 for fishing on Sunday with a seine, drag-net, or other kind of net. The penalty consisted of either fine ($200 to $500) or imprisonment up to 12 months. Provisos to the section, however, had excepted commercial fishing waters, the canals draining Lake Phelps in Washington and Tyrell Counties, and the waters of the Tar River in Pitt County; the exemption in favor of the Tar River in Edgecombe County had specified that it was limited to the taking of nongame fish. Although taking game fish by means other than hook and line or rod and reel would be a separate offense in itself, use of GS 113-247 to charge Sunday netting of game fish would have likely increased the punishment.

Chapter 274 (HB 404) drastically reduced the penalty for violation of GS 113-247. The offense now will be punishable only by a fine of not more than $50, with no imprisonment mentioned at all. In addition, more exceptions were carved out of the section. It will now be lawful to net under a proper special device license for nongame fish on Sunday in Craven, Gaston, and Mecklenburg Counties or portions of streams adjoining those counties. The other exception appeared in Chapter 291 (HB 324) to permit the otherwise lawful taking of "rock fish and any other non-game fish" [sic] on Sunday from that portion of the Roanoke River between the highway bridge on US Highway 301 at Weldon and the highway bridge on US Highway 258 north of Scotland Neck. This portion of the river lies between Halifax and Northampton Counties, and represents the first stretch of inland waters along the Roanoke north of the Scotland Neck bridge, as commercial waters begin at that point. According to the fishing regulations, rockfish (or striped bass) are game fish and may not be sold when taken from inland waters, though this restriction does not apply when the fish is taken from commercial fishing waters. As a supplement to the above act, therefore, Chapter 1304 (HB 1258) was passed later in the session to legitimate the public sale, in Halifax and Northampton Counties only, of rockfish taken from the portion of the Roanoke River described above.

The net effect of the two acts is much as if it extended commercial fishing waters up to the bridge at Weldon, on Sundays *only*, so far as rockfish are concerned, except that special device licenses would apparently here be required. Although the regulations as to special device licenses in terms apply only to nongame fish, the act specified the netting to be done with "skim and dip nets used in accordance with regulations of the Wildlife Resources Commission." Sunday netting for nongame fish would be allowed with the license as would be permitted on other days. Though it may not be intended by the draftsman of the act, who seemed to consider rockfish to be nongame fish without regard to where taken, netting for rockfish north of the Scotland Neck bridge on any day other than Sunday or in any other inland waters

would appear to be illegal. Actually, from January 1 to June 5 during the open season on shad and herring netting, numbers of rockfish may be taken on weekdays, the regulations allow up to one person's creel limit of rockfish to be kept when taken incidentally to shad and herring fishing operations. Gill nets as well as skim and dip nets may be used to take shad and herring, but on Sundays the only nets authorized are the skim and dip ones.

Boundary Between Inland and Commercial Fishing Waters

Before the creation of the Wildlife Resources Commission the Board of Conservation and Development under GS 113-136 was empowered to make regulations concerning fish of various types, applicable not only to taking game and nongame fish but commercial fishing as well. In GS 143-247, the Commission was ceded jurisdiction over wildlife resources exclusive of commercial fish and fisheries. GS 143-251 authorized cooperative agreements between the Commission and other agencies. Under this authority, the Wildlife Resources Commission and the Department of Conservation and Development have jointly promulgated boundaries between inland fishing waters and commercial fishing waters, with the separate types of waters under the respective supervision and control of each agency. These boundaries are not mutually exclusive from a jurisdictional standpoint, though, as the Commission prohibits the taking of game fish except by hook and line or rod and reel, and makes the license requirements for this type fishing applicable in many of the commercial waters other than the Atlantic Ocean. If nongame fish are caught in such waters by hook and line or rod and reel, license requirements would of course still apply, even though there is no Commission restriction on such fish caught by other methods. The latest publication fixing the agreed boundary lines between inland and commercial waters was published by the two agencies effective January 1, 1959.

Although the existing boundaries are in general as determined by the two agencies, members of the General Assembly may occasionally introduce special acts to change some particular boundary point. Chapter 631, 1955 Session, fixed the boundary on the Yeopim River in Perquimans County at Deep Water Point. Chapter 1293 (HB 1130) amends the 1955 act to change this to Norcum Point.

Commercial Trout Fishing Ponds

Chapter 988 (SB 342) adds a proviso to GS 113-257 to permit the licensing of Commercial Trout Fishing Ponds of three acres or less to be stocked exclusively with hatchery-reared mountain trout obtained from a privately-owned hatchery for the purpose of commercial angling. The license will cost $25 annually for the operation of each pond, and such ponds must lie on private land and not on a natural stream. The pond may be supplied, however, by the diversion and storage of water from natural streams if done through screened and regulated supply lines.

Anglers fishing in the commercial ponds may or may not need fishing licenses, in accordance with the provisions of existing license laws. The special mountain trout fishing license, needed only for fishing in Public Mountain Trout Waters, would of course not be required.

Reciprocal License Agreements

GS 113-145, pertaining to nonresident fishing licenses, was amended by Chapter 164 (HB 120) to authorize nonresidents with fishing licenses issued by any adjoining state to fish on the North Carolina side of any water forming the boundary between this state and the other state solely by virtue of the other state's license, provided such adjoining state shall extend the same privileges to persons with licenses issued in North Carolina. The act was introduced by a representative from Mecklenburg County, and its immediate object was said to have been the hope of a reciprocal agreement between North and South Carolina affecting the part of Catawba Lake lying between the two states. The South Carolina legislature, however, failed to pass any reciprocal legislation.

There was already, and still is, in effect a reciprocal agreement between North Carolina and Virginia as to fishing licenses on the John H. Kerr Reservoir, but with certain areas and tributary arms in either state being excepted from the agreement. Also, the North Carolina daily fishing permit will not be honored in Virginia, though the five-day permit will be. The new legislation, on the other hand, applies to both licenses and permits uniformly, and takes automatic effect when the other state extends the reciprocal privileges. Assuming that there was sufficient statutory authority for the Wildlife Resources Commission to make such reciprocal agreements in the past, this new law would not seem to invalidate present or future specially-negotiated agreements. A former agreement between North Carolina and Georgia relating to Lake Chatuge is no longer in effect.

Taking Fish and Other Seafood in Brunswick, New Hanover, and Pender

Chapter 444 (SB 22) as later modified by Chapter 767 (SB 452) results in a rather lengthy and complex amendment to GS 113-136. As finally passed, the legislation affects only the three counties listed in the caption, and the changes wrought affect the Board of Conservation and Development. The original language concerning the taking of fish for personal use must have been thought to be capable of application to fish regulated by the Wildlife Resources Commission, and this point was at least partially cleared up by an amendment providing that the act should not be construed to authorize any taking of fish in *inland waters* in violation of valid Commission regulations in effect at the time the act became effective. Theoretically this would permit the taking of game fish in commercial waters in the three counties even during a closed season imposed by Commission regulations. As trout is the only fish on which there is currently a closed season and as it is not found in those waters, the acts would appear to have no real effect on Wildlife Protectors and their enforcement duties. License requirements for fishing with hook and line or rod and reel would still seem to apply, as well as creel limits on game fish, since the applicable words of the statute are silent on this point:

> Notwithstanding any rule or regulation heretofore or hereafter adopted by the Board of Conservation and Development or any law to the contrary, any person may at any time take shrimp, fish and clams . . . for his own personal or family use . . . .

The provisions relating to the taking of oysters and several of the qualifications and exceptions added will not be discussed here.

Bladen County Night Fishing

Chapter 1034, 1953 Session, prohibited fishing in the

public waters of Bladen County during the hours of darkness. Chapter 1138 (HB 1091) repeals the 1953 special act to make the general law again applicable in Bladen County.

Boat Acts

Motorboat Numbering and Boating Safety

Chapter 1064 (HB 773) is a North Carolina modification of the State Boat Act published by the Council of State Governments as a part of its program of suggested state legislation for 1959. The Federal Boating Program of 1958, 46 USC § 527, provides that after April 1, 1960, all motorboats (vessels propelled by machinery of more than 10 horsepower) not having marine documents from the Bureau of Customs be numbered for purposes of identification. This numbering will be done on navigable waters of the United States by the Coast Guard, unless the state in which the motorboat is principally used has enacted a numbering statute which meets the requirements of the Federal Boating Program of 1958. If the state does have such a law, the state will number motorboats in all waters within its jurisdiction, including navigable waters of the United States.

The model state act recommended that the states go beyond the requirements of the federal act and number all power-driven vessels, but the initial definitions of Chapter 1064 distinguished between "vessel" (all watercraft other than seaplanes that can be used for transportation on water) and "motorboat" (vessel propelled by machinery of *more than* ten horsepower, not including vessels having valid marine documents). Thus, a power-driven craft of ten horsepower or less will not come under the category of "motorboat" and will not be numbered either under the federal or North Carolina act. Sailboats with auxiliary engines larger than ten horsepower are considered "motorboats."

The administration and enforcement of the act is the duty and responsibility of the Wildlife Resources Commission. On its effective date of January 1, 1960, every "motorboat" on the waters of North Carolina will be required to be numbered, either under our system or under that of the Coast Guard or the federally-approved system of some other state. Application for a number on Commission forms should be accompanied by a $3 fee. When issued, the number is to be painted or attached on each side of the boat's bow and the pocket-sized certificate of number (driver's license) issued with the number is to be carried by whoever operates the craft. Persons with motorboats on the waters of North Carolina registered elsewhere have up to a 90-day reciprocity period before having to register their existing number, which they will retain, with the Commission. On change of ownership of a motorboat, a new certificate of number will be issued in the name of the new owner for a $1 fee; the number, however, will not change. Certificates of number will be valid for one year, and are to be renewed each year on or before January 1. Changes of ownership interest other than security interest in any motorboat must be reported to the Commission. Ownership interest for Commission purposes means the right to beneficial use or possession and does not depend on legal title, except that a leasing agreement not intended as security does not give the lessee an ownership interest. Changes in address of registered owners are to be reported.

Motorboats are divided into four classes depending on length and are subject to detailed requirements as to lights and other safety equipment. These provisions are almost exactly parallel to those in the federal Motorboat Act of 1940, 46 USC § 526, and in August, 1959, the Wildlife Resources Commission adopted the federal equipment regulations promulgated under that act. References should be made to the regulations governing motorboats operating on the navigable waters of the United States as set out in Title 46, Part 25, of the Code of Federal Regulations and in copies of the Federal Register supplementing the latest Code edition. The federal regulations specifying approved equipment refer to the Coast Guard publication CG 190, *Equipment Lists*.

It is unlawful to operate or give permission to operate motorboats not equipped with the prescribed lights and safety equipment. Another provision requires motorboats with internal combustion engines to have mufflers, and prohibits cut-outs except for motorboats in approved races or regattas.

In addition to the numbering and equipment requirements applicable to motorboats, the act prohibits "reckless driving" or "drunk driving" in any *vessel*, or in the manipulation of water skis, surfboards, or similar devices. The operator of any vessel of any kind or size who is involved in an accident has imposed on him the duty to render aid to others if reasonably possible and to give the other parties or owner of any property damaged his name, address, and identification of his vessel in writing. Accidents resulting in death or in injury to a person or in damage to property in excess of $100 must be reported to the Commission within ten days. Commission regulations define "injury to a person" as an injury incapacitating a person longer than 72 hours.

Safety provisions of the act regulate water skiing, surfboarding, and similar activities when there is a towing *vessel*, and the Commission is authorized to regulate the holding of regattas, races, marine parades, tournaments, or exhibitions on North Carolina waters. Permission for these latter activities must be obtained 15 days in advance from the Commission in writing.

The Commission is not given the general power to make detailed "rules of the road" to be observed by vessels, but in local areas it can make "rules and regulations with reference to the safe and reasonable operation of vessels" other than on State-owned lakes. There, the Department of Conservation and Development makes the rules. The Commission apparently can make local regulations on its own motion, but the statute expressly provides that subdivisions of the State after public notice may apply to the Commission for special regulations for any waters within their limits.

Wildlife Protectors and every other law enforcement officer of the State and its subdivisions are given authority to enforce the act, including the power to stop, board, and inspect vessels subject to the act.

For more effective enforcement of the act in coastal areas normally policed by the Commercial Fisheries Division of the Department of Conservation and Development, the Wildlife Resources Commission is authorized to enter an agreement with the Department of Conservation and Development to reimburse the Department for the time and effort spent by its personnel in enforcing the act.

Punishment for the "drunken driving" and "reckless driving" offenses under this act may be a fine up to

$500 or imprisonment up to six months, or both. All other offenses under the act carry a $50 fine as the maximum punishment.

Pender County Boat Regulation

Chapter 590, 1957 Session, empowered the Sheriff's Department of Pender County to regulate the speed of boats on the Northeast Cape Fear River between Smith's Bridge and Lane's Ferry Bridge; a maximum speed limit of five mph was imposed within one-half mile of the southeast side of Smith's Bridge. It required boats to carry lights at night and forbade reckless operation of both boats and motorboats (normal definition). Chapter 771 (HB 924) amends the 1957 act to apply to every part of the Northeast Cape Fear River and the Black River in Pender County. The five mph speed limit was made general for both rivers, with the sheriff only to have power to regulate speeds lower than that.

As Wildlife Protectors are not mentioned in the above act, they clearly have no power to arrest for the violation of any of its provisions. Their general authority under the Motorboat Act to check the numbering and equipment of motorboats over ten horsepower and to enforce the safety laws set out there for all vessels would, however, certainly apply on these two rivers. A difficult problem might arise, though, if the Wildlife Resources Commission ever attempted to make special local regulations governing speed of boats on these two rivers in Pender County or on any other waters covered by similar special legislation. The Motorboat Act was ratified later than the Pender County amendment, but apparently this has no bearing on the problem. Repeal of local legislation by implication is rarely recognized in North Carolina. Without express authority to abrogate provisions of local acts in its enabling legislation, the Commission apparently will be powerless to override the local law. The model State Boat Act provided that "any ordinance or local law" could co-exist only so long as it was *identical* with the provisions of the suggested act, but it is thought that in the context of a model act the term "local law" referred to legislation by some subdivision of the State of a similar nature to an ordinance. In any event, the drafters of the Motorboat Act deleted this part before the bill was introduced.

Abandoned Boats

Two bills were ratified in 1959 making it a misdemeanor to leave abandoned boats or watercraft longer than 60 days along the shores or in certain waters in Pasquotank and Chowan Counties. Neither bill mentioned Wildlife Protectors and they would have no jurisdiction in this matter. These acts are discussed in the *Criminal Law* portion of this legislative survey.

