POPULAR GOVERNMENT

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Contents

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"Mr. Speaker!" Both House Speaker David W. Britt (right) and his successor, Earl W. Vaughn (left), could answer to that title in the 1967 North Carolina General Assembly. Vaughn was chosen to succeed Britt when the latter stepped down near the end of the session to accept appointment to the North Carolina Court of Appeals.

By Milton S. Heath, Jr.

the NORTH CAROLINA GENERAL ASSEMBLY of 1967

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

The 1967 General Assembly convened at noon on February 8 and adjourned *sine die* at 4:00 p. m. on July 6. When its doors finally closed, this Assembly had tested at least two legislative long-distance records. The length of this biennial session, 149 calendar days and 107 working weekdays, far outdistanced the previous record of modern times, 1955 (142 calendar days and 102 weekdays). The number of bills and resolutions introduced was the highest in a single session for almost 35 years. (Numbered bills and resolutions introduced in 1967 totaled 2,184. The previous high-water mark since the 1930's was 2,101, set in 1963. High year for the 30's was 1933 with 2,469.)

While the number of introductions was high this year, the percentage of bills enacted by this Assembly, especially of public bills, was relatively low. Of the 2,184 introductions, 1,273 laws and 87 resolutions were ratified, for an over-all enactment ratio of about 5 to 8. Of the year's introductions, 829 were local bills and 1,355 public bills; 737 local bills and 536 public bills were ratified. Thus approximately 89 per cent of the local introductions were enacted and about 40 per cent of the public introductions. By comparison, while about the same percentage of local bills were enacted in 1965, almost two-thirds of the public bills became law that year.

The 1967 Legislative Record

In broad terms, the 1967 Assembly left its mark most clearly in the areas of court organization and procedure, water-resources law and programs, election law, correctional and jail reform, tax reduction and tax law revision, educational policy, health and welfare, and business activity. Two politically explosive issues also required an extraordinary investment of legislative energies before being finally disposed of, "brown bagging" and congressional redistricting.

The Courts

This year saw a continuation of efforts at court reform and reorganization under way since 1959, with an exceptional record of achievement. Two products of the work of the Commission on the Courts rank with the major achievements of the session: the creation of an intermediate court of appeals to help relieve the burden of an overworked Supreme Court and the adoption of a uniform jury selection law, with elimination of all professional exemptions from jury duty. Also adopted was a Courts Commission recommendation for an omnibus revision of numerous statutes needing minor amendment in the wake of a decade of court reform. A reorganization of the system of superior court solicitors was enacted. Finally, a new set of Rules of Civil Procedure—the first major revision of a century in this field—was enacted after years of careful spadework. The General Statutes Commission had been at work on this project for seven years, at the request of the North Carolina Bar Association.

Water Resources

Water-resources legislation was another area of unusual productivity. After eight years of virtually no legislation in the field, the 1967 session brought two landmark statutes and a host of lesser changes. The first of the new laws reorganizes the Department of Water Resources with two principal changes: adding to its function that of air-pollution control (renaming the agency as the Department of Water and Air Resources), and combining the Board of Water Resources and the Stream Sanitation Committee into a single Board of Water and Air Resources. This merger eliminates an internal contradiction that has plagued the Department since its creation—the existence of two policy boards within a single department. The second major new law, growing out of the ground-water problems of the phosphate mining area of eastern North Carolina, is the "capacity use areas" act. It gives the Department limited authority to regulate the use of water in areas where water shortages or conflicts exist or are impending—

the first regulatory authority over the *use* of water to be enacted in North Carolina, other than an unworkable 1951 irrigation-permit law that was repealed several years ago. The combination of the Water-Air Board reorganization and the capacity-use areas law gives North Carolina a unified program of coordination and control of both water quality and quantity that is unparalleled in any of the eastern states. Another significant enactment of this year enables the Department to adopt and enforce standards for well construction and maintenance.

Looking toward the 1969 General Assembly, based on the recommendations of a study commission created this year to evaluate a study of the need for reorganizing the conservation and development activities of State government, there is the prospect of legislative consideration of natural resource programs as a whole. The Legislative Research Commission was also directed by the '67 Assembly to review the actual operation of the new water laws and report to the '69 Assembly its recommendations for further legislation.

Election Laws

A signal achievement of this or any legislative session was the enactment of a complete recodification of the general election laws, without material change in substance—a long-needed reform but one of the most difficult to realize because of the political sensitivity of the subject matter. The new elections code was a work product of the Election Laws Revision Commission, created by the 1965 Assembly. Among noteworthy changes in election procedures were new laws requiring the installation of loose-leaf registration systems by county boards of election throughout the State by 1970, and providing for members of the General Assembly to run in House and Senate districts for "numbered seats" rather than at large. As finally enacted, the numbered-seats law included a patchwork of exemptions, leaving voters in some counties with the prospect of at-large elections for one house and numbered seats for the other.

Congressional Redistricting

A redrawn congressional districts map for North Carolina finally emerged with Assembly approval on July 3, three days before adjournment. Before this result was attained, eight separate bills were introduced and considered in committee: SB 34, SB 35, SB 60, SB 69, SB 233, HB 136 (identical with SB 69), HB 377, HB 946, and HB 1241. The law that was finally enacted (SB 69) will nominally combine two pairs of present incumbents in two of the new districts (Fountain-Gardner, and Broyhill-Whitener). The average deviation of district population is 1.06 per cent and the population ratio of the largest to the smallest district is 1.04:1—substantial improvements in both respects from the old law (3.46 per cent and 1.19:1, respectively). The range of deviation from the statewide average was improved thus: −1.86 per cent to +2.31 per cent (previously, −8.91 per cent to +8.39 per cent). Visually, the new district map is also more compact than its predecessor, though presenting to the eye at least one pair of districts (the 9th and 10th) with truly tortuous boundaries. Since the adjournment of the General Assembly, the new congressional districts have been approved by a three-judge federal district court, though with some reservations regarding the compactness issue, and with a judicial suggestion that the next regular revision of congressional districts after the 1970 census should provide for greater compactness.

Jails and Prisons

Two significant new laws were placed on the books regarding jail and prison administration. One of these reorganizes the administration of State prisons in a new State Department of Correction. It also incorporates contemporary thinking on the humanization and individualizing of treatment of prisoners to speed their safe return to the free community and improve their chances of rehabilitation. The other new law seeks to improve local jail conditions and provide for the basic needs of prisoners in jails. It requires the Commissioner of Public Welfare to develop minimum jail standards to be met by localities and provides for training of jail personnel and improved medical services. As a follow-up to the jail reform effort, an interim study commission has been created to explore and report to the 1969 Assembly on such matters as detention of alcoholics and juveniles, local jail financing problems, and the appropriate roles for State and local government in the field of jail administration.

Taxes

Proposed tax cuts, new tax sources, and tax law revision gave the House and Senate Finance Committees one of their busiest springs in many a year. Out of their labors emerged tax-cut legislation recommended by Governor Moore, some overdue technical revisions of tax laws, and some small beginnings of new revenue sources long sought by local governments. The gubernatorial tax-relief package enacted this year involved a combination of income tax exemptions totaling estimated revenue losses of $23.3 millions a year: exemptions for servicemen's combat pay, exemptions for the aged (65 years or older, $1,000 exemption), dependency exemptions for parents of students ($600 for each student), and an increase in the basic dependency exemption from $300 to $600. The principal tax law revision of the session took the form of a 125-page bill prepared and recommended by the North Carolina Department of Revenue, making detailed technical changes in income tax, inheritance and gift tax, franchise tax, sales and use tax, and highway fuel tax laws to clear up many long-unre-

solved matters of interpretation and bring about closer conformity to parallel federal tax laws.

During the 1967 session almost every conceivable new source of local tax revenue was presented in some form for legislative consideration. The net result of these efforts did not bring about substantial changes, and the issue will undoubtedly be revived in 1969. Although no over-all or substantial relief was granted to localities this year, a small increase in county revenues will result from enactment of a county real estate transfer-stamp tax, effective upon the withdrawal of the federal government from this field on January 1, 1968. Also enacted was a local bill empowering Mecklenburg County to hold a county-wide referendum on an optional 1 per cent sales tax increase in the county. (A similar bill for a statewide local-option 1 per cent sales tax was defeated.) Finally, on the very last day of the session, a modest assist was given to municipal finances in some cities by adoption of a change in the formula for allocation of utility franchise tax receipts to cities and towns served by private utilities. This will bring about a phased increase in the municipal share of franchise tax revenues from the present 3/4 of 1 per cent to 2 per cent in 1969 and 3 per cent in 1970. By 1970 it will increase aggregate revenues in these cities from an estimated $2.25 million to an estimated $11.3 million.

Education

Throughout this spring the General Assembly wrestled with questions of educational policy. For the most part, following the lead of Governor Moore and the Board of Higher Education, the Assembly took a conservative view of proposed departures from present State policy. Thus, the Assembly turned down requests to make East Carolina College a separate State university; to move the office of the President of the Consolidated University from Chapel Hill to Raleigh; to revamp the UNC Board of Trustees; and (in the field of public school education) to crack the Administration budget line on teacher pay increases, originally 17.58 per cent and later raised to 20 per cent. Late in June, however, a break was finally made in this pattern with the enactment of a bill to create an intermediate higher education classification, the "regional university," lying somewhere between the Consolidated University and the remaining State colleges and institutions of higher learning. Originally the bill specifically designated only East Carolina as a regional university. As the bill progressed through the Assembly, Western Carolina and Appalachian State were added by Senate amendments, and A & T was added by a closely contested House floor amendment. The ultimate consequences of this law are at best conjectural. At this time it can be observed that the regional universities plan reflects an obvious sharpening of the competition for the higher education dollar; that it raises some question concerning the future role of the Board of Higher Education; and that it represents one of the few setbacks suffered by Administration forces during this legislative session.

Local public school organization came in for a goodly share of legislative attention this year. A special focus of interest was the method of selecting school boards; this interest mirrored widespread dissatisfaction with the complex traditional procedure that has ended with appointment of county school board members by the General Assembly itself in the Omnibus School Boards bill. The discontent with the traditional system led to enactment of Chapter 972, which provides for local election of school board members in every county of the State. This represents a new departure for local school board selection in North Carolina, even though the effective date of the new law was delayed to June, 1969, and though some important elements were left undecided by Chapter 972. (Explicitly left for determination by future legislatures were the partisan or nonpartisan nature of local elections, district vs. at-large elections, and the number of board members.)

Health and Welfare

North Carolina assumed leadership early this session in the movement for broadening of legal grounds for abortions with the enactment of Chapter 367 of the 1967 Session Laws. This new abortion law adds to the permissible grounds for abortion: pregnancy resulting from rape, grave impairment of the mother's health, or substantial risk of the birth of a child with grave physical or mental defects.

Another notable early session law provides for regulation of ambulance service by the State Board of Health and for local franchising or operation of ambulance services.

After many years of patient but unsuccessful efforts, sponsors of a licensing examination and board for practicing psychologists succeeded in securing the enactment of a licensing law for their profession.

Two new acts of the '67 session brought North Carolina law into closer conformity with medical and scientific views of the nature of epilepsy. Chapter 137 abolished all restrictions on the marriage of epileptics. Chapter 138 removed from the statute books a 1933 law that had provided for sterilization of all epileptics in public institutions and for the sterilization of epileptics living in the community upon motion of the director of public welfare or next of kin.

One of the noteworthy defeats of the session involved a recommendation for licensing of day-care nursery centers. Two alternatives were presented to the General Assembly—licensing by the State Board of Health and licensing by the Board of Public Welfare. While neither measure was enacted, backers of this proposal received some encouragement from the fact that the Legislative Research Commission was directed by House resolution to study the subject and report back to the 1969 Assembly.

Business Activity

Two new laws sought by business interests to stimulate the economy were enacted this session with Administration support—a 1 per cent hike (up to 7 per cent) in the top legal interest rate on residential loans and a law permitting issuance of industrial development revenue bonds.

In addition, the recommendation of an interim study commission for a State aid program to cities, counties, and public airport authorities for local airports was adopted, and an increase in workmen's compensation benefits, on the order of 15 per cent to 25 per cent, was enacted.

Other significant new laws of special interest to the business community included a general overhaul of the State's banking laws; laws regulating billboards and junkyards in the vicinity of interstate and primary highways; and a number of amendments to the insurance laws, including new regulations of out-of-state insurance companies.

Among the notable "defeats" in this area of legislation were the "truth in lending" bill (a subject designated for further study by the Legislative Research Commission before 1969); proposals to regulate strip mining and trading stamp companies; a bill to allow twin-trailer trucks 65 feet in length; statewide and local liquor-by-the-drink proposals; a number of new tax proposals, seeking primarily to find additional revenue sources for local governments; and the bill to allow North Carolina's "electric cities" to acquire competing utility properties.

Legislative Machinery

Time and Frequency of Sessions

This General Assembly took an active interest in the subject of length and frequency of sessions. It made one significant change in the existing pattern of biennial regular sessions and considered several others.

The present State Constitution prescribes a nominal convening date of Wednesday after the first Monday in February for regular legislative sessions, but permits this date to be varied by legislative action. As one of its last formal acts this year, the General Assembly moved its convening date for future sessions to the first Wednesday after the second Monday in January. Ch. 1181 (SB 746). This action, obviously spurred by the painful experience of a hard day's work in Raleigh on July 4 this year, means a convening date of January 15 in 1969. Convening dates under the new scheme will range from January 10 at the earliest to January 16 at the latest.

Once again this year, as in most recent sessions, a proposal was offered to shift from biennial to annual regular sessions, but it received more substantial support than has been its usual lot. (Such a change would require a constitutional amendment, necessitating a three-fifths approval of each house as well as a favorable statewide referendum.) A bill calling for an annual-sessions referendum obtained the necessary Senate approval this year by a margin of 35 to 13 votes, but it died in the House committee (SB 472). Revival of the proposal in 1969 seems a foregone conclusion, unless the pressure for annual sessions can be relieved by an effective tightening of the existing legislative machinery.

Late in the session a compromise alternative to annual sessions was offered in the form of a bill providing for the 1967 Assembly to adjourn to meet on the first Wednesday after the first Monday in February, 1968, for a 21-day session to cover budget matters (among other things), with all bills to be introduced within the first 10 days. This bill also died in House committee. Its failure laid to rest, at least for the time being, any questions that might have been raised regarding the validity of this novel procedure.

Rules

Rules changes in both houses were limited and routine in character. The number of committees remained unchanged in both Senate and House. No rules amendments affecting committee structure or nomenclature were adopted this year, other than two committee name changes in the Senate—from "Penal Institutions" to "Correctional Institutions" and from "Mental Institutions" to "Mental Health."

Changes in Senate procedures involved a loosening of limitations on debate in two respects: an amendment permitting Senators to speak three times each day (previously only twice), and an increase in the time limit for a speech on any single subject from 30 minutes to 45 minutes. In the House, procedural changes involved the order of precedence of motions and related matters. House Rule 14 was clarified by a rewrite that states in a single place the basic order of precedence of motions; previously two overlapping statements of the order of precedence were included in the rule. An addition to Rule 14 made explicit the prevailing understanding that questions tabled by the House cannot be acted upon again during the session except by two-thirds vote. Another addition to Rule 14 provided that a motion to table is always in order except when a motion to adjourn is before the House. This change eliminated a minor discrepancy between the House and Senate Rules concerning the precedence of motions.

Other 1967 Rules changes were concerned with housekeeping matters—such as, providing that copies of all printed bills be distributed to the offices of the members of the General Assembly as well as to their desks in the Senate and House chambers; instituting controls over the placing of materials on the desks of members by outsiders; and increasing the number of committee clerks authorized in the House from 34 to 36, and in the Senate from 17 to 25.

Local Bill Deadline

The May 1 deadline for regular introduction of local bills initiated by a 1965 law, was again ob-

served this session. As in 1965, this year the deadline was not strictly enforced, but operated in such a way as to reduce materially the number of local bill introductions after May 1, thereby lightening the end-of-session workload of the Assembly.

This year a few more bills were introduced after the deadline (203) than in 1965 (184). However, this may be attributed to the unusual length of this session. The *average* number of bills introduced per week after May 1 declined substantially from the 1965 experience of 28.3 bills per week to 1967's average of 17.6 bills. (By way of comparison, the average weekly local bill intake before May 1 this year was 59.6 bills.)

The local bill deadline contributed to one of the modern long-distance records established in this legislative session—i.e., the largest number of bills introduced on a single day, 126 in all, including 105 local bills, introduced on Monday night, May 1, 1967. This eclipsed the previous one-day high of 91, scored on the corresponding day of the 1965 session.

Legislative Research and Services

The program of legislative internship launched in 1965 was continued again in 1967. As before, a group of selected undergraduates from colleges in North Carolina served rotating assignments as aides to legislative leaders and committees. Once again the plan was supervised by Professor Preston Edsall of the Department of Politics at North Carolina State University. In 1965 the internships were financed on a one-year basis by the North Carolina Center for Education in Politics. This year, with no such financing available, the program was successfully maintained on a voluntary basis, thanks to the efforts of Dr. Edsall.

This year the Legislative Reporting Service of the Institute of Government initiated an experimental application of computer technology to its bulletin services. In cooperation with the Institute, Central Data Processing of the Department of Administration programmed and produced experimentally several new cumulative weekly publications based on the daily bulletins. These included weekly printouts of public and local bill status, bills in committee, ratified and killed bills, and bills by introducer. The success of these efforts encouraged the Institute and the Department to plan for more extensive and regularized computer uses for the 1969 session. The Assembly gave its blessings to their plans by a resolution indicating that as much as $30,000 may be allocated for computer services from the 1969 legislative budget (R 85).

Extensive use was again made this year of the interim legislative study commission as a means for securing studies in depth of complex governmental problems. A review of the interim studies that will be made in the coming biennium will be found in the article on State Government (pages 6-15).

Pay and Allowances

Chapter 391 of the 1967 Session Laws (HB 446) calls for submission to the statewide electorate at the next general election a constitutional amendment to eliminate constitutional limits on the compensation of members of the General Assembly, leaving this matter to legislative discretion. (Presently the North Carolina Constitution, Article II, Section 28, limits members to a maximum of $15 per day for 120 days of a regular session and $15 per day for 25 days of an extra session. It limits the presiding officers to $20 daily for like periods.) This proposed amendment has been viewed by some as paving the way to annual legislative sessions. A related enactment, Chapter 1120 of 1967 (HB 1091), rewrote the previous statutory provisions of GS 120-3 relating to legislative pay to conform with the proposed amendment. It deleted a cross reference to the constitutional provision on aggregate compensation limits for regular sessions.

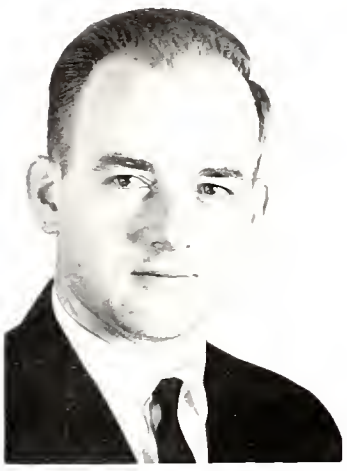
Two companion laws were enacted providing for reimbursement of expenses of legislative leaders between regular sessions of the General Assembly. Chapter 1014 (HB 1282) appropriated $5,000 for the clerical, postage, and other office expenses of the Chairman of the Advisory Budget Commission during the 1967-69 biennium. Chapter 1015 (HB 1283) entitled the Speaker of the House and President pro tempore of the Senate to claim subsistence and travel expenses for days of service when the Assembly is not in session and provided for their office expenses between sessions to be a proper charge against Legislative Research Commission funds.

This session the House adopted a resolution authorizing a $100 postage allowance per member; a maximum total of $2,500 postage and telephone allocation for all committee chairmen; and a variable telephone services allowance for each member, based on the distance of his home from Raleigh.

By Chapter 1236 (SB 737) the Assembly granted $2.00 daily pay raises to its Chaplains and most of its clerical and administrative personnel (other than the Principal Clerks and Sergeants at Arms), retroactive to April 15. The Legislative Research Commission was directed by this act to study classification plans for clerical and secretarial personnel of the Assembly and report back in 1969, with a view to avoiding future retroactive pay increases.

By Chapter 25 (HB 46) the Assembly provided for straight $20 daily subsistence allowances for its Principal Clerks, Reading Clerks, Sergeants at Arms, and Chief Enrolling Clerks. Previously these officials were paid only actual subsistence up to $20 daily. Finally, Chapter 776 (HB 574) made clear that the law permitting installment or per diem payments to legislators applies to the 1967 session and all future sessions. It also made this law applicable to the Sergeants at Arms, Reading Clerks and Principal Clerks, as well as to the members.

By John L. Sanders with David R. Gergen



STATE GOVERNMENT

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

The 1967 session witnessed somewhat more than the usual amount of legislative activity affecting the structure and organization of state government. Thirteen new state agencies were added to the existing 200-plus. (No agency was abolished without replacement.) Three agencies previously established by executive action were given statutory status. Nearly a score of agencies and institutions experienced some change in their name, structure, or organization, and many more were the targets of unsuccessful reorganizational efforts. The constitutionally authorized Court of Appeals was activated and five new regular superior court judgeships were created. Twenty-five special studies and study commissions were authorized. State constitutional amendments were proposed in extraordinary number, although only two were submitted to the voters. This article summarizes these activities, some of which will be discussed in greater detail in other articles in this issue.

New Agencies

With the enactment of Ch. 535 (HB 298), North Carolina joins some two-thirds of the states in sanctioning the issuance of tax-free industrial revenue bonds for the purpose of promoting industrial expansion. To administer the system in this State, the General Assembly established the North Carolina Industrial Development Financing Authority, a seven-member group comprising the State Treasurer and the Chairman of the Department of Conservation and Development, ex officio, and five appointees of the Governor. The Governor's appointees must include one with experience in industrial real estate, one who has served as an elective county officer, and one who has served as an elective municipal officer. All appointees serve overlapping, five-year terms. The Governor designates the chairman. The act sets forth detailed procedures for obtaining the Authority's approval of a project, leading to the issuance by it of revenue bonds to finance the acquisition of a site and construction of a building to suit the prospective industrial lessee. The Authority itself will not operate a project except where necessary to protect its interest.

The North Carolina Capital Building Authority, established by Ch. 994 (SB 409), has been given responsibility for planning, designing, and supervising the construction of state buildings and other capital improvement projects under the jurisdiction of the North Carolina Capital Planning Commission—which means essentially the governmental agency buildings in Raleigh. The Authority was proposed with this limited jurisdiction apparently in order to test its utility before extending its jurisdiction to other State agencies and institutions. Unlike similarly named agencies in some states, the Authority will have no financing function; it merely will supersede the operating agencies as the designer and construction overseer of buildings built for those agencies under appropriated or other financing. The members of the Authority are the Governor, ex officio, the Director of Administration (chairman, ex officio), the Attorney General, the State Treasurer, two citizens appointed by the Governor, one Senator appointed by the Lieutenant-Governor, and one Representative appointed by the Speaker of the House of Representatives. The Commission may draw on the Department of Administration for personnel or it may hire necessary personnel.

The State Art Museum Building Commission, established by Ch. 1142 (SB 631), is charged with the duty of locating, planning, contracting for and supervising the construction of, and equipping a building for the State Museum of Art. Patterned after the State Legislative Building Commission, this Commission consists of nine persons appointed by the Governor; three who have served in the Senate, appointed by the President of the Senate; and three who

have served in the House of Representatives, appointed by the Speaker of the House. All members will serve until their assigned task is completed.

Established by Ch. 1051 (SB 581) primarily to build and operate a stadium in the Greensboro-Winston-Salem area, the North Carolina Stadium Authority nevertheless has authority to build additional stadiums for the fun and profit of the people of the State and to issue tax-free revenue bonds to finance such enterprises. The State and participating local governments may sell, lease, or lend property to the Authority. The membership of the Authority consists of seven persons appointed by the Governor for four-year terms.

The Executive Mansion Fine Arts Commission, established by Ch. 273 (HB 501), is an outgrowth of the strong interest of Mrs. Dan K. Moore in enhancing the furnishings and decor of the Governor's Mansion. The 16 members of the Commission will be appointed by the Governor for overlapping four-year terms. The group's responsibility will be to preserve and maintain the Governor's Mansion, to improve its furnishings by the solicitation of appropriate gifts, and to approve major renovations and changes in the furnishings of the Mansion. Financing from private sources seems to be contemplated.

North Carolina became a signatory to the Interstate Compact for Education by Ch. 1020 (SB 203). The compact, developed and promoted by former Governor Terry Sanford, is intended to afford a vehicle for interstate cooperation in educational matters and will be jointly financed by the party states. The governing body of the compact is the Education Commission of the States, consisting of seven members from each member state: the Governor, two legislators chosen by the respective houses, and four members appointed by and serving at the pleasure of the Governor. The membership from each state is supposed to be broadly representative of the state and its educational interests. There may be a total of not more than ten non-voting commissioners chosen for one-year terms to represent educational organizations. In addition, the compact provides for the establishment of the North Carolina Education Council, comprising the State's seven members of the Education Commission plus not more than five other persons appointed by the Governor for three-year terms, and chaired by the Governor or his designee. Serving as ex officio members of the Council will be the Chairman of the State Board of Education, the Superintendent of Public Instruction, the Chairman of the State Board of Board of Higher Education, and the Director of Higher Education.

In response to anticipated strip mining in the Piedmont, the General Assembly made North Carolina a party to the Interstate Mining Compact by Ch. 946 (SB 607). The compact pledges signatory states to establish effective programs for the protection of the public against some of the adverse effects of surface mining and for the conservation and use of mined-over land. The Interstate Mining Commission, comprising the governors of the party states, is the governing body of the compact and has investigative and recommendatory powers. To advise the Governor of North Carolina with respect to mining matters, the act establishes "within the Office of the Governor" a Mining Council, comprising the State Geologist, the Chairman of the Laboratory Advisory Committee of the North Carolina State University Mineral Research Laboratory, and the Chairman of the Minerals Resources Committee of the Board of Conservation and Development, all ex officio; eight members appointed by the Governor for six-year overlapping terms, of whom three are to represent mining industries, three are to represent non-governmental conservation interests, and two are to represent the Board of Water and Air Resources; and one Senator appointed by the Lieutenant-Governor and one Representative appointed by the Speaker of the House of Representatives for two-year terms.

After several previous unsuccessful tries, the psychologists of the State this year obtained a licensing act, Ch. 910 (SB 578), restricting practice as a psychologist after June 30, 1968, to those licensed under the terms of the act. Much of the lengthy act is devoted to defining what is and is not the practice of psychology. A doctoral degree is required for licensure as a "practicing psychologist" and a master's degree for licensure as a "psychological examiner." A grandfather clause permits licensure without examination prior to July 1, 1969, of individuals who have at least five years of professional practice of psychology but who do not meet the educational requirements. To administer the act, there is established the North Carolina State Board of Examiners of Practicing Psychologists, consisting of five members appointed by the Governor for three-year overlapping terms from lists of nominees submitted by the Executive Committee of the North Carolina Psychological Association. Two of the five members must be primarily engaged in graduate teaching or research in psychology, at least two must be practicing psychologists, and various other qualifications must be met.

The watchmakers were more successful than the psychologists. On their first try (Ch. 937 [SB 517]), they got a licensing act restricting (after January 1, 1968) the practice of making and repairing watches and other time-recording instruments to persons licensed as watchmakers or apprentice watchmakers, after examination on the theory and practice of watch construction and repair. A grandfather clause permits the licensure without examination, prior to January 1, 1969, of persons with one year's experience in watchmaking and repairing. The act will be administered by the North Carolina State Board of Examiners in Watchmaking and Repairing, consisting of five members serving overlapping four-year terms under

appointment by the Governor. Members must have two years' experience in the trade.

(The auctioneers were less fortunate in their suit: the bill—SB 524, HB 1094—proposing the auctioneers license act of 1967 and the North Carolina Auctioneers Commission never emerged from committee in either house.)

The dither of the Civil War centennial is scarcely past and now we confront another significant historic anniversary. Proper celebration of the 200th anniversary of the American Revolution will be assured by the North Carolina American Revolution Bicentennial Commission, comprising 13 ex officio members and ten members appointed by the Governor to serve overlapping five-year terms. (Ch. 70 [SB 76]).

Another bicentennial, that of Guilford County (b. 1770), will be suitably marked by the Guilford County Bicentennial Commission, established by Ch. 548 (HB 922). Three members appointed by the Governor will join numerous ex officio and locally appointed members to make up this Commission.

The success of the battleship U. S. S. North Carolina as a tourist attraction may have inspired Ch. 1216 (HB 1273), which established the Frying Pan Lightship Marine Museum Commission to operate the Frying Pan Lightship, now owned by the City of Southport, as a museum. The Commission will consist of two members appointed by the Governor and five appointed by the Board of Aldermen of the City of Southport for overlapping three-year terms.

The Historic Murfreesboro Commission, created by Ch. 18 (HB 55), is the most recent of several such groups established to conduct research and to plan and carry out programs for the preservation of historic buildings and sites in and near particular towns. Bath, Hillsborough, and Swansboro have such commissions. The Murfreesboro group will consist of four ex officio members and 30 appointees of the Governor serving overlapping five-year terms.

Three agencies that have been in existence for some time under authority of executive action by the Governor were given legislative sanction this year.

The Governor's Committee on Law and Order, established to coordinate the efforts of State and local law enforcement agencies and to make studies and recommendations looking to more effective law enforcement, was provided for by Ch. 65 (SB 36). It consists of the Governor (chairman), Attorney General, Director of the State Bureau of Investigation, Commissioner of Revenue, Commander of the State Highway Patrol, Director of Administration, Chairman of the Council on Human Relations (formerly the Good Neighbor Council), Adjutant General, Commissioner of Motor Vehicles, all ex officio; one district solicitor and a member and two alternates from the North Carolina Sheriffs' Association and the North Carolina Association of Chiefs of Police [sic] serving one-year terms under appointment of the Governor.

The Good Neighbor Council was given permanent status under the title of the North Carolina Council on Human Relations by Ch. 992 (SB 77). It comprises a chairman, a vice-chairman, and 18 members appointed by the Governor to serve at his pleasure. The Council, "for administrative and budget purposes . . . ," is made a part of the Department of Administration. The primary function of the Council continues to be the improvement of race relations through better interracial communications, the development of job opportunities for Negroes, and the stimulation of similar efforts by local organizations.

Ch. 164 (SB 176) gives statutory footing to the North Carolina Arts Council, which also is made a part of the Department of Administration. Twenty-four members, serving three-year overlapping terms under appointment of the Governor, make up the Council. The task of the Council is to promote, directly and through local organizations, interest in the arts in this State.