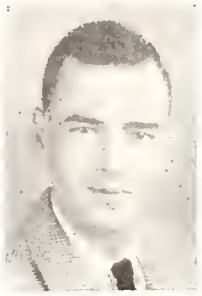
Miscellaneous

Obstructions in Streams and Ditches

Wildlife Protectors, among others, are to report violations of GS 77-14 to the board of county commissioners. Chapter 1125 (SB 254) amends the section so that it applies to obstructions of streams and drainage ditches of any kind rather than being restricted to farmland drainage ditches.

Wildlife Refuge Repeal

Chapter 568 (SB 313) repeals the 1955 session law which created a wildlife refuge at the Lumberton Steam Electric Plant Cooling Pond.



COURTS, JUDGES, RELATED OFFICIALS

By Royal G. Shannonhouse

Assistant Director of the Institute of Government

Chapter numbers refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Supreme Court

Retirement of Justices

Prior to the 1959 amendment (Ch. 1240; SB 225), GS 7-51 provided a retirement salary for justices of the Supreme Court, judges of the Superior Court, and Attorneys General who had served for 15 years on the Supreme Court, on the Superior Court, on both courts, *or* as Attorney General. Thus an Attorney General could not count a period of service on the Superior Court and justices and judges of the courts could not count prior service as Attorney General toward the 15 years' service required. Chapter 1240 allows total years service as Attorney General *and* justice or judge of either or both courts to be counted in qualifying for the retirement salary provided by GS 7-51. Although the purpose of the 1959 amendment, as stated in the caption [to make consistent the retirement provisions with respect to Justices of the Supreme Court, Superior Court Judges and the Attorney General"] has been effected, it would seem desirable to have such provisions as to Justices of the Supreme Court within Article 6A of GS Chapter 7 (Retirement of Justices), and such provisions as to the Attorney General within GS Chapter 114 (Department of Justice), Article 1 (Attorney General). Such provisions are readily overlooked as now located within Article 7 of GS Chapter 7 (Organization of Superior Courts).

Civil and Criminal Statistics

GS 114-11.1 was amended by Chapter 297 (SB 109) to clarify the scope of the Chief Justice's authority to require clerks of court to provide civil and criminal statistics. The rewritten act is discussed in detail under "Clerks, Superior Court," below.

Superior Courts

Retirement of Judges

See "*Retirement of Justices*," above.

Special Judges

While extending the authority (GS 7-54) of the Governor to appoint four special judges of the Superior Court (Ch. 465; HB 589), the General Assembly retained its firm control over this segment of the judiciary by providing that the term of office of any special judge appointed by the Governor shall end June 30, 1963.

Solicitorial Districts

The unusually heavy workloads of solicitorial districts nine (Cumberland, Hoke, Robeson, Bladen Counties) and fourteen (Gaston, Mecklenburg Counties) was recognized, and, it is hoped, remedied, by the creation of new solicitorial districts nine-A (Robeson and Bladen Counties) and fourteen-A (Mecklenburg County) (Ch. 1168; SB 247 and Ch. 1175; SB 322, respectively). Splitting two solicitorial districts into four will not solve all of the inequities of the present solicitorial districting scheme [see Hall, "Variances and Inequalities in the Solicitorial Districts," POPULAR GOVERNMENT (Special Issue), May, 1958], but it does indicate that the General Assembly is aware that inequalities exist.

Terms

Biennial legislative supervision over perennial judicial operations was exercised with the amendment of GS 7-70 to modify the system of Superior Court terms in 16 counties: Ashe (Ch. 804, HB 935; Buncombe (Ch. 758, HB 978); Camden (Ch. 729, HB 936); Catawba (Ch. 845, HB 1099); Chatham (Ch. 412, HB 607); Davidson (Ch. 756, HB 915); Franklin (Ch. 1078, HB 1127); Guilford (Ch. 856, HB 1152); Henderson (Ch. 342, HB 438); Johnston (Ch. 927, HB 1121); Pasquotank (Ch. 761, HB 1050); Perquimans (Ch. 760, HB 1012); Person (Ch. 965, HB 1176); Rowan (Ch. 925, HB 1112); Rutherford (Ch. 746, HB 758); Transylvania (Ch. 751, HB 843).

The required newspaper advertisement of special terms (GS 7-80) was reduced from two weeks to one week (Ch. 360; HB 693), although notice of such term may still be given by advertisement "at one public place in every township" of the county, without a time requirement, instead of by such newspaper publication.

Costs

New GS 6-21.1 (Ch. 688; HB 717) authorizes the presiding judge, in his discretion, to allow a reasonable attorney's fee in personal injury and property damage cases when the judgment is $500 or less. Such fee is to be taxed as costs of court.

Other Courts

Municipal Recorders' Courts

A "deputy or assistant clerk" of a municipal recorder's court may be elected by the governing body of the municipality under new GS 7-200.1 (Ch. 858; HB 1206). Such "deputy or assistant" clerk is required to give bond and is then "as fully authorized and empowered to perform all the duties and functions of the office of clerk of municipal recorder's court as the clerk himself." The compensation of such office is by salary only, fixed by the governing body, and the clerk is held responsible for the official acts of such deputy or assistant.

Clerks of Superior Court

[The following section includes 1959 legislation directly affecting the office and duties of clerks of Superior Court. These officials will be generally interested in the other sections of this article, as well as the articles entitled, "Legislation of Interest to County Officials," "Domestic

Relations," and "Criminal Procedure," elsewhere in this issue.]

Civil Procedure

Lis Pendens. The procedure by which a person may obtain the benefit of constructive notice of pending litigation was spelled out by Chapter 1163 (SB 105), amending GS 1-116 and -117, GS 2-26 and -42(6). "Actions to foreclose any mortgage or deed of trust or to enforce any lien on real property; and actions in which any order of attachment is issued and real property is attached" were added to the cases in which notice of lis pendens may be filed.

The new act also added to the items to be included in the notice the name of the court in which the action is pending. Under the original statute (GS 1-116), notice of pending litigation could be filed, among other times, "after the time of filing of his answer, if it is intended to affect real estate." As amended, this provision permits notice to be filed "at or any time after the filing of an answer or other pleading in which the pleading party alleges an affirmative cause of action" of the type specified in the first paragraph of the section. The new section also makes it clear that notice of pending litigation must be filed with the clerk of the Superior Court in each county in which any part of the land lies in order to be effective against bona fide purchasers or lien creditors with respect to the real property in such counties.

GS 1-117, as rewritten by the new act, is greatly simplified to require merely that such notices be cross-indexed by the clerk of the Superior Court in a record kept pursuant to GS 2-42(6), which statute was also rewritten to require the name of the court in which the action is pending to be recorded, as well as the day and hour of entry on the cross-index and a description of the place where the notice is filed. GS 2-26 was amended to include a fee of 25¢ for indexing the notice of lis pendens, a provision which formerly appeared in GS 1-117.

Verification of Pleadings. GS 1-145 formerly provided that if several parties were united in interest and pleading together, one of the parties "acquainted with the facts" could verify the joint pleadings "if the party is in the county where the attorney resides." Chapter 277 (SB 136) deleted the latter requirement.

Continuance Before Term. Under GS 1-175, a party had to file his affidavit thirty days before the trial term to have his application for a continuance considered. Chapter 458 (SB 135) reduces this time to "at least fifteen days." This relaxation of the requirements for continuance before term, the provisions of GS 1-176 (allowing continuances during a term), and many judges' "rules of discretionary thumb" [see Shannonhouse, "Continuance Rules and Practices," POPULAR GOVERNMENT (Special Issue), April, 1958], places almost unlimited control over the time of trial of an action in the hands of the attorneys concerned.

Execution. Before the 1953 amendment to GS 1-305, clerks of the Superior Court were required to "issue executions on all judgments rendered in their respective courts," under specified conditions. The 1953 amendment changed the word "rendered" to "docketed" and made other changes in the conditions for issuance. Chapter 1295 (HB 1166) changed "docketed" back to "rendered," so that clerks are now required to "issue executions on all unsatisfied judgments rendered in" their courts, with the same qualifications as existed before the amendment. The statute as it now stands does not provide for execution to be issued, therefore, on judgments docketed in one court when those judgments were rendered in another court. Perhaps the most common example of such judgments are those rendered by justices of the peace. Execution on such judgments may be issued by the clerk of the Superior Court under the authority of GS 7-166. Nevertheless, it would appear desirable to have the judgments on which execution may be issued more carefully spelled out to include those docketed in a Superior Court as well as those rendered in such court.

Notices. [See *Sheriffs*, below.]

Legal Advertising. Publication of legal notices in counties in which no newspaper qualified for legal advertising is published was provided for by Chapter 350 (HB 61), which amended GS 1-597, adding a new paragraph which permits such advertising to be carried in a newspaper published in an adjoining county if the clerk of the Superior Court finds that such newspaper otherwise qualifies for legal advertising and has a general circulation in the county where such legal advertising is required.

Assistant Clerks

Chapter 1297 (HB 1180) simplifies the population formula for determining the number of assistant clerks of the Superior Court which may be appointed, and increases the number of such assistants allowed, under GS 2-10, as follows: two assistants in counties with less than 50,000 population (eliminating the former limitation of one assistant in counties of less than 25,000 population); four assistants in counties of 50,000 to 80,000 population (formerly three assistants); and six assistants in counties of over 80,000 population (formerly four assistants). A number of the clerks of the Superior Court have pointed out that the statute does not prescribe an authority for determining population at a given time and does not take into consideration the several counties which in fact have populations much larger than census figures indicate because of military installations, such as Fort Bragg (Cumberland County), and yet such installations are the source of a great deal of work in the clerks' offices. It is probable that legislation will be proposed in the next session of the General Assembly which will further amend this law to recognize these considerations.

Books and Records

Two paragraphs of GS 2-42 were affected by 1959 legislation: paragraph six, pertaining to the record of lis pendens, was rewritten (see "Superior Court," *Civil Procedure, Lis Pendens*, above) and paragraph 35 [record of permits to purchase weapons] was repealed as to over half of the state's 100 counties (See *Explosives and Weapons*, below).

Money in Hand; Investments and Disbursements

The popular claims that we live in a condition of "spiraling inflation" are somewhat supported by the history of GS 2-53, which permits the clerks of the Superior Court to disburse certain amounts paid in to them for the benefit of minor or indigent children and for incompetent or insane persons without the appointment of a guardian. In 1924 the maximum amount which could be so disbursed was $100; in 1927 the amount was increased to $300 and in 1949 to $500. Chapter 794 (HB 846) doubled the maximum limit, so that now the clerks may disburse not more than $1,000, without appointing a guardian, for the benefit of "any minor, indigent or

needy child or children . . . or incompetent or insane person." The proceeds of an insurance policy which accrue to such a person and which may be disbursed by the clerk without the appointment of a guardian, would appear still to be limited to $500 by GS 2-52, which was not specifically affected by Chapter 794.

Chapter 795 (HB 848), amending GS 28-68), also doubled (from $500 to $1,000) the amount which the clerk of the Superior Court may receive from persons indebted to intestates where no administrator is appointed.

Evidence

Chapter 646 (SB 107) added new section GS 8-53.1, providing that confidential communications to clergymen of established churches or religious organizations are privileged under specified conditions.

The formerly rather complicated formula for determining the notice required to be given before taking a deposition (GS 8-72), based upon railway mileage, has been simplified by Chapter 468 (SB 137) to provide that 10 days' notice must be given when the party served resides within the state and 15 days notice must be given when the party served resides outside the State. In each case the time is computed by excluding the day on which the notice is served and by including the day of the taking.

Explosives and Weapons

Explosives, blank cartridge pistols, and weapons of various kinds are within the purview of sheriffs in some of the counties and the clerks in other counties, as a result of three new acts of the General Assembly. In Franklin, Granville, Vance and Warren counties, the sheriffs are authorized to issue permits to possess or carry explosives, under specified circumstances, but the clerk of the Superior Court is authorized to do so if the sheriff fails or refuses to do so, and the county commissioners in these counties may provide that the clerk or assistant clerk of the Superior Court issue such permits in the first instance. [Chapter 549 (HB 468), creating new section GS 14-283.1, as to the counties listed. The bill originated as a statewide act, but was finally limited as indicated before ratification.]

Blank cartridge pistols were brought within the terms of GS 14-402 (sale of certain weapons without permit forbidden), which required the clerks of Superior Court to issue such permits under specified circumstances, by Chapter 1068 (HB 929). Then an act [Ch. 1073 (HB 1048)] which became effective subsequent to the effective date of Chapter 1068 transferred to the sheriffs the duties formerly performed by the clerks in issuing such permits [Amending GS Ch. 14, Art. 53], but 41 counties were exempted from the new act. The same act transferred to the sheriffs in the counties which were not exempted the duties of the clerk of the Superior Court in disposing of pistols confiscated as a result of conviction of violating GS 14-269 (carrying concealed weapons). It would thus appear to be an appropriate time for some law enforcement agency to study the laws of other states pertaining to registration of dangerous weapons and to consider the advisability of a statewide act bringing together in one place the varying provisions in this area and placing the responsibility for enforcing these provisions in a more consistent manner.

Extradition

Waiver of extradition may now be made before a clerk of the Superior Court as well as before a judge of a court of record. [Ch. 271 (HB 287), amending GS 15-80.]

Administration of Estates

GS 28-149 (order of distribution) was repealed by Chapter 879 (SB 102) and the subject formerly covered by this statute is now included in rewritten Chapter 29, the "Intestate Succession Act," which will become effective July 1, 1960. [A detailed analysis and discussion of the new intestate succession act will be published in a forthcoming issue of POPULAR GOVERNMENT.

The limitation on the clerk's discretion in fixing commissions to be received by personal representatives was increased by Chapter 662 (HB 847), which amends GS 28-170 to provide that this discretionary power may be exercised when the gross value of the estate is $2,000 (formerly $1,000).

Claims for payment of reasonable hospital and medical expenses, not over $500, may now be paid out of the amount recovered in a wrongful death action, provided such claims are approved by the clerk of the Superior Court. The usual right of appeal from a clerk to the Superior Court is also provided for. [Ch. 1136 (HB 803), amending GS 28-173.]

New section GS 28-184.1 was added by Chapter 1160 (SB 76), pertaining to the exercise of powers of joint personal representatives by one or more of such representatives. As used in the new section, "personal representatives" includes executors, administrators, administrators c.t.a., administrators d.b.n., collectors, and testamentary trustees. The new section provides that if a will sets forth the powers of such personal representatives by all of them or by any one or more of them, the provisions of the will control; however, if the will does not prescribe the powers of such personal representatives, they may, by written agreement signed by all of them and filed with and approved by the clerk of the Superior Court of the county in which they qualified, provide that any one or more of certain specified powers be exercised by one or more of them as designated in such agreement. The act further provides that all acts of such personal representatives, other than those set forth in the new section, must be performed by both of the personal representatives if there are two and by a majority of such personal representatives if there are more than two. Ministerial acts may be performed by any one of them and none of them is relieved of liability on his bond by entering into such a written agreement.