Agency Reorganizations

Ch. 1038 (SB 563) brought at least temporary surcease to perhaps the most warmly contested issue of the 1967 session—the designation of the institution formerly known as East Carolina College. Under this act, it is denominated a university—and so are three other institutions which had not actively sought such a change prior to the introduction of SB 563. They are now Appalachian State University, North Carolina Agricultural and Technical State University, and Western Carolina University. (Earlier measures to declare East Carolina University a separate university (SB 82, HB 198) or a campus of The University of North Carolina (SB 99) failed to gain the approval of either house.) In addition to more prestigious names, these new "regional universities" have more specific authority than before to engage in research and extension work. (See the article on Higher Education in the October issue of *Popular Government*.)

Ch. 892 (HB 356), the Water and Air Resources Act, established the Department of Water and Air Resources as the successor to the Department of Water Resources and the State Stream Sanitation Commission. The Department is governed by the North Carolina Board of Water and Air Resources, all the members of which are appointed by the Governor for six-year, overlapping terms. Eleven of the 13 initial members of the new Board must be appointed from the old Board of Water Resources and State Stream Sanitation Committee, and the other two appointees shall be a licensed physician and a person connected with the State Board of Health or a local health department. Successors to the 11 holdover members of the new Board must be appointed in accordance with statutory specifications designed to obtain representation of various affected interests. Two nine-member advisory bodies, the Water Control Advisory Council and the Air Control Advisory Council, are provided

for, the members to be appointed by the Governor to represent specified interests. (See the article on Water Resources in the October issue of *Popular Government.*)

The State Department of Correction replaced the State Prison Department on August 1 under Ch. 996 (SB 555), with attendant changes in the titles of the governing board and administrator of the ageney. The Commission of Correction, a seven-member body appointed by the Governor for four-year terms, is the policy-making board of the new Department. The executive head of the Department is the Commissioner of Correction, chosen (like his predecessor, the Director of Prisons) by the Commission subject to the approval of the Governor to serve a term of four years. (*See* Penal and Correctional Administration, page 62.)

Ch. 1197 (HB 1030) creates the North Carolina Mutual Burial Association Commission of five members, one of whom is appointed by the Governor for a three-year term and four of whom are elected by the burial association and perpetual-eare cemetery operators by a complex procedure. The functions of the Commission are to supervise burial assoeiations and to make policy for the Burial Association Commissioner, who has heretofore been a single administrator.

The North Carolina Veterans Commission gave way to the North Carolina Department of Veterans Affairs under the provisions of Ch. 1060 (HB 467). The functions of the Department will be essentially the same as those of the Commission. The governing body of the Department is the State Board of Veterans Affairs with five voting members, all veterans and representative of both parties, appointed by the Governor for overlapping five-year terms, plus the heads of all veterans' organizations in the State as non-voting members. The State Direetor of Veterans Affairs will administer the Department.

Ch. 1006 (HB 296) commits the State for the first time to a program of financial aid to airport development, under the administration of the Department of Conservation and Development. To advise the Department on airport matters, there is established the Governor's Aviation Committee, eomprising 11 people appointed by the Governor to serve overlapping terms of four years. At least four of them must be knowledgeable about aviation and airport development. This legislation grew out of the work of a study commission set up by the 1965 session.

The public livestock market regulatory aet was revised and strengthened by Ch. 894 (HB 931), which established the North Carolina Public Livestock Market Advisory Board, an eight-member group appointed by the Commissioner of Agriculture to represent various interests affected by the aet in performing the advisory function suggested by its title.

Ch. 1184 (HB 1077) eliminated the Structural Pest Control Commission and replaced it with the Structural Pest Control Division of the Department of Agriculture, to be administered by a director responsible to the Commissioner of Agriculture. A five-member Structural Pest Control Committee was established to perform some of the functions formerly carried out by the Commission.

A Savings and Loan Advisory Board was created by Ch. 557 (SB 199) to advise the Commissioner of Insurance on the regulation of savings and loan associations. The seven-member board consists of the Commissioner of Insurance and Deputy Commissioner (who are chairman and vice chairman respectively) and five members appointed by the Governor for four-year overlapping terms. Three of the appointees must have experience in the management of savings and loan associations.

The State Board of Assessment, heretofore entirely ex officio in composition, was recast by Ch. 1196 (SB 271) into a board of five members, one serving ex officio (the Director of Tax Research), one appointed by the Lieutenant-Governor and one by the Speaker of the House, and two appointed by the Governor. The appointees will serve overlapping, four-year terms. The new Board will have the aid of a full-time administrative officer, whereas the Department of Revenue provided staff assistance to the old Board. The Board continues to have supervision of the valuation and taxation of property throughout the State.

The office of Chief Medical Examiner was established by Ch. 1154 (SB 153) as successor to the Committee on Post-Mortem Medicolegal Examinations. Appointed for a four-year term by the State Board of Health and responsible to the Board, the Chief Medical Examiner will appoint county medical examiners, to whom he will provide some supervision and technical assistance.

Ch. 1028 (HB 904) gives statutory standing to the North Carolina Advancement School and brings it under the general supervision of the State Board of Education and the more immediate watchcare of the Board of Governors, a group consisting of the superintendent of the Forsyth County school system and nine other citizens to be appointed by the State Board of Education.

Not all of the proffered bills to alter the structure of State government passed. A number of bills proposing changes in the size, mode of selection, or apportionment of the Board of Trustees of The University of North Carolina (SB 324; SB 420, HB 940; SB 426, HB 941; SB 430) all failed, although SB 426 did gain Senate approval, only to fail on its second reading in the House. Proposals for the establishment of an Office of Statistical Services in the Department of Administration (SB 488, HB 1043), to limit members of the Advisory Budget Commission to two consecutive terms (HB 1360), and to revise the mode of choosing the members of the State Board of Elections (HB 1346) never got out of committee alive.

Interstate Compacts

The 1967 General Assembly enacted legislation making North Carolina a party state to three interstate compacts. The Compact for Education, adopted by Ch. 1020 (SB 203), is intended to encourage and facilitate communication and cooperation among the states in the interest of educational improvement. The Interstate Mining Compact, endorsed by Ch. 946 (SB 607), commits the State to take measures to cope effectively with the adverse effects of surface mining, including the rehabilitation of mined-over land. The administrative structures associated with these two compacts have been discussed above in the section of this article headed "New Agencies."

The Interstate Library Compact, enacted by Ch. 190 (SB 201), authorizes state library agencies of party states to engage in joint and cooperative programs, and enables local library agencies in two or more party states to establish by agreement interstate library districts. The State Librarian is compact administrator for North Carolina.

Studies and Study Commissions

Study Commissions

Many of the debates which echoed through the legislative chambers during the past session promise to continue during the next biennium as the issues are considered by a near-record number of study commissions created by the 1967 General Assembly.

Ad hoc commissions, usually established for two-year periods by the legislators or the Governor, have become a traditional means of grappling with problems which are too complex or controversial to be resolved in a single session. In recent years, recommendations by these commissions have often formed the basis for new laws. Among the groups set up by the 1965 General Assembly, for instance, one played a large role in settling the Speaker Ban dispute, another made recommendations leading to a thorough recodification of election laws, and another proposed changes in the State tax structure.

In the 1967 session, members introduced 42 proposals (omitting duplicates) for studies during the coming session, including 20 that called for the creation of new commissions and 22 that assigned problems to existing agencies or commissions. The Assembly approved 25 of the measures, slightly more than half.

Enacted in this session were 11 bills creating or renewing special commissions, ten assigning studies to the Legislative Research Commission, and four calling for studies by other agencies. The 11 new commissions equal the record number of such groups established by the 1965 General Assembly.

In most instances the special commissions created in the recent session are authorized to employ assistance, and members are allowed the same per diem ($7) and expense allowances (up to $20 a day plus mileage) as are members of other State boards. Financial support ordinarily comes from the State's Contingency and Emergency Fund.

In creating the special commissions, the 1967 General Assembly followed a practice popular in the preceding session. Before 1965, nearly all legislative enactments for temporary commissions authorized the Governor to appoint all commission members. Among the 11 commissions established in the 1967 session, however, the Governor is authorized to name all members in only two instances. Legislative leaders will share in the appointment process for eight of the groups and will appoint the entire membership in a ninth case.

The special commissions established by the 1967 General Assembly and directed to report to the 1969 session are as follows:

Local Government Study Commission. This group, potentially one of the most important, is to study methods of strengthening local governmental structures and reducing the heavy load of local legislation which faces each General Assembly. All forms of local government, including county, municipal, and special purpose organizations, are to be examined. The Governor will appoint six members of the commission, the Senate President (the Lieutenant-Governor) will appoint three Senators, and the Speaker of the House will appoint six Representatives. (Resolution 76 [HR 944]).

Governor's Study Commission on the Public School System of North Carolina. The enabling legislation directs the Commission to make a wide-ranging and "exhaustive study" of the public school system in order to assess its effectiveness. Particular attention is to be given to the financial resources of public schools, the desirability of year-round operation on a quarterly basis, the certification and training of teachers and administrators, the adequacy of facilities, the selection and distribution of textbooks, the organization of city and county units, the food service program, the value of research in experimental schools and projects, the relationship of public schools to the State's special vocational schools and community colleges, school bus transportation, the education of handicapped children, and the inculcation of virtue. The Commission's membership includes three Senators appointed by the Senate President, three Representatives named by the Speaker, and 11 persons appointed by the Governor, four of whom must be certified public school personnel. (Resolution 81 [HR 1026]).

Conservation and Development Study Commission. Reflecting in part its keen interest in natural resources, the General Assembly created this Commission to study possible reorganization of State governmental activities in the resouree field. Specifically, the Commission is to consider whether the Department of Conservation and Development should be split into two departments, one concerned with

commerce and industrial development and the other with natural resources. The Commission is also to investigate the appropriate functions for a department of natural resources and methods of coordinating the departments or agencies if separated. Nine persons will serve on the Commission, including three appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House of Representatives. (Resolution 80 [SR 177]).

The Tax Study Commission. Essentially a renewal of the Commission for the Study of the Revenue Structure of the State established in 1965, the Tax Study Commission is to review State and local tax laws and to recommend rate changes which will assure a system "as stable and equitable as possible," and yet competitive with other states in attracting business. Appointments for the nine seats are again equally divided among the Governor, the Senate President, and the House Speaker. The Director of Tax Research will serve as a non-member secretary. (Resolution 67 [HR 1230]).

Jail Study Commission. Following on the heels of measures enacted by the 1967 General Assembly to improve local jail conditions, the Commission is directed to study local jails and other local confinement and detention facilities "with a view to improving the quality of jail administration so that such facilities may provide for the safe custody and humane treatment of offenders and promote their rehabilitation insofar as practicable." Specific items to be considered are the economic and practical problems of maintaining jails at a local level; the use of jails for alcoholics, mental patients, and children; the proper roles of State and local governments in jail administration; and the lack of adequate detention facilities for children. Eleven people are to serve on the Commission, including two appointees of the Governor, two Senators named by the Senate President, two Representatives appointed by the Speaker, and the presidents (or their representatives) of the Association of County Commissioners, League of Municipalities, Sheriffs' Association, Police Executives Association, and Medical Society of North Carolina. (Resolution 53 [SR 290])

Zoological Garden Study Commission. The General Assembly asked this Commission to determine the feasibility of establishing a zoological garden in North Carolina. Appointments for the nine seats on the Commission are divided equally among the Governor, the Lieutenant-Governor, and the Speaker. (Resolution 28 [HR 122]).

State Parks and State Forests Study Commission. After hearing a number of proposals to add new areas to the State park and forest system, the legislature created this Commission to "inventory and evaluate the public park and public forest facilities in North Carolina, and those private lands that may become available for public use in relation to its estimate of present and projected needs. . . ." There are to be 15 people appointed to the group, including nine by the Governor, three by the Senate President from the Senate membership, and three by the Speaker from the House membership. Serving in ex officio capacities will be the Director of Administration, Chairman of the Board of Conservation and Development, Chairman of the State Highway Commission, Chairman of the Wildlife Resources Commission, Chairman of the Seashore Commission, Chairman of the Recreation Commission, and the Chairman of the Board of Water and Air Resources. (Ch. 1235 [SB 666]).

Legislative Commission to Study Library Support. The Commission, for which no official name is designated by statute, will "study the pattern of financing public library services in North Carolina and. . . determine the sources of this support and the limitations placed upon them by the bases of revenue and the legal restrictions on levying taxes for library support." To fill the six positions on the Commission, the Governor will appoint one person, the Senate President will appoint two Senators, and the Speaker will appoint three Representatives. (Resolution 78 [HR 1085]).

Commission for the Study of the Rules of Civil Procedure. This group is directed by statute to "study the Rules of Civil Procedure enacted by the 1967 session. . . [Ch. 954 (HB 401)] and to submit to the 1969 General Assembly such recommendations for the improvement of the Rules of Civil Procedure as it finds appropriate." The new rules, which govern the litigation process in State courts, are patterned after the federal rules of procedure and are to become effective in 1969. Membership on the Commission will include three Senators from each of the two Senate judiciary committees, elected by those committees, and three Representatives from each of the two House Judiciary Committees, appointed by the Commitee chairmen with concurrence of the House Speaker. These 12 Commission members may appoint two retired or emergency superior court judges as additional members. (Resolution 77 [SR 700]).

North Carolina Commission on the Education and Employment of Women. First created by Governor Terry Sanford in 1963, this Commission was renewed by the 1965 General Assembly for a two-year period and was recreated for an indefinite term by the recent General Assembly. Calling for continued study, the 1967 legislature directed the Commission to report to each session of the General Assembly and to consult with the Governor, the departments of the State, and the General Assembly. The Governor is authorized to appoint all seven members of the group. The membership is to be staggered during the next biennium, four members serving for one-year terms and three for two-year periods. Thereafter all appointments are to be for two years. (Ch. 1027 [HB 528].)

North Carolina Cancer Study Commission. The General Assembly this year established the Cancer Commission as a permanent organization, replacing a similar commission which had been created on an interim, biennial basis since 1957. The Commission, which is to study the problems of the cause and control of cancer, is to be composed of 20 members, all appointed by the Governor for a two-year term beginning July 1, 1967. Ten of the members shall be from within and ten from without the medical profession. (Ch. 186 [SB 75]).

Courts Commission. Created by Resolution 73, Session Laws of 1963, as a continuing agency to draft legislation to implement the court amendment of 1962, the Courts Commission will carry its work forward into the 1967-69 biennium without the necessity of new legislative authorization.

Almost as interesting as the study commission bills which passed the General Assembly were those which failed. One proposal for a commission to study the full-year operation of the public schools (SR 152) passed the Senate but was rejected in the House, as the topic was assigned to a more comprehensive study commission, the Governor's Commission on the Public School System of North Carolina. HR 1341, proposing a State building code commission, died in a Senate committee. The remaining bills for new commissions all failed to emerge from the chamber where introduced. They included commissions to study the consolidation of county units within the State (SR 305); the banking laws (SR 562); the problems of those 65 or over (HR 114); air pollution control (HR 229 and SR 96); the sales and use tax laws (HR 1361); annual sessions of the General Assembly and provision for a permanent research staff for the Assembly (HR 1362); and highway safety (HR 1384).

Legislative Research Commission

Established in 1965 as the successor to the Legislative Council, the Legislative Research Commission is the permanent, general-purpose research agency of the General Assembly. It consists of the President Pro Tempore of the Senate and five Senators appointed by him, and the Speaker of the House of Representatives and five Representatives appointed by him. The President Pro Tempore and the Speaker are co-chairmen. The Commission was assured of a busy biennium by ten assignments from the 1967 session to study and report to the 1969 session on:

- The "ways and means of obtaining and or providing greater numbers of medical doctors for smaller towns and communities of North Carolina." (Resolution 60 [SR 540]).
- The problem of obtaining adequate fire and extended coverage insurance on coastal property. (Resolution 79 [SR 632]).
- The advantages of creating a State Department of Public Safety combining the State Bureau of Investigation, the State Highway Patrol, and other state law enforcement agencies. (SR 696).
- The effectiveness of 1967 water resources legislation and the need for additional statutes on the subject. (Resolution 83 [SR 726]).
- A statewide inspection and licensing program for child-care facilities. (House Resolution, unnumbered.)
- "The laws under the jurisdiction of the North Carolina Department of Public Welfare and other agencies . . . ," especially Chapters 108 and 111 of the General Statutes, together with related federal programs. (House Resolution, unnumbered).
- Consumer credit and lending practices. (House Resolution, unnumbered).
- A classification and pay plan for legislative employees. (Ch. 1236 [SB 737]).
- The feasibility of placing all full-time, non-professional public school employees under the State Personnel Act. (House Resolution, unnumbered).
- The revision and recodification of the liquor laws of the State. (House Resolution, unnumbered).

At least half of these topics were the object of intense legislative interest during the 1967 session.

Proposed Legislative Research Commission study assignments that failed to receive legislative approval included studies of banking law (SR 670); the publishing, indexing, and researching of the statute and case law of the State (HR 1250); a civil service system for state employees (SR 54); motor vehicle tire safety (SR 497); the use of motion picture evidence in drunken-driving cases (House Resolution, unnumbered); lowering the voting age (House Resolution, unnumbered); and including domestic employees under the minimum-wage law (House Resolution, unnumbered).

Agency Studies

SR 654 directs the Courts Commission to study and report on the feasibility of establishing a public defender system.

The suitability of Pilot Mountain and surroundings for inclusion in the State parks system will be studied by the Department of Conservation and Development under Resolution 68 (SR 512).

Resolution 58 (HR 262) directs the Governor's Coordinating Council on Aging to study the effects of state and local taxation on the senior citizens of the State. Resolution 69 (HR 1113) directs a study by the same agency of the feasibility of exempting from ad valorem taxation the principal dwelling place of persons 65 or older.

A proposed study (HR 1331) by the Department of Motor Vehicles of motor vehicle registration fees, especially for vehicles carrying unprocessed forest products, failed of passage.

State and Local Property

Seven bills were passed by the 1967 General Assembly making minor changes in the methods of acquisition, maintenance, and improvement of governmental property.

A number of modifications in the procedures for letting public building contracts are established by Ch. 860 (HB 796). Among other things, the measure permits contracts for less than $7,500 for construction and repair of public buildings to be advertised and bid in a more informal manner than contracts for larger sums. Heretofore such informality was allowed only for contracts of less than $3,500. (*See* Cities, page 16, for further details.)

The Department of Administration is the State's agency for the acquisition of land for most purposes, including acquisitions by eminent domain. Ch. 512 (HB 789) amends GS 146-24(c) to enable the Department to use the more expeditious condemnation procedure already available to the State Highway Commission in lieu of the slower procedure of Chapter 40.

The General Assembly also approved three measures concerning the beds of oceans and other navigable waters. One, Ch. 533 (SB 447), declares that the title to bottoms of navigable waters within one league of the seashore and the title to all shipwrecks and other archaeological artifacts more than 10 years old lying on the bottoms of all navigable waters shall be in the State of North Carolina. Permits for exploration of the shipwrecks may be issued by the Department of Archives and History. A second bill, Ch. 876 (HB 1137), re-enacts with small changes GS 113-202, providing for leases of State-owned bottoms for oyster and clam cultivation. Finally, a system for monitoring the dredging of State-owned tidelands, beaches, marshlands and navigable waters is introduced by Ch. 907 (SB 400). Owners of equipment to be used in such dredging are required to register with the Department of Water and Air Resources.

As indicated under "New Agencies," above, Ch. 994 (SB 409) establishes the North Carolina Capital Building Authority to plan, design, and supervise the construction and improvement of State buildings under the jurisdiction of the North Carolina Capital Planning Commission. Ch. 1125 (SB 260) provides that a controversial statue of George Washington, designed for the North Carolina State House by Italian sculptor Antonio Canova and destroyed by fire in 1831, shall be placed in the rotunda of the Capitol building following its restoration.

Miscellaneous

Among the other measures considered by the 1967 General Assembly, four were directed to tort claims for injuries resulting from the alleged negligence of State employees. Ch. 1206 (HB 1224) increases the maximum liability of the State for such claims from $12,000 to $15,000. Ch. 1032 (HB 1045) provides that in claims arising from school bus accidents, the State Attorney General may represent the local city or county board of education when he deems the amount of the claim to be sufficiently important. Heretofore the local attorney of the board was solely responsible for the defense. Another bill, Ch. 1092 (HB 1168), allows the State to provide for the defense of civil or criminal actions brought against State employees on account of the employee's actions within the scope of his employment. The fourth bill, SB 458, failed to gain approval; it would have provided that students in institutions, schools, and agencies under the control of the State Board of Juvenile Correction were to be considered employees of the State for the purpose of tort actions against the State.

Following on the heels of the State Supreme Court's 1966 decision in *Rabon v. Hospital*, the General Assembly also abolished the common law defense of charitable immunity with regard to all institutions. (Ch. 856 [HB 616]). In *Rabon*, a sharply divided Court held that the doctrine no longer applied to hospitals but the Court left open the question of whether the defense might still be used by churches, orphanages, and other charitable institutions.

Two additional bills introduced in the recent session concerned the use of state funds. HB 191, enacted as Ch. 398, clarifies the procedures for investing excess state funds. A second measure, HB 1005, which would have granted a preference to carriers registered in North Carolina for the delivery to the State of State-purchased products, failed to win approval.

One of the session's more warmly contested issues was HB 1011, which would have required all public boards, commissions, councils, and other public bodies, other than the General Assembly and judicial groups, to meet in open session. The bill was amended 10 times before it was finally tabled in the Senate.

HB 1081, reported unfavorably in the House, would have established a Code of Ethics for the General Assembly and a joint committee to investigate alleged violations of the code.

Other bills considered by the General Assembly were:

* SB 568, enacted as Ch. 1130, raises from $18,000 to $20,000 the annual salaries for the Secretary of State, Attorney General, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Agriculture, Commissioner of Labor, and the Commissioner of Insurance, effective in 1969.

* HB 52, enacted as Ch. 165, authorizes the Governor to offer rewards up to $10,000 for information leading to the arrest and conviction, or the apprehension, of persons who have committed felonies or other infamous crimes.

* HB 1326, enacted as Ch. 1253, empowers the Governor to contract with the United States Government in order to secure benefits available to the State under the Federal Highway Safety Act of 1966. Two

bills which would have given the Governor additional powers to cooperate with federal agencies in implementing federal safety programs were both defeated.

* Ch. 930 (SB 425) prescribes rules of evidence for proceedings before State administrative agencies. Essentially the rules are to be the same as those applied in the superior and district court divisions of the General Court of Justice.

* Ch. 108 (SB 42) creates a Court of Appeals in the General Court of Justice to hear many of the cases which previously have been appealed directly from superior courts to the State Supreme Court, thereby relieving the overloaded docket of the Supreme Court. (*See* Courts and Court Officials, page 33.)

* Ch. 997 (SB 557) provides for additional resident judges in the twelfth, eighteenth, nineteenth, twenty-sixth, and twenty-eighth judicial districts.

* SB 85, which died in Senate Committee, would have exempted North Carolina from the 1966 federal act making Daylight Saving Time uniform within the states. Bills to adopt Daylight Saving Time in North Carolina were defeated many times in past General Assemblies.

Constitutional Amendments

Although the General Assembly received an unusually large number of bills proposing amendments to the State Constitution—a total of 18, excluding duplicates—only two of them gained legislative approval and will appear on the ballot at the next general election.

Both of the pending measures relate to the General Assembly. The first, Ch. 391 (HB 446), would delete from the Constitution the present pay scale for members of the General Assembly and authorize the Assembly itself to fix the compensation of its members. To guard against self-serving, a pay increase would not become effective until the beginning of the next regular legislative session after enactment. The Constitution, Art. II, sec. 28, now sets the pay of members of the General Assembly at $15 a day for not more than 120 days of regular session and 25 days of a special session. The presiding officers receive $20 a day for the same periods. Members may also receive subsistence and travel allowances at the rates applicable to state boards generally—currently $20 a day, without time limit, and eight cents a mile. The pending amendment, by leaving the legislative pay scale to statutory provisions, would make it unnecessary to go to the voters for approval—often hard to obtain—every time lengthening legislative sessions, inflation, or other causes justify an increase in pay. The change would facilitate a shift to annual legislative sessions, one of the current blocks to which is the limited pay period.

The second successful amendment proposal is Ch. 640 (HB 471), which would amend the provisions of the Constitution dealing with the apportionment of members of the Senate and House of Representatives. Since the decision of the United States District Court in *Drum v. Seawell*, 249 F. Supp. 877 (M.D.N.C. 1965), invalidated the constitutional provisions (Art. II, secs. 5 and 6) governing the apportionment of Representatives and the Extra Session of 1966 reapportioned the House on a population basis, the literal words of the State Constitution have not described the apportionment system actually in force. In order to conform the Constitution to the facts, this amendment would revise Art. II, secs. 4, 5, and 6, to accord with the population-based scheme of apportionment of the 50 Senators and the 120 Representatives now in force and would clarify several related provisions in the process.

One measure (SB 472) that would have affected the legislative institution in a much more fundamental way—by requiring annual legislative sessions—passed the Senate handily but never emerged from the House Committee on Constitutional Amendments. The need for annual sessions had been examined recently by the Legislative Research Commission, which favored retention of the biennial meeting schedule for the time being.

Yet another measure (SB 454) which would have brought about a significant readjustment in legislative-administrative relations proposed that the Governor be given the power to veto acts of the General Assembly. The Senate Committee on Constitution quickly dispatched it with an unfavorable report, amid comments that the Governor is amply endowed with legislative influence under current informal arrangements.

The suffrage was the most frequent subject of constitutional amendment proposals—seven bills, all of which failed to pass their house of origin. HB 11, which proposed to lower the voting age to 18 years, came nearest to success: it passed its second reading in the House, only to fail on third reading the next day. HB 181, authorizing the General Assembly to fix the voting age at not less than 18 nor more than 21, was postponed indefinitely in the House. A proposal (HB 140) to give otherwise qualified military personnel on foreign duty the right to vote with respect to age was reported unfavorably. Proposals to lower the minimum residence period for voting in State elections to six months (HB 211) and four months (SB 91) failed of approval. An amendment empowering the General Assembly to extend voting and office-holding rights in municipal corporations to nonresident freeholders (SB 401)—a measure intended to make it possible for nonresident freeholders in resort towns to vote and hold municipal office there—died in committee. And a proposal (SB 449) to excise the obsolete "gandfather clause" from the literacy requirement for voters met a similar fate.

Taxation claims second place for the number of constitutional amendment overtures, all of them un-

successful. Two measures, HB 67 and HB 1159, which would have exempted from taxation the principal residence of every person over 65 to the extent of the first $10,000 and $5,000 in value respectively, were both reported unfavorably in the House. HB 1143, which would have abolished the exemption of $500 worth of personal property from execution for collection of debt, died in committee. HB 307, which failed to pass its second reading in the House, would have authorized the General Assembly to exempt from taxation land and equipment used exclusively for sewage treatment and air and water pollution abatement.

Three final, unsuccessful constitutional amendment proposals deserve mention: HB 529, which would have required that all judges of the General Court of Justice be licensed attorneys; HB 906 and SB 392, which would have reduced from two-thirds to a simple majority of each house the number of affirmative legislative votes required to submit to the voters a call for a constitutional convention and would have prescribed convention procedures in some detail; and SB 450, which would have repealed the judicially invalidated requirement of racial segregation in the public schools.

THE HOUSE OF REPRESENTATIVES

The 1967 General Assembly of North Carolina

the CITIES and the 1967 GENERAL ASSEMBLY

By Lee T. Quaintance and Warren J. Wicker

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

Introduction

Except for innovations in regard to bonding authority and intergovernmental relations and a revision of the purchasing and contracting statutes, little general municipal law making significant changes in existing statutes or blazing new directions was enacted by the 1967 General Assembly. Indeed, little of a sweeping nature, other than revenue proposals, was recommended by legislative commissions, or sponsored by the League of Municipalities, or introduced in bill form by individual legislators. To say this does not suggest that there were not important modifications of existing general laws and numerous adjustments in municipal charters and enactment of other local legislation designed to meet changing conditions and particular situations.

The circumstances that may make new directions in the legal framework of local government desirable and create a climate for enactment of laws to effect this end are diverse and complex. The poverty of the 1930's was such a circumstance in this State, and it brought about important changes in local governmental structure. A major reallocation of financial and program responsibilities between the State and local government resulted from the assumption by the State of school and highway functions that had been borne primarily by local government. Since World War II the circumstance generally urged as the challenge and the necessity for change and innovation in the legal framework of local government has been urbanization. In response, much legislation—especially in the fields of zoning, subdivision control, water and sewer powers, and planning—has been enacted.

The legislative session most responsible for new and comprehensive legislation designed to meet the needs of urbanization was the 1959 General Assembly. That session enacted a large share of the recommendations of a municipal government and of a tax study commission created by the 1957 General Assembly. The measures passed included a new system for periodic revaluation of real property and uniform assessment of real and personal property; a new annexation method without referendum in certain circumstances; a municipal extraterritorial zoning statute that has become a national model; and a strengthening of the planning powers of local government.

Perhaps the Local Government Study Commission created by this year's General Assembly to report to the 1969 session will take a long, hard look at local government in this State and present comprehensive recommendations comparable with its predecessor's work product a decade earlier. The commission is to be composed of fifteen members, consisting of three senators (appointed by the President of the Senate), six representatives (appointed by the Speaker), and six citizens appointed by the Governor.

Unlike the experience in a number of other states, legislative study commissions in North Carolina have traditionally not been simply cold ground in which to bury politically hot potatoes. Their recommendations tend to receive broad attention by the press and by the legislature although, of course, they are not always adopted by the legislature; the fate of the recommen-

dations in regard to local government of the 1967 tax study commission is ample proof of that (see "Finance," below).

The recommendations of the 1969 Local Government Study Commission and their fate in the legislature will be viewed with interest by those concerned with local government. The charge given to the commission by the legislature is broadly stated but calls for particular attention to: (1) means of strengthening county government as a general-purpose, regional provider of governmental service, (2) the impact of urbanization on municipal government and the capacity of municipal government to cope with it in terms of public services and facilities, (3) the relationship of special-district and other special-purpose governments to general-purpose municipal and county government, and (4) methods of reducing the volume of local legislation requiring the time and attention of the General Assembly.

Many of the general statutes enacted by the 1967 General Assembly that affect local government will be discussed below. However, the reader is reminded that numerous general and local acts of tangential concern to municipalities and some that affect them directly are covered by the subject matter of other articles in the *Popular Government* legislative issues. Comments on local legislation in this article are usually confined to discussion of discernible trends and to those acts of an innovative character that makes them of general interest. Table I carries forward the analysis which has been made since 1957 of all local legislation pertaining to municipalities.

Organization and Structure of Municipal Governments

Virtually all North Carolina municipalities operate under charter acts of the General Assembly, which ordinarily give them all powers granted by general statute to municipal governments plus specific additional powers and modifications of the general law to meet local preferences and contingencies. Consequently, when a municipality finds a provision of the general statutes inadequate to or in conflict with its needs, the usual course of action is to seek legislation amending its charter rather than a change in the general statutes. Local legislation (defined by the codifier of the North Carolina statutes as legislation affecting fewer than ten counties) is more easily passed in the General Assembly than a general change. However, in certain areas, such as taxing and bonding authority and the control of alcoholic beverages, the General Assembly may be reluctant to allow local deviation from laws of statewide application; in these fields, therefore, substantive changes are more often in the form of general acts rather than in acts applying to only one or a few municipalities.

As in previous sessions, legislation in 1967 relating to governmental structure almost invariably took the form of local legislation. Most of it deals with the size, terms, compensation, and other organizational aspects of governing boards, the form of city government, and adjustments in municipal election procedures.

Incorporation, Dissolution, and Consolidation

Seven municipalities were incorporated by legislative act, and the charters of two inactive municipal governments were dissolved. The new towns are Bells Island (Currituck), Como (Hertford), Cramerton (Gaston), Erwin (Harnett), King (Stokes), Kitty Hawk Woods (Dare), and Montreat (Buncombe). The charters of Buies Creek (Harnett) and Englehard (Hyde) were repealed. Three of the towns were incorporated without a local election, while two (Erwin and King) are subject to approval in a local referendum election; Erwin has already held its election, which resulted in a favorable vote for incorporation, and in King an election may be held at any time in the discretion of the county commissioners. (King was previously incorporated subject to election in 1965 but the referendum was never held.) Two of this session's incorporation acts provide for an unusual means of "activation" that differs from both direct legislative incorporation and legislative incorporation subject to a local referendum election: In Kitty Hawk Woods and Bells Island, incorporation is to become effective upon passage of a resolution by the county board of commissioners. Enactment of the resolution is mandatory upon receipt by the board of a petition signed by 15 per cent of the resident freeholders of the town. The county board is given no control over the charter of these municipalities but only the duty to "activate" the charter prescribed by the legislature upon petition. Another means of special incorporation, first enacted in 1963, has been extended to January 1, 1969. This act places special limitations, applicable only to Lincoln County, on the seldom-used procedures provided by general statute for nonlegislative incorporation of municipalities.

Two consolidations of existing governmental units were enacted subject in both cases to local referendum elections. One of these provides for a merger of the towns of Jonesville and Arlington in Yadkin County. (The proposal was introduced in two substantially similar forms, of which HB 1322, Ch. 1037, passed). The other provides for the merger into one city of the towns of Draper, Leaksville, and Spray and the Meadow Greens Sanitary District in Rockingham County.

Form of Government

The long-term trend in North Carolina has been toward the adoption of the council-manager form of government. The trend continued this session when the last town with a population over 10,000 and no city manager, Roanoke Rapids, secured legislation to empower the city council to appoint a manager. A similar provision was enacted for Bessemer City. Legislation was adopted to provide for referenda on adoption of a council-manager form of government in the cities of Maiden and Rockingham.

Table I
LOCAL LEGISLATION AFFECTING CITIES AND TOWNS

	Number of New Laws						
	1957	1959	1961	1963	1965	1967 Passed	1967 Killed
Structure and Organization							
Incorporation and Dissolution	7	11	6	9	8	12	1
Form of City Government	25	28	30	27	34	38	3
Election Procedures	41	44	34	35	34	27	1
Compensation of Officers	29	15	11	12	17	31	2
Qualification, Appointment	8	6	4	11	7	4	0
Retirement, Civil Service	10	17	11	22	31	15	0
Comprehensive Charter Revision	16	13	28	17	10	13	0
	136	134	124	133	141	140	7
Finance							
Taxation and Revenue	21	14	14	9	2	8	1
Expenditures	9	6	9	15	4	5	0
Tax Collection	10	12	8	13	2	11	0
Special Assessments	15	7	6	12	8	4	0
	55	39	37	49	16	28	1
Planning, Zoning, and Extension of Limits							
Planning and Zoning	22	19	21	24	32	22	2
Annexation	28	35	15	14	21	21	2
	50	54	36	38	53	43	4
Powers and Functions							
Streets, Traffic, and Parking	4	4	1	4	3	9	2
Regulatory Powers, Other	20	8	5	3	7	8	1
Police Jurisdiction	15	9	14	6	12	1	0
Local Courts	27	25	12	25	14	6	1
Beer, Wine, and Liquor	7	6	14	19	36	27	2
Other Functions	17	13	18	14	15	19	1
Purchasing	—	—	—	—	2	7	2
Sale of Property	40	18	19	23	17	27	1
Schools	—	—	—	—	16	8	0
Miscellaneous	7	4	4	3	10	16	1
	140	87	87	97	132	128	11
Grand Total	378	314	284	317	342	339	23

Note: The tabulation for the 1967 session shows both bills that passed and those that failed. For prior sessions, only bills enacted into law are shown. Before 1965, bills falling in the "purchasing" and "school" categories were tabulated under other headings. It should be noted that legislation does not always fall with clarity into one category or another. When a bill seems to fall into more than one category, it is given a multiple entry. Total revisions of municipal charters are entered only under the charter-revision category even though they may contain clauses affecting multiple categories. When legislation was introduced in completely identical form in both houses of the legislature, an entry is made only for the bill that actually passed, or tabulated only once if both versions failed. The 1967 session's tabulation of 362 entries, of which 339 passed and 23 failed, actually represents 314 separate bills, of which 296 passed and 18 failed. There were 43 multiple entries for passed bills and 5 for bills that failed.

The chief development in regard to form of municipal government in the 1965 session of the General Assembly was reform of an election plan prevalent in a number of beach communities. The plan provided for appointment of town governing boards by the Governor after a nominating referendum in which both resident and nonresident property owners were entitled to vote. This practice was highly questionable in light of provisions of the state Constitution that assume that a voter must reside in the precinct or ward in which he votes. In face of a challenge of the advisory referendum by litigation, five towns had provisions for this means of election removed from their charters in the 1965 session and replaced with provisions for election of governing boards by local residents only. In the 1967 session one more municipality (White Lake) made this change, which leaves outstanding only one municipal charter (Boiling Springs Lake) that provides for an advisory referendum and appointment method of selecting its governing board. A bill was introduced in this session of the legislature to provide for amendment of the state Constitution to permit the General Assembly to authorize voting and holding of office in municipalities by nonresident freeholders. This bill was never reported to the floor by a committee of the house in which it was introduced.

Composition of the Governing Board

Provision was made for change in the number of members of the governing board in at least eight towns. A tendency continued toward governing boards of five or six members, although the number of commissioners in two small towns was reduced from five to three. A trend also continued toward staggered four-year terms for municipal governing boards; at least a dozen towns switched to this plan of election. In five towns election wards were abandoned in favor of at-large elections, and in at least five others some modification was made in existing ward lines.

Municipal Elections

Random modification of municipal election procedures continued in this session as it has in the past. This is usually one of the most prolific areas of local legislation. The areas affected included adoption and abandonment of municipal primaries, modification in other nomination devices such as filing of candidacy, and numerous changes in procedural details such as hours of voting and registration. A tendency continued toward elimination of single-shot voting; four cities adopted such legislation. For discussion of general legislation in election laws, see the article on Election Laws in this issue (page 52).

Compensation, Qualification of Officers, Retirement, and Civil Service

General and local legislation relating to municipal personnel will be discussed in the article on Public Personnel in the October issue of *Popular Government*. Compensation was the one area in this field marked by an increase in the volume of local legislation affecting cities. Thirty cities secured acts raising the salaries, or granting discretion to the town governing body to raise the salaries, of either the mayor or members of the town council or both. In other instances the town clerk, members of a water board, and municipal election officials had their salaries modified by legislative act.

Comprehensive Charter Revision

Thirteen municipalities had total revisions of their municipal charters in this session of the legislature. Jacksonville was the largest city revising its charter (1960 population: 13,491); the others ranged down in size to Crossnore (1960 population: 277). The other cities were: Asheboro, Bessemer City, Enfield, Henderson, Lenoir, Newton, Roanoke Rapids, Salemburg, Sanford, Tarboro, and Whiteville. Among the provisions of these revisions that may be of general interest are: the adoption of a council-manager form of government by charter provision for Roanoke Rapids and Bessemer City (noted above); the inclusion in the Henderson charter of authority for city police to exercise law enforcement powers in regard to city matters in the same manner as the sheriff throughout the county (this differs from provisions, which have become common in recent years, giving police extraterritorial authority within one mile of town limits); and the continuance in the Tarboro charter of an interesting provision authorizing the city to obtain liability insurance and waive its immunity for governmental functions to the extent of its insurance for damage to persons or property inflicted by the negligence of city officials or employees while acting within the scope of their authority or employment (this insurance concept of general tort liability, first adopted for Tarboro in 1963, is not known to exist in any other city in the State).

Finance

Much of the general legislation of interest to municipal governments considered by the 1967 General Assembly concerned finance. When the Assembly convened, it had before it the recommendations of the Commission to Study the Revenue Structure of the State. Of major importance to municipalities were the commission's recommendations for revision of privilege license taxing; a local-option 1 per cent sales tax to be shared by county and municipal governments; the elimination of refunds to cities and counties on sales taxes paid on construction materials; authorization of a tax of $10.00 a year on motor vehicles by cities; and several changes affecting the State Board of Assessment.

The legislative program of the North Carolina League of Municipalities also included major proposals relating to finance. The League supported the commission in the 1 per cent local-option sales tax recom-

mendation and the recommendations with respect to changes in privilege license taxation, the motor vehicle tax increase, and the changes with respect to the State Board of Assessment. In addition, the League proposed that the municipal share of the utility franchise tax be increased to 3 per cent of gross receipts and that limitations upon recreation and library tax levies be removed. As in prior years, the League opposed moves to reduce the property tax base.

The commission's recommendations concerning the State Board of Assessment were approved (with modification), and the property tax base was not significantly reduced. (See the article on the Property Tax, page 70, for details.) The Leagues proposal for an increase in the municipal share of the utility franchise tax was enacted on a delayed basis, and a local-option sales tax for Mecklenburg County only was approved. Otherwise, the major proposals outlined above failed of passage.

Local Sales Taxes

Two statewide acts to provide local governments with the proceeds of a 1 per cent sales tax were introduced and both failed to pass. HB 593 was designed to provide for a county-wide 1 per cent sales tax on a local-option basis, and called for approval by voters in a referendum. The amount collected within each county was to be returned to that county and distributed within the county to the county government, municipal governments, and special districts in proportion to the ad valorem levies of each.

When HB 593 failed, a second attempt was made through the introduction of HB 1238, which provided for placing a 1 per cent additional tax on the State's existing 3 per cent sales tax, the proceeds to be distributed among the counties and municipalities of the State in proportion to population. The proposal was altered in committee to provide for a statewide referendum on the question, but the committee substitute then failed.

The first bill, HB 593, would have favored the larger and wealthier counties in that proceeds would have been returned to the county of collection, and the larger and wealthier counties are generally important shopping centers for persons living in surrounding counties. The per capita distribution called for in HB 1238 would have favored the smaller and poorer counties in that (1) the point of collection would not have affected the distribution, and (2) because of the per capita distribution there would have been a transfer of taxes from state taxpayers in the wealthier areas to those in poorer areas.

A local-option 1 per cent sales tax, applicable to transactions subject to the State's 3 per cent sales and use tax, was approved by enactment of HB 1249 (Ch. 1096) for Mecklenburg. The tax cannot be imposed without approval in a referendum, which may be called either by the board of county commissioners or under a petition procedure. The tax, if imposed, is to be collected by the Commissioner of Revenue and remitted to the county government and all municipalities within the county on a quarterly basis in proportion to the ad valorem levies of each. Preliminary estimates indicate that if the tax is imposed, the proceeds received by each unit will equal approximately the same amount of revenue that would be produced from a 30-cent rate on the $100 valuation under the general property tax.

Tobacco Taxes

Two bills to impose a tax on tobacco were introduced but failed of adoption. HB 939 called for a tax of 5 cents on each pack of cigarettes (and other tobacco products accordingly) with the proceeds distributed to counties for school purposes, thus resulting in a lower property tax for all county taxpayers, including those within the cities. The second bill, HB 1037, would have added to state revenues with a tobacco tax geared to 2 cents per pack for cigarettes.

Utility Franchise Taxes

North Carolina cities now receive an amount equal to three-fourths of 1 per cent of the gross receipts of utilities taxed by the State and collected from sales within each municipality. This is one-eighth of the state tax of 6 per cent. Ch. 1272 (HB 1369) amended the statutes to provide that as of June 30, 1969, the municipal share shall be increased to 2 per cent of the gross receipts, and then increased again on June 30, 1970, to 3 per cent, or one-half of the state tax as of that time. This increase in franchise taxes shared with municipalities was the only important act increasing municipal revenues generally.

Recreation and Library Taxing Limits

The 10-cent and 15-cent limits on recreation and library taxes that cities may impose after approval in a referendum were removed by Ch. 703 (HB 451). Governing boards may now submit to the voters such limits as they deem appropriate.

Investments

Investment authority of local governments was consolidated by Ch. 798 (HB 1025). Cash balances of any fund may now be deposited in any bank or trust company in the form of time deposits, certificates of deposit, or such other form as the Director of Local Government may approve. Investments authorized for cities include those in obligations of the federal government, or of agencies of the federal government when fully guaranteed; in obligations of the State or of local governments of North Carolina, subject to regulations imposed by the Director of Local Government; in shares of savings and loan associations; and in obligations of certain federal banking agencies. Interest earned on such deposits or investments is to be credited to the fund from which the cash is invested or deposited.

Delinquent Taxes

Ch. 704 (HB 452) enacted GS 160-58.1, which allows the governing body of any municipality to direct that the proceeds of all taxes collected subsequent to the end of the second fiscal year after levy be paid into the general fund.

Bonds

The Revenue Bond Act of 1938 was amended by three acts of the 1967 legislature. Ch. 711 (HB 917) amended the revenue bond statutes to provide that local governments may request an advance on bonds to be sold to the federal government or an agency thereof. The private sale of revenue bonds by the Local Government Commission was authorized by Ch. 555 (SB 174). And Ch. 100 (HB 120) amended GS 160-417 to change the maximum term of revenue bonds from 35 to 40 years. The same act also amended GS 160-2(6) to extend from 30 to 40 years the maximum term for which municipalities may make contracts for the supply of water.

GS 160-382 was amended by Ch. 1086 (HB 1146) to provide that the maximum term of bonds for airport purposes be limited to 30 years.

Special Assessments

GS 160-100 requires the preparation of a "special assessment book" containing full information as to the special assessments on each project. Ch. 763 (HB 510) amended the statute to permit such "books" to be on cards, machine cards, tape, or any other device suitable for the accurate storage of information, thus permitting the use of contemporary data processing equipment in special-assessment administration.

Trends of past years were evident in ten local acts that provided for special assessments for street improvements under certain conditions without a petition, established a basis for corner-lot exemptions, and expressly authorized the use of acreage charges for water and sewer extensions.

Tax Collection

The local acts relating to tax and revenue collection (see Table) blazed no new trails. Following the patterns of previous years, they dealt with discount and penalty rates, the release of taxes, liens, and making a property lien of utility charges.

Planning and Zoning

Both general and local legislation relating to planning, zoning, and related matters are discussed in the article on Planning in this issue (page 65).

Annexation

The general annexation procedures enacted by the 1959 General Assembly (GS 160, Art. 36, Parts 2 and 3) provide a method for extending corporate boundaries on criteria largely dependent on the urban character of the area proposed to be annexed. The process is subject to judicial review but not to a referendum vote of the residents of the area proposed for annexation. A referendum procedure is available under the old annexation law (GS 160, Art. 36, Part 1) and it has often resulted in the defeat of municipal expansion efforts. A bill introduced this session to build referendum procedures into the 1959 law died in committee.

The only general act passed (HB 1355, Ch. 1226) in regard to the 1959 procedures made technical and nonsubstantive clarifications in three sections of the act. The old annexation procedures, which still apply to some counties, were amended (SB 414, Ch. 929) to make specific requirements as to public-hearing procedures by municipal governing boards in considering proposed annexation ordinances.

The 1959 annexation law provides two procedures: one for towns under 5,000 population and one for those larger than 5,000 population. When the session began, twelve counties were exempted from the "under 5,000" and eight from the "over 5,000" procedures. A number of towns are specifically included under one or the other of the procedures, and one town incorporated in this session is specifically excluded (King, in Stokes County). In the 1967 session legislation was adopted eliminating Randolph from those counties exempted from the two parts of the 1959 annexation law (SB 144, Ch. 156), and a referendum was provided for Halifax County (SB 719, Ch. 1056) on the question of dropping its exception from this act. A bill was introduced to add Catawba to those counties excluded, but it failed to pass.

Although the annexation procedures provided by general statute seem to be meeting most needs, five towns secured annexations by legislative acts this session. Two other local acts were passed to exclude land from existing town boundaries, and one town secured legislation setting up a special annexation procedure with regard to a specified parcel of land. In addition, sixteen other municipalities secured charter amendments or other local acts to redefine their boundaries, and in so doing may have added adjacent territory to their corporate limits.

The most intriguing development in the annexation field is a local act that affects only the City of Raleigh. This bill (HB 1243, Ch. 989), which became known during the session as the "satellite-city bill," provides a method, with myriad limitations, of annexing areas not physically attached to the main body of the city—hence the analogy to satellites.

The desirability of noncontiguous annexation is a subject of controversy among people interested in municipal government. The experience in some areas of the country where cities have grabbed isolated housing developments or prime industrial sites and connected them to the main part of the city by only a narrow corridor of land has resulted in opposition to "balloon annexation" (the corridor of land being like the string on a balloon). In Los Angeles (harbor) and Chicago

(airport) balloon annexation has been used to connect a major public facility to the city, and in both cases the practice has been criticized for the distorting effect it has had on governmental boundaries and hence on the provision of public services in the region. The 1959 North Carolina annexation law contains explicit safeguards against ordinary balloon annexation by requiring that at least one-eighth of the boundary of the area proposed to be annexed must directly abut existing areas of a municipality (GS 160-453.4[b] and GS 160-453.16[b]).

The satellite-city bill also contains safeguards that are apparently designed to overcome the objections to balloon annexation and to fashion a new device for dealing with urban problems. First, the act does not contemplate connection of the satellite to the main city by a corridor, thus eliminating a number of problems arising in places where balloon annexation has been used from the existence of this "string" of city territory. Other safeguards include: (1) limitation of this annexation to areas which at their closest point are not more than three miles from the limits of the main city; (2) limitation of total land in satellites to not more than 10 per cent of the total area of the city (although no limit is set on the minimum size of any satellite); (3) provision that creation of a satellite have as its first prerequisite a petition by 100 per cent of the owners of property therein and that this area not be within the boundaries or extraterritorial jurisdiction of any other municipality; (4) requirement that in the case of a subdivision the petition must be signed by owners of all its property; (5) provision for public hearings by the Raleigh City Council on the petition and the requirement that if the council chooses to adopt an ordinance annexing the petitioning satellite, it must first determine that such annexation is in the best interest of both the city and the satellite and make a finding that the city can provide the residents of the satellite with the same services as main-city residents; and finally, (6) a provision for a referendum in Raleigh upon petition of 10 per cent of the qualified voters of the city that could overturn a decision by the council to annex a satellite. The residents of the satellite will be entitled to the "same benefits and privileges" as city residents but shall not be treated preferentially and may be charged rates for water and sewer services in excess of main city rates. Also, the satellite will not be considered as part of the city for purposes of determining extraterritorial jurisdiction of the city, and strict limits are placed on the use of the satellite in regard to future annexation under general law of areas contiguous to the city.

The limits and safeguards on the satellite-city annexation power are so great that it is difficult to imagine many circumstances in which it can be used. Perhaps its prime utility will be in annexing subdivisions or other urbanized areas near the city that have a need for urban services but are too small to provide them efficiently. For these areas to annex themselves to the city rather than form into separate incorporated municipalities might greatly benefit the long-term development of the region. In any event, the satellite-city bill demonstrates the sometimes-realized and sometimes-overlooked potential of local legislation as a device for experimentation with new ideas.

Intergovernmental Relations

The objective of fostering cooperative arrangements among units of local government was advanced by several bills this session. Two general laws were passed to facilitate emergency mutual-aid contracts between municipalities—one for law enforcement assistance (HB 116, Ch. 846) and the other for aid in restoring utility services (HB 406, Ch. 450). Another bill supplements existing joint municipal or joint county and municipal powers in regard to recreation facilities by adding a new commission method of administering such programs (HB 1372, Ch. 1228).

The most significant enactment this session in regard to interlocal cooperation is HB 982 (Ch. 797), which establishes a legal format for formation of regional councils of governments ("COG's") in North Carolina.

COG's are voluntary associations of elected officials from county and municipal governing boards who associate for the purpose of studying regional problems and possibly taking concerted governmental action in dealing with regional needs. The formation of COG's has become increasingly popular in recent months among local governments across the country. The number of formal COG organizations has jumped from twelve in mid-1965 to perhaps over eighty today. Formation of these voluntary associations is an experiment with hopeful potential for achieving workable, and politically realistic, cooperation among local governmental units.

The North Carolina act, which has much in common with a model act recommended by the U. S. Advisory Commission on Intergovernmental Relations, provides for creation of a COG on adoption, by the governing bodies of its members, of identical resolutions spelling out its powers and duties within broad standards set by the act.

In addition to the acts mentioned above, seven local acts were secured to authorize or modify existing authorization under general law for cooperation between particular cities or between particular cities and a county to provide specific services or functions (these included health services, airport facilities, purchasing, planning, and water facilities). The most interesting of these local acts is HB 163 (Ch. 61), which empowers Wayne County and any or all municipalities therein to merge branches of their governments performing similar functions upon majority vote of the governing bodies of the units entering into the merger.

Powers and Functions

Streets

GS 160-281.3 was added to the statutes by enactment of HB 1342 (Ch. 1255) and authorizes municipalities of the State to enter into agreements with the state government and its agencies and with the federal government and its agencies to secure benefits under and carry out the purposes of the National Highway Safety Act of 1966.

Local acts affecting streets were largely routine amendments to charters affecting procedures or authorizing the granting of easements in public ways. Authority to meet a special right-of-way problem was secured by Charlotte in Ch. 740 (HB 216). Charlotte is authorized by this act, when acquiring right-of-way for a street, and when a portion of a building or structure must be taken, to take all of it when the partial taking will "substantially destroy the economic value or utility of the building or structure." Authority to take the underlying fee outside of the right-of-way was not granted.

Regulatory Powers

Cable television. The authority of cities to franchise and tax cable television systems was made clear by passage of HB 1234 (Ch. 1122). The act amended GS 160-2 to empower cities to grant such franchises up to a period of 20 years and to levy "reasonable franchise taxes" on cable television operations under the authority of GS 160-56.

Abandoned vehicles. The abandoned-motor vehicle statute, GS 160-200, was revised by Ch. 1215 and Ch. 1250 (HB 1271 and HB 1289) to redefine what constitutes an abandoned vehicle, to define what constitutes a "junk" motor vehicle, and to authorize municipalities to adopt ordinances providing for the removal and disposition of abandoned and junk motor vehicles. Such vehicles may be removed from private property as well as from public property and streets with the approval of the owner of the property.

Local acts. Local acts of interest include Ch. 78 (HB 165), which empowered Wilson to hold an advisory referendum on a Sunday-closing ordinance, and Ch. 74 (HB 167), which granted to the Greensboro governing board the power to require examinations of those engaged in heating, plumbing, electrical, and air-conditioning work.

Alcoholic Beverages

As in previous years, a large number of local acts relating to the sale of beer and wine and the establishment of ABC stores were considered (see Table 1 on page 18.) Elections on the establishment of ABC stores were specifically authorized for fourteen towns, plus all towns in Columbus County and all towns over 1,000 population in Robeson. Votes on the sale of beer and wine were authorized in six cities. Changes in the distribution of proceeds from ABC stores were made in eight cities. Other acts dealt with the composition of ABC boards, jurisdiction of ABC officers, salaries, and other miscellaneous matters. (For further analysis of legislation relating to alcoholic beverages, see the article on this subject in the next issue of *Popular Government.*)

Purchasing and Contracting

The 1967 General Assembly made major revisions in the statutes controlling purchasing and contracting through rewriting Article 8 of Chapter 143, General Statutes of North Carolina (HB 796, Ch. 860). The major changes were as follows:

A. GS 143-129 was amended to require use of the formal contracting procedure on construction and repair contracts demanding the expenditure of $7,500 or more. This is an increase from the previous $3,500 limit.

B. The cost of any building project that may be undertaken by a unit's own forces was increased from $15,000 to $25,000 through amendment to GS 143-135.

C. The classification of work on construction projects costing more than $20,000 and requiring the preparation of separate specifications and the awarding of separate contracts was revised to combine heating, ventilating, and air conditioning and to add a special classification for refrigeration. The plumbing and gas and electrical classifications remain unchanged.

D. The bid-deposit requirement was modified to permit such deposits to be in the form of cashier's checks, as well as cash, certified check, or bid bond, all of which had been previously authorized.

E. The modification of GS 143-132 made that statute more restrictive. As revised, construction and repair contracts may not be let after the first bid unless at least three bids are received if the cost is $7,500 or more—a lower limit than the $20,000 that previously applied. As in the past, readvertising and awarding the contract even if only one bid is received is permitted when three bids are not initially received.

F. Through inadvertence, a 1965 amendment to the statutes required local governments to secure approval of the Department of Administration before negotiating with the low bidder in order to bring a project within the funds available. As revised, discretion in those circumstances has been restored to the local governing board.

G. The changes in GS 143-129 brought automatic changes in the effect of the informal contracting statute, GS 143-131. Informal bids must now be taken on construction and repair contracts involving expenditures of $500 to $7,500 (previously $500 to $3,500) and on the purchase of apparatus, supplies, materials, or equipment involving outlays of $500 to $2,000 (no change).

Most of the local legislation in the general area of purchasing and contracting concerned the disposal of

property (classified separately in Table 1 on page 18), following the experience of previous years. These acts often validated transfers that had already been made, expressly authorized property transfers at private sale, or changed the limits and procedures applying to particular cities in respect to the disposal of property. An example of the latter change will be found in Ch. 531 (SB 349), which revised the charter for the city of Tarboro and authorizes the city council to dispose of personal property of under $500 in value at private sale (without bids), requiring informal bids only when the value is between $500 and $2,500 and calling for sealed bids above that level.

Other Functions

Sanitation. A number of North Carolina cities have had difficulty in locating suitable sites for landfills. SB 110 was introduced to amend GS 160-204 to add landfills to the list of purposes for which cities may condemn land. The legislature, however, failed to pass the bill and cities in general remain without this power. Similar legislation was adopted for the Town of Williamston through enactment of HB 692 (Ch. 329).

Industrial Development. Authorization for the creation of the North Carolina Industrial Development Financing Authority is found in Ch. 535 (HB 298), which is discussed in detail in the article on State Government in this issue of *Popular Government*, page 6.

Libraries. Resolution 78 (HR 1085) created a special commission to study the financing of public libraries in North Carolina and to make recommendations for "more equitable and adequate financing of public libraries" to the General Assembly of 1969. The commission is to be composed of five persons—two members of the Senate (appointed by the President of the Senate), two members of the House (appointed by the Speaker), and one person appointed by the Governor.

Airports. An initial program of limited state aid for local airports was authorized by Ch. 1006 (HB 296). The acts provides that the Department of Conservation and Development shall be the state agency to carry out the purpose of the act and creates the Governor's Aviation Committee to advise the Department. The Department is to prepare and maintain a state airport plan, offer assistance and advice to local airports, and administer a state loan and grants fund as provided by the General Assembly. Appropriations for 1967-68 were $250,000.

Ambulance Service. Ch. 343 (HB 159) constitutes a comprehensive move to provide for the regulation of private ambulance services and to authorize counties and municipalities to provide such services. For discussion of this act, see the article on Public Health in the October issue of *Popular Government*.

Miscellaneous

Enactment of Ordinances. Ch. 1156 (SB 413) added a new section to GS 160-200 to provide that municipalities may not adopt ordinances prohibiting or regulating business activity on Sundays without holding a public hearing on the question and giving at least 30 days' notice of the hearing.

Fidelity Bonds. GS 160-277 was amended by Ch. 800 (HB 1062) to permit municipalities to cover all employees under blanket faithful-performance or honesty bonds rather than under individual bonds as previously required, except for treasurers or tax collectors, for whom individual bonds continue to be required.

Mileage Allowance. North Carolina municipalities have been limited under the general law (GS 147-8, -9) in the payment of mileage for the use of personal automobiles of employees and officers to seven cents per mile. Ch. 941 (SB 566) exempts municipalities from these statutes and leaves to the governing board (except where local acts prevail) discretion as to the amount of mileage to be paid.

Tax Study Commission. Continuing study of the state and local tax systems was provided by Resolution 67 (HR 1230), which created a new Tax Study Commission to follow the work of the previous commission and to report its recommendations to the Governor by September 1, 1968. The commission is to be composed of nine members: three appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House.

By Joseph S. Ferrell

the COUNTIES and the 1967 GENERAL ASSEMBLY

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

[Note: Only legislation affecting the general structure, powers, and financing of county government is discussed in detail in this article. An attempt has been made to summarize briefly other acts relating to specific activities, or indirectly bearing on county government, and to refer the reader to other articles in this issue discussing them in more detail. Local acts are mentioned when they are indicative of trends, or have more than routine interest.]

The 1967 General Assembly will probably appear in 1969 as the curtain-raiser of a concerted effort over the next biennium to review the basic structure and financing of North Carolina county government. This year determined efforts by the North Carolina Association of County Commissioners were unsuccessful in gaining access for counties to revenue sources outside the property tax. Efforts to protect the property tax base from further erosion were generally successful (see the article on Property Taxation). The three major pieces of legislation created a Local Government Study Commission, authorized the creation of capital reserve funds, and revised the investment authority of local governments. Public attention was forcibly called to the revenue plight of local governments by the extended consideration of the local-option sales tax plan, ultimately defeated. On the whole, the major local government issues facing the 1967 General Assembly were not resolved to the satisfaction of those involved in county government and will probably reappear in 1969 with the recommendations of the Local Government Study Commission and the Tax Study Commission. As it was, 1967 saw a large number of relatively minor adjustments in the structure, powers, and financial affairs of counties.

County Organization

Local Government Study Commission

North Carolina local government laws have not undergone comprehensive revision since the county government acts of 1905 and the municipal corporations act of 1917. The half-century which has elapsed since the enactment of these fundamental laws has seen much change in the nature and extent of local government powers, and in the organic relationships among the federal, state, and local levels of government. On the whole, North Carolina local government has been well adapted to functioning in a state gradually passing from rural to urban character, but each new problem has been attacked in isolation. With the exceptions of the 1930 Brookings Institution study and the work of the 1957 Municipal Government Study Commission, there has been little systematic attention to the whole problem of ordering local government for effective functioning as economic and social conditions have changed in the last fifty years. With the active support of the North Carolina Association of County Commissioners and the North Carolina League of Municipalities, the 1967 General Assembly created a Local Government Study Commission to make studies and recommendations for revision of the local government laws (R. 76, HR 944). The Commission is specifically directed to study: (1) ways to reduce the volume of local legislation in the General Assembly; (2) possible changes in the organization and administration of county government which would permit the county to realize its full potential for providing general purpose, area, and regional governmental services; (3) the impact of urbanization on municipal government and its capability for furnishing a full range of public services for the expanding urban areas of the State; and, (4) the purpose and function of special purpose local government units in relation to general purpose county and municipal units.