Descents

The entire chapter on descent and distribution was rewritten as the "Intestate Succession Act" by Chapter 879 (SB 102). The new act makes such extensive changes in the law that it cannot be adequately covered here. A detailed analysis and discussion of the new act will be published in a forthcoming issue of POPULAR GOVERNMENT.

Widows; Dissent from Will

Chapter 880 (SB 104), rewrote GS Chapter 30, Article 1 (Dissent from Will) to make it consistent with the new Intestate Succession Act (GS Chapter 29, as rewritten). The rewritten article provides that a person may not dissent from a deceased spouse's will if he receives one-half or more of the property passing at death, including both property passing under the will and outside the will; a dissent may be filed with the clerk of Superior

Court within six months after probate of the will and may be in person or by an attorney authorized in writing. For a minor spouse, a dissent may be executed and filed by a guardian. Dissent must be filed as a record of the court. As to the effect of dissent, the rewritten article distinguishes between the first spouse of decedent and the second or subsequent spouses; and provides that the residue of the net estate shall be distributed as provided in the will, diminished pro rata unless the will provides otherwise. The new article is effective July 1, 1960; and is applicable only to estates of persons dying on or after that date.

Fiduciaries

Chapter 1246 (SB 448) adopts for North Carolina the uniform act for simplification of fiduciary security transfers (GS Chapter 32). The new act will be discussed in a forthcoming issue of POPULAR GOVERNMENT.

The General Assembly carried further its unprecedented pattern of major revision by rewriting GS Chapter 33, Article 12, Gifts of Securities to Minors. [Chapter 1166 (SB. 143).]

Under an amendment to GS 36-1 (Chapter 1015; HB 913), fiduciaries may invest surplus funds in savings accounts in federally insured banks in North Carolina or in certificates of deposit issued by such banks. This act also amended GS 34-13 to add these two investments to the list of those authorized for guardians under the veterans' guardianship act.

Probate and Registration

[See, also, "Registers of Deeds," elsewhere in this issue.]

The number of papers filed for probate and registration is due to increase as a result of Chapter 1026 (HB 1094), which adds new section GS 47-20.4, providing that a deed of trust or mortgage must be registered in each county where any of the affected land lies in order to be effective as to such land. The new section also adds mortgages of "a leasehold interest or other chattel real" to the instruments which must be so recorded.

An additional asknowledgement before the clerk of Superior Court is required by Chapter 1235 (SB 61), amending GS 47-30 (see new subparagraph d) to require that all land maps presented to the register of deeds for recording shall contain a certificate by the person making the survey (or the person making the map) stating the source of information and other data. It is the execution of this certificate which shall be acknowledged before the clerk of Superior Court. The form of the certificate and probate are set out in the statute.

After January 1, 1960, maps filed in special proceedings will be required to meet the recordation requirements of GS 47-30, in accordance with Chapter 1235 (SB 61), amending GS 47-32. The new act further provides that the clerk of Superior Court shall file a copy of the map in the special proceeding book and certify a copy to the register of deeds of the county in which the lands lie. The clerk is entitled to a fee for such service, not over $10.00, to be fixed by the Board of County Commissioners.

Court Statistics

A trend to limit court and crime statistics collected by the Department of Justice and to shift some of this duty to the Chief Justice of the Supreme Court began with the appointment of an administrative assistant to the Chief Justice in 1951, and continued with the 1955 amendment to GS 114-10 which separated civil and criminal statistics, placing the responsibility for collection of the former on the Chief Justice. Chapter 297 (SB 109) is another step in this direction. The new act rewrote GS 114-11.1, which grew out of GS 114-10 by the 1955 amendment, to clarify the authority of the Chief Justice as to the statistical data which the clerks of Superior Court are required to furnish on forms provided and at such times as the Chief Justice shall require. The rewritten section includes civil and criminal litigation and increases from $200 to $250 the amercement of clerks who fail or refuse to furnish such data. More significantly, the reference in the old statute to statistical data to be furnished by clerks of the Superior Court "and other court officials," was limited by the new act to clerks of the Superior Court alone. Thus, the Chief Justice no longer has authority, under this act, to require statistical reports from clerks of court other than the Superior Court. The separation between the statistical collection duties of the Attorney General, under GS 114-10, and the similar duties of the Chief Justice under GS 114-11.1, now being essentially complete, it would seem appropriate to shift the statutory directions as to the latter official over to GS Chapter 7, subchapter 1 (Supreme Court) and out of GS Chapter 114 (Department of Justice).

Miscellaneous Provisions

Approval of bonds. The clerk of Superior Court is required to approve railroad policeman's bonds, under Chapter 124 (SB 44), amending GS 60-84, which also provides that such bonds may be in cash, by corporate surety, or by two or more individual sureties owning equity in realty in North Carolina worth twice the amount of the bond. Only the two or more individual sureties need be approved by the clerk.

Lock boxes. Chapter 1192 (SB 465) amended GS 105-24 to require the presence of the clerk of the Superior Court when a "lock box" to which a decedent had access is opened by an executor, administrator, personal representative, or cotenant. The act also adds lessee to the list of persons who must be accompanied by the clerk of Superior Court when such a lock box is opened. As to such depositories to which a decedent merely had access, the clerk is to supervise the inventory only of assets in which the decedent had an interest.

Civil Procedure

[Other changes in civil procedure are noted under that heading following "Clerks, Superior Court," above.]

Appeals. An additional procedure for obtaining the dismissal of appeals to the Supreme Court was created by new GS 1-287.1 (Ch. 743); HB 599), which provides that when the statement of a case on appeal has not been served on the appellee or his counsel within the time allowed, "it shall be the duty of the presiding judge," on motion of appellee (who is required to give five days' notice) to enter an order dismissing the appeal. The new procedure does not apply in cases where sentence of death has been pronounced, nor in cases where a statement of case on appeal is not required.

Small Claims. Chapter 912 (HB 662) added a proviso to the jury trial provision (GS 1-593.5) of the small claims act (GS Ch. 1, Art. 43A) stating that, where there is no jury trial in such actions, the judge is not required to comply with GS 1-185 (requiring decision in writing, to be filed with the clerk during the court at which the

trial takes place), unless requested to do so by one of the parties before or after the verdict.

Real Property Actions. Chapter 469 (SB 160) adds to GS 1-42 (presumption of possession of real property follows legal title) a proviso "that a record chain of title to the premises for a period of thirty years next preceding the commencement of the action shall be *prima facie* evidence of possession thereof within the time required by law." GS 1-42 provides that the establishment of legal title creates a presumption of possession in the person holding the legal title and that the occupation of the premises by any other person is deemed to be in subordination to the legal title, unless such occupation is shown to be adverse. Thus the establishment of legal title satisfies the requirement of GS 1-39 that the plaintiff show possession of the premises within 20 years before the commencement of an action for the recovery or possession of real property. [*Conkey v. Lumber Co.*, 126 N.C. 499 (1900).] In *Moore v. Miller*, [179 N.C. 396 (1920)], the Court discussed the various ways of establishing legal title for this purpose and concluded that a mere chain of title was not sufficient. The 1959 amendment of GS 1-42 fills this gap in cases where the plaintiff can show a record chain of title for thirty years preceding commencement of the action.

Discontinuance. GS 1-96, which was rewritten in 1953 and amended in 1955, was again rewritten by Chapter 1161, section 6 to provide that an action discontinued for failure to obtain an extension of time in which to serve the summons (or failure to obtain an alias or pluries summons) within 90 days [GS 1-95] may be revived by obtaining an alias or pluries summons thereafter (in addition to the existing method of having an extension endorsed by the clerk of the Superior Court). The provision that such action is then deemed to have begun on the date of issue of such alias or pluries summons, or on the date of endorsement by the clerk, as to the defendants thereafter served, is restated more clearly.

Motion for Nonsuit. Chapter 77 (SB 82) added new section GS 1-183.1, which makes clear that the granting of defendant's motion for nonsuit as to plaintiff's cause of action does not amount to the taking of a voluntary nonsuit on any counterclaim pleaded by defendant pursuant to GS 1-137.

Sheriffs

Service of Process

Chapter 522 (HB 443) amended GS 1-589 to permit sheriffs to serve subpoenas for witnesses and summonses for jurors by telegram or certified mail, in addition to telephone or registered mail. When served by certified mail, the service and return is handled in the same way as services by registered mail (copy mailed and written receipt requested of the addressee; receipt then filed with the return). When served by telegram, the sheriff must state on his return that such subpoena or summons was so served and must also attach to his return a copy of the telegram, setting forth the subpoena or summons in full, and must also attach a service message from the telegraph company showing personal delivery of the telegram to the addressee. Such a return is prima facie evidence of service and the person named is bound to appear as if personally served.

The same chapter also amended GS 8-59 to provide that a subpoena may also be served by telephone, telegram, or certified or registered mail as provided in GS 1-589.

Criminal Law; Explosives and Weapons

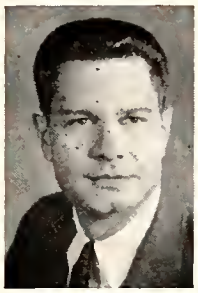
[See article entitled "Criminal Law," elsewhere in this issue and "Explosives and Weapons," under the heading "Clerks of Superior Court," elsewhere in this article.]

Automobile Equipment

Vehicles used or operated for law enforcement purposes by sheriffs and their salaried deputies, whether owned by the county or not, were added to GS 20-125(b), thereby allowing such vehicles to be equipped with "special lights, bells, sirens, horns or exhaust whistles" of a type approved by the Commissioner of Motor Vehicles [Chapter 1170 (SB 297)]. The new act also provides that such special equipment shall not be operated or activated by any person except a law enforcement officer while actively engaged in performing law enforcement duties. It also amends GS 20-130.1, which prohibits any person operating a vehicle displaying red lights visible from the front, to provide that "the provisions of this section shall not apply to motor vehicles used in law enforcement by the sheriff or any salaried deputy sheriff or salaried rural policeman."

Miscellaneous provisions

There was the usual flood of local legislation pertaining to salaries and fees, deputies, jail operations, law enforcement officers' relief and retirement funds (local), and other matters. Such local acts affected the sheriffs' offices in 69 counties, a list of which, including chapter and bill numbers, is available on request to the Institute of Government.



REGISTERS OF DEEDS

By Robert Montgomery, Jr.

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers are the bill numbers of bills introduced in the House and in the Senate.

Traditionally, legislation affecting registers of deeds is usually placed in chapters of the North Carolina General Statutes other than Chapter 161, which is the Chapter devoted to, and entitled, "Registers of Deeds." The 1959 General Assembly, in every case except one, followed this tradition.

The North Carolina Association of Registers of Deeds recommended four major items of affirmative legislation to the General Assembly, which acted favorably on each item. The only matter that marred an otherwise perfect legislative program for the Association was a portion of one bill which established a recording tax in connection with the financing of a "North Carolina Survey Base." Even here, however, the passage of the particular provision represented an instance of the legislative grasp exceeding its reach, and action by the Attorney General of North Carolina apparently has eliminated this fly in the Association's legislative ointment.

Maps and Plats

Of major significance to registers of deeds this year were items of legislation submitted pursuant to the recommendations of the North Carolina Commission for the Study of a Uniform Map Law. Of six Senate bills ratified in this connection (SB 61 through SB 66), three directly affect the register of deeds in his official capacity.

Mapping Requirements and Recordation.

The preparation and recordation of maps is substantially affected by Chapter 1235 (SB 61) which rewrites and expands GS 47-30 to provide for comparatively uniform sizes of maps presented in various counties for recordation. Applicable only to land maps presented for recordation in North Carolina after January 1, 1960, the rewritten version of GS 47-30 specifies that such maps shall have an outside marginal size of not more than 21 inches by 30 inches nor less than 8½ inches by 11 inches, including 1½ inches for binding on the left margin and a ½ inch border on each of the other sides. Where the size of land areas mapped or suitable scale to assure legibility require, the law provides that maps may be placed on two or more sheets, with appropriate match lines.

All maps presented, to which the law is applicable, are required to be reproducible in cloth, linen, film, or other permanent material. The new law requires registers to maintain in map files the reproducible map submitted and, in addition, to maintain in a map book a direct or photographic copy of the map, with at least the map book entry properly indexed.

A saving provision in the new statute is one which or other laws setting forth map size regulations to continue, despite the new law, their use of such sizes as are currently in use until June 30, 1963, the critical date on or before which the affected counties must modify the map sizes to conform to those set out in the new statute. Each map submitted for recordation must carry a certificate by the person making the survey or map, indicating the origin of information shown on the map, including references to deeds and to any other recorded permits all counties currently operating under statutes data designated. An additional requirement is that certain technical surveying and mapping data be shown and, where the map is the result of a survey, it must be accurately tied to a monument of some U. S. or state agency survey system.

Plats and maps prepared and submitted for recordation under the new law must be proven and probated as provided for deeds and other conveyances before recordation can be effected.

Chapter 1235 (SB 61) also modifies GS 47-32 to provide that, after January 1, 1960, maps filed in special proceedings must meet the specifications set forth in the new law and that the clerk of the Superior Court of the county in which the special proceeding is pending shall certify a copy of the map to the register of deeds of the county in which the affected lands lie, for recordation in the county map book provided for by the law.

The new law, unfortunately, is to some extent self destructive in the sense that a number of counties are excepted from its application. They are: Alexander, Alleghany, Beaufort, Bladen, Caswell, Cherokee, Franklin, Greene, Harnett, Hoke, Hyde, Jones, Lee, Lenoir, Madison, Martin, Northampton, Pamlico, Pasquotank, Pender, Person, Pitt, Robeson, Swain, Tyrrell, Washington and Watauga.

Survey Base Tax.

As originally introduced, Chapter 1315 (SB 66) would have added GS 102-13 to provide for the collection of a recording tax of 50¢ from the seller on each transfer of realty, except cemetery lots, rights of way, easements and leases, by registers of deeds, for the purpose of partially financing the completion of the North Carolina Coordinate System provided for in Chapter 102 of the North Carolina General Statutes. The Senate, on June 18, 1959, deleted by amendment the section of SB 66 (Section 3) relating to the recording tax. However, much to the amazement of registers of deeds and the North Carolina Senate, Chapter 1315, as enrolled and ratified, contained the persistent recording tax section.