The Commission is directed to report to the 1969 General Assembly before January 1, 1969, which gives

Table I

County	Terms† of Office	Districting	No.† of Members	Statutory Reference
Ashe	4S†† [4]		5 [3]	Ch. 325, HB 670
Avery	4S [2]		5 [3]	Ch. 316, HB 610
Bladen	4S [2]			Ch. 158, HB 270
Halifax*	4S [2]*			Ch. 839, HB1013
Harnett	4S [2]			Ch. 1243, HB 850
Northampton	4S [2]			Ch. 427, HB 747
Pitt		**	6 [5]	Ch. 778, HB 772
Robeson		***	7 [6]	Ch. 125, SB 150
Rowan	4S [2]	****		Ch. 982, HB 304

*Subject to referendum.
**Adds additional member to Greenville district.
***Adds additional member to Lumberton district.
****Repeals districting requirements.

†The numbers in brackets indicate the composition before the 1967 amendments.

††4S indicates 4-year staggered terms.

it about one year to complete its work. With tasks of such magnitude specifically assigned to it, it is doubtful that the Commission will be able to present a comprehensive report within such a short time.

The Board of County Commissioners: Structure and Procedures

Under the general laws in effect prior to this session, county commissioners were required to meet *in the courthouse* on the first Monday of each month. With many counties renovating their courthouses or building new ones in order to provide for the new district courts, this requirement has posed a problem. Seven counties (Guilford, Hoke, Lee, Mecklenburg, Wake, Watauga, and Wilson) obtained local acts allowing some or all county officials to use temporary quarters for the conduct of official business while the courthouse is undergoing renovation or demolition. (See, e.g., Ch. 180, HB 130; Ch. 126, SB 154; Ch. 524, HB 914). Ch. 617 (SB 219) solves the problem for the commissioners by amending the general law (GS 153-8) to allow them to designate some place other than the courthouse for their regular meetings. Such action must be taken by formal resolution and must be made known to the public by publication.

There were no revisions in the general law providing for the number and method of election of county commissioners, but several counties obtained local acts in this area. The trend toward staggered four-year terms and five-member boards continued. (The general law provides for three-member boards serving two-year terms.) Including the changes summarized in Table I, 53 county boards now serve staggered four-year terms and 75 boards have five members.

As originally introduced, HB 1011 would have prohibited all public boards, commissions, and governing bodies from holding private, executive, or secret sessions. This bill passed the House with an amendment allowing executive sessions to consider personnel matters and the acquisition or sale of property. The Senate amended it to exempt nearly all public agencies, including city councils and boards of county commissioners, and then killed the entire bill. As it relates to boards of county commissioners, what the bill would have accomplished if passed in its original form is unclear, for there is now no authority to exclude the public from any regular or special meeting of the board, or to hold legal meetings in places other than the courthouse or some other regular meeting place duly designated by resolution open to public inspection—and the bill could have done nothing about the informal or "station wagon" meeting.

Ch. 797 (HB 982) authorizes any two or more local governments to form a regional council of local officials for purposes of (1) studying problems common to two or more of its members; (2) promoting cooperative action among its members; and (3) making recommendations to its member units and other public agencies. This act is discussed in more detail in the article on Cities and the 1967 General Assembly in this issue.

The Board of County Commissioners: Vacancies and Salaries

Under GS 153-6, vacancies occurring in the board of commissioners are filled by appointment of the clerk of superior court. With the addition this year of Dare, Granville, and Watauga, forty-one counties now provide for the filling of vacancies by the remaining members of the board. In Cherokee County, vacancies will be filled by the county executive committee of the

political party to which the member causing the vacancy belonged (Ch. 7, SB 16).

Reflecting the economic conditions of 1883, GS 153-13 allows county commissioners per diem compensation of $2.00. Every county has obtained some local modification of this section at one time or another; 26 did so this year. Of interest is a trend toward fixing commissioners' salaries on a monthly or annual basis rather than per diem. Thirteen of the 26 counties modifying commissioners' salaries in 1967 fixed monthly or annual salaries ranging from $1,200 to $1,500 per year, with the chairman usually receiving a larger amount than the other members.

Jury Commissions

Heretofore county commissioners have been charged with the duty of preparing the jury lists for terms of court to be held in their county. Effective January 1, 1968, this duty is transferred to a county jury commission of three members, one each appointed by the commissioners, the clerk of superior court, and the resident superior court judge (Ch. 218, HB 348). This act is discussed in detail in the article on Courts and Court Officials in this issue.

The Board of Education

For over half a century county boards of education have been the only local government officials, other than justices of the peace, not elected by the people or appointed by locally elected governing bodies. Admittedly, the system of legislative appointment was intended to insure that the party in control of the General Assembly would retain control of public education despite the political complexion of each county. At best the system could be justified as tending to remove education from the vicissitudes of partisan politics; at worst it tended to alienate many voters from the school system. In response to growing public dissatisfaction with appointment of school boards by the General Assembly, Ch. 972 (SB 33) provides for the election for all county school boards in the State, effective for the 1969 elections, either by local act or statewide law. This act is discussed more fully in the article on Education in this issue.

The general laws pertaining to school consolidation were revised by Ch. 643 (HB 557). This act is discussed in the article on Education in this issue.

Local school legislation was concentrated in acts for the election of school boards, most of which failed, and acts authorizing referenda on the consolidation of city and county administrative units. Consolidation referenda were authorized for city and county units in Anson, Burke, Chowan, Gaston, Lee, Lincoln, Pasquotank, and Vance counties. Ch. 615 (HB 1010) consolidated units in Richmond County without a referendum.

Robeson County obtained two acts authorizing referenda on whether specific areas described in the bills should be annexed to the Lumberton city administrative unit (Ch. 636, SB 435; Ch. 638, SB 487). Article II, § 29, of the North Carolina Constitution prohibits local acts "changing the lines of school districts." If "school districts" and "administrative units" are the same thing within the meaning of this clause, the Robeson acts are of doubtful constitutionality.

Coroners and Medical Examiners

In 1965 the General Assembly enacted general legislation replacing the county coroner with a county medical examiner, who was required to be a practicing physician. Only 15 counties elected to come under the act that year. Four more joined in 1967: Buncombe, Cabarrus, Caldwell, and Lincoln. The entire act is repealed, effective July 1, 1969, by Ch. 1154 (SB 153), which creates the office of State Medical Examiner within the State Board of Health and provides for appointment of county medical examiners by the Chief Medical Examiner. No counties are exempted from this act. See the article on Public Health in the October issue of *Popular Government* for a full analysis.

Welfare Employees

Prior to amendment by Ch. 898 (HB 1246), GS 108-38 provided that the board of commissioners and the local board of public welfare should "jointly determine" the number and salary of county welfare employees, after receiving the advice of the local director of welfare and the State board, but the members of the board of public welfare had no vote. Ch. 898 removes the requirement of joint action, leaving the determination to the board of commissioners alone. See the article on Public Welfare in this issue.

County Powers

Salaries and Fees

In most counties the salaries of at least some county officers or employees are fixed by the General Assembly and may not be increased or decreased by the board of commissioners. Beginning with the enactment of GS Ch. 153, art. 6A, in 1953, boards of commissioners in a substantial number of counties have been authorized to fix the salaries of specified officers and employees—within limits. This year six counties (Camden, Caswell, Duplin, Edgecombe, Forsyth, and Swain) joined the 52 already under the act, bringing the total to 58.

While the total number of counties ostensibly subject to GS Ch. 153, art. 6A, is high, reality is not quite so generous. Seven covered counties are denied authority to fix the salaries of elected officials, and all covered counties are forbidden to reduce salaries fixed by local act during the term of office of any officer or employee. In 1967 there were 72 local acts fixing the salaries and fees of various officers, board members, employees, and jurors (in addition to those affecting

county commissioners' salaries already discussed). This category of local act is one of the largest—in terms of the number of bills introduced and passed—and, without doubt, the least necessary.

Defense of County Employees

Both cities and counties in North Carolina enjoy immunity from lawsuits by private citizens for civil wrongs committed by public officials or employees in the discharge of their duties when the official act in question was of a "governmental" as opposed to a "proprietary" nature. The county's governmental immunity, however, does not protect the individual officer or employee from being sued in his private capacity. For example, a county cannot be sued in trespass for sending the building inspector to Mr. Citizen's premises over Citizen's protest; yet, Mr. Citizen can sue the building inspector individually. Prior to the enactment of Ch. 1093 (HB 1169), counties had no authority to pay for defense counsel for an officer or employee sued on account of alleged wrongs committed in the course of doing his duty. This new statute, to be codified as GS 160-28.1, authorizes counties to undertake an employee or former employee's defense, in the discretion of the board of commissioners, through the county attorney, a special counsel employed for the purpose, or by purchasing insurance. The expense of such a defense is declared to be a necessary expense.

The Police Power

The police power of the State is its power to regulate individual conduct for the health, safety, and welfare of all. Municipal corporations have had delegated police power for many years, but the General Assembly has never allowed all the counties the same power to define crimes and otherwise regulate individual conduct. In 1963, 52 counties were authorized to regulate and prohibit a broad range of activities outside the corporate limits of municipalities [GS 153-9 (55)], but this act was declared unconstitutional insofar as it authorized regulation of business activities. (Such an act must either apply to all the counties or must be based on a "reasonable classification.") Ch. 80 (SB 68), enacted by the 1967 General Assembly, is one of the first general grants of the police power to counties. It authorizes counties to prohibit or regulate "itinerant merchants, peddlers, hawkers and solicitors." Regulations adopted pursuant to this grant of power may require a permit to engage in itinerant selling, may limit the times and areas in which solicitation may be made, may require evidence of financial stability and proper credentials, and may require a bond to be posted to protect the public from fraud. County regulations may be made applicable within city limits if the city governing board consents, and violation of the regulations is made a misdemeanor. No counties are exempted from the act.

HB 9 would have given counties the authority to set the speed limits on privately or publicly owned property normally accessible to motor vehicles such as shopping centers, parking lots, service stations, drive-in theaters, and the like. The bill was reported unfavorably by committee, but the objective was obtained by other means in Ch. 106 (HB 256), making the general "reasonable and prudent" speed law applicable to such areas.

Most of the county legislation invoking the police power was in the form of local acts. Seven counties were added to GS 153-10.1, authorizing county commissioners to adopt ordinances governing the disposal of trash and garbage (Carteret, Craven, Lincoln, Macon, Pamlico, Pitt, and Union); it was made a misdemeanor in 20 counties to abandon domestic animals on the property of another or on the public highways (Beaufort, Carteret, Cabarrus, Chatham, Cleveland, Craven, Edgecombe, Franklin, Gaston, Guilford, Johnston, Moore, Nash, Orange, Pamlico, Union, Vance, Wake, Warren, and Wilson; see Ch. 843, SB 371); Carteret County was given authority to regulate surfing (Ch. 89, HB 130); unnecessary noises were prohibited in Carteret (Ch. 647, HB 773) and parts of Rowan (Ch. 417, HB 687); acts regulating the parking of motor vehicles were passed for Cabarrus (Ch. 314, HB 606), Carteret (Ch. 474, HB 757), and Dare (Ch. 473, HB 729); the offense of disturbing the peace in Guilford County was defined (Ch. 575, HB 804); discharge of firearms on public highways or streets was prohibited in Alleghany, Catawba, and Guilford (Ch. 573, HB 767); Forsyth was authorized to regulate dogs running at large (Ch. 918, HB 1178); bingo was legalized for "patriotic or fraternal clubs" in New Hanover (Ch. 86, SB 93); the City of Lumberton was exempted from Robeson County's act requiring pool rooms to stay closed on Sunday (Ch. 247, SB 246); bay rum was outlawed in Rutherford County (Ch. 746, HB 934); pawnbrokers were legalized for Onslow County (Ch. 768, HB 1210); Rockingham and Person came under the going-out-of-business-sale statutes while Alamance came out; and legal beer and wine crept one-half mile closer to the administration building of Elon College (Ch. 250, HB 115).

It is interesting to observe that the General Assembly continues to enact such laws when a general delegation of ordinance-making powers to counties similar to that already delegated to cities would give counties the authority to adapt police regulations to local conditions.

Recreation Commissions

Ch. 1228 (HB 1372) amends the statute authorizing joint city-county recreation programs (GS 160-164) to allow the participating units to create a joint commission to administer the program by the passage of identical resolutions. A joint commission so created would exercise whatever powers might be

granted by the resolutions creating it—which may include all the powers that any one of the participating units would have if acting alone as to the control and general administration of parks, playgrounds, and other recreational facilities. Joint commissions are expressly denied the power to levy taxes, issue bonds, or create debts which would be a general liability of any of the participating units, but they are required to operate under budgets and appropriations approved by the participating units.

Health and Hospitals

Acts to authorize counties to regulate and provide for ambulance service (Ch. 343, HB 159), making minor changes in the laws authorizing counties to lease hospital facilities to non-profit associations or corporations (Ch. 820, SB 209, and Ch. 466, HB 683), and relating to hospital district bonds (Ch. 718, HB 532) are discussed in the article on Public Health in the October issue of *Popular Government*.

Garbage Disposal

Counties were first authorized to undertake garbage collection and disposal services in 1961 (GS 153-272 through 153-275). Ch. 1001 (SB 679) authorizes the issuance of county bonds for the purpose of acquiring land and equipment for sanitary landfills, and Ch. 707 (HB 699) allows the State Highway Commission to contract with counties for the use of prison labor and highway equipment in connection with garbage disposal facilities.

Zoning

Ch. 1208 (HB 1240) amends the county zoning enabling laws to (1) allow the board of adjustment to swear witnesses; (2) make it explicit that the board of commissioners as well as the board of adjustment may issue special-use permits; and (3) authorize the board of commissioners to fix the number of members on the board of adjustment and provide for geographical representation on the board. See the article on Planning in this issue.

Purchasing and Contracting

A general revision of the chief statutes regulating purchasing and contracting by local governments was effected by enactment of Ch. 860 (HB 796). The minimum size contract for construction and repair work requiring the use of the formal bidding procedure was increased from $3,500 to $7,500; the cost of construction projects which may be undertaken by force account was increased from $15,000 to $25,000; the three-bid requirement on construction contracts over $20,000 was lowered to cover all those for more than $7,500; and the classification of separate building specifications and contracts under the provisions of GS 143-128 was revised. For a more detailed discussion of those changes, see the article on Cities and the 1967 General Assembly in this issue.

Water and Sewerage Services

The statutes granting general authority for counties to provide water and sewerage services were amended by Ch. 462 (HB 631) expressly to authorize boards of county commissioners to adopt rules and regulations governing the use of county water and sewerage systems. Violation of such regulations is made a misdemeanor.

Three changes were made in the Revenue Bond Act of 1938 to aid counties and cities in arranging financing for water systems, prompted by the needs in Anson County. The maximum term of revenue bonds was extended from 35 to 40 years by Ch. 100 (HB 120). Authority to receive an advance from the federal government or its agencies in anticipation of the sale of revenue bonds was authorized by Ch. 711 (HB 917). And Ch. 555 (SB 174) authorized the private sale of revenue bonds, subject to a number of safeguards.

Finally, 43 counties now have authority to levy special assessments for water and sewerage facilities under the provisions of GS Ch. 153, art. 24A, with the elimination of the exemptions of Forsyth and Northampton.

County Jails

Ch. 581 (SB 289) substantially revises the laws relating to county jails. The act (1) gives the State Board of Public Welfare authority to promulgate standards for local jails; (2) requires the Board of Public Welfare to provide training for jailers; and, (3) continues the Board's existing authority to approve jail plans. R. 53 (SR 290) creates the Jail Study Commission charged with the duty of studying local jails and recommending ways to aid counties in providing adequate jails and detention facilities. Ch. 879 (HB 1145) authorizes counties to levy a special tax for jail construction. These acts are discussed in the article on Public Welfare in this issue.

Law Enforcement Assistance

Ch. 846 (HB 116) authorizes all political subdivisons of the State to lend law enforcement officers to each other in emergencies. A state of emergency must be declared by the "chief elected official" of the requesting political subdivision; the units involved must have previously agreed to assist each other in emergencies; and agreements may be reached for compensation to the sending subdivision. No such agreements would be necessary for a county to assist a city within its borders; but the act will allow pooling of police efforts among counties and will allow cities to agree to help the counties police rural county areas in emergencies.

For counties, the provision of the act that a state of emergency be declared by the "chief elected official" may cause some problem of interpretation. Historically, the sheriff is the "chief elected official" of a county, but the chairman of the board of commissioners can also be considered as such. Pending clarification of the statute by court decision, the safest course would be for the sheriff and chairman of the board to make a joint declaration of a state of emergency to invoke the provisions of the act.

Sources of Revenue

The major local government issue facing the 1967 General Assembly was the continuing quest for sources of revenue to supplement the property tax. (See the article on Property Taxation in this issue for a discussion of attempts to reduce the property tax base.) Chief among the many proposals for new revenues was the recommendation of the Commission for the Study of the Revenue Structure of the State, created by the 1965 General Assembly, that the counties be authorized to hold referenda on the levy of an additional 1 per cent sales tax to be collected by the State and returned to the counties and cities in much the same manner as the intangibles tax is now collected and distributed. HB 593, embodying this proposal, was reported unfavorably by committee, and a favorable minority report failed. Later in this session HB 1238 was offered as an alternative. This bill would have increased the State sales tax by 1 per cent without local option, and would have distributed the additional revenue realized to the counties and cities. It failed second reading in the House. However, the local-option sales tax issue is far from dead. Mecklenburg County obtained a local bill (Ch. 1096, HB 1249) allowing it to try the plan. Should Mecklenburg's voters approve such a levy, and should experience with it prove satisfactory, the 1969 General Assembly will surely have to wrestle with the problem once more.

When it became apparent that the local-option sales tax was in deep trouble as a statewide measure, a host of alternative proposals were put forward. All of them failed. HB 939 would have levied a tax on tobacco products, the proceeds to be earmarked for education and distributed to local government. It was reported unfavorably by committee; however, a favorable minority report failed by a surprisingly small margin. This may be the harbinger of renewed efforts in 1969. HB 1090 would have returned to the counties 15 per cent of the State sales tax collected within their borders. HB 1263 would have shared 50 per cent of the State income tax with the counties, earmarked for education. In view of the revenue consequences for the State, neither of these revenue-sharing bills received very serious consideration. No fewer than six bills would have tapped the alcoholic beverage taxes in some manner for local governments. None of them gained significant support.

Ch. 551 (SB 126) added bakery wholesale or thrift outlets to the chain store privilege license tax section (GS 105-98) for a very small revenue gain.

Only Ch. 986 (HB 563) increases county revenues to any significant extent. On January 1, 1968, the federal stamp tax on real estate transfers will end. Ch. 986 enacts a state real estate transfer tax of 50 cents per $500 value of the property transferred, generally along the lines of the existing federal tax. The Commission to Study the Revenue Structure of the State recommended this new tax and estimated that it would bring in approximately $800,000 each year. Each county's revenue gain will depend on the frequency of real estate transfers and the value of the land.

Financial Administration

Capital Reserve Funds

Assume that County X desperately needs more office space to house its growing departments. To purchase or build a new building will cost $500,000; the county paid off $200,000 worth of bonds in the preceding fiscal year and therefore can issue a little over $137,000 in bonds this year without a vote; there are no other funds in sight. In order to issue bonds in excess of $137,000 even for "necessary expenses," there must be a vote of the people— and the people are hard to convince of the need for office buildings. In many a similar situation counties have had to forego needed construction either because of the reluctance of the voters to approve bond issues or the reluctance of the commissioners to incur further debt. Ch. 1189 (HB 1201) revises the obsolete County Capital Reserve Fund Act (GS Ch. 153, Art. 10A) to empower counties to establish capital reserve funds for any purpose for which they might issue bonds. These funds may be created by resolution of the board of commissioners setting forth (1) the purposes for which the fund is created; (2) the approximate length of time during which funds are to be accumulated; (3) the approximate amount to be accumulated; and (4) the sources from which the funds will be derived. Liberal amendment powers allow the commissioners to use reserve funds for purposes other than those originally contemplated. As an alternative to creating a separate fund, capital reserve accounts may be established in any of the regular current expense funds. Monies may come from any source. For example, general purpose reserve funds may be accumulated by regular annual appropriations in the general fund or in any other fund. Return now to the example of County X. If County X's commissioners could have established a capital reserve fund in 1960 to which they could have appropriated $50,000 per year, the fund would have had over $350,000 in assets by the end of 1967. Instead of being $363,000 short of the needed funds for their $500,000 office building, only $13,000 would have to be found—and interest earned by investment of the fund would have supplied this.

Investment of Idle Cash Balances

Prior to the enactment of Ch. 798 (HB 1025), counties had specific authority to invest monies held in school capital reserve funds, public and mental health center reserve funds, sinking funds, and the unused portions of bond issues; there was no authority to invest other cash balances. Long-term balances may be built up through the sound budgeting practice of accumulating working balances in each fund, and short-term balances result from collecting most of the annual tax levy in the four months between October 1 and February 1. In recent years most counties have been

systematically investing idle cash balances, mostly in certificates of deposit, without specific authority to do so. Ch. 798 (HB 1025) consolidates existing investment authority and grants new authority to invest any monies subject to the Fiscal Control Act in the following types of securities: time deposits; certificates of deposit; obligations of the United States, North Carolina, any North Carolina local government (presumably including bonds of the investing unit itself), or any federal agency whose obligations are guaranteed by the United States; shares of savings and loan associations; and obligations of certain federal banks. The Director of Local Government is given certain regulatory authority over such investments; and bank deposits may not exceed the maximum amount guaranteed by federal insurance. Interest earned on investments must be credited to the fund whose monies are invested. The act does not attempt to answer the question of whether interest earned on invested tax money retains the character of tax funds and thus is restricted in its use without the approval of the voters.

Public Assistance Funds Transfers

Under GS 108-25, 108-54, and 108-73.12 before amendment of § 108-73.12 by Ch. 554 (SB 163), counties had limited authority to transfer funds among the Old Age Assistance, Aid For Dependent Children, and Aid to the Permanently and Totally Disabled funds. Some of these transfers were subject to approval of the State Board of Allotments and Appeal; others were not. Ch. 554 allows interfund transfers, subject to approval by the State Board, among any public assistance funds.

County Auditors

Thirty years ago, the elected county auditor was a familiar figure in North Carolina county government. The office has never been provided for by the general law. Yet, many counties created the office by local act—usually before the local government fiscal reforms of the 1930's—to insure some central supervision of county funds. After the enactment of the County Fiscal Control Act, county auditors assumed the duties of county accountant. Gradually the elected county auditors have been abolished and the office of county accountant made appointive by the county commissioners as provided by the general law. In 1967 Avery, Pender, and Rowan made the auditor appointive.

Publication of Budget Estimates

GS 153-119 requires that the annual budget estimate adopted by the commissioners be published for public information; it does not specify in what detail. There is considerable difference of opinion among county accountants as to what must be published. Some counties publish only totals for each fund; others publish varying degrees of detail. Avery and Caswell counties obtained local acts this year requiring publication in sufficient detail to show separate appropriations for each department, agency, or activity of the county (Ch. 317, HB 611; Ch. 331, HB 697). Thus, publication of the General Fund budget must show at least totals for each department included in the General Fund. This would seem to be the minimum detail already required by GS 153-119.

Airport Bond Maturities

Ch. 1086 (HB 1146) amends GS 153-80 and 153-82 to fix the maximum maturity period of airport bonds at 30 years. Before amendment these statutes fixed a 10-year limit on bonds for equipment and construction and a 40-year limit for land acquisition.

Appropriation and Special Tax Authorizations and Related Powers

Recreation and Library Taxes

GS 160-72 and 160-163 presently authorize counties to levy special taxes, upon a favorable vote of the people, for the support of libraries and recreation programs. The library tax was limited to 15 cents and the recreation tax to not less than 3 cents nor more than 10 cents. Ch. 703 (HB 451) removes these statutory limits and allows the commissioners to submit any rate they may choose. Any increase in a maximum tax previously voted by the people must also be approved by a vote.

School Current Expense Supplements

Ch. 1263 (HB 1408) amends GS 115-80 to make it explicit that counties may supplement teachers' salaries and employ additional school personnel beyond the state minimum by the levy of taxes and appropriations in the school current expense fund without the necessity of a vote on a special school tax for these purposes. This act is further discussed in the article on Education in this issue.

Public Aid to Private Charities

In every North Carolina community there are a variety of public service activities conducted by private groups—the chamber of commerce, the boy scouts, rescue squads, community action programs, sheltered workshops, and so forth. These agencies perform valuable services for the community, and are usually short of funds. Quite often county commissioners are approached for a "donation." Given the purposes of these agencies and their value to the community, is it appropriate or legal for public governing boards to "donate" public funds to them? The Supreme Court has ruled that public funds may not be "donated" to private agencies, no matter how beneficial their activities may be. This rule is derived from the command of art. V, § 3, of the North Carolina Constitution that taxes shall be levied "for public purposes only." The Court has extended this language to all funds, from whatever source derived, and has held that "donations" are not for a public purpose unless the governing board retains complete control over the use and expenditure of the funds. Thus, a local government may appropriate funds for the use of a private charity only so long as (1) the activity concerned is one which should be appropriate for the

government to undertake itself; (2) there is statutory authority for the local government to support the activity with public money; and (3) there are sufficient safeguards to insure that the funds are used for the purpose for which they were intended. For example, a city can make funds available to a local chamber of commerce for local development so long as the city council retains control over their expenditure.

Ch. 1074 (HB 1038) and Ch. 464 (HB 673) both purport to authorize counties to appropriate non-tax revenues for making "donations" to privately controlled activities. Ch. 1074 authorizes donations "to any licensed facility for the mentally retarded, whether publicly or privately owned, and whether located within the borders of such county or not." Ch. 464 authorizes donations "To any orthopedic hospital, whether publicly or privately owned, and whether located within the borders of such county or not." The most common type of activity probably contemplated by the drafters of Ch. 1074 is the "sheltered workshop." These agencies are usually privately sponsored and provide a sheltered environment in which persons unable to function adequately in normal activities because of mental illness or retardation may be gainfully employed. In view of the holdings of the North Carolina Supreme Court discussed above, these statutes are of doubtful constitutionality insofar as they permit unrestricted gifts of public money to such activities. Commissioners wishing to take advantage of the authority conferred should consult their county attorney for advice.

Four local acts raise similar problems. Halifax County obtained authority for four named townships to vote on the levy of a tax to support a privately controlled non-profit hospital (Ch. 110, HB 91); Buncombe County was authorized to make appropriations to the Eliada Home (Ch. 64, HB 194); Mitchell County was "directed" to appropriate funds to the N. C. Rhododendron Festival (Ch. 415, HB 578); and Stanly County was authorized to donate land and funds to a vocational workshop (Ch. 588, HB 667).

Special Taxes for Necessary Expenses

The North Carolina Constitution allows counties to levy special taxes outside the General Fund for "special purposes with the special approval of the General Assembly." If such taxes are for necessary expenses, no popular vote is required. Five counties were added this year to GS 153-9(43), which allows special tax levies for the county accountant, farm demonstration agent, home demonstration agent, and veterans' service officer. This brings the number of counties subject to this authorization to 47.

Ch. 879 (HB 1145) adds a new section [GS 153-9(8a)] to authorize special levies for courthouse and jail construction, renovation, and furnishing.

Bladen, Robeson, and Rowan counties obtained local acts authorizing the levy of special taxes for library support without a vote of the people by the declaration that libraries are a necessary expense within the meaning of the Constitution (Ch. 488, SB 298; Ch. 136, SB 128; Ch. 471, HB 719). Existing Supreme Court decisions hold to the contrary. However, the Court has repeatedly said that the necessary expense concept is not static and is subject to alteration as conditions change. These acts may pass constitutional muster if tested in the courts.

Special Voted Taxes

There were no general laws authorizing new taxes subject to popular vote, but Cumberland County obtained a local act authorizing a referendum on the levy of a tax to support the maintenance of a county auditorium (Ch. 971, HB 1291).

Special Appropriations

Two counties, Catawba and McDowell, were added to GS 153-9(35½) and GS 153-9(35¾) relating to the authority of counties to assist in soil and water conservation activities with non-tax revenues. Other local acts authorized counties to spend money for local development, police protection of recreational waters, rural fire protection, flood control, and orthopedic hospitals.

Miscellaneous

Several acts directly or indirectly related to county government are discussed in other articles in this issue.

See the article on State Government for discussion of the North Carolina Industrial Development Financing Authority (this act has property tax implications for counties which are discussed in the article on Property Taxation) and an act authorizing State loans and grants for airport construction and development (Ch. 1006, HB 296).

See the article on Water Resources in the October issue of *Popular Government* for discussion of acts relating to small watershed improvement programs (Ch. 987, HB 969) and flood-plain management (Ch. 1070, HB 997).

See the article on Public Personnel in the October issue of *Popular Government* for discussion of amendments to the Local Governmental Employees' Retirement System Act (Ch. 978, SB 669).

In addition to the Local Government Study Commission, the 1967 General Assembly created a Tax Study Commission (R. 67, HR 1230) charged with the duty of studying the revenue structure of the State, and a Library Study Commission to study library support (R. 78, HR 1085). The Legislative Research Commission was directed to study means for providing more physicians in small towns (R 60, SR 540).

In local acts, Brunswick, Hyde, and New Hanover counties set up procedures for determining title to lands built up from the ocean by erosion-control programs (Ch. 644, SB 329; Ch. 566, HB 642) and Jones Knob in Haywood and Jackson counties was renamed Mount Lyn Lowry.

By C. E. Hinsdale

COURTS AND COURT OFFICIALS

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

The General Assembly of 1967 enacted more legislation of major significance to the courts and court officials of North Carolina than any legislature in a century. This is a strong statement, coming as it does on the heels of the rewriting of the Judicial Article of our State Constitution by the 1961 General Assembly and the enactment of the Judicial Department Act by the 1965 General Assembly, but it can be supported easily by a partial recitation of important legislation enacted this year: a new Court of Appeals in the Appellate Division of the General Court of Justice, bringing with it entirely new jurisdictional and procedural arrangements in the courts above the trial level; reform of procedures for the selection of jurors, including an appointed jury commission in each county, and the elimination of all statutory exemptions from jury duty; strengthening of the district court system, and its extension to 61 more counties; wholesale overhaul of the system for the prosecution of crimes in the trial courts; doubling, by late 1968, of the full-time, State-paid judicial manpower, both trial and appellate; expansion of the provisions for counsel for indigents, both adult and juvenile delinquent; extension of the right of accused persons to pretrial release without money bail; and a thoroughgoing modernization of our century-old rules of civil procedure.