Insofar as the enrollment and ratification of Chapter 1315 were concerned, the recording tax provision seemed to possess all the technical attributes of binding law. However, Senate and House records indicated that the act had passed its second and third readings on the same

date (June 18, 1959) in the Senate and its second and third readings on the same date (June 20, 1959) in the House of Representatives. In this connection, the Attorney General of North Carolina, in a letter dated July 2, 1959, addressed to Lieutenant Governor Barnhardt, rendered an opinion that Section 3, establishing the recording tax in Chapter 1315, was not enacted into law as required by Article 2, Section 14, of the Constitution of North Carolina, and was therefore void. The section of the Constitution in question reads, in pertinent part, as follows:

> "No law shall be passed . . . to impose any tax upon the people of the State . . . unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days . . ."

In his letter to Lieutenant Governor Barnhardt, the Attorney General ended by stating his opinion that the registers of deeds in the counties of North Carolina should not collect the recording tax provided for in Section 3 of Chapter 1315.

Repeal of Surveyors' Instruments Testing Statutes.

The North Carolina Commission for the Study of a Uniform Map Law formally concluded, in the course of its deliberations, that improvements in the quality of surveying instruments had rendered obsolete certain tests required by Article 6, Chapter 81 of the General Statutes (GS 81-59 through GS 81-66). The Article provides that every surveyor operating in any North Carolina county with magnetic instruments, shall, between January 1 and December 21 of each year, test his instruments by the official meridian monuments in the county in which he resides or the nearest county in which such monuments have been erected, noting the error of the instruments as compared with monument standards and, before making surveys in a county other than the one in which the magnetic instrument has been tested, to procure in writing from the register of deeds of the county in which monuments have been established nearest to the point where the survey is to be made a statement giving the declination of the magnetic needle for the year in which it was last determined, and the rate and direction of the variation of the magnetic needle since that time. The Article further provides that the records of such tests and corrections, if any, shall be returned by the surveyor in writing and under oath to the register of deeds for the county in which the meridian is situated within ten days from the taking of the observation; and provides that the return shall be filed and registered by the register of deeds in a book to be furnished by the board of commissioners of the county and entitled "The Meridian Record."

The instrument and meridian testing provisions of Article 6, Chapter 81 were repealed completely, except as to Tyrrell and Washington Counties, by Chapter 1158 (SB 62).

Appointment of Assistant Registers of Deeds

The only legislative modification in the register of deeds chapter (Chapter 161) involves the number of assistant registers allowed in a county. Although the General Statutes provide no limitation upon the number of deputy registers of deeds which a particular register can appoint, GS 161-6 as previously written specified that ". . . each register of deeds is authorized and empowered, in his discretion, to designate *an* assistant register of deeds. . . ." Chapter 279 (SB 173) amends GS 161.6 to provide that each register of deeds can, in his discretion, legally appoint one *or more* assistant registers of deeds.

Registers Again Become Entitled to Copies of Session Laws

Until the year 1955, registers of deeds had, under the provisions of GS 147-45, received copies of the Session Laws following the adjournment of each session of the General Assembly.

However, in 1955, the registers, along with the sheriffs and chairmen of boards of county commissioners, were dropped from the statutory list of officials entitled to receive copies of the Session Laws from the Secretary of State. Chapter 215 (SB 172) restores registers to the list.

Changes in Marriage License Provisions

Proper County For Issuance of Marriage Licenses

In 1957, the General Assembly amended GS 51-6 to permit the register of deeds of the county of residence of either of two persons seeking to marry each other to issue a license, regardless of the county proposed as the place of solemnization of the marriage. Formerly, the section had provided that only the register of deeds of the county in which the proposed marriage was to be solemnized could issue a license for the marriage.

Chapter 338 (SB 174) restores the pre-1957 version of GS 51-6 to require that the license be issued only by the register of deeds of the county where the marriage ceremony is to take place.

Marriage Certificate Return Corrections.

Under GS 51-18.1, the register of deeds of any county is authorized to correct a record of application for a marriage license, or an application for license, when it appears that the name of either or both parties to the marriage is incorrectly stated. The documentary authority required for such correction is an affidavit signed by one or both applicants for the marriage license, accompanied by affidavits of at least two other persons who know the true name or names of the person or persons seeking the correction.

Chapter 344 (HB 493) amends GS 51-18.1 to extend the correctional authority to the return or certificate of the officer officiating at the celebration of the marriage. The procedure, and the required documentary authority, is the same as that previously provided in the section.

"Tubercular" Marriages.

Of interest to registers of deeds in connection with the issuance of marriage licenses is Chapter 351 (HB 110) which amends GS 51-10 to authorize the issuance of marriage licenses to applicants with active tuberculosis if the party or parties with active tuberculosis show evidence of being under treatment. However, both parties must be known to the local health department; both parties must agree to take adequate treatment until cured or protected, and; (1) the female applicant must be pregnant or the parties must have a child and the marriage must be necessary to protect the legitimacy of the child, or (2) the marriage must be necessary to validate a marriage entered into by the parties prior to the illness which was invalid by reason of a technicality, but which technicality is not a bar to marriage in North Carolina.

Vital Statistics Notarial Authority

The provisions of GS 130-57 formerly limited the notarial authority of registers of deeds in connection with vital statistics documents to papers relating to delayed birth registrations only. Chapter 986 (SB 223) amends GS 130-57 to authorize registers of deeds to take acknowledgements, administer oaths, and to perform all other notarial acts necessary for the registration or issuance of certificates relating to births, deaths, or marriages, and, in addition, validates all such notarial acts occurring prior to the ratification of the chapter.

Other General Legislation of Interest

Registers of deeds will find interesting other items of general legislation, most of which are discussed in other articles of this issue. Briefly, some items of particular interest are: Chapter 1237 (SB 65), which provides for the appointment of county surveyors (with Stanly and Carteret Counties excepted). Chapter 1162 (SB 101), which sets up a program of security microfilming of county records by the North Carolina Department of Archives and History; Chapter 289 (HB 252), which amends GS 97-2(2) to authorize workmen's compensation coverage to both elected and appointed officials of political subdivisions of North Carolina upon a proper resolution of the governing body of the subdivision; Chapter 251 (HB 271), which amends GS 153-9 to authorize boards of county commissioners to fix office hours, work days and holidays in the various offices of the county; and Chapter 512 (HB 384), which creates new GS 39-13.4 to provide that any conveyance of real property or any interest therein by a husband or wife shall be valid to pass such title as the grantor has, if the husband and wife have previously executed and recorded in the county where the land lies a valid deed of separation which authorizes the husband or wife to convey real property without the consent and joinder of the spouse (unless the deed of separation is cancelled of record by both parties and witnessed by the register of deeds or deputy or assistant register of deeds, or unless a written instrument of cancellation executed and acknowledged by both husband and wife has been received in the office of the register of deeds).

Beneficiary Cancellation Bill Fails

The continuing question of whether or not the beneficiary of a deed of trust can effect a valid record cancellation of the instrument under GS 45-37 came up for its biennial consideration by the General Assembly in 1959. Attorneys and officials are generally in disagreement on the answer to the question, with those who claim "no" apparently having the edge.

HB 314 would have eliminated the seeming ambiguity in GS 45-37 and would have provided authority to beneficiaries to effect a "personal" (marginal cancellation without the original instruments as distinguished from an "exhibition" cancellation, where the instruments, marked paid and satisfied, are actually presented to the register of deeds) cancellation of recorded deeds of trust. The bill was not reported out of committee; therefore, the problem situation under GS 45-37 remains the same.

Probate and Registration

Although new laws affecting the probating of instruments are perhaps of more interest to clerks of court than to registers of deeds, the laws, both general and local, requiring the draftsman of an instrument to be designated on it are in some cases of equal significance to clerks and to registers.

A general law which would have prohibited the probate by a clerk of Superior Court *or registration by a register of deeds* of any instrument on which the draftsman was not designated (with some enumerated exceptions) and would have required the recordation of the name and address or other designation of the draftsman along with the instrument was proposed as HB 728. This law failed to reach the floor of the House for consideration.

Local legislation and pseudo-local legislation, however, established in several counties the requirement that the draftsman of an instrument be designated in order for the instrument to be entitled to probate.

Three new counties were brought within the purview of GS 47-17.1 which prohibits the clerk of Superior Court from accepting documents for probate (with certain exceptions) unless the cover page clearly designates the draftsman of the document. They are: New Hanover by Chapter 548 (SB 300); Orange by Chapter 312 (HB 487); and Onslow by Chapter 783 (HB 681). In these counties, as in the ones previously designated by the section, the clerk of court is the specified enforcing officer of the requirement.

Chapter 1149 (HB 1300), applicable only to Cabarrus County, adds a new section, GS 47-13.2, which provides, somewhat differently from GS 47-17.1, that no instrument shall be accepted for probate *or registration* by the clerk of Superior Court *or the register of deeds* without a designation of the draftsman's name. It also requires that the draftsman's name and address be recorded with the instrument, but sets out certain exceptions, both as to types of documents and as to cases where the draftsman cannot be determined or is deceased.

In the case of Duplin County and McDowell County, Chapters 266 (SB 170) and 589 (HB 763) respectively bring them, *via* the provisions of Chapter 1160 of the 1953 Session Laws, under GS 47-17.1.

Seven counties—Edgecombe, Nash, Richmond, Henderson, Robeson, Stanly, and Montgomery—are affected by Chapter 1279 (HB 945), which establishes substantially the same requirements as GS 47-17.1, apparently placing the enforcement responsibility on the clerk of Superior Court and making no requirement that the name and address of the draftsman be recorded with the instrument.

Perhaps the most stringent legislation relating to draftsman designation is Chapter 932 (HB 1203), applicable only to Franklin County, which provides that neither the clerk of Superior Court *nor the register of deeds* shall accept for recordation any deed, deed of trust or mortgage executed after July 1, 1959, unless the draftsman is designated; and that the name of the draftsman must be recorded. Excepted are instruments executed and acknowledged out of the county and instruments where the person presenting them cannot obtain the signature of the draftsman; however, in the latter case, the clerk must enter an order based on a verified petition.

Salaries and Fees

Salaries

Eighteen registers of deeds received fixed salary increases by local acts of the 1959 General Assembly. The counties involved are: Alamance—Chapter 1299 (HB 1189), which also provides that travel and expense al-

lowances are still to be fixed by the board of county commissioners; Alexander—Chapter 219 (HB 103); Beaufort—Chapter 473 (SB 292), which also deletes the former authority of the board of county commissioners to increase or decrease the salary; Davie—Chapter 892 (HB 987), which also fixes the salary of the deputy; Forsyth—Chapter 738 (SB 385), which also establishes a lower salary for any successor in office; Franklin—Chapter 1081 (HB 1162), which also provides that the board of county commissioners may decrease the salary of the register of deeds' assistants by not more than 10%; Graham—Chapter 593 (HB 770); Harnett—Chapter 998 (SB 482); Jackson—Chapter 143 (HB 134), Macon—Chapter 380 (HB 470), which also relieves the register of deeds of former duties as county accountant and tax supervisor; Madison—Chapter 384 (HB 500), which also applies to the deputy register of deeds; Mecklenburg—Chapter 961 (HB 1163); New Hanover—Chapter 471 (SB 269); Person—Chapter 581 (HB 638); Pitt—Chapter 884 (HB 777); Richmond—Chapter 389 (HB 362); Stokes—Chapter 689 (HB 782), which also applies to the deputy register of deeds; and Vance—Chapter 992 (SB 422).

In seven counties, the boards of county commissioners were provided by local acts with fiscal ranges within which to fix the compensation of registers of deeds: Burke—Chapter 1095 (HB 1248); Columbus—Chapter 467 (SB 131), which provides that the board "shall increase" the register of deeds' salary not more than 10%; Iredell—Chapter 651 (SB 355); Lenoir—Chapter 736 (SB 380); McDowell—Chapter 893 (HB 991); Moore—Chapter 997 (SB 447); and Pasquotank—Chapter 1088 (HB 1232).

Chapter 1228 (HB 1330), applicable to Guilford County, on the other hand eliminates the former limitations within which the board of county commissioners could fix the compensation of the register of deeds.

Four new counties were brought under the provisions of Article 6A of Chapter 153 (GS 153-48.1 through GS 153-48.5) which allows the board of county commissioners to fix the number and salary of deputies, assistants and other employees in the office of the register of deeds and other county officials and also the salary of the register of deeds: Carteret—Chapter 1267 (HB 540); Catawba—Chapter 497 (HB 653); Currituck—Chapter 231 (HB 309); and Wayne—Chapter 206 (SB 146).

Other counties affected by local acts giving the boards of county commissioners authority to fix the compensation of registers of deeds, but not coming specifically under Chapter 153, Article 6A, are: Chowan—Chapter 39 (HB 48); Craven—Chapter 842 (HB 1061), which also applies to deputies and assistants; Cumberland—Chapter 955 (HB 1148); Henderson—Chapter 890 (HB 953), which authorizes the board to increase the salary of the register, assistant and deputy as much as 15% during the period of July 1, 1959-June 30, 1961; Northampton—Chapter 976 (HB 1214), which provides a limitation of 10% on any salary increase; Randolph—Chapter 885 (HB 792), which also provides a 10% limitation; and Rutherford—Chapter 70 (HB 141), which specifies a 5% limitation.

Chapter 389 (HB 362), applicable to Richmond County, authorizes the board of county commissioners to set the number and compensation of deputies and employees of the register of deeds but places the power to name the deputies and employees in the register of deeds.

One county, Alamance, was added to the list of counties in the second paragraph of GS 153-48.5 by Chapter 1288 (HB 1086) to revoke the authority of the board of county commissioners to fix the salaries of elective officials.

Chapter 376 (HB 435), applicable to Montgomery County, amends GS 153-48.3 to eliminate the 20% limitation on increases and decreases in salaries, travel allowances and compensation of officers by the board of county commissioners.

Fees

Four counties were brought under the provisions of GS 153-9(12a) by the 1959 General Assembly, thus permitting the board of county commissioners to fix the fees to be charged by the registers of deeds of the counties. The statute prohibits the board from increasing or decreasing fees more than 20% during any one fiscal year of the county. The counties are: Carteret—Chapter 1267 (HB 540); Chatham—Chapter 664 (HB 869); Lee—Chapter 700 (HB 896); and Wayne—Chapter 206 (SB 146).

Chapter 376 (HB 435) removes the 20% limitation in connection with increasing or decreasing fees under GS 153-9(12a) as to Montgomery County.

The boards of county commissioners in seven more counties were authorized by local acts to establish the fees to be charged by registers of deeds: Anson—Chapter 336 (HB 516); Chowan—Chapter 39 (HB 48); Davidson—Chapter 374 (HB 426); Harnett—Chapter 520 (SB 314), which permits the board to fix fees only after receiving the advice and recommendations of the Harnett County Judicial Council; Moore—Chapter 997 (SB 447), which also establishes specific fees for certified copies of birth, marriage and death records at $1.00; Scotland—Chapter 295 (HB 326); and Washington—Chapter 440 (HB 582), which also establishes a 20% limitation on increases and decreases during any fiscal year of the county.

Other local acts established specific fees to be charged by the register of deeds of the applicable county. Chapter 654 (SB 358) created a specific fee schedule in lieu of GS 161-10 and GS 161-10.1 in Iredell County. Chapter 577 (HB 634) set a fee of $1.50 for the first page and $1.00 for each additional page or fractional page of "easement rights-of-way" in Person County. Chapter 1095 (HB 1248) fixed the following specific fees in Burke County: deed—$1.25, deed of trust and mortgage—$1.50.

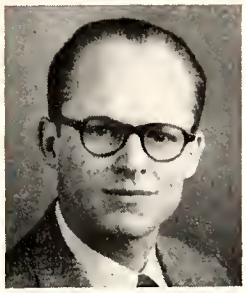
Miscellaneous Local Acts

Miscellaneous local acts affecting the registers of deeds of three counties were enacted by the General Assembly.

Chapter 1114 (HB 1293) validates all acts of the deputy register of deeds performed in the register's name under GS 161-6 or other law since November 4, 1958 in Watauga County.

Two acts applicable to Washington County are Chapter 450 (HB 657) and Chapter 540 (HB 656). The first requires persons and firms to furnish blanks of instruments recorded in the register of deeds office at his request. The second authorizes the use of a record book entitled "Miscellaneous" for conditional sale contracts, mortgages, crop liens, deeds of trust and other instruments and validates the previous use of such a record book.

Finally, Chapter 229 (HB 302) provides that in Wake County the county tax collector shall collect beer and wine taxes, a duty formerly assigned to the register of deeds in that county.



PENAL - CORRECTIONAL ADMINISTRATION

By V. L. Bounds

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers refer to the bill numbers of bills introduced in the House and in the Senate.

Two years of extraordinary progress as a separate department of State government provided a firm foundation on which the governing authorities of the North Carolina Prison Department could stand with confidence in presenting their legislative program to the 1959 General Assembly. Seven bills pertaining to the State prison system were supported by the Prison Department and all of them were enacted. Three bills affecting prisons were opposed by the Prison Department; two of them died in committee and the third was killed by an unfavorable committee report.

Disposition of Prison Products

Experience in this State and elsewhere has demonstrated that a well developed prison industries program can provide varied and constructive employment for many prisoners and produce quality products for tax-supported agencies at less than the cost of corresponding items obtained from commercial concerns. But experience has also shown that prison industries can be forced to shut down by lack of sales for their products where they are restricted to the state-use market and also compelled to bid with commercial concerns for the business within this market. Private enterprises, with other markets open to them, can often afford to bid under costs for a period sufficiently long to close a competing prison plant, and then raise their bids to recoup their losses.

Prison officials agree that the market for prison industry products should be limited to tax-supported agencies. They also agree that prison industries should be as diversified as practicable to reduce to a minimum competition with any single segment of the free economy, as well as to provide the variety in possible job assignments necessary to meet the varying needs of a very heterogeneous prison population and to avoid training more prisoners in a particular kind of work than can be absorbed easily in the free labor market as the prisoners are released. But prison officials contend that it is in the best interests of the State as a whole to compel State-supported agencies to purchase fairly priced prison products that meet standard specifications and the reasonable requirements of such agencies.

Prison industries cannot be operated without competing with some private enterprises. Those affected almost invariably protest. The question is whether the advantage inherent in diversified prison industries operating under the state-use system should be considered to constitute public interests that outweigh the interests of private industries adversely affected. The 1959 General Assembly answered this question in the affirmative when it enacted one of the seven bills supported by the Prison Department.

Chapter 170 (HB 205) rewrites G.S. 14-346 and adds a new paragraph to G.S. 148-70. The rewriting of G.S. 14-346 was deemed necessary by the Prison Department to clarify the exceptions to provisions making it a misdemeanor to sell in this state products of convict labor. The law, as rewritten, permits open market sales of items produced by probationers, parolees, or work-release prisoners, and products of agricultural, forestry, quarrying, or mining operations employing inmates of a State penal or correctional institution. Such institutions may also manufacture items to be sold to agencies supported in whole or in part by the State or to its political subdivisions. Inmates of a State penal or correctional institution may sell handicraft items they make during leisure hours and with their own materials.

No one objected to clarifying G.S. 14-346 so as to remove all doubt about the legality of practices developed since the law was originally enacted in 1933. The opposition to HB 205 focused on the section adding a new paragraph to G.S. 148-70. This addition requires departments, institutions, and agencies supported in whole or in part by the State to give preference to Prison Department products and forbids them to buy from any other source without permission of the Board of Award when a sufficient supply of prison products are offered for sale that meet standard specifications and the reasonable requirements of the user as determined by the Board of Award. Prices of prison products must be kept substantially in accord with those paid by governmental agencies for similar items as determined by the Board of Award or with competitive bids which the Board may require, taking into consideration the best interests of the State as a whole, but prison products are exempt from the provisions of Article 3 of Chapter 143 of the General Statutes respecting contracting for State requirements under competitive bids.

Part of the opposition to this controversial section of HB 205 was roused by the erroneous belief that it would compel cities and counties to purchase prison products; political subdivisions of the State may purchase prison products offered for sale to them but they are under no compulsion to do so. Other opponents seemed to fear an excessive expansion of prison industries to the mortal injury of many private enterprises selling in the state-use market.

While enactment of this legislation permits the Prison Department to expand and diversify its prison industries, the door is not thrown wide open. Many articles used by governmental agencies cannot be produced in prisons. In addition to this practical limitation, other checks are available in law and practice to prevent unwise develop-

ment of prison industries. Proposals must be cleared by the State Prison Commission, whose members are appointed by the Governor and whose membership is always likely to include successful businessmen. Capital required to develop prison industries comes from the Prison Enterprises Fund under the provisions of G.S. 148-2, and effective control of this Fund is vested in the Governor. Furthermore, since the Board of Award is empowered to determine prices for prison products and to permit State agencies to purchase from other sources, the Prison Department will of necessity consult the Board before expanding an existing enterprise or installing a new one. The membership of this Board is controlled by and is generally identical with the Advisory Budget Commission. A final check of great importance is the fact that the General Assembly meets every two years and can therefore curtail any expansion of prison industries considered excessive by a majority of the legislators. Awareness of this fact should assure great caution on the part of all concerned with the selection of new prison enterprises.

But the opponents of prison industry expansion did not wait two years to attempt legislative curtailment. HB 205 was ratified March 27, 1959; six weeks later, HB 794 was introduced to rewrite the second section of the new law so as to place private enterprises operating in North Carolina on the same preference plane as prison enterprises in the state-use market. This bill was opposed by the Prison Department and was killed by an unfavorable report from the Penal Institutions Committee to the House. However, although this first attempt was abortive, it probably presages a biennial battle between the advocates and the opponents of prison industries.

Work Release Privileges for Prisoners

Governor Hodges initiated a study of the feasibility of work furloughs for prisoners which led to introduction in the 1957 General Assembly of a bill providing that an inmate of the State prison system recommended by the sentencing court could be granted work release privileges enabling him to maintain regular employment in the free community, pay the cost of his prison keep, and support his dependents. However, a committee substitute for this bill was enacted into law, and codified as G.S. 148-33.1, which restricted eligibility for work release privileges to misdemeanants with less than six months previous prison service. This law proved to be too restrictive. In two years only 16 prisoners were recommended by the sentencing courts for work release privileges under its provisions, and half of those recommended were denied the privileges because they lacked suitable employment.

During the past biennium several superior court judges expressed their belief that the work release law should be broadened to permit recommendation of felons and recidivists in cases considered deserving by the sentencing court. Prison and parole officials became convinced there were many inmates of the State prison system not yet ready for regular parole who were ready for the more limited freedom of work release privileges, and that granting this measure of freedom could provide a stepping-stone some prisoners need to cross the treacherous currents flowing between conventional prisons and conventional parole.

Therefore, legislation was proposed to and enacted by the 1959 General Assembly [Chapter 126 (HB 107)] which amends G.S. 148-33.1 so as to permit a judge imposing a sentence to imprisonment in the State prison system for a term not exceeding five years to recommend that the Prison Department grant the prisoner the option of serving the sentence under the work-release plan. There are no restrictions as to the crime or previous imprisonment of the offender. Furthermore, the new law empowers the Board of Paroles to authorize the Prison Department to grant work release privileges to prisoners serving terms not exceeding five years, but the Board must consider recommendations of the presiding judge of the court which imposed sentence before authorizing a grant of such privileges to a prisoner who has not yet served a fourth of his fixed or minimum sentence. This obviates the possibility of the Board of Paroles' acting in ignorance of the sentencing court's wishes earlier than the Board could grant a regular parole.

Already more than twice as many prisoners have been granted work release privileges since the law was broadened than during the biennium when it was restricted to misdemeanants with less than six months previous imprisonment. The courts are beginning to make more use of this type of disposition for offenders who cannot be trusted with the degree of freedom they would have under probation supervision but who do not need conventional imprisonment. The Board of Paroles is making use of work release to prepare and test prisoners for regular parole. The taxpayers are being relieved of some of the costs of supporting prisoners and their families, and the prisoners are being given an opportunity to break bad behavior patterns and to prove their readiness for a return to free society.

Custodial Agents of the Director of Prisons

For many years it has been the practice to use highway foremen and truck drivers to supplement prison guards in maintaining custody of prisoners employed in road work. But after the Prison Department was separated from the control of the State Highway Commission, the legality of this practice was questioned. All doubt has now been resolved by legislation [Chapter 109 (SB 32)] amending G.S. 148-4 so as to authorize designating employees of governmental units hiring prison labor as agents of the Director of Prisons to maintain control and custody of prisoners placed under the supervision of such employees, the manner of designation to be determined by prison regulations.

Classification of Felons Serving Misdemeanor Sentences

Under another prison practice of long standing, prisoners convicted of a felony and sentenced to a term of imprisonment to be served after a term imposed on commision of a misdemeanor were classified as felons and placed in a felon unit even though they had not completed serving the misdemeanor sentence. It was reasoned that any additional security required to protect the public against the actually or theoretically greater threat from the escape of a person convicted of a felony as contrasted with the supposedly lesser threat from the escape of a mere misdemeanant would be called for during the period when the individual was completing a misdemeanor sentence to be followed by a consecutive felony sentence. This practice received legal sanction by legislation [Chapter 50 (SB 27)] adding to G.S. 148-12 a requirement for classifying as a convicted felon any prisoner confined in the State prison system under a felony sentence to begin after a misdemeanor sentence.

Prisoner Education

Chapter 431 (HB 448) authorizes the Prison Department to take advantage of aid available from any source to provide academic and vocational education for prisoners. The State Department of Public Instruction is authorized to co-operate with the Prison Department in planning prisoner education. Priority is to be given to meeting educational needs, established by tests, of inmates under 21 when received with sentences under which they will be held not less than six months nor more than five years before being eligible for a regular parole. This legislation should give added impetus to the programs for prisoner education that have been developing rapidly during recent years.

Treatment and Punishment of Prisoners Inflicting Self-injuries

Recently several prison inmates of Ivey Bluff Prison in Caswell County have injured themselves and then refused to consent to necessary treatment. As a consequence, Chapter 1196 (SB 496) was enacted authorizing the local health director to give or withhold consent to an operation or treatment of an injured prisoner when a board comprised of the Director of Prisons, the prison's chief medical officer, and a State or county welfare department representative finds that: (1) the injury was wilfully and intentionally self-inflicted; (2) the operation or treatment is necessary for the prisoner's health; (3) the prisoner is competent but refuses consent. Companion legislation [Chapter 1197 (SB 497)] makes it a felony punishable by a maximum of ten years imprisonment for a prisoner to inflict a self-injury incapacitating him to perform his prison assignment, or to aid or abet another inmate in such an offense.

Processing Prison Food

A bill which died in committee (HB 218) would have forbidden the governing authorities of the State prison system from requiring central processing of meat and vegetables raised at field units. If this bill had been enacted, decisions affecting food control of great moment in their cumulative effect would have been made not at the top level of prison administration but at the level of unit superintendents.

Use of Prison Labor

The other bill affecting prison administration that was never reported back to the House by the Penal Institutions Committee (HB 1078) would have prohibited the State Highway Commission from making use of prison labor in the operation of highway maintenance equipment on the public roads. This bill was opposed by the Highway Commission and the Prison Department on the grounds that it would immediately idle 150 prisoners, require an expenditure of $300,000 a year to pay for free labor to perform the work the prisoners had been doing, and establish a precedent for legislation cutting down opportunities for constructive employment of prisoners.

MOTOR VEHICLES AND HIGHWAY SAFETY

I. Motor Vehicle Laws in General

By Robert Montgomery, Jr.

Assistant Director of the Institute of Government

Chapter numbers given refer to the 1959 Session Laws of North Carolina. HB and SB numbers refer to bill numbers of bills introduced in the House and in the Senate.

A general impression in North Carolina is that the 1959 session of the General Assembly was a hostile one for motor vehicle and highway safety legislation. Such an impression is perhaps largely the result of a disproportionate share of tumult and shouting accompanying the defeat of two major legislative proposals in the field —chemical tests for intoxication and systematic mechanical inspection of vehicles. Although lacking in the glamour and controversy of the major proposals, many items of motor vehicle legislation were considered and favorably acted upon by the General Assembly.

Considered comprehensively, that is, regardless of the source or recommendation of the particular proposals, 41 bills relating to motor vehicles were introduced. Only 18, or roughly 44%, were ratified. This figure is deceptive, however, in that several single bills contained a number of items of motor vehicle legislation. HB 447, the Department of Motor Vehicles' "omnibus" bill, is a good example of this. Considered item by item, the ratifications ran approximately 60%-70% of the introductions.

The Department of Motor Vehicles proposed formally that 22 statutory changes be made. At the introduction stage the number of suggested changes was reduced to 17. About 77%, or 13, of the recommended changes were passed.

Notable failures, however, were two major bills recommended by the Department in connection with chemical tests for intoxication and systematic mechanical inspection of vehicles. The chemical test bill (SB 120), after stormy public hearings, never reached the Senate floor for action after it had been re-referred to Judiciary II. The mechanical inspection bill (HB 312) was defeated almost mechanically. Apparently, the unfortunate North Carolina experience with the 1947 mechanical inspection act is still remembered vividly, although the 1959 proposal would have established an inspection system based on the use of certified private garages to eliminate the "waiting line" feature of the 1947 proposal. Both proposals were and are unanimously favored by all highway safety organizations.

A late major proposal—the "point system" bill—designed to replace the judicially repealed "habitual violator" provision of the driver license law received legislative approval as Chapter 1242 (SB 340).