The Court of Appeals Act, Ch. 108 (SB 42), was discussed in detail in the April, 1967, issue of *Popular Government*. The new juror selection law, Ch. 218 (HB 348), now Chapter 9 of the General Statutes, was discussed in a pre-enactment article in the March, 1967, issue of *Popular Government*. That article remains an accurate description, in all essential details, of the law as ratified. These two major enactments will not be discussed further in this article. Major emphasis will be given in this discussion to the amendments to the Judicial Department Act of 1965, the solicitorial reorganization law, and various particular enactments which affect the operations of the trial courts generally, and especially the office of the clerk of superior court. The new rules of civil procedure, while important, are not effective until 1969, and are too technical for extended treatment in this publication.

Amendments to the Judicial Department Act of 1965

To the surprise of some and the gratification of many, the first few months of operations under the Judicial Department Act of 1965, which became effective in 22 countries in December, 1966, revealed few rough spots requiring legislative sanding. Ch. 691 (SB 292), known as the Omnibus Amendments Act, effective July 1, 1967, contains some three dozen sections amending the 1965 law, but the bulk of these are of a purely technical, clarifying or supplemental nature; only a few are of sufficient importance, substantively, to merit mention here.

GS 7A-43.2 is amended to make provision for full-time assistant solicitors of superior court. Subject to the approval of the Administrative Officer of the Courts, a superior court solicitor is authorized to appoint one or more full-time assistants, to serve at his pleasure. The salary of a full-time assistant cannot exceed that of a district court prosecutor. The provision for part-time assistant solicitors is continued, at $35 per diem for each day's service, not to exceed 5 days per week, and the requirement that the service be "in court" is removed. These changes are effective in all 100 counties.

GS 7A-101 is amended by the addition of subsection (b), which authorizes the Administrative Officer of the Courts to grant annual merit salary in-

NEW JUDGES
General Court of Justice
July, 1967

Appellate Division
Court of Appeals
David M. Britt
**Walter E. Brock
*Hugh B. Campbell
*James C. Farthing
*Raymond B. Mallard, Chief Judge
Naomi Morris

Superior Court Division
Regular Resident Judges****
***Coy E. Brewer
**Edward B. Clark
Sam. J. Ervin, III
James G. Exum
**Fred H. Hasty
**Harry C. Martin
Thomas W. Seay, Jr.
Frank W. Snepp, Jr.

Special Judges
Fate J. Beal
James C. Bowman
**J. William Copeland
Robert M. Martin
**Hubert E. May
Lacy H. Thornburg

District Court Division
George Z. Stuhl

crements to clerks of superior court, in amounts not to exceed 10 per cent of the salary set forth in subsection (a), and provided that the increase or increases cannot exceed the statutory salary for clerks in counties of the next higher population group. A salary increase must be based on a finding by the Administrative Officer that the operations of a particular clerk's office are discharged with "exceptional efficiency and economy," or that the particular clerk's responsibilities, due to rapid growth of population or judicial business, have increased above the average for the clerks in his salary grouping. This section continues to apply only to those clerks who are on the State payroll (in those counties in which the district court is operative). The decision of the Administrative Officer under this subsection is final, and no clerk is eligible for a merit salary increment until he has served a full year in office.

Repeal of GS 7A-104, together with amendment of GS 7A-105 does away with the requirement for individual bonds for clerks of superior court. Henceforth they may be bonded under the same blanket bond as is authorized for other personnel in the clerk's office.

A new GS 7A-104, applicable in district court counties only, replaces GS 2-7 with modern grounds and procedures for removal of the clerk of superior court from office. These grounds and procedures are substantially the same as for removal of a district court judge, except that the affidavit required to initiate action is filed with the chief district judge.

The table in GS 7A-133 is expanded to include both the number of judges and full-time assistant prosecutors per district and the numbers of magistrates and additional seats of court per county for the 18 districts (embracing 61 counties) which come under the district court system in December, 1968. Also, the number of magistrates authorized for several of the original 22 counties has been increased. See the table on page 36.

In GS 7A-134, the qualifying population figure is lowered from 100,000 to 85,000. This will authorize family court counselors (who assist district court judges) in five additional counties: Robeson, Scotland, Alamance, Chatham, and Orange.

To GS 7A-148, subsection "(b)" is added: "The chief district judges shall prescribe a multicopy uniform traffic ticket and complaint for exclusive use in each county of the State not later than December 31, 1970."

The language of GS 7A-165, concerning part-time assistant prosecutors, is liberalized in the same manner as the provisions noted earlier for part-time assistant solicitors. Per diem ($35) is authorized, not to exceed 5 days per week, and the services need not be rendered "in court."

The language of GS 7A-171 concerning nominations of magistrates by the clerk of superior court is clarified. As amended, the section now requires that the clerk nominate "two (or more, if requested by the judge)" candidates for each magisterial vacancy. This makes it clear that for each appointment the superior court judge is to have a choice, and not to be forced merely to ratify a nominee of the clerk.

An amendment to GS 7A-180 grants to clerks of superior court the power to set bail in traffic cases, upon waiver of preliminary examination, in accordance with a bail schedule furnished by the chief district judge. This makes the authority of the clerk in routine traffic cases similar to that of the magistrate. The same authority is given to assistant and deputy clerks (GS 7A-181).

Three amendments to the 1965 statute provide for the operation of the district court in a municipal seat of court which sits astride a county line. An addition to GS 7A-182 authorizes a joint additional office of the clerk of superior court in such a locality; a new section, GS 7A-199, provides special civil, criminal, and juvenile venue rules, and rules for the use of a civil jury, in such a bi-county site; and another new

*Former Regular Superior Court Judge
**Former Special Superior Court Judge
***Former Chief District Judge
****Five additional regular judgeships were authorized by the 1967 General Assembly, raising the total number of regular superior court judgeships to 40.

section, GS 7A-293 (reported here out of order), enlarges the criminal authority of a magistrate assigned to such a locality to the bi-county perimeter of the seat of court plus one mile. To date, Rocky Mount is the only beneficiary of most of these provisions, although other small towns located astride the same Nash-Edgecombe county line may utilize the provisions respecting the magistrate's power.

GS 7A-292 is expanded by listing several additional quasi-judicial powers of the magistrate, such as the appointment of assessors to allot property for homestead exemptions and the assignment of a year's allowance to a surviving spouse. The list includes several common functions now performed by justices of the peace, but it is by no means all-inclusive.

Several amendments effect minor adjustments in the article dealing with costs and fees. GS 7A-304 (a) is amended to provide that in a criminal case in which an active prison sentence is imposed, costs of court shall not be assessed unless the judgment specifically so provides, thus conforming the law to practice and easing the bookkeeping burden of the clerk. The same subsection is further amended to liberalize the use of facilities fees in the construction or renovation of courthouse facilities within a two-year period (before or after) the district court is activated in any county. A new subsection is added to GS 7A-304 which establishes a priority for distribution of partial payments, thus enabling the clerk of court, in criminal cases, to close out inactive accounts. Fees of interpreters, when authorized and approved by the court, are added to the list of expenses assessable or recoverable in GS 7A-305 (d). In GS 7A-308 (a) the list of miscellaneous fees and commissions collectible by the clerk of court is amended by deletion of "commitments of the mentally ill," "registration of professional and technical persons," and "pistol permits," and by the addition of "On all funds placed with the clerk by virtue of his office and *invested* by him, a three per cent (3%) commission on the first one thousand dollars ($1,000), and a one per cent (1%) commission on all funds above one thousand dollars ($1,000)." (Emphasis supplied.) Counties and municipalities will be relieved by GS 7A-317 (new), which specifies that counties and municipalities are not required to advance costs for the facilities fee, the General Court of Justice fee, the miscellaneous fees enumerated in GS 7A-308, or the civil process fees enumerated in GS 7A-311.

Various sections of Chapter 7A are amended to remove reference to specific salary figures for judges, prosecutors, full-time assistant prosecutors, the Administrative Officer of the Courts, and his assistant. A substitute provision states that the salaries of these officials will be as set forth in the Budget Appropriations Act. This eliminates the need for frequent amendments to statutes specifying salary figures, and also eliminates the repetitious justification for salary adjustments in the legislature—once before the Appropriations Committee and a second time before the Courts and Judicial Districts Committee. Travel and subsistence allowances of all officials are made the same as those for State employees generally. The salary classifications for clerks of superior court, based on population, remain unchanged, as does the salary range for magistrates.

This completes the list of changes to the Judicial Department Act of 1965, as contained in the Omnibus Amendments Act. The latter act, however, made several adjustments in other chapters of the General Statutes of interest to judicial officials and others. GS 2-42 was amended by deletion of four subsections requiring that physicians, dentists, chiropodists, and nurses register with the clerk of superior court. Corresponding changes in Chapters 83 and 90 eliminate the requirement for registration (with the clerk) of nine other categories of professional and technical personnel. An addition to GS 20-42(b) requires the Department of Motor Vehicles to furnish certified copies of any record kept by them to public and court officials for official use, without charge. An addition to GS 105-93 reverses an Attorney General opinion that the process tax is applicable in district court counties. Various changes in Chapter 147 of the General Statutes shift the responsibility for distribution and sale of Supreme Court Reports from the Secretary of State to the Administrative Officer of the Courts. Under the Court of Appeals Act, the latter official already has responsibility for printing and sale of advance sheets and bound volumes of Supreme Court and Court of Appeals Reports. These amendments are effective July 1, 1967.

The need for a few additional amendments to the 1965 law came to light after the Omnibus Amendments Act was well on its way to enactment. These changes were effected by individual bills. Perhaps the most important of these changes was made by Ch. 601 (SB 116) ratified (and effective) May 25, 1967, which amends GS 7A-288 to provide that appeals from district to superior court in criminal cases ". . . may be withdrawn within 20 days after notice of appeal is given, or 10 days before the next criminal session of Superior Court convenes, whichever is later." A parallel change in GS 7A-304(a) specifies that an appeal may be withdrawn under these new time limits without assessment of superior court costs. Another amendment, Ch. 1165 (SB 652), eliminates the requirement in small-claim cases (GS 7A-211) that all defendants must be from the same county, specifying that at least one of the defendants, if there are more than one, must be a bona fide resident of the county of the magistrate to whom suit is assigned for trial. The State is authorized to pay for meals of jurors sequestered during the day, under an amendment to GS 7A-312. (Overnight expenses of sequestered jurors are already provided for as a State expense.) Family court counselors were given the same peace-officer powers as juvenile court probation officers, under

District Court Districts — December, 1968

District	Judges	Full-time Asst. Pros.	County	Magistrates Min.	Magistrates Max.	Additional Seats of Court
*1	2	0	Camden	1	2	
			Chowan	2	3	
			Currituck	1	2	
			Dare	2	3	
			Gates	2	3	
			Pasquotank	3	4	
			Perquimans	2	3	
2	2	0	Martin	3	4	
			Beaufort	3	4	
			Tyrrell	1	2	
			Hyde	2	3	
			Washington	3	4	
3	4	1	Craven	5	7	
			Pitt	8	10	Farmville Ayden
			Pamlico	2	3	
			Carteret	4	5	
4	4	1	Sampson	5	7	
			Duplin	6	8	
			Jones	2	3	
			Onslow	5	7	
5	3	0	New Hanover	6	8	
			Pender	4	6	
6	3	0	Northhampton	5	6	
			Halifax	7	9	Roanoke Rapids
			Bertie	4	5	
			Hertford	5	6	
7	4	1	Nash	7	9	Rocky Mount
			Edgecombe	4	6	Rocky Mount
			Wilson	4	6	
8	4	1	Wayne	5	7	Mount Olive
			Greene	2	3	
			Lenoir	4	6	
9	3	0	Person	3	4	
			Granville	3	4	
			Vance	3	4	
			Warren	3	4	
			Franklin	3	4	
10	5	2	Wake	12	16	Apex Wendell Fuquay-Varina
11	4	1	Harnett	5	7	Dunn
			Johnston	8	10	Benson Selma
			Lee	3	5	
*12	4	2	Cumberland	10	15	
			Hoke	2	3	
13	2	0	Bladen	4	6	
			Brunswick	4	6	Shallotte
			Columbus	6	8	Tabor City
*14	3	0	Durham	6	8	
15	4	1	Alamance	7	9	Burlington
			Chatham	3	4	Siler City
			Orange	4	6	Chapel Hill

District	Judges	Full-time Asst. Pros.	County	Magistrates Min.	Max.	Additional Seats of Court
*16	3	1	Robeson	8	12	Fairmont Maxton Red Springs Rowland, St. Pauls
			Scotland	2	3	
18	6	3	Guilford	15	20	High Point
20	4	1	Stanly	4	5	
			Union	4	6	
			Anson	3	4	
			Richmond	4	5	
			Moore	4	5	Southern Pines
21	5	2	Forsyth	10	15	Kernersville
24	2	0	Avery	2	3	
			Madison	3	4	
			Mitchell	3	4	
			Watauga	3	4	
			Yancey	2	3	
*25	3	1	Burke	4	6	
			Caldwell	4	6	
			Catawba	6	9	Hickory
26	6	3	Mecklenburg	15	25	
27	5	1	Cleveland	5	8	
			Gaston	10	18	
			Lincoln	3	5	
29	3	1	Henderson	4	6	
			McDowell	3	4	
			Polk	2	3	
			Rutherford	6	8	
			Transylvania	2	3	
*30	2	0	Cherokee	2	3	
			Clay	1	2	
			Graham	2	3	
			Haywood	4	6	Canton
			Jackson	2	3	
			Macon	2	3	
			Swain	2	3	

*Activated December, 1966

an additional amendment to GS A-134. Employees of local courts who became employees of the State by operation of law in December, 1966, or who become State employees in similar fashion in December, 1968, or December, 1970, may retain to their credit, under Ch. 1187 (HB 1198), earned sick leave not exceeding 30 work days.

Legislation Affecting Solicitors

In addition to the provisions mentioned earlier for full-time and part-time assistant solicitors, important, long-range changes in the office of solicitor were made by Ch. 1049 (SB 308). It is the intent of this new law, a Courts Commission recommendation, to eliminate the causes of long-standing dissatisfaction with the system for the prosecution of crimes in the trial courts of the State.

The new law does three things: (1) it increases the number of solicitorial districts from 24 to 30, the numbers and boundaries of which are to be the same as superior court judicial districts; (2) it makes the solicitor a full-time State official; and (3) it assigns to the solicitor responsibility for the prosecution of all crimes in the superior *and district* courts of the State. Since these changes could not be effected in mid-term without raising a serious constitutional question, the new legislation is effective January 1, 1971, the day after the terms of office of the present solicitors expire. On this same date the office of district court prosecutor is abolished, and the functions of this office are absorbed by the solicitor and his assistants.

Pending the effective date of these permanent changes in the law, a measure of potential relief for current problems in various districts is provided by authorizing 18 of the busiest solicitors to "go full-time" on July 1, 1968, if they renounce all private practice by that date and so inform the Administrative Officer of the Courts. Solicitors in the following districts are not affected by this temporary measure: the first, nine-A, the fourteenth, the seventeenth, the twentieth, and the twenty-first. Solicitors who elect to become full-time State employees in 1968 will receive a $3,000 increase in pay—to $15,000 per year. Other solicitors will receive a $1,000 increase. In addition, full-time solicitors will be entitled to $400 per month office-expense allowance (which must be documented to the Administrative Office). The former $3,000 "all expenses" allowance continues; it becomes a travel and subsistence allowance. Of course, when a solicitor's district comes under the district court system, all his legitimate "operating" expenses are a State responsibility, by constitutional mandate.

Legislation Affecting Clerks of Superior Court

Public Sales

Ch. 979 (HB 43), recommended by the General Statutes Commission, standardizes procedures for various types of public sales of realty. Effective October 1, 1967, amendments to Article 29A (Judicial Sales) and Article 29B (Execution Sales) of Chapter 1 and to Article 2A (Sales Under Power of Sale) of Chapter 45 accomplish this purpose. Most of the new provisions previously existed as to one or more of the three types of sales, and the intent of this act is to make each new provision applicable to all.

GS 1-339.17 (Judicial Sales), GS 1-339.52 (Execution Sales) and GS 45-21.17 (Sales Under Power of Sale), concerning notices of public sales given by publication in a newspaper, are amended to require the last publication to be within *ten* days preceding the date of sale rather than within seven days prior to the sale. GS 1-339.52 is further amended to delete the provision for posting of notice at three public places, if a newspaper qualified for legal advertising is not published in the county, and now requires publication once a week for four successive weeks in a newspaper having general circulation in the county.

When an upset bid is offered for real property, in addition to the increased bid amount being depositable in cash, under GS 1-339.25 and GS 1-339.64, the bidder may now deposit the increased amount by certified check or cashier's check satisfactory to the clerk accepting the deposit. The upset bid deposit must be made with the clerk within ten days of the filing of the report of sale. GS 1-339.64 and GS 45-21.27 are amended to provide that, if the tenth day falls upon a day when the clerk's office is not open for business, the deposit may be made on the next following day when the clerk's office is open.

A new subsection (c) is added in GS 1-339.68, Execution Sales, enabling the clerk to issue an order for possession of the property against any person in possession at the time of sale. The order may be issued upon application by the purchaser when the purchase price is paid, the sale is confirmed, the purchaser is entitled to possession, and the person in possession is given ten days' notice. GS 45-21.29 is amended to provide for an order for possession under the same conditions but with the additional requirement that the sale was within the authority of the power of sale or of applicable statutes.

A new section, GS 45-21.29A, specifies that no other confirmation of sale under Article 2A, Chapter 45, is required except for the clerk's confirmation. The section further states that, if no upset bid is filed by the end of the ten-day period, the rights of the parties to the initial sale become fixed.

GS 105-391(s), concerning disposition of proceeds in a tax foreclosure sale, provides for payment of any surplus proceeds into court. This subsection is amended by Ch. 705 (HB 539) to provide that, if in doubt as to the person entitled to the surplus, or if adverse claims are asserted, the clerk shall not disburse the funds until rights are determined in a special proceeding pursuant to the procedure for establishing a claim to execution sale proceeds (GS 1-339.71).

Joint Tortfeasors Contribution

Ch. 847 (HB 214) enacts a new Chapter 1B, *Contribution*, effective as to litigation initiated after January 1, 1968. The new chapter adopts a "Uniform Contribution Among Tortfeasors Act" repealing GS 1-240, the current statute on the subject. The new chapter provides, among other things, that when the entire judgment amount is paid by fewer than all of several joint judgment debtors, entry on the judgment docket shall be made in the same manner as for other cancellations of judgments. The entry shall further recite that the judgment has been satisfied, released, and discharged as to the paying judgment debtor(s), naming him, but that the lien of the judgment is preserved as to the non-paying judgment debtor(s), for the purpose of contribution. No entry of cancellation as to the non-paying judgment debtor(s) shall be made in the judgment docket or index.

Duties of Clerk of Superior Court Transferred to Register of Deeds

Registration of corporate certificates and related documents is deleted from GS 2-42 as a duty of the clerk by Ch. 823 (SB 471). This function becomes the responsibility of the register of deeds, effective January 1, 1968. Amendments to Chapters 53, 54, 55, 55A, 57, 59, 66, 105, and 117 specify the appropriate filing office for these papers to be the office of the register of deeds. The act also provides for physical transfer of existing records from the clerk to the register of deeds.

Ch. 639 (HB 349) is the culmination of efforts over a period of years by the clerks of superior court and registers of deeds. It eliminates the requirement in GS 47-14 that the clerk examine and order instruments to be registered when the proof or acknowledgment is had before an official other than the clerk. This change is effective October 1, 1967. Thereafter the register of deeds will examine the certificate of proof or acknowledgment to determine the propriety of an instrument's execution and make the decision as to registration. A form for certification by the register is provided in GS 47-37, as amended.

Adoptions

Chapter 48, *Adoption of Minors*, has been redesignated *Adoptions* and amended in several areas affecting the clerk's duties. Additional changes of interest to public welfare personnel may be found in the article on Public Welfare.

GS 48-4 designates who may adopt and requires a residence period for the petitioner unless the child to be adopted is a stepchild. Ch. 693 (SB 403) lowers the residence period from one year to six months. Ch. 619 (HB 512) further amends this section to delete the period of residence requirement, provided the petitioner is currently a resident, when the adoptee is a grandchild by blood of the petitioner or a child born to a petitioner out of wedlock. The provision as to a grandchild is applicable to petitions filed after January 1, 1967. If adoption is by the putative father of a child born out of wedlock, an affidavit must be filed in accordance with a new subsection (d) stating that the petitioner is, or is believed to be, the father of the child and that the child was born out of wedlock. GS 48-24(b) is amended to require the clerks to include any affidavit, filed in accordance with GS 48-4(d), with a copy of the petition forwarded to the State Board of Public Welfare.

Ch. 19 (HB 62) amends GS 48-21(c) to add brother, sister, half-brother, and half-sister as classes of relationship for which the court may waive the interlocutory decree and probationary period and proceed to grant a final order of adoption. The age of a child for which the interlocutory decree may be waived, when the child has resided with the petitioner for five years and consents to the adoption, is lowered from sixteen to twelve. Ch. 619 also amends this subsection to permit waiver of the interlocutory decree when a petitioner is the putative father and files the affidavit described in the new GS 48-4(d).

GS 48-29, providing for a change of name as requested in the adoption petition, is amended by Ch. 1042 (HB 921) to also permit a change of name upon the filing of a subsequent petition by the adoptive parents.

Ch. 880 (HB 1152) creates a new section, GS 48-36, for adoption of a person over 21 upon petition to the clerk by an individual or married couple, who must be over 21, in the county of the adoptee's residence. The petitioners and adoptee must have resided in the State for six months. The adoptee must file his written consent with the clerk. After posting the petition and consent at the courthouse door for ten days, the clerk may issue an order of adoption. Rights, duties, and obligations of the adoptee and adoptive parents are the same as if the adoptee were under 21.

All changes to the adoption laws are effective July 1, 1967.

Miscellaneous

Various amendments to Chapters 1, 28, 31, 33, 34, 36, 38, 44, and 47 will be of interest to the clerk of superior court.

GS 1-239 provides for the clerk to receive payment of money upon a judgment. Ch. 1067 (HB 988) amends this section to require the clerk, within seven days after the receipt of such money, to give notice of the payment to the attorney of record for the party (or, if there is no attorney of record, to the party himself) in whose favor the judgment was rendered. The clerk is forbidden to disburse any of the money until at least seven days after the required written or personal notice is given to the attorney.

Amendments to GS 28-34 and to GS 28-40, by Ch. 41 (SB 28), eliminate the requirement that an administrator, appointed solely to institute a wrongful death action, be bonded prior to receiving property into the deceased's estate. This change is not applicable to bonds obtained before March 14, 1967.

GS 28-105 specifies the order for payment of a decedent's debts. Ch. 1066 (HB 981) amends this section with respect to second-class payments (funeral bills) to stipulate that this is a limit for the preference of payment only and is not a limitation on reasonable funeral expenses. Also, the preferential limitation of $600 shall not be diminished by any federal benefits awarded to the estate or beneficiaries.

Ch. 947 (SB 610) adds a new section, GS 28-152, effective October 1, 1967, to require a non-resident trustee of an inter vivos or testamentary trust to appoint an agent for the service of civil process prior to the transfer of assets to the trustee from an estate subject to administration in this State. If property is transferred to such a trustee in violation of this section, process may be served outside the State or by publication, pursuant to the rules of civil procedure, and the courts have the same jurisdiction as would have been obtained by service upon an appointed process agent. The provisions of this section are in addition to other permissible means for obtaining jurisdiction.

Effective as to wills of persons dying on or after October 1, 1967, GS 31-5.3 (revocation of a will by marriage) is rewritten by Ch. 128 (HB 98) to provide that an existing will is *not* revoked by a subsequent marriage of the maker. The surviving spouse's right to dissent from the will is the same as if the will had been executed after the marriage.

GS 33-12 requires a guardian to be bonded prior to receiving property of the ward. Ch. 40 (SB 27) adds a provision that a guardian appointed to bring an action on behalf of an infant, idiot, lunatic, insane person, or inebriate, when there are no other assets in such person's estate, need not furnish security until property coming to the estate is turned over to the guardian.

Ch. 564 (HB 468) makes several amendments in the Veterans' Guardianship Act. GS 34-4, which limits single guardians to a total of five wards, is amended to except persons qualified as public guardians under Chapter 33. The exception for banks and trust companies is continued. A separate bond is now required for each ward, but all minors of the same family unit constitute only one ward. When a public guardian's term of office expires, he may retain any appointments made to him during his term. GS 34-12, which permits compensation to the guardian up to five per cent (5%) of the annual income of the estate, is amended so that the court may award compensation not to exceed twenty-five dollars ($25) from estates having an annual income of less than five hundred dollars ($500). GS 34-13 is amended in subparagraph (3), which permits the guardian to purchase a home or farm for the ward with the estate's funds, to enable the guardian, upon petition to and order of the clerk approved by the superior court judge, to encumber the home or farm up to the full purchase price to obtain the benefits of Title 38, Chapter 37, *Home, Farm, and Business Loans,* of the U. S. Code. Subparagraph (5) is amended to limit permissible bank savings account deposits and certificates of deposit purchases to the extent that they would be insured by the Federal Deposit Insurance Corporation.

Ch. 99 (HB 97) adds a new section, GS 36-18.2, effective October 1, 1967, to permit an individual or corporate trustee named in a will, or any substitute trustee, to renounce the trusteeship prior to qualifying under GS 28-53 or taking any official action. Upon such renunciation, the clerk shall give written notice to all persons interested in the trust. If the will names a substitute trustee, the clerk shall appoint the substitute. If the will does not name a substitute, the clerk shall follow any instructions that may be contained in the will for selecting a suitable trustee or, if no such instructions exist, shall appoint a suitable person or corporation of the clerk's selection. The substitute has the same powers and duties as if originally named. Recording of all proceedings is done as in a special proceeding, and a notation of the renunciation is filed with the recorded will.

GS 38-4 provides for appointment of a surveyor or surveyors, named by the parties, in an action in superior court involving a dispute as to land boundaries. Ch. 33 (HB 96) rewrites this section, effective October 1, 1967, to enable the court in any action or special proceeding involving boundary disputes to appoint *one* surveyor, or more if the court in its discretion deems necessary. Upon request of any party, the court shall call the surveyor as the court's witness, with any party thereupon having the privilege of direct examination, cross examination, and impeachment. Fees of the surveyor(s) continue as part of the costs.

Ch. 1029 (HB 908), recommended by the General Statutes Commission, creates a new Chapter 44A, *Statutory Liens and Charges,* which establishes personal property liens in favor of persons performing work on personal property, furnishing room and board accommodations, and boarding animals. The lien is valid while the lienor has possession of the property and is enforced by the lienor's giving notice and conducting a private or public sale. The act repeals personal property liens created under GS 44-2, GS 44-3, GS 44-4, and Articles 3, 5, 6, and 7 of Chapter 44. It is effective midnight June 30, 1967.

GS 47-115.1 provides for powers of attorney which continue when the principal becomes incapacitated or incompetent. Ch. 1087 (HB 1148) adds a new subsection (k) for situations in which the power of attorney does not specify the amount (or formula for determining the amount) of commissions the attorney in fact is entitled to receive. Such commissions shall be fixed in the discretion of the clerk, pursuant to GS 28-170.

Legislation Affecting Magistrates and Justices of the Peace

Marriage Ceremonies

Chapter 51, *Marriage,* is amended by Ch. 957 (HB 542) to require the magistrate or justice of the peace, after performing a marriage ceremony, to return the completed marriage license and certificate to the issuing register of deeds within *ten* days after the ceremony, rather than within thirty days as previously required. Also, at least *two* witnesses to the ceremony are now necessary.

Other Legislation

Judicial officials will be interested in a new law concerning issuance of warrants for inspection of premises for health and safety reasons and another law encouraging pretrial release of accused persons without bail. Each is discussed in the article on Criminal Procedure. A new law affecting criminal defendants found not guilty by reason of chronic alcoholism is discussed in the article on Criminal Law.

By Douglas R. Gill

CRIMINAL LAW

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

The 1967 General Assembly considered over 75 different bills intended either to affect "true" criminal law, that law imposing criminal sanctions on conduct generally regarded as bad in all circumstances, or to enact essentially new regulatory schemes that relied at least in part on traditional criminal law-type penalties to compel compliance with their requirements. Of these introductions, somewhat over half were enacted into law. In addition, there were countless other bills that modified existing regulatory provisions, and thus in some way affected the circumstances in which the criminal sanctions utilized by those regulatory schemes come into play. (These latter enactments, only very indirectly related to the criminal law, are not included in this report.)

BILLS AFFECTING "TRUE" CRIMINAL LAW

Law and Order Committee

The Governor's Committee on Law and Order, created by Ch. 65 (SB 36, HB 75), received a broad mandate to coordinate activities of law enforcement agencies, study improvements in law enforcement and criminal justice, and seek ways of continuing the safety and security of the State's citizens. The committee is to include the Governor, the heads of various concerned agencies, and gubernatorial appointees, including representatives of the chiefs of police and sheriffs and a district solicitor.

Criminal Punishment in General

Capital Punishment

A number of bills affecting the imposition of the death penalty failed in the House, where they were introduced. The first of these, HB 68, would have permitted the judge to sentence persons convicted of murder in the first degree, arson, burglary in the first degree, and rape to life imprisonment even when the jury made no recommendation for mercy. The bill died in committee, so the law remains that the death sentence for those offenses will always be imposed *unless* the jury recommends mercy. An unfavorable committee report killed HB 71, aimed at eliminating the death penalty except for premeditated killing of police officers or for killing during a kidnapping. Three other bills that would have modified capital punishment failed second reading in the House despite favorable committee reports. HB 113 would have permitted prosecuting officers, with court approval, to announce their intent to seek no death penalty in capital cases and then proceed with the cases as if they were not capital. HB 138 would have permitted the death penalty in most cases only if the jury affirmatively recommended it. HB 314 would have removed the death penalty and substituted other penalties in cases of murder in the first degree, rape, burglary in the first degree, arson, and killing while injuring railroad property.

Habitual Felon Act

The General Assembly enacted Ch. 1241 (HB 619) imposing extended imprisonment on those who repeatedly commit felonies, despite arguments that this kind of law has been outmoded and defeats efforts to adjust the period of imprisonment to that most appropriate for the individual. The enacted version provides for 20-year to life sentences for those found to be habitual felons, with no release on parole or reduction of sentence to reduce habitual felons' periods of incarceration below 75 per cent of their original sentences (life sentences are to be treated as 40-year sentences in computing this percentage). The act defines a habitual felon as one convicted of or pleading guilty to three felony offenses (except federal offenses relating

to liquor) in any state or federal courts after the ratification of the act (July 6, 1967). Such a conviction or plea is considered a separate felony only if it occurs after the conviction of or plea to the preceding felony. A finding that a defendant is a habitual felon may be made by a jury only after it has found him guilty of the principal felony. When he is found guilty of this principal felony, a separate bill of indictment may be presented to the same jury for the finding of whether the defendant is a habitual felon. The trial on the facts raised by this indictment for habitual felony is then to be handled as a trial on a principal charge. The act also specifies means for proving the prior offenses.