Other items of a relatively minor nature receiving legislative disapproval were: HB 65, which would have provided a special extra-budget appropriation for 25 additional highway patrolmen; HB 66, which would have increased registration fees for property-carrying vehicles by the amount of $2.00; a section of HB 447, which would have established a tire safety section; HB 686, which would have permitted the confiscation of vehicles used in connection with the commission of certain crimes; and SB 119, which would have broadened arrest powers of police officers at the scene of an accident and in cases of flight to avoid arrest.

General Provisions

Three sections of GS 20-38, the definitions section of the Motor Vehicle Act of 1937, were modified. The general effect of all three changes is to provide for lower registration fees for certain vehicles by virtue of their confinement to operations more narrow in scope than those normally anticipated for vehicles of their type.

Chapter 1264 (HB 447), effective October 1, 1959, amends GS 20-38(p)(2) to exclude from the definition of "for hire passenger vehicles" vehicles of *nine-passenger* (formerly seven-passenger) capacity or less, operated by the owner, when the cost of operation is shared by neighbor fellow workmen between their homes and their place of daily employment, when the vehicle is operated for not more than two trips each way per day.

Chapter 1264 (HB 447) amends GS 20-38(q)(5) to exclude from the definition of "U-Drive-It passenger vehicles" passenger vehicles leased or rented to public school authorities to be used for the purpose of driver-training instruction.

Chapter 19 (SB 16) amends GS 20-38(bb) to include within the definition of "special mobile equipment" privately owned vehicles on which fire fighting equipment has been mounted and which are used only for fire fighting purposes.

Registration and Certificates of Titles of Motor Vehicles.

Forgery of Documents.

One of the few felony provisions in the motor vehicle law, GS 20-71, was amended by Chapter 1264 (HB 447), effective October 1, 1959, to make it a felony to alter, falsify or forge an *application* for certificate of title and registration as well as to alter, falsify or forge a certificate of title or registration card. As rewritten, the section now makes it a felony to: (1) forge or counterfeit any certificate of title or registration card purporting to have been issued by the Department of Motor Vehicles; (2) alter, with fraudulent intent, any certificate of title, registration card or application therefor; (3) alter, falsify or forge, with fraudulent intent, the assignment of a certificate or title, registration card or application there-

for; (4) hold, or use, any certificate of title, registration card or application therefor, or assignment thereof, knowing that the document has been altered, forged or falsified.

Unclaimed Vehicles Law.

Chapter 1264 (HB 447), effective October 1, 1959, adds a new subdivision (5) to GS 20-77(d) to provide that the operator of a place of business for garaging, repairing, parking or storing vehicles for the public, in which a vehicle remains unclaimed for 30 days, shall within five days after the expiration of that period report the vehicle as unclaimed to the Department of Motor Vehicles. However, the new section provides that a vehicle left by any person whose name and address are known to, or are furnished from a reliable method of identification to, the operator or his employee is not considered unclaimed. A violation of the section constitutes a misdemeanor punishable by a fine not to exceed fifty dollars or thirty days imprisonment, or both, in the discretion of the court, and additionally invokes the forfeiture of all liens for storage held in connection with the vehicle by the person failing to make the report required.

The new unclaimed vehicles law is modeled on Section 4-105(c) of the Uniform Vehicle Code and is widely acknowledged as an effective measure in connection with the prevention of motor vehicle thefts, at least one factor that led to its recommendation by the North Carolina Department of Motor Vehicles.

Use of Dealer Demonstration Plates.

Under GS 20-79(b), motor vehicle dealers have been allowed to permit the operation of motor vehicles owned by them and displaying special dealer demonstration plates in the personal use of persons other than those employed in the dealer's business, provided each person so using a vehicle had in his possession a certificate on a form approved by the Commissioner of Motor Vehicles. A permit granted under this section was known as the dealer's "48-hour permit," by virtue of the limitation on its use to a 48-hour period.

Chapter 1264 (HB 447), effective October 1, 1959, amends GS 20-79(b) to increase the time limit for this particular use of dealers' demonstration plates to 96 hours.

Automobile Utility Trailers.

A rather complicated new Part 6.1, entitled "Automobile Utility Trailers," and a new section GS 20-84.2 dealing with reciprocity provisions for non-residents engaged in the business of renting automobile utility trailers for use in and through North Carolina is added by Chapter 1066 (HB 796). The new section provides that passenger automobile utility trailers owned and operated by any non-resident person or firm engaged in the business of leasing such trailers for use in intrastate or interstate use are exempt from registration fees in North Carolina, and are granted all reciprocal privileges, only in two cases. They are: (1) where such person or firm has validly licensed all of its utility trailers in the state of residence, which state accords similar recognition and exemption regarding such trailers licensed in North Carolina and operated in such other state, and such person or firm is not engaged in North Carolina in the business of renting utility trailers, and (2) where such person or firm (a) has licensed in North Carolina the average number of its utility trailers operated in and through the state during the preceding licensing year, (b) has filed with the Department of Motor Vehicles such data as the Department may require in determining the average number of trailers operated during the preceding year, and (c) has paid the prescribed fees, based on such average number, for registration certificates and plates, after which all of its trailers, properly identified and licensed in any state, territory or country may be operated in North Carolina, if towed by a private passenger car duly registered in North Carolina, or registered in another state but operated within the applicable reciprocity laws of North Carolina.

The new section does not apply to the intrastate rental of a trailer where the destination rental station is more distant from the licensing state than the originating rental station.

The act defines "automobile utility trailer" as any trailer suitable for towing by a private passenger automobile, the use of which is confined to the private hauling by private passenger automobile of personal property for intrastate or interstate use, but not rented or leased to any person for use in the furtherance of, or incident to, any commercial or industrial enterprise or for use in any intrastate or interstate business or occupation carried on by the lessee.

"Farmer" Plates.

Under certain conditions, vehicles confined to particular farming operations may be licensed under GS 20-88(c) at one-half of the conventional licensing fee. Chapter 571 (HB 262) rewrites the second proviso of GS 20-88(c) to provide for the licensing of "farm trailers" under the same conditions and at the same fees previously limited to the licensing of "farm trucks." The section, as rewritten, also restricts its application both with regard to trucks and to trailers, to vehicles licensed for not more than twelve thousand pounds.

The minimum license fee under the section remains ten dollars and the section, as rewritten, excludes semi-trailers with a maximum weight of twenty-five hundred pounds or less, which may be licensed under GS 20-51 for a fee of three dollars.

GS 20-88(c) is effective with regard to "farm truck and trailer" registration beginning January 1, 1960.

Seizure of Vehicles for Overload Penalties and Assessments.

As previously written, GS 20-96 provided that any peace officer who discovered a property hauling vehicle being operated on the highways with an overload as described in the Motor Vehicle Laws or which was equipped with improper registration plates, could seize the vehicle and hold it until the overload had been removed or proper registration plates had been secured and attached or the overload penalty provided for had been paid. The remedy of seizing the vehicle apparently was limited to the time at which the penalties or assessments were made. Chapter 1264 (HB 447) amends GS 20-96 effective October 1, 1959, to authorize the seizure of property hauling vehicles where the owners are liable for overload penalties or assessments applicable to the particular vehicles, which assessments are due and unpaid for thirty days.

Size, Weight, Construction and Equipment of Vehicles

Length of Vehicles.

As previously written, GS 20-116(d) established a

maximum length of thirty-five feet, inclusive of front and rear bumpers, for any vehicle operated in North Carolina, whether used singly or in combination. The only exception permitted was a maximum length of forty feet in the case of a three-axle passenger bus.

Chapter 559 (HB 567) amends GS 20-116(d) to eliminate the thirty-five foot limitation *where the vehicle in question is used in a combination.* However, it should be noted that the maximum overall length of combinations remains unchanged at fifty feet, inclusive of bumpers (with the exception of house trailers which, with the towing vehicle, can be as long as fifty-five feet, exclusive of bumpers) and that all vehicles must be operated within the overall length provisions, despite the change in GS 20-116(d).

Violation of Axle Weight Limitations on Light-Traffic Roads.

The North Carolina State Highway Commission is authorized by GS 20-116(e) to designate any highways of the State's system as light-traffic roads by posting the maximum load limitations applicable to the particular roads. Prior to 1958, the Commission established gross weight limitations which were enforceable by the assessment of monetary penalties scheduled in the last paragraph of GS 20-118. However, the Commission in 1958 removed the gross weight limitations from restricted roads and established as the sole weight criterion a maximum weight of 13,000 pounds per axle. The penalty section, as previously written, permitted the enforcement of this axle weight limitation on light-traffic roads only by criminal prosecution, since the schedule of monetary penalties provided for violations of axle weight limitations on unrestricted roads apparently did not apply to restricted axle weight limitations as established on light-traffic roads by the Highway Commission. Thus a paradoxical situation existed. An axle weight violation on an unrestricted road could be enforced only by the criminal prosecution specifically prohibited in the case of violations on unrestricted roads.

Chapter 1264 (HB 447), effective October 1, 1959, amends GS 20-118(e) to provide for the application of the monetary penalty schedule to violations of maximum axle weight limitations established by the State Highway Commission in connection with light-traffic roads, thereby bringing about consistent penalties for virtually identical offenses.

Maximum Gross Weight Limitations.

The maximum gross weight applicable to vehicles or combinations having *four or more axles* is raised from 56,000 pounds to 62,000 pounds by Chapter 872 (HB 958). The penalties for gross weight violations remain the same. However, when the 5% statutory "tolerance" on gross weight is considered, the chapter has the effect of raising the effective gross weight limitation or "road limit" as to vehicles having four or more axles to 65,100 pounds.

Special Permits for Vehicles of Excessive Size or Weight.

Chapter 1129 (SB 265) amends GS 20-119 to eliminate the requirement that special permits to operate or move vehicles of excessive size or weight be issued by the Highway Commission only where the applicant is engaged in a seasonal operation.

Horns and Warning Devices.

Legislative attention was repeatedly directed to GS 20-125(b). It provides that certain types of vehicles operated by certain agencies may be equipped with ". . . special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. . . ." Four additional agencies or groups can now claim the privileges of the section.

Chapter 494 (HB 642) permits the use of such special equipment on vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties.

Chapter 1170 (SB 297) extends a similar authorization regarding vehicles used by any county sheriff, salaried deputy sheriff or salaried rural policeman in the active performance of law enforcement duties, regardless of whether or not the particular vehicle is owned by the county.

Chapter 1209 (HB 595) extends a similar authorization regarding privately owned vehicles operated by chiefs or assistant chiefs of emergency rescue squads sponsored or recognized by a municipality or civil defense agency.

Chapter 166 (HB 127) adds the requirement that vehicles owned by the Wildlife Resources Commission and operated exclusively for law enforcement purposes be equipped with the equipment mentioned in the section.

Chapters 1170 and 166 also amend GS 20-130.1 so as to eliminate the prohibition against the display of red lights, visible from the front of the vehicle, in connection with the officers covered by those chapters.

Brakes.

Prior to the 1959 legislative session, GS 20-124 specified in subsection (b) that no person having control or charge of a motor vehicle should allow the vehicle to stand on any highway unattended without first effectively setting the hand brake thereon, stopping the motor and turning the front wheels into the curb or side of the highway.

Chapter 990 (SB 360) leaves this provision of subsection (b) unchanged in substance but amends it to specify "parking" brake instead of "hand" brake.

Subsections (c) and (d) of GS 20-124 formerly provided specific stopping distance standards for foot and hand brakes in terms of feet, both as to motor vehicles in general and to motor trucks and tractor-trucks with semi-trailers attached in particular and, in the latter case, standards with the brakes applied separately and simultaneously.

Chapter 990 (SB 360) also deletes from subsection (c) the specific tests formerly set out and replaces them with a general standard to the effect that vehicles shall be equipped with ". . . brakss adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying brakes, each of which means shall be effective to apply the brakes to at least two wheels." The chapter also specifies that the means of applying brakes, if connected in any way, shall be constructed so that a failure of one will not leave the motor vehicle without brakes on at least two wheels. Subsection (d) remains unchanged in substance but is redesignated as subsection (e).

As far as motorcycles and motor-driven cycles are concerned, the amending chapter changes the requirements of GS 20-124 to provide that such vehicles shall be equipped with at least one brake which may be operated by hand or foot, specifying the requirements in new subsection (d).

Windshield Wipers.

There is no requirement of North Carolina law that motor vehicles be equipped with a permanent windshield. However, GS 20-127(b) provides that where a vehicle is equipped with a permanent windshield, the windshield must be equipped with a device for cleaning snow, rain, moisture or other matter from the windshield directly in front of the operator. Nevertheless, the section as formerly written made no specification that the device must function.

Chapter 1264 (HB 447), effective October 1, 1959, provides that the "device" [windshield wiper] for cleaning snow, rain, moisture or other matter from the windshield must be ". . . in good working order. . . ."

Parking Lights.

GS 20-134 formerly provided that when a vehicle was parked or stopped upon a highway during the times mentioned in GS 20-129 (that is, from one-half hour after sunset to one-half hour before sunrise and at any other time that light is insufficient to render clearly discernable any person on the highway at a distance of 200 feet) one or more lamps projecting a *white* light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle had to be displayed.

Chapter 1264 (HB 447), effective October 1, 1959, amends GS 20-134 to provide that the light mentioned may be either *white or amber.*

Vehicle Financial Responsibility Act of 1957

Although the Department of Motor Vehicles asked for only three statutory changes in the Vehicle Financial Responsibility Act, the 1959 General Assembly actually considered no fewer than nine bills relating to the ten section act, and finally enacted five items of amendatory legislation.

Commissioner's Power to Require Actual Presentation of Proof of Financial Responsibility.

Chapter 1277 (HB 872) amends GS 20-309 by adding a paragraph which authorizes the Commissioner of Motor Vehicles, when he deems it necessary, to require the actual presentation of a new or current certificate of insurance as proof of financial responsibility in registering any vehicle during any registration year he designates in advance.

Notice of Repossession of Vehicles.

Although the Senate Insurance Committee reported unfavorably SB 306 which would have amended GS 20-310 to provide that cancellation of an automobile liability insurance would not be effective until fifteen days after *actual receipt* by the policyholder of a termination notice, as distinguished from the current requirement of GS 20-310 that cancellation is effective fifteen days after the insurance company in question mails a notice of termination to the named insured at the address shown on the insurance policy, "notice" provisions under the act were, in effect, expanded by Chapter 658 (HB 713) which adds a new section, GS 20-310.1, to provide that any person, firm or corporation retaining title to any motor vehicle under a conditional sale contract or similar instrument shall give written notice to the Commissioner of Motor Vehicles informing the Commissioner that the vehicle has been repossessed for nonpayment of the purchase price. The notice required is to be given within thirty days after the repossession and must contain the date of repossession, the make, motor number, serial number, title number, license number, model of the vehicle, name and address of the purchaser, and of the repossessing person or firm.