In its present form, the law raises the question of whether it unconstitutionally punishes a "status" (the status of being a habitual felon) rather than a particular criminal act, since it is applied after a separate jury finding of habitual feloniousness, rather than applied as a further consideration to be used in determining the proper sentence to impose as a result of a single criminal act.

Clarification of Punishments for Felonies and Misdemeanors Generally

Ch. 1251 (HB 1297) rewrites GS 14-1 to define a felony as a crime which was a felony at common law, or may be punishable by death or imprisonment in the State's prison, or is denominated a felony by statute (the old law provided only that a felony was "a crime which is or may be punishable by either death or imprisonment in the State's prison"). Both the old and the rewritten sections define a misdemeanor as any other crime. This act rewrites GS 14-2 to provide that the maximum imprisonment for a felony without a "specific punishment" prescribed is up to ten years' imprisonment or fine, or both, in the court's discretion. A North Carolina Supreme Court decision that a statute calling for imprisonment or fine in the discretion of the court is not a "specific punishment" apparently will govern the application of this rewritten section. The only practical effect of the change is to permit *both* imprisonment and fine (previously, a felony without a specific punishment was to be punished by imprisonment *or* fine).

The act also clarifies GS 14-3 by providing that misdemeanors without a specific punishment prescribed may be punishable by not over two years' imprisonment or fine or both in the discretion of the court. Although unarticulated in the old law, this limitation has long been tacitly understood and observed. The new formulation seems to leave open the question of whether a crime specified as punishable "by fine *or* imprisonment in the discretion of the court," and thus a crime with "no specific punishment" (which, by this act, is said to be punishable "by fine, by imprisonment not exceeding two years, *or by both*"), can be punished by both fine and imprisonment or by only fine or imprisonment. (Emphasis added.)

Offenses Against Persons

Acts of Intimidation

Ch. 522 (HB 149) added a new subsection to GS 14-12.12 to prohibit the placing of burning crosses or other exhibits, or using a burning cross or a part of one, on someone else's property or on a public road with the intent to intimidate persons or prevent them from doing lawful acts (the existing portion of GS 14-12.12 prohibits such activity regardless of the intent). That chapter also amended GS 14-12.14 to limit its prohibition on placing an exhibit while wearing a hood, mask, or other disguise to cases when it is done with intent to intimidate. The actions affected by these provisions—as well as by GS 14-12.13, which prohibits placing an exhibit with intent to intimidate—were made felonies, punishable by one to five years' imprisonment in the State's prison, rather than misdemeanors, by Ch. 602 (HB 53).

Clarification of Assault Laws

A House committee reported unfavorably a group of three bills (HB 188, HB 189, and HB 190) aimed at plugging some gaps in the statutory law of assault. The primary substantive effect of these introductions would have been to include as felonies assault with a deadly weapon either with intent to kill or resulting in serious bodily injury. Since these bills failed, it remains the law that only assault with a deadly weapon both with intent to kill and resulting in serious bodily injury is a felony.

Miscellaneous

Introductions aimed at altering laws relating to the use of force against law enforcement officers (SB 313) and broadening the list of those who are exempted from indictment for child abduction (HB 1313) failed.

Forgery and Fraudulent Practices

Credit Card Crime Act

Fraudulently obtaining property or services by means of credit cards used to be included among the prohibitions of Article 19A of GS Ch. 14 prohibiting generally the fraudulent use of various credit devices. The comprehensive new law enacted as Ch. 1244 (HB 1076) removes references to credit cards in that article and provides an entire new Article 19B entitled "Credit Card Crime Act."

This act prohibits "credit card theft" (defined to include obtaining or withholding a credit card from another without the cardholder's consent and with intent to use or transfer it; receiving and retaining possession of a credit card known to be lost or misdelivered with intent to sell or transfer it; selling or buying a credit card from other than the issuer; receiving during a 12-month period credit cards issued in

two or more names and known to have been illegally obtained as security for debt or illegally bought) and punishes such theft as a felony with a maximum fine of $3,000 or imprisonment not exceeding three years, or both. Prima facie evidence of credit card theft is possession or control of credit cards in two or more names other than names of members of the possessor's immediate family.

The act further prohibits "forgery of credit card" (defined to include falsely making or embossing or uttering a purported credit card with intent to defraud; and signing a credit card without authorization and with intent to defraud), and punishes it as a felony with a maximum fine of $3,000 or imprisonment not exceeding three years, or both. Prima facie evidence of falsely making or embossing under this section is possession of two or more falsely made or embossed credit cards, and prima facie evidence of signing with intent to defraud under this section is possession of two or more signed credit cards by one other than the cardholder or one authorized by him.

The act further prohibits "credit card fraud," which is defined to include obtaining something of value with intent to defraud by using a credit card retained under circumstances amounting to credit card theft; using one known to be forged, expired, or revoked; obtaining something of value by representing, without the consent of the cardholder, that the presenter is the holder of the specified card or by representing that he is the holder of the card when such card has not been issued; or obtaining control over a credit card as a security for debt. Credit card fraud also includes furnishing, with intent to defraud, something of value upon presentation of a credit card known to have been obtained or retained by means amounting to credit card theft or known to be forged, expired, or revoked, and includes failing to furnish something of value represented in writing to the issuer as having been furnished. Credit card fraud is punished by a fine not exceeding $1,000 or imprisonment not over one year, or both, if the value obtained or falsely represented as having been furnished does not exceed $500 in any six-month period. If the value is greater than that, the punishment is fine of not over $3,000 or imprisonment not over three years, or both. The act also prohibits criminal possession of credit card forgery devices (defined to include possessing two or more incomplete credit cards with intent to complete them without the consent of the issuer, or possessing, with knowledge of its character, machinery or plates or other contrivances designed to reproduce instruments purporting to be credit cards). This offense is punishable by a fine not exceeding $3,000 or imprisonment not exceeding three years, or both. The act also prohibits "criminal receipt of goods and services fraudulently obtained" (defined as receiving something of value obtained by credit card fraud with the knowledge or belief that it was obtained by that violation). Punishment for this violation is the same as that for credit card fraud, depending upon the value of the goods obtained during a six-month period. A presumption of criminal receipt of goods and services fraudulently obtained is created by obtaining at a discount price a ticket issued by an airline, railroad, steamship, or other transportation company, from other than the authorized agent of the company, when that ticket was acquired by credit card fraud and when reasonable inquiry was not made to ascertain whether the person from whom he obtained the ticket had a legal right to possess that ticket.

Other Prohibitions Against Fraud and Forgery

Ch. 957 (HB 542), the bill amending the laws relating to marriage records, makes a misdemeanor of all cases of obtaining a marriage license by fraud. Formerly, only the fraudulent obtaining of a marriage license for persons under 18 was a misdemeanor.

The penalty for making fraudulent statements in order to gain benefits from insurance policies was clarified by designating the violation as a felony with a punishment of imprisonment not over five years or fine not over $5,000, or both, in the discretion of the court. The violation had not been designated as a felony and the fine previously was not to exceed $500. In addition, GS 14-112.1, which described a similar crime punishable only as a misdemeanor, was repealed.

A couple of other bills aimed at discouraging fraudulent acts died in committee. HB 650 would have established that a statement from a bank returning a check as unpaid because of either insufficient funds or lack of a bank account would be prima facie evidence that the check's maker did not have sufficient funds to pay the check. HB 954 would have outlawed phony sales contracts aimed at getting loans for greater than the value of the goods upon which the loan was being made.

One feature of Ch. 343 (HB 159) is a provision making it a misdemeanor (punishable by a fine not exceeding $50 or imprisonment not exceeding 30 days) to obtain or knowingly accept ambulance services with intent to defraud and without intending to pay reasonable charges when financially able to pay. Willful failure to pay for ambulance services, within 90 days after request for payment, by one other than a bona fide indigent raises a presumption of violation of this provision.

Because of the failure of North Carolina's laws against forgery adequately to describe the crime in a general manner, a specific provision is required to prohibit the forgery of each particular instrument subject to forgery. This need was reflected by a provision of Chapter 986 (HB 553, an act to levy a tax stamp on conveyances of real estate) specifying forgery of those stamps as a prohibited act of forgery.

Injury to Property

Damaging Occupied Property with High Explosives

Ch. 342 (HB 51) adds a new GS 14-49.1 that out-

laws willfully and maliciously damaging or attempting to damage any occupied dwelling, building, vehicle, or real or personal property of any kind by using nitroglycerine, dynamite, gunpowder, or other high explosive. This crime is a felony punishable by imprisonment in the State prison for ten years to life.

Two other bills, Chs. 1082 and 1083 (HB 1126 and HB 1127), redo the criminal laws against willful injury to certain real property. The first rewrites GS 14-278 (prohibiting certain unlawful and willful placement of objects on railroad tracks or removal of any part of the tracks with intent to injure a person traveling on the railroad or to damage any of the equipment traveling on the road) to apply that section to such actions when they are "unlawful and willful," rather than, as the section did provide, when they are "willful and malicious." The punishments for this violation are also rewritten. The punishment had been imprisonment of from four months to 10 years or a fine of $200 to $1,000 and the defendant's commission to jail until finding "surety for his good behavior for a space of time not less than three nor more than seven years"; if his action resulted in the death or maiming of one traveling on the railroad, the penalty was death if the person was killed, and five to sixty years if the person was maimed or disabled. Now, all violations are subject only to imprisonment in the State's prison for from four months to 10 years or fine, or both. This bill also does away with the provision in GS 14-278 outlawing the malicious destruction or injury to plank roads, turnpikes, and canals and to locks, dams, or sluices that are a part of a work aimed at improving navigation. The same bill also rewrites GS 14-279 to provide that the same acts prohibited by GS 14-278 shall be only a misdemeanor if committed unlawfully but without intent to cause injury to any person or to damage equipment. Before this rewriting, the section applied to such acts committed unlawfully and on purpose, but "without malice." Also, the old section provided a minimum sentence of twelve months in case such action resulted in the death or maiming of someone traveling on the railroad.

The other bill redoing a section on damage to property rewrote GS 14-127 to make a misdemeanor of willful and wanton damage, injury, or destruction of any real property of a public or private nature. Formerly that section had prohibited malicious damage, injury, or spoliation upon real property. In addition, the previous section had excepted from its provision trespasses done by those who reasonably believed they had the right and trespasses committed in hunting, fishing, or the pursuit of game that were not willful or malicious. The section also provided that a failure to state in a complaint that the damage caused by such injury exceeded $10 would result in a fine upon conviction of not over $50 or imprisonment for not over 30 days. All of these provisions were removed.

Ch. 582 (SB 302) prohibits putting refuse in cemeteries or destroying, removing, breaking, or damaging any plant or ornament in the cemetery without the consent of the person in charge of the cemetery.

Theft

GS 14-90, which presently prohibits only embezzlement of various property belonging to another persons or corporations, was amended by Ch. 819 (SB 194) to include such property when belonging to unincorporated associations or organizations. Ch. 1175 (SB 717) makes a felony punishable by imprisonment for not over fours years or a fine of not over $5,000, or both, of the stealing of various property relating to secret technical processes. The property includes any sample, culture, micro-organism, specimen, record, recording document, drawing, or any other article, material, device, or substance which either constitutes, represents, evidences, reflects, or records a secret scientific or technical process, invention, or formula or any phase or part of those things. A process is said by the act to be secret when it neither is nor is intended to be available to anyone other than the owner or selected persons for limited purposes with the owner's consent and is furthermore said to be secret only when it may give the owner an advantage over competitors or other persons who do not have knowledge or the benefit of that process. The major effect of the law seems to be to elevate from a misdemeanor to a felony that larceny of property relating to technical processes when the property would not be worth more than $200 and thus not a felony under the general rule that makes larceny of any property worth over $200 a felony. The law seems to leave untouched the problem of industrial spies who may gain knowledge of such a secret technical process, not actually stealing property in the traditional sense of the word but obtaining such knowledge by mere observation of the process.

Nuisances

Alcoholism as a Defense to Public Drunkenness

The problem of determining when a man is criminally responsible for his drunken appearance in public has long been avoided by the practice of routinely sentencing habitual public drunks to short jail sentences from which they would emerge to reappear drunk on the streets and ready for still another sentence to a short jail term. Furthermore, the offense of public drunkenness has been, until this time, the result of local legislation not adopted by many counties of North Carolina. Ch. 1256 (HB 1373) makes an effort to come to grips with these problems, an effort prompted by a recent United States Fourth Circuit Court of Appeals case deciding that a criminal sentence for public drunkenness for one who was an alcoholic was inappropriate. This bill provides that any person throughout the State found drunk or intoxicated in a public place is guilty of a misdemeanor. The punishment is a fine of not more than $50 or imprisonment

for not more than 20 days in a county jail. Conviction of a subsequent offense within a twelve-month period results in either the same fine or imprisonment, or the alternative of commitment to the custody of the Commissioner of Correction for an indeterminate sentence of not less than 30 days nor more than six months. Prior to this act, the punishment for public drunkenness varied considerably from county to county, and nowhere was there a provision for indefinite commitment to the prison system. In the event that the court selects the latter alternative, the Commissioner of Correction or his agent must designate where within the State prison system the person is to be committed, although at any later time during the period of the commitment the Commissioner or his agent may authorize his release under conditions described so that the offender may receive care and treatment from a specified hospital, occupational clinic, or other appropriate facility or program outside the prison system. The conditions of such a release may be modified or revoked during the period of commitment to the Commissioner's custody, but the total time served in confinement and on conditional release must never exceed six months from the date of entry into the prison system. The Commissioner of Correction's authority to release the offender unconditionally may be exercised only after the person has served at least 30 days of his sentence, at least part of which must be served in actual confinement. The remainder of the thirty-day minimum, however, may be served on conditional release. This section, GS 14-335, also provides, in direct response to the circuit court case mentioned, that chronic alcoholism shall be an affirmative defense to the charge of public drunkenness. Whenever it is shown to the trier of fact that the defendant is a chronic alcoholic, a judgment of not guilty by reason of chronic alcoholism must be entered. In that event the court may initiate certain treatment procedures also enacted by this bill. These procedures will be described in detail in the article on Public Health in the October issue of *Popular Government*.

Highway Nuisances

HB 750, intended to prohibit the discharge of firearms on roads maintained and supported by the North Carolina State Highway Commission, died in committee, while SB 307 was tabled. That bill would have revamped substantially the law against littering on public highways to include such innovations as prohibitions against dumping in waters near public roads or parks and a provision that a payment of a fine for violating the section could be suspended on the condition that the defendant clean up an area designated by the court.

False Ambulance Alarms

Ch. 343 (HB 159) makes it unlawful willfully to summon an ambulance, or report that one is needed, without good reason to believe there is such a need. A violation is subject to a fine not exceeding $50 or imprisonment not exceeding 30 days, or both.

Offenses Against Public Administration

Eavesdropping on Defendants and Juries

Ch. 187 (SB 143) adds a new article 30A, GS Ch. 14, which prohibits the willful overhearing or attempting to overhear or procuring another to overhear words spoken between a person in the custody of a law enforcement agency or other public agency and that person's attorney by means of an electronic amplifying or transmitting or recording device or similar mechanical or electrical devices or arrangements without the consent or knowledge of all the persons engaged in that conversation. Evidence obtained by these prohibited means becomes inadmissable in North Carolina courts upon the objection of any participant in the conversation. The bill also prohibits the willful overhearing or attempting to overhear or procuring of another to overhear any of the investigations or deliberations or voting by any grand jury or petit jury in a criminal case by similar means without the consent or knowledge of that jury. Both overhearing conferences between lawyers and their clients in the custody of public agencies and eavesdropping upon juries are made misdemeanors punishable by imprisonment or fine or both in the discretion of the court.

Unsuccessful Bills

Two bills, both reported unfavorably, were aimed at controlling political activity. One of these, HB 1162, would have included political posters among those whose unauthorized placement on private property is prohibited. Another, SB 14, would have made the solicitation of political contributions from State employees by another State employee a misdemeanor. HB 1387, also reported unfavorably by committee, would have outlawed the receipt by any judge of gifts or hospitality in the home of an attorney. The bill would have made it a misdemeanor for a superior court judge during a regular or special term to receive or agree to receive any gift, money, concession, liquor, fish, or any other tangible or intangible thing from any attorney who is a member of the Bar of that county or who appears before the judge that term and for the judge to be a social guest in the home or premises of any such attorneys during the term.

Laws Enforcing Public Morality

Abortion

North Carolina became one of three states in the Union to make major changes in its law governing the circumstances which justify abortions. Abortions had been legally justified in North Carolina only when necessary to preserve the life of the mother. A new act, Ch. 367 (SB 104, originally identical with HB 249),

provides a new GS 14-46 establishing that to advise, procure, or cause the miscarriage of a pregnant woman or an abortion is not illegal (GS 14-45 outlaws abortions generally) when performed by an M.D. licensed to practice medicine in North Carolina if he reasonably establishes one of the following grounds: 1) that there is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the woman; 2) that there is a substantial risk that the child would be born with a grave physical or mental defect; or 3) that the pregnancy resulted from rape or incest (if the alleged rape is reported to a law enforcement agency or court official within seven days after it was alleged to have happened); and if, in addition to the establishment of one of these grounds, the woman has given her written consent for the abortion to be performed. The act provides that if the woman is a minor or is incompetent, the abortion can be performed only after permission is given in writing by the parents, her guardian, or someone else standing in the position of parents to her, or, if she is married, by her husband. The act also provides that the woman must have resided in North Carolina for at least four months preceding the operation except in an emergency endangering the life of a woman. The abortion must be performed in a hospital licensed by the North Carolina Medical Care Commission and may occur only after three doctors of medicine (who are not engaged jointly in private practice and one of whom shall be the person performing the abortion) have examined the woman, have certified in writing the circumstances which they believe justify the abortion, and have submitted that certificate prior to the abortion to the hospital where it is to be performed. When an emergency exists, however, the certificate may bear that notation and may be submitted within 24 hours after the abortion.

Drugs and Glue

Peyote, mescaline, LSD, and various other psychedelic drugs or hallucinogens have now been defined as narcotics by Ch. 193 (HB 147) and are therefore now subject to the criminal laws regulating the manufacture, sale, and possession of narcotics. Another contemporary method of getting kicks, glue-sniffing, was outlawed by Ch. 552 (SB 135), which makes a misdemeanor of intentionally smelling or inhaling fumes of glues containing a solvent having a property of releasing toxic vapors or fumes (such glues are defined as those containing certain specified compounds) if done in order to cause a condition of "intoxication, inebriation, excitement, stupefication, or dulling of brain or nervous system." The bill also outlaws the use or possession of these glues for that purpose and selling or offering to sell them to another person with reasonable cause to suspect their use for such a purpose.

Gambling and Dens of Iniquity

Ch. 1219 (HB 1295) alters the definition of "slot machines" in GS 14-306 (defining "slot machines" for purposes of determining those devices which are illegal) to delete those coin-operated devices on which the player may make varying scores upon which wagers might be made. The act adds to the definition, however, "any other machine or device designed and manufactured primarily for use in connection with gambling and which machine or device is classified by the United States as requiring a Federal gaming device tax stamp under applicable provisions of the Internal Revenue Code." The act furthermore specifies that the definition is not to include coin-operated machines or devices designed or manufactured to be played for amusement only and the operation of which depends in part upon the skill of the player. This change would seem to exempt from the definition such devices as slide bowling machines and at least those pinball machines which do not return free games.

Ch. 101 (HB 144) repealed a provision in GS 14-293 which required municipal police officers to make weekly reports on whether gambling is occurring in "houses of public entertainment" in violation of that section to the mayor of the municipality, required the mayor to require reports from officers and to issue warrants for the violators, made it a misdemeanor for the mayor or police officer to fail to carry out these duties, and imposed a $500 penalty on the persons who committed those offenses, the penalty to be divided between the one bringing the suit and the county school fund. The act bars all civil or criminal actions not already instituted which arise from the repealed provisions.

GS 14-317 forbids, under penalty of conviction of a misdemeanor with a fine up to $50 or imprisonment up to 30 days, the keeper of certain establishments from permitting a minor to enter those establishments when the parent of that minor notifies the keeper not to permit the minor into his establishment. Ch. 1089 (HB 1161) removes bowling alleys from the list of those establishments to which the provision applies. The act also amends the section, which still applies to barrooms and billiard rooms, to define the minor as one under 18 years of age and to provide that the required notification must be in writing.

Bills That Failed

SB 520 would have outlawed the keeping of wild animals as a trade attraction. It died in committee. SB 521 would have outlawed the selling of very young fowl or rabbits as pets and dyeing such animals. It was tabled. SB 689 would have outlawed flag-burning specifically and would have raised the penalty for all flag desecration. A Senate committee reported it unfavorably.

BILLS CREATING REGULATORY CRIMES

Many critics of American legislation have condemned the tendency of the enactors of regulatory laws to seek compliance with those regulatory provisions by making a failure to abide by them a criminal offense. The critics say that this habit saps the "true" criminal law of its moral persuasion and need not occur if the legislators would seek more imaginative solutions to the problems of enforcing regulatory provisions. In addition, these critics point out, the machinery of the criminal law is ill-suited to enforcing the demands of a regulatory scheme. The full scope of defendants' rights, including juries and a necessity of proof beyond a reasonable doubt, prevents the sure enforcement that is necessary to deter violations of mere regulatory provisions. Furthermore, the difficulties of proving a regulatory offense are enormous if the offense is made a crime only if willful. But if the action need not be willful to be an offense, then one of the traditional requirements to establish a criminal violation is neglected. They suggest that rather than making any failure to abide by regulations a misdemeanor, it might be more effectve to provide civil-type fines, penalties of license suspension, or the imposition of some other civil burden.

The North Carolina General Assemby in 1967, however, appears not to have been persuaded by any of these considerations. A good number of new regulatory schemes relying at least in part on creating misdemeanors with criminal penalties to prompt compliance with their requirements were enacted. A list of most of these enactments follow below. In addition to these enacted measures that included regulatory crimes, there were about two dozen more bills introduced which would have created new "crimes" as part of these regulatory schemes if they had been enacted.

The first column indicates the chapter number of the act and the bill number, The second column contains a brief indication of the penalized conduct. The final column gives the *maximum* fine or punishment permitted for the violation. If no limit is placed on the fine, the word "fine" is used alone. If both fine and imprisonment are possible, the word "both" is used.

Ch. 343 (HB 159)	Operation of ambulance without permit	fine, 2 yrs., both
Ch. 519 (SB 381, HB 898)	False application for undeserved reimbursement of piped gas tax	$500, 2 yrs.
Ch. 533 (SB 447, HB 968)	Violation of provisions concerning undersea salvage	fine, 2 yrs., both
Ch. 581 (SB 289, HB 591)	Violation of provisions requiring supervision of jails and medical care of jail prisoners	fine, 2 yrs., both
Ch. 894 (HB 931)	Knowing violation of or willful failure to comply with act or regulations regulating livestock markets	fine, 2 yrs., both
Ch. 907 (SB 400, HB 953)	Violation of provisions concerning marsh and tideland dredging	fine, 2 yrs., both
Ch. 910 (SB 578)	Practicing psychology without license or representing self as licensed without having license provided by act	$500, 6 mos., both
Ch. 923 (SB 175)	Violation of provisions regulating test drillings on highway rights-of-way	fine, 2 yrs., both
Ch. 933 (SB 465, HB 991)	Violation of provisions of act regulating water use	$1,000
Ch. 953 (HB 343)	Taking bear out of season	$100, 60 days, both
Ch. 986 (HB 563, SB 259)	Willful failure to pay conveyance stamp tax	$1,000
Ch. 1009 (HB 545)	Willful violation of provisions regulating perpetual care cemeteries	fine, 2 yrs., both
Ch. 1041 (HB 320)	Willful failure to reappear after pre-trial release without bond	$50, 30 days, both
Ch. 1184 (HB 1077)	Violations of provisions of article or regulations regulating structural pest control business	fine, 2 yrs., both

Ch. 1197 (HB 1030)	Offering of free funeral services, embalming, ambulance services, or anything free when acting for perpetual care burial association regulated by act	fine, 2 yrs., both	Ch. 1198 (HB 1193, SB 576)	Operation of junk-yard within 1,000 feet of highway	fine, 2 yrs., both
			Ch. 1248 (HB 1195, SB 575)	Erection of out-door advertising in violation of act regulating such advertising	fine, 2 yrs., both

By Allan Ashman

CRIMINAL PROCEDURE

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

Introduction

The 1967 General Assembly enacted into law legislation designed to increase the monetary incentives for the apprehension of certain criminals, to seek better ways for handling criminal defendants between the time of arrest and trial, to streamline and modernize the trial process, and to provide for automatic review of the sufficiency of the State's evidence in all criminal cases. These measures reflect, in part, this General Assembly's desire to expedite the administration of criminal justice and to insure the most equitable and efficient procedures for dealing with the accused.

Bills That Failed

A few of the more important or interesting bills that failed, and which are not mentioned in the discussions below, are

HB 113: authorizing prosecuting officers specifically to announce that they do not seek a verdict for which punishment would be death for certain capital offenses.

HB 1353: authorizing as a condition of probation the implementation of work-release at the local level.

HB 1406: requiring that in order to qualify for the surety upon a bail bond there be presented to the clerk of the superior court of the county where the accused is charged financial information, records, and inventories which in the clerk's opinion would be sufficient to insure the appearance of the accused for trial at the time and place mentioned in the bond.

Indigent Criminal Defendants

Appointment and Compensation of Counsel

Ch. 869 (HB 1102) adds a new GS 15-5.4 authorizing superior and district court judges, in felony cases only, to determine whether a defendant is indigent and whether to appoint counsel pursuant to GS 15-4.1 (appointment of counsel for indigent defendants) and GS 15-5.1 (rules and regulations of State Bar Council relating to counsel for indigent defendants) to represent him at preliminary examinations. The new act provides that an attorney appointed to represent an accused person at a preliminary examination at which no probable cause is found shall be entitled to a fee fixed by the district court judge, but if probable cause is found the attorney's fee for such services shall be fixed by the superior court judge presiding at the trial or at some other stage of the proceedings.

Public-Defender Study

Senate Resolution 654 (adopted June 16) directs the Courts Commission to make a study concerning the feasibility of establishing a public-defender system in North Carolina. This directive essentially is the same as the one made by the 1963 General Assembly to the Legislative Council (SR 660, adopted June 18, 1963) to make a study with respect to the advisability of establishing a public-defender system in the State. (See Watts, *Criminal Law and Procedure,* Popular Government, September-October, 1963, at p. 17 for an analysis of the 1963 legislation and its background.)

Inspection Warrants

Constitutional Issues

The Fourth Amendment to the United States Constitution provides that "The right of the people to be secure in their persons, houses, papers and effects

against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the person or things to be seized." The purpose of this amendment is to guarantee the privacy and security of individuals against arbitrary invasions by government officials. With this principle in mind the Supreme Court of the United States in *Camara vs Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967), moved to eliminate any misconception it may have fostered in *Frank v. Maryland*, 359 U.S. 360 (1959). In *Frank* the Court had upheld the conviction of a person who refused to permit warrantless administrative inspection of private premises for the purposes of locating and abating a suspected public nuisance. It was felt that the Court had, in this opinion, carved out an exception to the rule that warrantless searches are unreasonable under the Fourth Amendment. However, any doubts as to the validity of such searches was swept aside when the Court in *Camara* held, in essence, that the Fourth Amendment bars warrantless, nonemergency administrative inspections of residential and commercial premises without the consent of the occupants.

Legislative Response

In response to the *Camara* decision, the General Assembly acted to authorize the issuance of warrants to conduct administrative inspections and any other inspections that might be authorized by law. Ch. 1260 (HB 1390) adds a new Article 4A entitled "Administrative Search and Inspection Warrants" to Chapter 15, which permits any magistrate of the General Court of Justice, judge, clerk, or assistant or deputy clerk of any court of record whose territorial jurisdiction encompasses the property to be inspected to issue to any State or local government official a warrant to conduct an inspection search.

Under this new act, before such a warrant can issue, it must be established under oath and by a signed affidavit that the search is part of an authorized inspection program which naturally includes that particular piece of property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such a search or inspection of that property. The act provides that such a warrant is valid if it (1) is signed by the issuing official and bears the date and hour of its issuance above his signature along with a notation that the warrant is valid for only 24 hours (it must be personally served upon the owner or possessor of the property between the hours of 8 a.m. and 8 p.m. and must be returned within 48 hours); (2) describes the object of the search with sufficient accuracy and detail to permit identification of the property to be searched; (3) indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and (4) is attached to the affidavit required to be made in order to obtain the warrant.

Fugitives from Justice

Governor's Reward

Ch. 165 (HB 52) amends GS 15-53 to increase from $400 to $10,000 the reward the Governor may offer and pay for the apprehension and delivery of fugitives who have committed or who have been convicted of felonies or other infamous crimes within the State. This law also adds a new GS 15-53.1 authorizing the Governor to offer and pay up to $10,000 reward to any person who provides information leading to the arrest and conviction of persons who have committed felonies or other infamous crimes in North Carolina.

School Damage Rewards

Another act, Ch. 369 (SB 262), authorizes county and city boards of education to offer and pay from current expense funds up to $50 reward for information leading to the arrest and conviction of persons who willfully deface, damage, or destroy property, or who commit acts of vandalism, or who commit larceny of property belonging to the public school system under the jurisdiction and adminstration of the city or county boards.

Bail

Unsecured Bond

Ch. 1041 (HB 320) adds GS 15-103.1 permitting officers authorized to fix and take bail to release from custody pending trial or hearing any person charged with a noncapital felony or misdemeanor of his own recognizance or on execution of an unsecured bond if the officers feel that the defendant is likely to return for trial even without posted security. The act makes the failure to appear for trial or hearing or any knowing violation of a condition of such pre-trial release a misdemeanor punishable by a fine of not more than $50 or imprisonment for not more than 30 days or both, and shifts from the counties to the State the costs of extraditing a person who has fled the State while released without any security.

Pre-Trial Examination of Witnesses and Exhibits

Ch. 1064 (HB 936) adds a new Article 15B entitled "Pre-Trial Examination of Witnesses and Exhibits of the State" to Chapter 15 of the General Statutes. The act provides (new GS 15-155.4) that in all criminal cases before the superior court, the superior court judge assigned to hold the court of the district wherein the case is pending or the resident superior court judge of the district shall, when there is cause, direct the solicitor or other counsel for the State to pro-

duce for inspection, examination, copying, and testing by the accused or his counsel any exhibits to be used in the trial well in advance of the trial so as to permit the accused to prepare his defense. The judge must also direct, when there is cause, that the accused or his counsel be permitted to examine, before any clerk of superior court or any other person designated by the judge for such purpose, any expert witness to be offered by the State in the trial of the case.

The act requires (new GS 15-155.5) that prior to the issuance of any order for a pre-trial examination of exhibits or expert witnesses, the accused or his counsel must make a written request to the solicitor for such an examination and have had such a request denied or unanswered for more than 15 days. The judge's order for examination of the expert witnesses of the State may contain such protective provisions on behalf of the State or the witnesses as the judge deems just and reasonable.