Revocation of Registration for Failure to Maintain Proof of Financial Responsibility.

As originally written, GS 20-311 was somewhat ambiguous concerning the procedure to be followed where a person affected by the Financial Responsibility Act failed to maintain proof of financial responsibility covering his vehicle. Chapter 1277 (HB 872) amends GS 20-311 to provide specifically for the revocation of registration upon notice that proof of financial responsibility for a particular vehicle is no longer in effect, and specifically to prohibit the re-registration of the vehicle until proof of financial responsibility is presented to the Department of Motor Vehicles and the appropriate fees for a new registration of the vehicle have been paid.

Vehicles Covered by the Act.

Chapter 1277 (HB 872) amends GS 20-313 to provide that any vehicle "required to be registered in North Carolina" is covered by the provisions of the Financial Responsibility Act, regardless of whether or not the vehicle is in fact registered in North Carolina.

Penalties and Proof Provisions.

HB 1210, reported unfavorably by the House Calendar Committee, would have raised the punishment provided for in GS 20-313 in connection with the operation of vehicles without having financial responsibility in full force and effect, from a fine of $10-$50 or thirty days' imprisonment to a fine of $10-$100 or a maximum of sixty days' imprisonment or both and, further, would have authorized the Commissioner of Motor Vehicles to deliver to any law enforcement officer or court official, upon request, a certificate indicating whether or not proof of financial responsibility was in effect for any vehicle or person on a particular date, which certificate would have been admissible in evidence in a prosecution for a violation of the act and would have been *prima facie* evidence of the truth of the statements it contained.

Proof of Financial Responsibility by Exempt Carriers.

Although SB 344, which would have amended GS 20-317 to remove the exemption granted in the 1957 act to carriers regulated by the Interstate Commerce Commission or the North Carolina Utilities Commission, was never reported by the House Insurance Committee, Chapter 1252 (SB 498) amended GS 20-317 to provide that financial responsibility certified to the Interstate Commerce Commission or to the North Carolina Utilities Commission shall be deemed to be modified to conform to the financial responsibility requirements established by the Vehicle Financial Act of 1957, if the insurance policy, bond or other proof is less than that required by the 1957 act Chapter 1252 is applicable to all insurance policies or contracts issued, made or renewed after the effective date of the act, which is August 1, 1959.

Effort to Increase Limits of Financial Responsibility Fails.

SB 383, which would have amended GS 20-309 and GS 20-314 so as to increase the limits of financial responsibility required by the act to $10,000 for the injury to, or the death of, one person: $20,000 for the injury to, or the death of, two or more persons; and $5,000 for property damage, was not reported by the Insurance Committee of the House. Consequently, the limits required by the act remain at "five, ten and five."

II. Driver Licensing

By Joseph P. Hennessee

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During the early years of the automobile and motor vehicular traffic any person irrespective of age or physical or mental condition was permitted to drive. It was not until the year 1913 that the General Assembly began to regulate the operation of motor vehicles. In that year it required that the operator of a motor vehicle be at least sixteen (16) years of age (Ch. 107, P.L. 1913). It was not until 1917 that the General Assembly provided that a driver must possess the physical capacity to operate a motor vehicle with a reasonable degree of safety and the mental capacity to control its operation (Ch. 140, P.L. 1917). There was no further regulation of drivers in North Carolina until 1935. In that year, for the first time, a minimum driver's license law was put into effect (Ch. 52, P.L. 1935). This authorized the issuance of a license to any person upon satisfactory proof that he had been operating a motor vehicle for a minimum of one year prior to the effective date of the Act. This license was good for an indeterminate length of time and no provisions were made for a renewal license. A step forward was taken, however, in a requirement that each new driver and each driver who could not qualify for a license under the so-called "grandfather clause" be required to pass certain minimum requirements.

With this relatively late start in the field of driver licensing, North Carolina's progress has been rapid. A real step forward was taken in 1947 when the General Assembly required the periodic re-examination of all drivers and authorized the Department of Motor Vehicles to set up and enforce adequate standards for all license applicants (Ch. 1067, S.L. 1947). Periodically since that date our driver license requirements and standards have been upgraded and revised. It is the purpose of this article to discuss the changes enacted by the 1959 General Assembly.

The 1935 General Assembly authorized the Department of Motor Vehicles to suspend the driver's license of any person with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee is " . . . an habitual violator of the traffic laws . . . " (§11, Ch. 52, P.L. 1935). This was codified as GS 20-16 (a) (5) and had the force of law for twenty-four years. Under this law the Department sought to reach those habitual offenders whose individual offenses would not in themselves constitute grounds for suspension or revocation under the other provisions of the law. Under these provisions suspensions were grounded in the sound discretion of the Department and untold numbers of multi-offense drivers were removed from the roads.

This was brought to an abrupt end in March, 1959, when the North Carolina Supreme Court held this provision to be void as an unconstitutional delegation of legislative powers to a non-legislative body. *Harrell v. Scheidt*, 249 N.C. 699. To understand this decision it is helpful to review the doctrine of separation of powers under which our governments, both state and federal, operate. Under this system specific powers are delegated to the legislative, judicial and executive branches of the government. For example, the sole authority to declare what the law shall be is vested in the legislative branch of the government; the judicial power, including the authority to interpret the law and to hear controversies under it, in the courts; and the power and duty to enforce and administer the law in the executive.

American courts and leading constitutional authorities universally agree that no part of the legislative power may be delegated to a non-legislative body. They do not agree, however, as to what constitutes a delegation of legislative authority. The United States Supreme Court has laid down the rule that the legislature must declare the policy of the law and fix the legal principles which are to control in given cases. *Mutual Film Corp. v. Ohio Industrial Comm.*, 236 U.S. 239 (1915). The Virginia Court in striking down as an unconstitutional delegation of legislative powers an ordinance which permitted a police chief to revoke the driving permit of any driver who, in the opinion of the chief, became unfit to drive an automobile, said that the rights of men are to be governed by law itself and not by the lot or leave of administrative officers or bureaus. *Thompson v. Smith*, 155 Va. 367, 154 S.E. 579 (1930). The South Carolina Court stated, in a similar vein, that it is necessary for the law to declare a legislative policy, to establish primary standards for carrying it out or to lay down an intelligible principle *to which the administrative body must conform.* Thus, the Court said, when the authority of the State Highway Department to suspend or revoke a license for cause "which it deems satisfactory" is considered in the light of the above principles, such provisions must be held invalid as an unconstitutional delegation of legislative powers. *It sets up no standards to guide the Department and contains no limitations. Highway Dep't v. Harbin*, 226 S.C. 585, 86 S.E. 2nd 466 (1955).

The North Carolina Court, in reaching the same conclusions, cited the Virginia and South Carolina decisions with approval and held that *GS 20-16 (a) (5)* which authorized the Department to suspend the license of any operator or chauffeur with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee . . . "is an habitual violator of the traffic laws" *contained no fixed standards or guides to which the Department must conform in order to determine whether or not a driver is an habitual violator of the traffic laws*, but that to the contrary, *it left in the sole discretion of the Commissioner of the Department the power to determine when a driver became an habitual violator of such laws.* This, it held to be an unconstitutional grant of legislative power.

Confronted with this decision the Department was left without any means of dealing with those drivers who previously had been subject to the provisions of GS 20-16 (a) (5) and had no alternative but to return all licenses suspended under the habitual violator statute. To fill this void the General Assembly enacted a limited point system under which violation points are to be assessed according to a scale of values written into the law and under which the Department is authorized, but not required, to suspend the license of any operator or chauffeur upon a showing by its records or other satisfactory evidence that the licensee has, within a two-year period accumulated twelve (12) or more points, or eight (8) or more points in the two-year period immediately following the reinstatement of a license which has been suspended or re-

voked because of conviction for one or more traffic offenses. In order to come within the eight (8) points suspension authority it is not necessary that such suspension have been under the point system. The eight (8) point suspension level will apply during the two-year period following the reinstatement of any license suspended or revoked for any traffic offenses.

An examination of Chapter 1242 (SB 340) discloses that the authority to suspend upon the basis of a point accumulation is codified as GS 20-16 (a) (5) while the schedule of points and the limits and principles to which the Department must adhere are contained in *GS 20-16 (d)*. This latter provision, designed as it is, to spell out and limit the authority of the Department, apparently meets the constitutional objections which proved the downfall of the original habitual violator provisions. Keeping in mind that *GS 20-16 (a) (5)* authorizes the Department of Motor Vehicles to suspend the license of any operator or chauffeur who in a two-year period accumulates twelve (12) points, or eight (8) points within the two-year period immediately following the reinstatement of a license suspended or revoked for any traffic offenses, *GS 20-16 (d)* sets forth the point values which must be assessed, establishes the maximum periods of suspensions under these provisions, describes the procedures to be followed by the Department, and erects barriers beyond which the Department may not go.

Upon receiving notice of convictions for specified traffic violations within this State the Department of Motor Vehicles is required to assess violation points according to a schedule of point values contained in the Act. No points may be assessed for convictions resulting in suspensions or revocations under other provisions of the law. In those instances where a person is convicted of two or more enumerated traffic offenses committed on a single occasion, points are to be assessed for one offense only (if the offenses involved have different point values, points are to be assessed for the offense having the greatest point value).

Whenever a licensee accumulates as many as four (4) violation points on his record the Department is required to send him a warning letter at his last known address. Whenever a licensee accumulates as many as seven (7) points the Department may request (but not require) that he attend a conference regarding his driving record and may permit him to attend a Driver Improvement Clinic operated by the Department. Upon the successful completion of such a course, three points are to be subtracted from his violation total. In order to prevent abuse of this provision, however, a licensee may only once have three points erased from his record in this manner.

Perhaps under existing provisions of the law prior to the enactment of this act the Department had the authority to place an operator on probation in lieu of suspension. Certainly no specific authority to do so was contained in the law. Under the point system, however, the Department is specifically authorized to place an operator on probation in lieu of suspension. In such case the period of probation is to be for a period of one year and an accumulation of three violation points during the probationary period will constitute a violation of probation and will result in a suspension, or, if during a period of suspension under the provisions of the point system, probation was substituted for the balance of a suspension period, the balance of the period of suspension will be invoked.

Whenever a license is subject to suspension under the provisions of the point system and any other provision of the law the suspensions are to run concurrently. Under the provisions of the point system a first suspension is to be for a maximum of sixty (60) days; a second suspension for a maximum of six (6) months; and a third or subsequent suspension for a maximum of one year. Upon the restoration of the license or driving privilege of any person which has been suspended or revoked for conviction of any traffic offense, under the point system or otherwise, any points that might have been accumulated in the driver's record must be cancelled.

What will be the effect of a point system of license suspension? Opponents of the measure have said that it is too stringent; that it will penalize the professional driver; that it has no relation to highway safety. Perhaps the measure is stringent. It was designed to be so, but as finally enacted it provides for suspensions upon accumulation of specified point totals accumulated during a two-year period. As originally introduced it was to apply to a three-year period. A majority of the thirty odd states now having point systems operate on a three-year basis. In addition, this system applies only to a relatively small number of specified violations and points may not be assessed for some thirteen enumerated violations. In fact, in effect, it is not a twelve point but rather a fifteen point system since a driver may once be permitted to attend a Driver Improvement Clinic and have three points subtracted from his point total upon the successful completion of the course of instruction offered therein. Will it penalize the professional driver? The simple answer to this is that it will penalize no driver who drives in a manner so as to observe all traffic rules and regulations. The lawful driver has nothing to fear from a point system or any other provision of the law which provides for a suspension or revocation upon conviction for violations of the traffic laws. This provision, like the other provisions of the law providing for suspensions and revocations, is intended to reach and penalize those drivers who either cannot or will not drive within the law. These laws are intended to apply to the professional as well as the occasional driver, and, if a professional driver or an occasional driver, it makes no difference which, cannot or will not drive in a lawful manner he should not be heard to complain when corrective action is taken against him. Does the point system have any relation to highway safety? It has long been recognized that traffic accidents just don't happen. They are made to happen and one of the major causative factors in most such accidents is either a conscious or unconscious violation of the rules of the road or the rules of driving courtesy and good sense. A recent study of the driving records of over 40,000 drivers disclosed that traffic violations are the best predictors of traffic accidents. For example, according to this study, those drivers with no non-accident violations had .167 accidents each; those with one non-accident record, .391; those with two such violations, .560; with three, .699; four, .857; and those with five, 1.001. Campbell, *Driver Improvement: The Point System, Esso Safety Foundation*, Chapel Hill, 1958. Project these figures to approximately 2 million drivers in this State and it becomes apparent that a substantial reduction in violations, if it can be accomplished,

will result in substantially fewer traffic accidents with their resultant losses in lives, productive man hours and damaging property losses.

GS 20-16.1, as it read prior to being amended by the 1959 General Assembly provided for a mandatory license suspension upon conviction for exceeding by more than fifteen miles per hour the speed limits set forth in *GS 20-218* (35 mph for loaded school buses) and subparagraphs 3 (45 mph for non-passenger vehicles other than loaded school busses) and 4 (55 mph for passenger vehicles) of *GS 20-141(b)*. The 1957 General Assembly (Ch. 214, S.L. 1957) added a new subparagraph 5 to *GS 20-141(b)* to authorize the State Highway Commission, following a traffic and engineering study and a determination that speeds greater than those set forth in *GS 20-218* and subparagraphs 3 and 4 of *GS 20-141(b)* would be safe and reasonable, to set speed limits not to exceed 60 miles per hour on designated sections of highways. Through inadvertance this change was not carried forward into or reflected in *GS 20-16.1*. Consequently we had an anomalous situation in which the Department was required to suspend the license of any person convicted of exceeding by over fifteen miles per hour the 55 mph speed limits for passenger cars but was not required to suspend the license of a driver who exceeded by over fifteen miles per hour the 60 mph limits set by the State Highway Commission. Chapter 1264 (HB 447), ratified on the final day of the session, rewrote *GS 20-16.1* so as to require that the Department suspend the license of any person convicted of exceeding by over 15 miles per hour the 60 mph speed limits fixed under authority of subparagraph 5, as well as subparagraphs 3 and 4 of *GS 20-141(b)* and *GS 20-218*. An additional change in this section provides a mandatory suspension for speeding in excees of 55 mph within the corporate limits of any town or in excess of 60 mph within a municipality if such speed limit is posted and in effect.