Trial in Superior Court

Juries

Ch. 218 (HB 348) makes a substantial change in the present jury system by streamlining the method of picking jurors and eliminating many of the jury exemptions that have accumulated over the years. The act specifically repeals GS 15-163 (peremptory challenges of jurors by defendants), GS 15-164 (peremptory challenges by the State), and GS 15-165 (challenge to special venire), and relocates substantially similar provisions pertaining to peremptory challenges in GS Chapter 9 (Jurors).

GS 9-21 (a) carries forward provisions of the present law and provides that in all capital cases each defendant may challenge peremptorily without cause no more than fourteen jurors and that in all other criminal cases each defendant may challenge peremptorily without cause no more than six jurors. GS 9-21 (b) provides that in all capital cases the State may challenge peremptorily without cause no more than four jurors. The State's challenge, however, whether peremptory or for cause, must be made before the juror is tendered to the defendant. (See C. E. Hinsdale's pre-enactment article on juror selection in *Popular Government* for March, 1967, for an account of the law. This description presents a faithful picture of the new law even though written prior to enactment, because few changes were made in the bill during its legislative consideration.)

Review of Evidence

Ch. 762 (HB 481) adds a new GS 15-173.1 which provides that sufficiency of the State's evidence in a criminal case is reviewable upon appeal whether the defendant moves in the trial court to dismiss on the basis of the insufficiency of the evidence under GS 15-173 (demurrer to the evidence) or not.

Privileged Testimony

Ch. 116 (HB 166) amends GS 8-57 to permit a spouse to be examined in behalf of the State against the other spouse in a criminal action or proceeding for any criminal offense against legitimate, illegitimate, or adopted minor children of either spouse or in criminal prosecutions involving assaults by either spouse against the other or abandonment, or when a spouse neglects to provide for the other spouse's or children's support.

Ch. 794 (HB 118) amends GS 8-53.1 to make clergymen incompetent to testify in any legal action, suit, or proceeding unless the communicant waives his privilege in open court. The act removes the former requirement that the communication be confidential and requires that the communication be made to the clergyman in his professional capacity necessary for him to discharge the functions of his office when the communicant is seeking spiritual advice and counsel.

Post-Conviction Criminal Appeals

Ch. 523 (HB 363) amends GS 15-222 by making clear that the State as well as the defendant may appeal from superior court judgments in post-conviction criminal appeals. The act guarantees the availability to defendants of the necessary legal counsel and court records for such proceedings and provides that effective October 1, 1967, the Court of Appeals shall be substituted for the Supreme Court as the forum for review of superior court judgments in post-conviction proceedings.

By Henry W. Lewis

ELECTION LAWS

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

For the first time since 1901 the general election laws of the state have been recodified. Ch. 775 (HB 146) completely rewrites GS Chapter 163, but does not affect special and local acts dealing with elections. It was drafted by a seven-member Election Laws Revision Commission charged under the terms of R. 71, Session Laws of 1965, with preparing legislation it considered "necessary to recodify the election laws to make them as clear and concise as possible and to remove any ambiguities, conflicts, and inaccuracies."

In its report accompanying the bill, the Commission stated that "It was the unanimous opinion of the members that they were called upon to clarify, simplify, and codify, but not to write new law." Necessarily, however, in eliminating ambiguity and in making use of a uniform vocabulary, the Commission had to take positions as to the true intent of existing statutes. For example, provisions concerning the arrangement of the voting place and access to it were made less confusing by making them more specific. In almost every case, the Commission's views were accepted by the 1967 General Assembly. Its only major proposal for expansion of existing law (one concerning application for absentee ballots by persons whose physical disability makes it impossible for them to write their names) was rejected. Thus, while the recodification rearranges and rewrites the primary and election laws, it does not substantially alter existing policies and procedures. The Commission's printed report should be consulted for a section-by-section analysis of the new law.

Date and Hours of Primaries and Elections

Ch. 1271 (HB 1335) moves the date of the primary from the last Saturday in May to the first Saturday in that month. This will affect almost all election-officer appointments, board meetings, and registration procedures as well as the primary itself.

Reflecting the legislature's decision not to reject Daylight Saving Time, the recodified election law, Ch. 775 (HB 146), deletes all requirements that Eastern Standard Time govern primary and election procedures.

Proceedings before State Board of Elections

The State Board of Elections and persons appearing in proceedings before it will want to familiarize themselves with Ch. 930 (SB 425). The act deals with rules of evidence in proceedings before state boards of this type. In summary, it provides that (1) the rules of evidence applied in the superior and district courts must be followed, (2) documentary evidence may be received in the form of copies of excerpts if the original is not readily available, and (3) notice may be taken of "generally recognized technical or scientific facts within the agency's specialized knowledge" as well as of "judicially cognizable facts." In connection with the third provision, parties before the board must be notified "of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed."

Legal Defense for County and Precinct Officials

Under the provisions of Ch. 1093 (HB 1169) boards of county commissioners are given discretionary authority to provide for the defense of incumbent and former officers and employees in civil and criminal actions brought against them for action or inaction in the scope and course of their duty or employment. Precinct officials, members of county boards of elections, and county board employees seem to come within the terms of the act. In view of the provisions of GS 153-9(48), the principal interest in the

new act lies in the authority it grants to provide defense for *former* officers and employees.

Registration and Voting

Loose-Leaf Registration Mandatory by 1970

Ch. 761 (HB 205), embodying an official recommendation of the State Board of Elections, will insure that every county in the state records its registrations in a loose-leaf rather than bound book before January 1, 1970. County boards of elections must purchase binders of a type approved by the State Board of Elections, but the State Board is required to furnish the counties with uniform registration sheets for use in the binders. (The cost of the sheets is charged against the Contingency and Emergency Fund.)

Adoption of loose-leaf registration in no way restricts or expands a county's right to decide whether to adopt permanent and full-time registration.

Two counties (Buncombe and Lincoln) obtained special legislation directly related to the new statewide act. Under Ch. 1123 (HB 1242), if the elections board of either of those counties orders a new registration at the time it installs the loose-leaf system (before 1970), the books must be opened as soon as the system is installed and must remain open from that time through the usual registration period.

Use of Registration Records

Ch. 218 (HB 348) provides for the establishment of a jury commission in every county and charges it with preparing jury lists. The act specifies that one of the sources to be used by the jury commission is "voter registration records." Custodians of registration records should be prepared to comply with this requirement.

Voting Age

The 1967 General Assembly was urged in a series of proposals to reduce the minimum age for voting in this state, but all were unsuccessful. On the second day of the session a bill was introduced which would have authorized a referendum on amending the Constitution to lower the voting age to eighteen (HB 11). On the first day of March a bill was introduced to allow the people to vote on amending the Constitution to allow servicemen serving outside the United States and its possessions to vote regardless of their age (HB 140). A week later a bill was introduced to authorize a referendum on amending the Constitution to allow the General Assembly to reduce the voting age (but not the age for office-holding) to eighteen but no lower (HB 181). On May 3 the House committee to which HB 140 was assigned gave it an unfavorable report. On May 9, having reached the House floor, HB 181 was postponed indefinitely. On May 10 the first of the proposals, HB 11, failed to pass the House. The following day the House also rejected a proposal which would have directed the Legislative Research Commission to study the subject and make recommendations to the 1969 session (HR C).

Residence

The Constitution of North Carolina requires a residence of one year in the state in order to vote. Two proposals to allow the people to vote on amending this constitutional provision were unsuccessful: SB 91, which would have reduced the residence requirement to four months, and HB 211, which would have reduced it to six months.

One of the most interesting proposals on this subject dealt with residence for municipal voting and office-holding. SB 401 was designed to permit the people to vote on amending the Constitution to authorize the General Assembly to provide for voting in municipal elections and for municipal office-holding by nonresident freeholders who met all qualifications other than residence. This, too, was unsuccessful.

Nomination and Election Requirements

Members of the General Assembly

The impact of United States Supreme Court decisions enunciating the one-man-one-vote concept of legislative representation, implemented by action of the 1966 Extra Session of the General Assembly, has left portions of the North Carolina Constitution obsolete. Under the terms of Ch. 640 (HB 471), at the next general election the people will be asked to vote on a set of amendments designed to bring the Constitution up to date by rewriting the rules for determining representation in both Senate and House, by providing for representation in the House by district rather than by county, by deleting the provision requiring the Speaker of the House to reapportion the House, and by giving the General Assembly full authority to establish procedures for filling vacancies in its membership.

In Senate and House districts entitled to send more than one member to the General Assembly (except those specifically exempted), each seat will be given a number by the State Board of Elections and, for purposes of nomination and election, will be treated as a separate office. Persons seeking nomination and election to the Senate or House in a covered district must designate by number the seat they desire to fill. Votes cast for any candidate in a primary or election are effective only for the seat for which he has filed nomination. Ch. 1063 (HB 918), as amended by Ch. 1270 (HB 1433), makes these provisions, but under its terms twelve of the thirty-three Senate districts and twenty-one of the forty-nine House districts are excluded from its provisions. However, since one-member districts necessarily fall outside the purview of the act, these numbers are misleading. Listed here are the multi-member districts to which the act applies; all others are either single-member districts or multi-member districts exempted from the act: Senate Districts 1, 10, 19, and 27; House Districts 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 14, 15, 16, 18, 21, 22, 30, 37, 43, and 45.

Judges of Court of Appeals

The new Court of Appeals will ultimately be composed of nine judges. As of January 1, 1967, six positions on that court became open, and the Governor has filled them by appointment until the general election of 1968. At that time six persons will be voted on to serve out the eight-year terms which began on January 1, 1967. As of January 1, 1969, three additional positions on the court will become open, and at the general election in 1970 those three positions will be voted on to serve out the eight-year terms which will have begun on January 1, 1969. Candidates for positions on the Court of Appeals will seek nomination in the primaries preceding the appropriate general elections. See Ch. 108 (SB 42).

Solicitors

At the present time solicitors are elected from solicitorial districts which do not conform to superior court districts. Under Ch. 1049 (SB 308), however, as of January 1, 1971, the solicitorial districts will become identical with the superior court districts, and at the general election in 1970 a resident solicitor will be elected to a four-year term for each of the newly constituted districts.

County Boards of Education

Under existing general law, candidates for nomination for membership on county boards of education run in party primaries but are elected by the General Assembly. Over a period of years a substantial number of counties have, however, been exempted from the general law and both nominate and elect members of their boards of education—some in partisan elections, others in nonpartisan elections. Ch. 972 (SB 33) is designed to insure that every county elects its own education board members. The new act does not disturb local election systems already in being or authorized, nor those which may be set up by the next General Assembly, so long as they provide for final choice by vote of the people in the county. But if a county has not obtained such legislation by July 1, 1969, it will be required to elect at large a five-member board of education for four-year staggered terms on a nonpartisan basis at the time of the primary. Each county board of elections is required to certify to the State Board of Elections the size and method of election established for the board of education in its county, and the State Board is called upon to instruct the county board of elections in procedures to be followed in conducting these elections.

Poll Watchers

Heretofore, counties which adopted full-time and permanent registration have been forbidden to use watchers in primaries and elections. As proposed by the Election Laws Revision Commission, this provision was left unchanged. In enacting Ch. 775 (HB 146), however, the General Assembly removed the prohibition and made the law on this subject uniform. Thus, under new GS 163-45 watchers are permitted in all counties of the state under a single set of restrictions.

Signing Poll Books

Before the 1967 General Assembly convened, the State Board of Elections made three recommendations for election law changes it believed desirable. Two of those proposals were adopted and are noted elsewhere in this article. A third would have required each voter to sign the poll book at the time he received ballots on election day, and, incidentally, would have required the maintenance of a separate poll record in counties using full-time and permanent registration systems. The bill containing this proposal, HB 1147, was never acted on.

Civilian Absentee Ballot

Official Certification on Container-Return Envelope

Heretofore, the envelope furnished the civilian absentee voter in which to return marked ballots has carried notations of the voter's name, the number assigned his ballot application, and a record of the precinct in which his ballots are to be cast. In the future, under Ch. 851 (HB 409) the container-return envelope must carry a statement signed by the chairman or a member of the county board of elections certifying that the absentee voter is registered and qualified in the stipulated precinct and that he has made proper application for absentee ballots. This act puts into effect one of the recommendations of the State Board of Elections.

Absentee Ballots in County Bond Elections

In the past, use of the civilian absentee ballot has been restricted to statewide general elections. Under the terms of Ch. 952 (HB 119) it is made available in "county bond elections. . . arising on or after September 1, 1967." The limitations of the new law should be emphasized: it does not apply to persons in military service; it does not apply to any referenda except those in which the issuance of county bonds is at issue; and it does not apply to county bond elections held before September 1, 1967.

Political Activity by State Employees

Ch. 821 (SB 254) provides that under penalty of disciplinary action—possible dismissal or removal from office in case of deliberate or repeated violations—no state employee or officer is to "use any promise of reward or threat of loss to encourage or coerce any employee subject to the Personnel Act to support or contribute to any political issue, candidate, or party." The provisions of the act overlap, and to some degree supplement, the provisions of GS 163-271 as that section appears in the recodified elections law, Ch. 775 (HB 146).

General Municipal Election Law Amendments

Although many city and town charters contain election procedures and regulations which take precedence over the general law on the subject, the provisions of Article 3 of GS Ch. 160 still govern elections in many municipalities in part if not entirely. Ch. 241 (HB 450) amends three sections in that article: GS 160-32 is amended to delete the requirement that persons appointed as municipal registrars must be served with notice of their appointment by the sheriff or a township constable; in the future they need only be notified. GS 160-44 is amended to delete the stipulation that Eastern Standard Time govern registration hours. GS 160-49 is modified to delete requirements that the municipal canvass be held at the mayor's office at noon; however, the requirement that the canvass be held on the day after the election is unchanged.

Violations of Election Laws

Late in the 1967 session two sets of companion bills were introduced which, had they been passed, would have made significant changes in existing procedures for reporting and prosecuting violations of the election laws. Although not enacted, the proposals are noted here because of the interest they engendered.

One of them (HB 1343-SB 684) would have required the State Board of Elections to report violations of election laws which it discovered to both the Attorney General and the appropriate district solicitor. Under existing law, the Board is permitted to make its report to either. Under the other set of bills (HB 1349-SB 682) it would have been the duty of the Attorney General rather than the district solicitor to prosecute violations of the absentee ballot law reported by the State Board of Elections.

In addition, under HB 1343-SB 684, if an investigation by the State Board of Elections should disclose any criminal violation of the elections laws, the chairman of that board would have been required either to cause a warrant of arrest to issue or to seek a bill of indictment.

Proposed Reorganization of Election Machinery

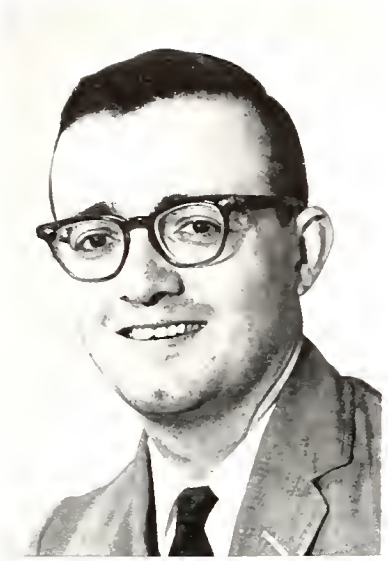
At the same time the bills noted in the preceding section were introduced, three more sets of companion bills were proposed. These were designed to work substantial changes in the manner in which election officials are chosen. Although none of these proposals was enacted, they, too, are reported here because of the interest they aroused.

Under HB 1346-SB 685, the terms of the present members of the State Board of Elections would have been terminated as of July 1, 1967, and the present board would have been replaced by a five-man board chosen as follows: The State Executive Committee of each of the two major political parties would have appointed two members, and these four would have elected a fifth. Should the appointees have been unable to agree, the fifth board member would have been named by the Governor. Such a system would have taken from each Governor the power he now exercises over all board appointments within a few months after he takes office.

Under HB 1344-SB 683, each three-man county board of elections would have been chosen as follows: The State Executive Committee of each of the two major political parties would have appointed one member (subject to the State Board of Elections' right to reject any unqualified appointee and to fill the vacancy from the same party), and the appointees would have elected the third member. Should they have been unable to agree, the third member would have been appointed by the State Board of Elections.

Under HB 1345-SB 681, the county board of elections would have named the registrar for each precinct, but the county chairman of each of the two major political parties would have named one judge for each precinct. If fewer than 20 per cent of the registered voters in any precinct belonged to either recognized party, the county chairman of that party would have been permitted to go outside that precinct in selecting a judge, so long as he named a registered voter of the county.

By Robert E. Phay



ELEMENTARY and SECONDARY PUBLIC EDUCATION

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

A summary of the legislation affecting higher education will appear in the next issue of Popular Government.

The General Assembly of 1967 was extremely active in the area of education. Both elementary and secondary education and higher education consumed an unusually large part of the legislature's time and effort. The result was the enactment of a substantial amount of new law, though many proposals for change in general law died in committee. In the area of public education below the college level, teacher salaries were increased 20 per cent for the 1967-69 biennium; the continuing contract for teachers was restored; effective July 1, 1969, county boards of education must be elected directly by the people; the Interstate Compact for Education was enacted; and a commission to study the public school system was authorized. This article will summarize these and other actions in the field of public education.

Personnel

A substantial pay increase for teachers was a foregone conclusion before the General Assembly convened. The question was how much. In his budget message to the General Assembly, Governor Moore proposed a 17.58 per cent salary increase for classroom teachers in the coming biennium (8.73 per cent for the first year of the biennium and 8.85 per cent for the second year of the biennium). This proposal, however, was considerably below the 30 per cent pay increase and longevity increments recommended by the United Forces for Education in HB 225 and the proposals made by two Republican-sponsored bills—SB 9, which would have increased classroom teachers' and principals' salaries 25 per cent, and SR 295, an advisory opinion to the Joint Appropriation subcommittee recommending a 30 per cent pay raise. These variances in the size of the teacher pay raise provided one of the major issues over which the legislature struggled during the early part of the session. Compromise was reached in the final budget which increased salaries for school teachers 20 per cent over the biennium—an increase that Representative Graham Tart, chief spokesman for the UFE legislative program, in the end supported.

The 20 per cent salary increase will permit the state in the second year of the biennium to reach the long-sought goal of a $5,000 minimum teacher's salary for the nine-month school term. North Carolina, however, will still rank around fortieth in the nation in expenditures per pupil from all sources—state, local, and federal.

School Board Election

The general law providing for the selection of county school board members, GS 115-19, provides that board nominations be made biennially at party primaries or conventions, the results of which are then certified to the State Superintendent of Public Instruction. The Superintendent transmits these nominations, "together with the names of the political party nominating them," to the chairman of the House Committee on Education. The General Assembly, which need not follow the nominations received from the State Superintendent, elects or appoints the members of the county boards of education by enacting the so-called "omnibus school boards bill." Since this procedure was adopted in 1955, a procedure devised to insure Democratic control in those counties predominantly Republican, counties have been obtaining local legislation providing for election at the county level, thereby exempting their boards from the general law.

Prior to the 1967 General Assembly, twenty-one counties had exempted their county boards in the manner described. The move away from the general law greatly accelerated in the 1967 General Assembly, with school board elections generating as many bills as almost any subject before this legislature.

Fifty-eight local bills, including ten bills dealing primarily with school consolidation, were introduced proposing some change in school election procedure. Forty-nine of these bills, including seven consolidation bills, would have removed a school board from the general law and provided for election at the local level. These bills affected forty-six county school boards, forty of which were appointed by the omnibus school boards bill, and thirteen city school boards. Forty-one of the fifty-eight bills were enacted. They changed election procedures in several city and county school districts and removed twenty-eight counties from the general law, leaving a total of fifty-one counties whose county school boards have no local legislation providing for local election of board members.

In addition to the many local bills introduced there were two major public bills, SB 33 and HB 1012 (a third, HB 1050, was almost identical to SB 33), dealing with county school board elections. Both bills proposed a more uniform system for the nomination and election of members of county boards of education. The legislature enacted the Senate bill, Ch. 972, which rewrote GS 115-18 to require all county boards of education, by July 1, 1969, to have not less than three nor more than nine members and to be elected at the local level for a term of four years. Ch. 972 also rewrote GS 115-19 to provide that in counties that do not elect their school board members by a vote of the people by July 1, 1969, the school board members shall be elected in one of the two following ways:

"(1) [O]n a partisan basis in the same manner as members of the General Assembly; or (2) on a non-partisan basis at the time of the primary election for nomination of candidates for the General Assembly."

If the county does not choose between one of the alternatives authorized, the election is to be non-partisan. School board members, under either partisan or non-partisan election procedures, are to serve four-year terms on a staggered basis, and the boards, unless designated otherwise by the General Assembly, are to have five members elected at large on a non-partisan basis. The school election bill also amends GS 115-22 to change the time for taking the oath of office from the first Monday in April to the first Monday in December next succeeding the election. The new law further makes any qualified voter residing within the county eligible in both primary and general elections to vote for members of the county school board. This means that city residents in those counties that have city school units may vote for the county school board members in addition to the members of their city school boards.

Considering the trend toward local acts that exempt from the general law, it is doubtful there will be many counties that do not have local legislation providing for the election of their school boards by the time this law becomes effective. It is interesting to note that if on July 1, 1969, GS 115-19 does not apply to ten counties or more—the codifier's test for what is considered general law—this section will no longer be classified as such.

School Consolidation

During the 1966-67 school year, 53 of the State's 100 counties had county-wide school units. Only six of these systems, however, became county-wide through consolidation. The great majority were united historically.[1] Nevertheless, consolidation of school units marks a growing trend throughout the State. Ten local bills (as compared with three in the 1965 General Assembly) affecting twenty-two school boards were enacted this session that either consolidate schools or authorize a county-wide election on the question of consolidation. The counties that are the subject of these acts are Anson, Burke, Chowan, Gaston, Lee, Lincoln, Pasquotank, Richmond, and Vance. Three of these counties—Chowan, Pasquotank and Vance[2]—already have voted to consolidate their school systems; the school systems in two of the counties, Anson and Richmond, were consolidated upon the enactment of the consolidation bill. The consolidations in these five counties will eliminate the following city administrative units: Morven and Wadesboro in Anson County; Edenton in Chowan County; Elizabeth City in Pasquotank County; Hamlet and Rockingham in Richmond County; and Henderson in Vance County.[3] These consolidations reduced from 167 to at least 160 the number of school administrative units that will operate in the 1967-68 school year.[4] If the other four counties also approve consolidation, the number of administrative school units will be reduced to 153 and the number of county-wide units will be increased from 59 (this number includes Vance County) to 63. This move toward consolidation is one that has been encouraged by the North Carolina Department of Public Instruction, the North Carolina Education Association, and the North Carolina State School Boards Association. (See the consolidation map on page 60.)

A new general consolidation law, enacted by Ch. 643, already has accelerated the present trend toward the union of school districts within a county. This act

1. Since the New Hanover-Wilmington school units merged over 30 years ago, only five other county-city units have united successfully. These are the consolidated units of Winston-Salem-Forsyth, Charlotte-Mecklenburg, Oxford-Granville, Laurinburg-Scotland and Canton-Haywood.

2. The consolidation in Vance County, although approved by referendum, does not take effect until June 30, 1968.

3. The 1966-1967 school year operated with 169 school administrative units. On July 1, 1967, Moore county consolidated its three school units into one, eliminating the Southern Pines and Pinehurst city school systems. This consolidating, however, was done pursuant to a 1965 act, SL 1965, Ch. 1051 and not legislation of the 1967 General Assembly.

4. In addition to consolidation following enabling legislation, the Fremont city schools consolidated with the Wayne County schools under a new liberalizing school consolidation law, Ch. 643 (HB 557).

changed the public law making it easier for county and city administrative units to unite. It rewrote GS 115-11(11), giving the State Board of Education new powers in approving school consolidation plans. It also amended the former consolidation statute, GS 115-74, and added a new section, GS 115-74.1. The new section eliminates the necessity of a special act by the General Assembly and authorizes local boards to work out together the problems of their merger, setting out the procedures they are to follow. When a plan of consolidation has been written and mutually agreed upon by the city and county boards of education (or two contiguous city administrative units) and approved by the board of county commissioners, the plan is submitted to the State Board of Education. Upon their approval, the plan of consolidation and merger becomes final and cannot be changed or amended except by an act of the General Assembly. Submission of the plan to the voters of the geographic area affected by the consolidation is permitted but not required.

Teacher Supplemental Pay

Money to supplement teacher salaries and to employ faculty additional to those provided for by state funds may be appropriated by boards of county commissioners without approval by the voters. This change in the law may have the most significant impact on North Carolina's public school system of any school legislation enacted this session.

Ch. 1263 (HB 1408) amended GS 115-80(a) to permit the county board of commissioners to approve school board requests for adding to or supplementing the school current expense fund and to levy taxes for items approved. Specifically included in the items of expenditure for which taxes may be levied are "additional personnel and/or supplements to the salaries of personnel." Before the school board may make any request, however, it must show that necessity or peculiar local conditions demand the requested expenditure.

Before the law was amended, the only items of expenditure that could be added or supplemented in the school's current expense budget without a referendum were items "not in the current expense budget provided by the State." Since salaries of teachers, principals, superintendents, and the majority of other school personnel are paid for by the State (see GS 115-79), county commissioners could levy taxes for these items only if they were approved by the voters. The new law now makes supplementing or adding to items of current expense a much easier task for boards of education and county commissioners. A referendum is no longer required.

Interstate Compact for Education

Ch. 1020 (SB 203) enacts the Interstate Compact for Education as a new Article 43 of GS Ch. 115. This article establishes the North Carolina Education Council and entitles the state to seven members on a national commission known as the Education Commission of the States. The function of the Commission is to provide a forum for the development of public policy alternatives in education, to act as a clearing house for information concerning education, and to facilitate the improvements of state and local educational systems by promoting local and state initiative. The seven North Carolinians on this Commission are to be the Governor, one legislator selected from each house of the General Assembly, and four persons to be named by the Governor.

The North Carolina Education Council operates at the state level, where it is to consider recommendations made by the Education Commission of the States and proposals to be made by the state to the Commission. The Council is to be composed of the seven North Carolinians on the national commission, five gubernatorial appointees, and four ex officio members—the Chairman of the State Board of Education, the State Superintendent of Public Instruction, and the Chairman and Director of the State Board of Higher Education. The Governor is to serve as chairman.

Public School Study Commission

Governor Moore, in his State of the State address, recommended a commission to study the public school system of North Carolina. This recommendation was accepted, and the General Assembly adopted Resolution 81 (HR 1026) creating the Governor's Study Commission on the Public School System of North Carolina. The Commission is to consist of seventeen members, eleven to be appointed by the Governor, four of whom must be certified public school personnel, and six to be appointed from the General Assembly, three from each house by the presiding officer. The Governor is to designate one of his appointees as chairman.

The Commission is to make a detailed study of the North Carolina public school system. Among the more important areas to be studied are the following: 1) the financial structure supporting public education, including an analysis of funds derived from state, federal, local, and other sources; 2) training, certification, supply, and demand for teachers, supervisors, and administrators; 3) the adequacy of public school sites and buildings; 4) the organization of county and city school administrative units; 5) the public school food service program; 6) the public school bus transportation system; and 7) the value of research carried on in experimental schools and projects. Included by amendment as a major topic of study is the feasibility of operating public schools for a complete year on a quarterly basis. This amendment incorporated SR 152, which had called for a separate study commission on the subject of a full-year school term.

Governor Moore announced the commission members in Raleigh on August 25, 1967, at his conference on public school education. The seventeen-member Commission will be headed by Dr. James H. Hilton,

executive secretary of the Z. Smith Reynolds Foundation, the recently retired president of Iowa State University and a former Dean of the School of Agriculture at North Carolina State University. In addition to Dr. Hilton, Governor Moore appointed the following members: Philip C. Brownell of Pisgah Forest, an executive of the Olin Mathieson Chemical Corporation; John W. C. Entwistle of Rockingham, president of the State School Boards Association; J. W. Goodloe of Durham, an executive of the North Carolina Mutual Life Insurance Company; Conrad Hooper, superintendent of the Raleigh City Schools; Dr. Amos Johnson, Garland physician; C. B. Martin of Tarboro, superintendent of the Tarboro City Schools; William B. McGuire of Charlotte, president of Duke Power Company; Mrs. Mary Nesbitt of Asheville, president of the North Carolina Classroom Teachers Association; Dr. A. Craig Phillips of Greensboro, administrative vice president of the Richardson Foundation; and Wallace West of Wilmington, principal of the New Hanover Senior High School.

Governor Moore also announced the appointments of Lieutenant-Governor Scott and former Speaker of the House David M. Britt. Scott's appointees are Senator Martha Evans of Mecklenburg, J. F. Allen of Montgomery, and Julian Allsbrook of Halifax. Britt's appointees are Representatives Allen C. Barbee of Nash, R. D. McMillan, Jr., of Robeson, and C. Graham Tart of Sampson. In announcing these appointments, the Governor challenged the Commission members "to have the courage to discard any obsolete practices which may persist in our educational programs." He stated that the Commission's study "will involve searching new ideas and new approaches to public school education. It will necessitate change in established patterns, not for the sake of change, but for essential improvement. We cannot allow traditional patterns to obscure any need for constructive changes in the overall structure."

Continuing Teacher Contracts

The restoration of the continuing contract for principals and teachers in the public school system was a major objective of the United Forces for Education. Ch. 223 (SB 3) rewrites GS 115-142 to provide that contracts entered into by the teacher, principal, or other professional employee (defined as a person holding a position for which the State Board of Education has established certification requirements) and the county or city school administrative units will continue from year to year unless terminated by the county or city board of education. If the school board decides not to retain the employee for the next succeeding year, termination of contract is to be made by notifying the employee by registered letter at the employee's last known address or business address of the employee prior to the close of the school year. If it is determined that the employee's services are not acceptable for the remainder of a current year, termination of contract is to be in accordance with the procedures of GS 115-67 and GS 115-145. Thus the new law gives neither the principal nor the teacher a vested right in his employment. Attempts to amend SB 3 to establish tenure rights for public school teachers and principals failed, as did HB 77, a bill to create a public school tenure system.

School Transportation

The defense of tort claims arising from school bus accidents as a result of an alleged negligent act or omission on the part of drivers paid from state funds has heretofore been the responsibility of local school boards. Local boards have been required to defend court claims through their own attorney despite the fact that any awards made against the local board by the State Industrial Commission would be paid out of state funds. This situation has not encouraged local school boards to actively challenge the claim, with the result that many claims are settled quickly. Ch. 1032 (HB 1045) rewrites GS 143-300.1 to make the State Attorney General's office responsible for defending local school boards involved in legal suits arising out of school bus accidents. It also appropriates funds to employ a new attorney and stenographer in the Attorney General's office and two claims adjusters in the office of the State Board of Education. This change in the law had been recommended by the School Superintendents' Association and the State Board of Education.