GS 20-19(c),(d), and *(e)* fix the periods of revocation for driving under the influence of intoxicating liquor or narcotic drugs at one year for a first conviction, four years for a second conviction, and permanently for a third or subsequent conviction. Heretofore the time when the second, third or subsequent conviction occurred in reference to a prior such conviction was immaterial. If it was a second, third or subsequent conviction that fact was sufficient to invoke the appropriate increased period of revocation. It was the consensus of the 1959 General Assembly that there should be a statute of limitations beyond which an individual should not be penalized for a prior mistake for which he had already received his punishment. Consequently, under provisions of Chapter 1264 (HB 447), *GS 20-19(d)* and *(e)* were rewritten to provide that in order for the increased periods of revocations for a second or third conviction for driving under the influence of intoxicating liquor or narcotic drugs to apply, the second conviction must have occurred within three years and the third or subsequent conviction within five years of a prior conviction.

GS 20-28(a) makes it unlawful to drive while one's license is under suspension or revocation other than permanent and provides for an additional suspension or revocation of one year for a first, two years for a second, and permanently for a third or subsequent offense. This section as rewritten by the 1957 General Assembly (Ch. 1187, §20, S.L. 1957) specifically permitted a person whose license had been permanently revoked under this section to apply for a new license after three years following the date of such permanent revocation. No specific authority was contained in the provision for the Department, however, to issue a new license upon such an application. As a practical matter, however, it was assumed that the proviso which permitted a former licensee to apply for a new license after three years carried with it the implied power for the Department to issue a new license in such instances, and the Department has been acting under this assumption. It was felt, however, that this under this assumption. It was felt, however, that this should be specifically spelled out in the law. Chapter 515 (SB 123) specifically provides that the Department may, upon the filing of an application for a new license after three years from the commencement of a permanent revocation for a third conviction for driving after revocation other than permanent, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behaviour for a minimum of three years from the last date of suspension or revocation and that his conduct and attitude are such as to entitle him to favorable consideration. This relief which spells out the practice which has been followed by the Department in such instances is made specifically applicable to persons whose licenses have been permanently revoked upon a third or subsequent conviction for driving after suspension or revocation irrespective of whether such conviction occurred before or after the effective date of this Act.

Ch. 1394, S.L. 1957 provided each officer and member of the uniformed State Highway Patrol with a subsistence allowance of forty dollars ($40) per month in addition to all allowances for subsistence and travel expenses which are otherwise provided by law. It was felt in many quarters that this allowance was intended to and should apply to uniformed driver's examiners (then under the Highway Patrol Division of the Department of Motor Vehicles) as well as to the officers and members of the Patrol Enforcement Division. Whatever the intent of the General Assembly in this matter, the additional subsistence was payable only to the individual officers and members of the patrol. Many legislative members thought that this wrought an inequity. Consequently a measure was introduced early in the session to provide

THE POINT SYSTEM

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Speeding in excess of 55 miles per hour	3
Illegal passing	3
Failing to yield right-of-way	3
Running through red light	3
No operators license or license expired for more than one year	3
Failure to stop for red light or siren	3
Driving through safety zone	3
Driving on wrong side of road	3
No liability insurance	3
Failure to report accident where such report is required	3
All other moving violations	2

a thirty-five dollar ($35) per month subsistence allowance for driver's license examiners. After a stormy passage which saw the measure receive an unfavorable committee report in the House and fail in a first attempt to remove it from the unfavorable calendar and bring it to the House floor, it was successfully revived in the waning days of the session to provide an additional subsistence allowance of twenty-five dollars ($25) per month for each driver's license examiner. Chapter 1320 (HB 399).

III. Rules of the Road, Speeding Penalties and School Busses

By Robert B. Midgette

Assistant Director of the Institute of Government

Drunken Driving

G.S. 20-139 was amended to extend the prohibition against driving either while under the influence of intoxicating liquor or narcotic drugs or by habitual users of narcotic drugs, whether under the influence or not, to drives, streets, etc., on the premises of hospitals, colleges, universities, schools, orphanages, churches, and any institutions maintained and supported by the State or its subdivisions, and upon the premises of any business or municipal establishment providing parking space for customers, patrons or the public. This amendment [Chapter 1264 (HB 447)] will become effective on October 1, 1959.

Two bills relating to drunken driving failed to pass. SB 120 would have required a motorist, upon being arrested by an officer having reasonable grounds to believe that he had violated the drunken driving laws, to submit to a test designed to measure his blood alcohol content. The percentage of blood alcohol shown would have been admissible in court and given a prescribed evidential weight depending upon the test result. HB 870 would have increased the minimum terms of imprisonment which may be awarded upon first, second and subsequent convictions of drunken driving.

Reckless Driving

The reckless driving section, G.S. 20-140, was completely rewritten by Chapter 1264 (HB 447) but without any substantive change whatsoever. The sole purpose in rewriting the section was to clarify the existing law—to make clear that there are two separate types of reckless driving, each completely independent of the other: (1) driving a vehicle carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, and (2) driving a vehicle without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property. The two types of reckless driving, both defined within one sectence in the section as written prior to this act, are now set forth in separate subsections. The rewritten version of G.S. 20-140 will become effective on October 1, 1959.

Speed

G.S. 20-141(b)(3) was amended by Chapter 1264 (HB 447) to restrict the speed of all vehicles of whatever kind, which are engaged in towing, drawing, or pushing another vehicle, to 45 miles per hour (except in business and residential districts where the speed limit is lower). This amendment resolves a number of uncertainties as to the maximum speed limit for automobiles towing or pushing various other vehicles. The amendment will become effective on October 1, 1959.

Maximum and minimum speed limits were established for vehicles traveling on highways which are part of the National System of Interstate and Defense Highways by Chapter 640 (SB 263). Subsection (h2) was added to G.S. 20-141 to set a maximum speed of 60 miles per hour and a minimum speed on the main-traveled lanes of 35 miles per hour on these highways. These limits are, however, subject to the general standard in effect on all highways within the State that no person shall drive a vehicle at a speed greater than is reasonable and prudent under existing conditions. Local authorities (counties and municipalities) may not alter these limits as declared; however the State Highway Commission is authorized to lower the maximum limit or raise the minimum limit if it finds upon the basis of an engineering and traffic investigation that conditions on any portion of highway so require. A change made by the Commission in the speed limits declared by this act would become effective only upon the erection of appropriate signs giving notice of such a change.

Bills relating to speed restrictions but which failed to pass included SB 121, which would have increased the penalty for speeding to a maximum of a $500 fine or six months' imprisonment, or both; SB 474, which would have authorized the State Highway Commission to raise speed limits to 65 miles per hour where reasonable and safe; and HB 730, which would have provided that proof of operation of a vehicle in excess of 80 miles per hour shall be prima facie proof that the vehicle was being operated by the registered owner.

Sounding Horn when Passing

Chapter 247 (HB 223) amended G.S. 20-149(b) to provide that the failure of a motorist to sound his horn when overtaking another vehicle as required by that subsection shall not constitute negligence or contributory negligence *per se* in any civil action, although such a failure may be considered with other facts in determining the issue of negligence or contributory negligence. This amendment has no effect on pending litigation.

Penalties

Speeding Over 80 Miles Per Hour

GS. 20-180 was amended to provide that speeding constitutes a misdemeanor punishable as provided in G.S. 20-176(b) (fine of not more than $100 or imprisonment for not more than 60 days, or both), except that the punishment upon conviction of speeding in excess of 80 miles per hour shall be a fine of not less than $50 or imprisonment of not more than two years, or both [Chapter 913 (HB 729)]. This amendment works no changes in the prior-existing law except as to speeding over 80 miles per hour; it does not apply to violations occuring prior to July 1, 1959.

School Busses

Meeting on Divided Highway

G.S. 20-217 now requires that a motorist come to a full stop upon approaching from any direction on the same

street or highway a school, Sunday school or church bus which is stopped and engaged in loading or discharging passengers. The motorist is required to remain stopped until the loading or discharging is completed and until the stop signal of the bus has been withdrawn, or until the bus has moved on. Chapter 909 (HB 407) amends G.S. 20-217 to provide one exception to its requirements.

The amendment permits the driver of a vehicle upon any divided highway, which is constructed with a barrier or intervening space between its roadways, to proceed without stopping upon meeting a school, Sunday school or church bus stopped in the roadway across the intervening space or barrier. This exception applies only to meeting and passing busses on those highways having a space or barrier separating the flow of traffic on one roadway from that on the other, and makes no change in the law as to the overtaking and passing of a bus proceeding in the same direction and in the same roadway as the overtaking vehicle even on divided highways.

Chapter 909 (HB 407) also contains an uncodified section which is a companion to the amendment to G.S. 20-217. That section declares it to be unlawful for any principal or superintendent of any school, who routes a school bus, to authorize the bus driver to stop and receive or discharge passengers on a divided highway where the passengers would be required to cross the highway either to board the bus or to reach their destinations after debarking from the bus, except at points where traffic is controlled by stop and go traffic signals adequate to provide safe crossing of the divided highway. The objective of this section, of course, is to have school busses routed on both sides of divided highways except at points where the danger to children crossing the highway is minimized.

Publications for Sale

The following Institute of Government publications are currently available for sale to interested citizens, libraries, and others. Orders should be mailed to the Institute of Government, Box 990, Chapel Hill.

COUNTY GOVERNMENT

Accounting for welfare funds (County finance bulletin #6). 1955. $0.50.
Calendar of duties for county officials, 1959-60. 1959. $0.50.
County commissioner responsibility in budget making and administration, by John Alexander McMahon. 1954. 83pp. $1.00.
The County finance act with the history of each section, local modifications, court decisions, and attorney general's rulings, by David S. Evans. 1959. 67pp. $2.00.
1959 school for newly elected county commissioners in North Carolina. 1959. 275pp. $2.00.

HEALTH, EDUCATION, WELFARE

Public health bulletin, nos. 1—irreg. (June 1958—) $0.50 each.
Public school budget law in North Carolina, by John Alexander McMahon. 1956. 60pp. $1.50.
Public welfare programs in North Carolina, by John Alexander McMahon. 1954. 122pp. $1.50.
The school segregation decision, by James C. N. Paul 1954. 132pp. $2.00.
Some background material for the State School Finance Commission, by Albert Coates. 1958. 272pp. $1.00.

INSTITUTE OF GOVERNMENT

Publications of the Institute of Government, 1930-1958, by Catherine M. Maybury. 1959. 59pp. Free.
The story of the Institute of Government, by Albert Coates. 1944. 76pp. Free.

LAW ENFORCEMENT

Changes enacted by the General Assembly of 1959: criminal law, by Dexter Watts [and] criminal procedure, by Roy G. Hall, Jr. 1959. 34pp. $1.00.
Coroners in North Carolina: a discussion of their problems, by Richard A. Myren. 1953. 71pp. $1.00.
Guidebook for wildlife protectors, by Willis C. Bumgarner 1955. 196pp. $2.00.
Investigation of arson and other unlawful burnings, by Richard A. Myren. 1956. 112pp. $1.50.
Law enforcement in forest fire protection, by Richard A. Myren. 1956. 85pp. $1.00.

LIBRARIES

Guidebook for trustees of North Carolina public libraries, by Ruth L. Mace. 1959. 88pp. $2.00.
Public libraries in North Carolina: proceedings of the first trustee-librarian institute. 1952. 47pp. $1.00.

MOTOR VEHICLES

Changes suggested in the motor vehicle laws of North Carolina . . . , by Joseph P. Hennessee and others. 1959. 80pp. $2.00.
Regulation of migrant farm worker transportation in North Carolina, by John Robert Montgomery, Jr. 1959 56pp. $2.00.

MUNICIPAL GOVERNMENT

Are new residential areas a tax liability; the financial impact on the city of annexing subdivisions: a report to the Greensboro City Council, by George H. Esser, Jr. 1956. 30pp. $1.00.
Calendar of duties for city officials, 1959-60. 1959. $0.50.
Comments on municipal revenues by North Carolina municipal officials: a report prepared for the Municipal Government Study Commission . . . , by Warren Jake Wicker. 1959. 40pp. $0.50.
The cost of providing municipal services as compared to the revenues to be derived from the areas or land uses served: a selected bibliography, by Ruth L. Mace. 1959. 6pp. $0.35.
An explanation of budgetary and accounting procedures prescribed by the new Municipal Fiscal Control Act (Municipal finance bulletin #1) 1955. $0.50.
Greensboro suburban analysis, by George H. Esser, Jr. 1956. 197pp. $3.00.
Guidebook for accounting in cities, by John Alexander McMahon. 1952. 219pp. $2.00.
Selected reports and materials on municipal finance in North Carolina, by George H. Esser, Jr. and Warren Jake Wicker. 1958. 185pp. $1.00.

PERSONNEL

County salary determination and administration in North Carolina, by Donald B. Hayman. 1952. 39pp. $0.50.
Social security and state and local retirement in North Carolina, by Donald B. Hayman. 1953. 171pp. $2.00.

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Planning legislation in North Carolina, by Philip P. Green, Jr. 1957. vp $1.00.
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Allowing discounts for the prepayment of property taxes (Property tax bulletin #8). 1954. $0.50.
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Report on the feasibility of separating the State Prison System from the State Highway and Public Works Commission, by V. L. Bounds. 1956. 348pp. $5.00.

OTHER

Guidebook for county and precinct election officials, by Henry W. Lewis. 1958. 108pp. $1.00.
Notary public guidebook. 1956. 96pp. $2.00.
Summary of 1959 legislation [of the] General Assembly of North Carolina. 1959. 108pp. $3.00.

Institute of Government 1959 Legislative Service

Milton Heath, Jr., ponders a difficult question as he studies a new bill.

... To See that

Legislative Service Editor Clyde Ball confers with veteran staff member Joseph Hennessee. Such conferences occurred daily by the score as a part of the unceasing efforts for absolute accuracy and clarity.

North Carolinians

Robert Midgette checks the provisions of the General Statutes as he begins the digest of a bill.

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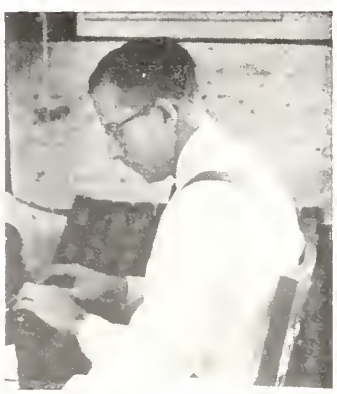

Hugh Cannon prepares copy which will go to the editor for checking and then to the typist to be cut on a stencil.

The Institute's Daily Legislative Bulletin was distributed to some 1,900 State, county and municipal officials in 1959. The Weekly Bulletin was sent to about 9,000 local officials. The staff for the 1959 session consisted of Clyde Ball, staff member in charge, Hugh Cannon, Milton Heath, Jr., Joseph P. Hennessee, and Robert B. Midgette. Considerable assistance was rendered by Roddey M. Ligon, Jr., and John L. Sanders.