GS 115-202, which requires local boards of education to provide courses in the operation of motor vehicles, was amended by Ch. 694 (SB 416) by the addition of a new subsection (g) providing that the public school program of driver training and safety education be made available to all private or nonpublic schools certified by the State Board of Education. Expenses for course instruction are to be borne by the private or nonpublic schools.

The major UFE objective in the transportation area was new legislation authorizing transportation for city children on the same basis as county children. Under present law the State Board of Education does not allocate funds to transport children who live in a municipality and attend public schools within the same municipality unless those children reside in territory annexed by a municipality after February 6, 1957. Separate bills (SB 65 and HB 132) providing for bussing city school pupils on the same basis as rural pupils died in committee. However, GS 115-190.1 was amended by Ch. 877 (HB 1140) to provide that school bus transportation was not to be discontinued by state or local governmental agencies where two or more municipalities have consolidated and the new consolidated municipality includes an area where pupils had been transported to their schools.

School Lunch Program

The 1965 General Assembly rewrote the school food service statute, GS 115-51, to restrict the use of

school food service funds to the essentials of food and personnel to prepare the food. Ch. 990 (HB 1358) amended GS 115-51 to include in the definition of "cost of operation" the salaries of all personnel directly engaged "in providing food services." The replaced phrase had read "in preparing and serving food." GS 115-51 was further amended by adding a definition of "personnel," defined to include "food service supervisors and directors, bookkeepers directly engaged in food service record keeping, and those persons directly involved in preparing and serving food." As a result of this change, federal food funds can now be used for the payment of administrative personnel such as lunchroom supervisors and cafeteria bookkeepers.

Two bills that would have appropriated state funds for school food service programs (SB 212 and HB 461) died in committee.

The North Carolina Advancement School

The North Carolina Advancement School, established in 1964 by former Governor Terry Sanford to enlarge the state's educational system through a program designed to help underachievers and to provide improved instructional programs for the public schools, was the subject of considerable controversy in the 1967 General Assembly. A proposal to reorganize the school, which suggested to some a change in the role to be played and in the type of research to be done by the school, resulted in the immediate resignation of the school director and fifteen members of the faculty.

It also presented one of the major policy decisions on the role that innovative educational programs are to play in North Carolina. The Advancement School had been under the administrative control of LINC (Learning Institute of North Carolina), but Governor Moore, in his legislative address to the General Assembly, recommended that control be shifted to the State Board of Education. Competing legislation was introduced into the General Assembly: HR 204, recommending continued operation of the school under the "administrative control and philosophy" of LINC, and HB 904, a bill to effectuate the change recommended by Governor Moore. Late in the session HB 904 was enacted as Ch. 1028, and the State Board of Education became responsible for operating the North Carolina Advancement School as part of the public school system. Ch. 1028 also provides for a board of governors that is to determine school policy, review school operation, and report its findings to the State Board of Education.

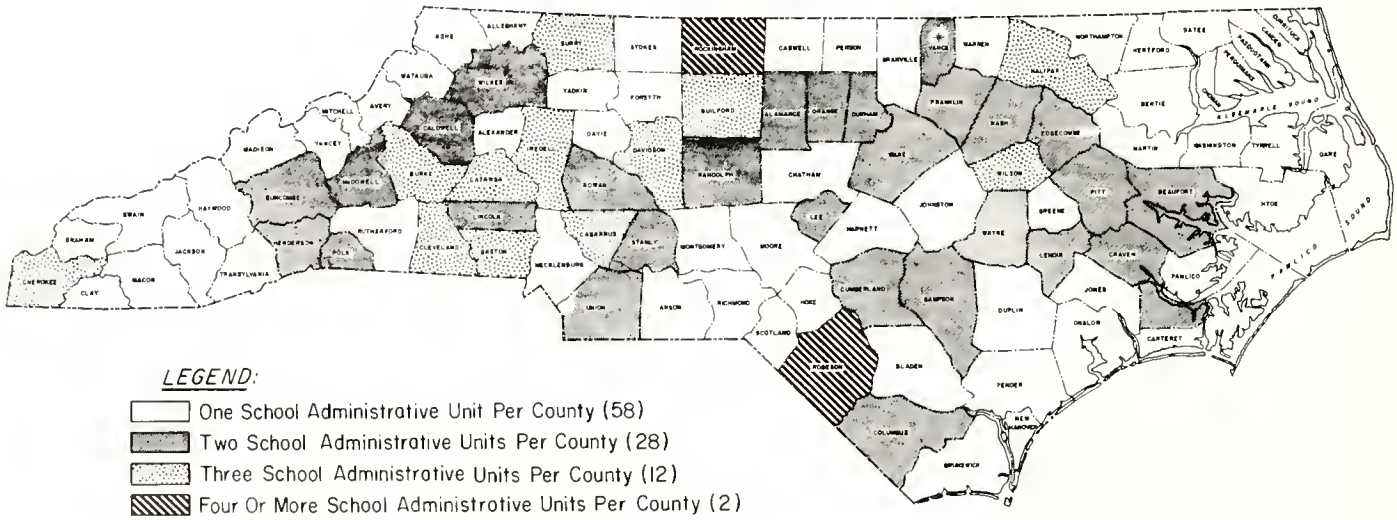
Miscellaneous Legislation

Ch. 697 (SB 544) amended GS 115-39 to permit county or city boards of education to enter into contracts with school superintendents for either two- or four-year terms. Heretofore, only two-year term appointments were permissible.

Ch. 369 (SB 262) authorizes city and county boards of education to offer and pay rewards up to $50 for information leading to the arrest and conviction of any person or persons injuring or damaging real or personal property in the public school system.

Ch. 1008 (HB 524) appropriates $100,000 from the General Fund to the State Board of Education for scholarships to train teachers for instructing mentally retarded children. The State Board is to promulgate rules and regulations for administering the scholarship fund. Any student who receives a scholarship

CONSOLIDATION OF
SCHOOL ADMINISTRATIVE UNITS



* Vance County voters recently approved the consolidation of their two units but they do not become a one unit county until June 30, 1968

August, 1967

must agree to remain in the North Carolina educational system for a period equal to that for which scholarship aid was given.

Ch. 550 (SB 83) amended GS 105-147(3) to permit substitute school teachers to deduct from reported income, in computing state income taxes, the ordinary and necessary expenses incurred in attending summer school at an accredited college or university. Prior to this amendment the deduction applied only to teachers, principals, and superintendents.

Two other bills dealing with summer school training did not get out of committee. SB 382 would have provided tuition-free summer school at all state institutions of higher education for public school teachers, principals, and superintendents who had been employed in the public schools for three consecutive years. This bill died in committee, as did SB 64, which would have authorized substitute school teachers to deduct, for state income tax purposes, the cost of courses taken to retain or to upgrade teaching certificates.

* * *

Although considerable legislation was enacted in the area of education, much of the public school story of the 1967 General Assembly was written in the legislation that failed. Neither the UFE's recommendation of $10,000,000 to inaugurate a pilot kindergarten program nor Governor Moore's and the Advisory Budget Commission's proposal for a $400,000 appropriation to study kindergartens came close to being enacted. As a result, North Carolina remains as one of twenty-four states that do not provide pre-school training as part of the state educational system. It is one of only three states in which there are no public pre-school programs supported by either the state or local school units, except through federal anti-poverty funds. Another failure was SB 131, a proposal to reduce class size by one in grades one through twelve. This proposal would have required the employment of 1,300 additional teachers at a cost coming very close to $9,000,000 per year. SB 130, another UFE proposal that died in committee, provided for the extension of employment of public school principals, school supervisors, and school teachers. Other bills suffering a similar fate were SB 258, which would have raised the compulsory school attendance age limit to 17 years; SB 225, which would have appropriated $1,650,000 to the Board of Education for the biennium to pay teachers supervising student teachers; HB 1063, which would have authorized the State Board of Education to increase sick leave with pay for teachers from five to seven days; and HB 739, which would have forbidden public schools to provide courses in cosmetic arts in any public school system where a licensed private school of cosmetology is serving the needs of the area.

THE SENATE

The 1967 General Assembly of North Carolina

PENAL AND CORRECTIONAL ADMINISTRATION

By Allan Ashman

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

The 1967 General Assembly may well have taken its most significant steps to improve the future administration of criminal justice in North Carolina in the areas of jail reform and corrections. The General Assembly enacted legislation designed to upgrade local jails and short-term institutions and to provide a sound statutory framework upon which a new State Department of Correction can build correctional programs.

Jail Reform

Jail Study Commission

Sparked by the Legislative Research Commission, the General Assembly launched a two-pronged attack aimed toward immediate as well as long-range improvements in jails and short-term institutions. Looking ahead, SR 290 (R 53) creates an eleven-member Jail Study Commission to explore the economic feasibility of the maintenance of jails by local units, the use of local jails for noncriminal types such as alcoholics, mental patients, and children; the proper role of state and local government in jail administration; and the lack of juvenile-detention facilities for children awaiting juvenile court action. The Commission is directed to report its findings and make its recommendations to the 1969 General Assembly.

Standards and Enforcement

Ch. 581 (SB 289) represents an effort to make immediate improvements in jail conditions and to provide for the basic needs of prisoners. The act repeals Article 7 (Courthouse and Jail Buildings) of GS Ch. 153 (GS 153-49 through -53) and adds a new Article 7, entitled "Local Confinement Facilities." Under this new article a division of Jail and Detention Services in the State Welfare Department is established under the direction of the Commissioner of Welfare to implement and co-ordinate specified jail services—such as providing consultation and technical assistance to local government officials concerning their confinement facilities (new GS 153-51). The Commissioner is required to develop minimum jail standards "with a view to providing secure custody of prisoners, and to protect their health, comfort, and welfare." These standards are to become effective only upon the approval of the Governor and not later than January 1, 1969 (new GS 153-52).

A new and more practicable enforcement procedure is established that requires semiannual jail inspections supported by written inspection reports to local officials who have the responsibility for taking corrective action (new GS 153-53). If it is determined that the minimum jail standards are not being met, the Commissioner of Welfare must notify the local officials and the senior regular resident superior court judge of this fact. Local governing bodies must then begin corrective action within 30 days after receipt of the inspection report or correct the unsatisfactory conditions within a reasonable period of time. If such steps are not taken, the Commissioner may order the jail closed (new GS 153-53.1).

Supervision, Medical Care, and Sanitary Conditions

The bill also seeks to improve the quality of (1) supervision in local jails by requiring continuous supervision of prisoners (new GS 153-53.2) and training for jail personnel (new GS 153-53.5); (2) medical services by requiring local governments operating confinement facilities to develop a plan for providing medical care for prisoners (new GS 153-53.3); and (3) food and the sanitary conditions under which food is prepared (new GS 153-53.4). In seeking these ends, Ch. 581 repeals several archaic provisions of the present law (for example, GS 153-179 requiring jailers to furnish prisoners "not less than one pound of good roasted or boiled flesh") and provisions that are constitutionally suspect, such as GS 153-51 and GS 71-2 requiring racial segregation in jails.

Financing Jail Reform

Ch. 899 (HB 1145) complements the jail-reform legislation by amending GS 153-9 to authorize boards of county commissioners to levy a special tax for the

purpose of acquiring, constructing, renovating, and furnishing courthouses and jails. Unfortunately, a bill (HB 1227-SB 600) that would have facilitated jail improvement by appropriating $250,000 to the Department of Administration to assist local governmental units in developing district jails (Ch. 581 carries forward provisions of present law authorizing district jails), pilot jail programs, and training programs for jail personnel never was reported out of the Appropriations Committee. (See the article on Public Welfare and Domestic Relations on pages 79 for further mention of Ch. 581 and related legislation.)

Corrections

Department of Correction

Ch. 996 (SB 555) extensively rewrites GS Ch. 148 (State Prison System) to create, effective August 1, 1967, a new State Department of Correction and to provide the foundation for new programs designed to correct imprisoned criminals and to facilitate their return to the free community. The bill amends GS 148-1 to change the name of the State Prison Department and the titles of the State Prison Commission and Director of Prisons to the State Department of Correction, Commission of Correction, and Commissioner of Correction, respectively. The provisions dealing with the composition, appointment, terms, and functions of the Commission of Correction are substantially the same as those relating to the Prison Commission it replaces. Likewise, the provisions covering the appointment, term, salary, authority, and responsibilities of the Commissioner of Correction correspond with those presently pertaining to the office of Director of Prisons. The name and title changes primarily serve to stress the importance of correction as a function of the prison system.

The new Department is required to establish diagnostic centers to make social, medical, and psychological studies of prisoners for classification purposes (GS 148-12). Whenever feasible, the Department is authorized to comply with the request of any sentencing court for a presentence study of convicted persons who are subject to imprisonment in the state prison system. Persons sent to a diagnostic center cannot be held there longer than authorized by the Court, and never longer than 90 days or the maximum term of imprisonment authorized as punishment for the offense, if the maximum is less than 90 days. Any time spent in the center will be credited on any prison term subsequently imposed. The use of these diagnostic centers will be completely discretionary with the courts, serving as an additional resource which they may use if they wish.

The bill amends GS 148-13 to authorize the payment of wages (up to $1.00 a day) and allowances to prisoners out of the Prison Enterprise Fund to provide incentive for good work and the acquisition of higher skills. These wages and allowances would be subject to forfeiture for poor work or misbehavior, the forfeited amount to be redeposited in the Prison Enterprise Fund.

GS 148-22 is amended to require that the Department provide humane treatment and programs to correct prisoners and be permitted to seek assistance from any source in meeting the treatment and training needs of prisoners. The legislation contemplates the development of treatment and training programs with the prison system that can be coordinated with corresponding services and opportunities available to the prisoner when he is released. Special programs are to be developed for problem prisoners, such as the mentally retarded (GS 148-22).

Ch. 996 amends GS 148-36 to require that the Department of Correction classify facilities and develop programs to provide an individualized system of discipline, care, and correctional treatment. The act also establishes as the guiding purpose of prison construction the distribution of prisoners throughout the State so as to facilitate individual treatment designed to prepare them for lawful living in the community where they are most likely to reside after their release from prison.

The bill modifies the indeterminate-sentence statute (GS 148-42) to make it available to superior court judges to use, in their discretion, *in any case* in which they are imposing prison sentences (now the term must be in excess of 12 months) and to enable the Commissioner of Correction to release conditionally a prisoner who has served his minimum term, less earned allowances for good behavior. The Commissioner, however, is required to consult with the Board of Paroles and seek the Board's cooperation in the implementation of agreed-upon release plans. The present power of the Board of Paroles to parole after a prisoner has served one-fourth of his minimum term is not affected by Ch. 996. What is affected is the power of the executive head of the State prison system with respect to prisoners serving indeterminate sentences. Whereas the Director of Prisons had only the option of complete discharge and continued imprisonment, Ch. 996 permits the Commissioner of Correction gradually to return the privileges of freedom as a prisoner who has served his minimum term demonstrates that he is ready to assume the responsibilities of freedom.

Ch. 996 repeals Article 21 of GS Ch. 15 (segregation of youthful offenders) in its entirety and rewrites Article 3A of GS Ch. 148 (facilities and programs for youthful offenders), consolidating the provisions of Article 21 of GS Ch. 15 into GS Ch. 148. The new legislation offers courts and correctional agencies an additional sentencing possibility (GS 148-49.4) which they can use in their discretion in deciding upon the best disposition for a person who is under 21 at the time that he is convicted of an offense punishable by

imprisonment. If a court decides that probation is not an appropriate disposition for a particular youthful offender but believes that the youth should be treated apart from the regular prison population, it may decide to sentence under the provisions of this article. Under this circumstance, the court sets a maximum term but no minimum term and commits the youthful offender to the custody of the Commissioner of Correction. This kind of commitment permits the Board of Paroles to release the youthful offender conditionally at any time, and *requires* a conditional release under proper supervision no later than four years after commitment. The Board of Paroles can, on the other hand, discharge the youthful offender unconditionally before the expiration of the maximum term; such action restores his citizenship rights forfeited upon conviction.

The act requires the Commissioner of Correction to segregate committed youthful offenders from other offenders and to separate classes of youthful offenders, whenever possible, according to their treatment needs (GS 148-49.6). Those provisions for presentence diagnostic studies, extension of the limits of confinement, and contractual arrangements for treatment and training services for adult prisoners are specifically made applicable to committed youthful offenders (GS 148-49.3, -49.5, -49.6, and -49.7).

Work-Release

Ch. 684 (HB 945) amends GS 148-33.1 (f) to set out a priority for disbursements from an inmate's work-release funds. The act requires that disbursements be made in the following order: (1) for travel and related expenses necessitated by a work-release inmate's employment; (2) for personal expenses; (3) to dependents, the amount to be determined by a court or, in the absence of a court order, by determination of dependency status and need by the local department of public welfare of the county where the dependents reside, and (4) to comply with any order of a court of competent jurisdiction regarding payment of an inmate's obligation in connection with any case before such a court. If any funds remain in the inmate's work-release account after deductions have been made in accordance with these provisions, the inmate may submit a written request for funds for consideration by the Department.

A measure (SB 43) introduced in the first few weeks of the session would have curtailed the scope of the work-release program by prohibiting persons convicted of murder, rape, burglary, and arson from participating in the program. However, much to the relief of the supporters of the work-release concept and program, the bill was not reported out of the Senate Committee on Correctional Institutions.

By Philip P. Green, Jr.

PLANNING

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

Highway beautification and natural-resource conservation measures highlighted the planning legislation enacted in 1967, as the more traditional areas of zoning, subdivision regulation, and urban redevelopment received somewhat less than usual attention by the General Assembly. On the whole, however, it was a bumper year for local planning officials.

Highway Beautification

The three most significant highway beautification acts were in a package proposed by the State Highway Commission after months of study. Ch. 1248 (HB 1195) regulates billboards and Ch. 1198 (HB 1193) junkyards along interstate and primary highways, while Ch. 1247 (HB 1194) authorizes the acquisition of property for the enhancement of scenic beauty along any part of the state highway system. A separate act, Ch. 413 (HB 45), provides that one-half of the net proceeds from sale of personalized automobile license plates shall be used by the State Highway Commission for beautification of highways other than those designated as interstate.

The first three acts in particular culminate years of effort by planners, garden club members, and others interested in improving our visual environment. But without the prod furnished by the federal Highway Beautification Act of 1965, which threatened the state with loss of $11 million in highway funds during the biennium, it is doubtful that they would have been passed.

Legislator after legislator explained his vote in favor of the bills by saying that he found it personally distasteful to yield to "blackmail" by the federal government, but as one stated, "How can you tell the folks back home that you turned down $11 million because you didn't want to improve the appearance of junkyards?"

It should be pointed out that the battle may not have finally been won, even now. Both the billboard and junkyard acts provide that they are to have no effect "until Federal funds are made available to the State for the purpose of carrying out the provisions of this Act, and the State Highway Commission has entered into an agreement with the Secretary of Transportation. . . as provided by the Highway Beautification Act of 1965. . . ." The property-acquisition act provides that the State Highway Commission shall have no duty to acquire property unless federal aid is made available.

Billboards

Ch. 1248 makes it unlawful to erect or maintain any outdoor advertising device within 660 feet of the right-of-way of any interstate or primary highway and visible from the main-travelled way, except for the following categories of advertising:

(a) Official signs and notices, and signs of utilities giving warning as to the location of an underground installation;

(b) Advertising for sale or lease of the property on which the device is situated;

(c) Advertising of activities conducted on the property on which the device is situated;

(d) Advertising, in conformity with State Highway Commission rules, in areas zoned or used for commercial or industrial purposes.

In all cases other than categories (b) and (c), it will be necessary to secure a permit from the State Highway Commission for such advertising.

The State Highway Commission is authorized to condemn or purchase any existing outdoor advertising which may have been lawfully erected prior to application of the law but which violates its terms, so that it can be removed. It has the authority, after 30 days' notice, to remove any unlawful signs at the expense of the owner and without compensation. Violation of the act is also subject to both civil and criminal penalties.

As an alternative procedure, the State Highway Commission is further empowered to regulate advertising within the proscribed area by acquiring easements or other property rights.

Local zoning authorities (city and county) are required, for the purpose of assisting in the enforcement of the act, to give the State Highway Commission written notice (by registered mail to the Commission's Raleigh office, mailed within 15 days after the zoning change) of the establishment or revision of any commercial or industrial zones within 660 feet of the right-of-way of interstate or primary highways.

Junkyards

Ch. 1198 makes it unlawful to establish or operate a junkyard within 1,000 feet of the right-of-way of any interstate or primary highway, except in the following cases:

(a) Junkyards which are not visible from the main-travelled way at any season of the year;

(b) Junkyards which are screened from the main-travelled way by natural objects, plantings, fences, or other appropriate means at all seasons of the year;

(c) Junkyards within areas which are zoned or used for industrial purposes.

In all such cases it will be necessary to secure a permit from the State Highway Commission in order to establish or maintain a junkyard.

In the case of unlawful junkyards, the State Highway Commission may, after 30 days' notice, remove any junk or otherwise make the junkyard conform to the provisions of the act, at the expense of the owner and without compensation. It may also bring civil or criminal actions to enforce the law.

In the case of lawfully established existing junkyards which violate the act, the State Highway Commission may (a) screen the junkyard, acquiring such property as may be necessary for this purpose, or where screening would be inadequate, (b) acquire the junkyard and remove the junk, (c) acquire and dispose of the junk itself, (d) pay for the expense of relocating the junk, or (e) acquire other property to which the junk can be moved and convey it to the owner of the junkyard for that purpose.

It can also regulate junkyards within the proscribed area through the acquisition of property rights.

Once more, the act requires city and county zoning authorities to give written notice to the State Highway Commission of the establishment or revision of any industrial zone within 660 feet of any interstate or primary highway right-or-way. Notice is to be given by registered mail within 15 days after the local action.

Property Acquisition

Ch. 1247 is primarily intended to authorize the acquisition of so-called "scenic easements." Exercising the powers granted in this act, the State Highway Commission could acquire interests in property at some distance from any highway, in order to preserve the appearance of the area. The act is not limited to such easements, however; it permits the acquisition of any kind of real property in the vicinity of a public highway where the objective is to restore, preserve, or enhance natural or scenic beauty.

As submitted, the bill would have authorized the condemnation of such rights, if necessary. As the bill was passed, however, the Commission may acquire these rights only through purchase, exchange, or gift.

Resource Conservation

The major step forward in the area of natural-resources conservation was the enactment of Ch. 892 (HB 356) creating a much-strengthened state agency to control water and air pollution—the Board of Water and Air Resources. Along with this came a package of acts granting new powers to the Board with relation to water resources, notably including the power to control directly the consumption of water by large users in areas of present or potential shortage. The acts will be described at greater length in the article on Water Resources in the October issue of *Popular Government*.

Of particular interest to local planning officials are Ch. 1070 (HB 997), which directs the Board "to provide guidance, coordination, and other means of assistance" to local governments in carrying out programs of flood-plain management, and Ch. 1071 (HB 998), which calls upon the Board to investigate the long-range needs of counties and municipalities for water-supply storage available in federal projects, to provide necessary assurances of local or state support for water-supply storage in federal projects, and to assign or transfer to local governments having a need for such storage any interest held by the state in federal water-storage projects.

Although HB 1332, directly regulating surface mining in the state, died in a House committee, the General Assembly did enact Ch. 946 (SB 607) under which the state entered the Interstate Mining Compact and agreed to embark upon a program of regulating this type of mining.

Since several Piedmont counties (notably Orange) have already learned that there is a definite possibility of such mining within their boundaries, consideration of legislation aimed at preventing some of the more noxious effects which have been observed in other states seems a certainty in the next legislature.

Ch. 907 (SB 400) requires registration with the Board of Water Resources of all earth-moving equipment to be operated on beaches, marshlands, or tidelands of the state; earlier provisions which would have required a permit before any earth-moving project could be undertaken in such areas were deleted before the act was passed. Two local bills provide that title to land created by beach erosion-control works in Hyde, Brunswick, and New Hanover counties is to be in the counties or in the municipalities in which the land is located.

Zoning

Municipal: General Law

Two acts modifying the municipal zoning enabling act (GS Ch. 160, art. 14) were enacted. Neither made major changes. Ch. 197 (SB 115) eliminates the limit of two alternate members on a municipal zoning board of adjustment and leaves the membership within the discretion of the city council. It also requires that when there are alternate members on the "inside" board of adjustment, a city exercising its one-mile extraterritorial powers under GS 160-181.2 must appoint alternate "outside" members. Prior to the act there was no authority to appoint alternate members from the extraterritorial area.

Ch. 1208 (HB 1240) modifies the enabling act in three respects. First, it makes clear that a zoning ordinance may provide for the issuance of "special use permits" or "conditional use permits" by either the local legislative body or the board of adjustment. Although this is a popular type of provision in zoning ordinances around the state, there has been some question as to the statutory authority for it.

Second, it rewrites the provisions of GS 160-177 relating to procedures for adopting a zoning ordinance so as to make them generally similar to the procedures embodied in the county zoning enabling act. The outmoded requirement of a zoning commission has been eliminated, and the legislative body may now use either a municipal or a joint planning board to prepare a recommended zoning ordinance.

Third, it amends GS 160-181.2 to allow a municipality to decline to exercise its extraterritorial powers beyond any "major physical barrier to urban growth" instead of any "major *natural* physical barrier" to such growth.

Municipal: Special Acts

All of the special acts relating to zoning of municipalities fell into two categories this session. One set of acts authorized Beaufort, Hillsborough, Murfreesboro, and New Bern to adopt special regulations for the preservation of historic areas, joining Winston-Salem, Edenton, Bath, and Halifax under the coverage of a 1965 act.

The other set of acts added Cherryville, Chocowinity, Drexel, Glen Alpine, Hillsborough, Mebane, and Mount Holly to the towns enjoying one-mile extraterritorial zoning power and further extended the jurisdiction of Chapel Hill, Selma, Smithfield, and Mebane.

County: General Law

There was only one act which affected the county zoning enabling act (GS Ch. 153, art. 20B). This was Ch. 1208 (HB 1240), which makes a number of "housekeeping" amendments, primarily to the provisions relating to the board of adjustment.

To permit greater representation, it removes the limit of five members on the board. It goes further to require that all county zoning ordinances contain a provision that board of adjustment members, insofar as possible, shall be appointed from different parts of the county. And in the event that less than the entire county is zoned, it requires that there shall be at least one member from each zoned area.

Next, it brings the county act into line with the municipal act by authorizing the chairman of the board of adjustment (or temporary chairman) to administer oaths to witnesses coming before the board. The municipal provisions were enacted in 1963 as a result of the case of *Jarrell v. Board of Adjustment*, 258 N.C. 476 (1963), but no change was made at that time in the county act. Under the new provisions it will no longer be necessary to have an oath-administering official other than the chairman present at board meetings.

Finally, the act makes it clear that a county zoning ordinance (as well as a municipal ordinance) may provide for issuance of "special use permits" or "conditional use permits" by either the board of county commissioners or the board of adjustment.

County: Special Acts

Craven and Cumberland counties came under the general county zoning enabling act during the 1967 session, reducing the number of exempt counties to nine. Three special acts made minor changes with reference to particular counties. One specified that the Nash County zoning ordinance could regulate mining and quarrying operations (probably a superfluous act, since such operations are normally regulated throughout the county under the usual provisions of zoning enabling acts, and also seemingly in violation of Article II, Section 29 of the State Constitution).

A special Mecklenburg County act modified provisions relating to the county board of adjustment so as to permit up to 13 members and to require only a majority vote to grant relief to a property owner. It also authorized the county ordinance to define "bona fide farm" and "farm purposes," so that it will be clear what types of operations are exempt from coverage by the ordinance.

A third act modified Forsyth County's special planning act to provide that only 10 (rather than 30) days' notice is necessary prior to a hearing on a zoning amendment.

Subdivision Regulation

No major legislation was enacted affecting either the city or county subdivision-regulation enabling acts. HB 1233, which would have amended both acts in a variety of ways, failed to pass its second reading in the House. Only two special acts were enacted. One added Rockingham County municipalities to the coverage of the municipal enabling act, while the other modified the extraterritorial jurisdiction of Smithfield and Selma under that act.

Urban Redevelopment

The legislative program of the redevelopment commissions of the state included two proposals. One, embodied in SB 442, would have simply updated the validation provisions of GS 160-474.1 from January 1, 1965, to January 1, 1967. It died in committee.

The other proposal was finally passed as Ch. 932 (SB 441), after major amendments. As enacted, it authorizes (but does not require) compensation of redevelopment commission members, and it tidies up the provisions relating to eminent domain proceedings by making clear that either party may call for a formal hearing before the commissioners of appraisal (presided over by the clerk of superior court), and that payment into court of the appraised amount does not cut off the redevelopment commission's right to an appeal as to the size of the award.

Provisions of the bill providing for (a) redevelopment of "institutional renewal areas," (b) repeal of the requirement that the redevelopment commission pay the property owner's attorney fees, and (c) discretionary authority for the court to reduce the amount of an award where the owner received income from the property after suit was filed were all deleted on recommendation of a Senate committee before the bill was passed. SB 688, which would have provided separately for redevelopment of institutional renewal areas, was never reported out of committee.

Ch. 1249 (HB 1259) amends the redevelopment law requiring payment of attorney's fees to make clear that it applies to all persons having an interest in the property, regardless of whether they are "respondents."

A special act applying only to Charlotte and Durham allows disposition of redeveloped property to someone other than a high bidder when the city council finds, after a public hearing, that another bidder would develop the property for purposes yielding greater property taxes or in a manner that would enhance the value of neighboring properties or in a manner that would ease the problem of relocation for persons displaced by a redevelopment project.

SB 280, authorizing sales tax refunds to local housing authorities, was never reported out of a Senate committee.

Building Regulation

Ch. 1260 (HB 1390) met a critical need when it authorized the issuance of search warrants for administrative inspections. The U. S. Supreme Court in the recent cases of *Camara v. Municipal Court*, 35 L. W. 4517, and *See v. Seattle*, 35 L. W. 4522, had declared that search warrants were necessary for such inspections when the owner or possessor of property refused entry and when the inspection was not of an emergency nature. This threw up a major roadblock to minimum housing inspections, health inspections, fire prevention inspections, etc., in North Carolina, since there was no statutory authority for anyone to issue a search warrant for these types of inspection. Ch. 1260 corrects this situation.

A proposal creating a State Building Code Commission to study the feasibility and desirability of making one- and two-family dwellings subject to the State building code passed the House late in the session but failed to clear the Senate Calendar Committee.

Meanwhile, Beaufort, Harnett, Onslow, and Wayne counties came under the state law authorizing county plumbing inspectors (GS 153-9[47]); Harnett also received authority to appoint a county building inspector; and building permits were required in Macon County—all by special acts. Other such acts gave Lee County authority to adopt a minimum housing standards ordinance governing the areas within its zoning jurisdiction and established a commission to hear appeals from the Burlington building inspector under the city's housing code.

Planning Boards

Ch. 1167 (SB 674) appropriates $60,000 for the biennium, to be used in conjunction with funds from the states of South Carolina and Georgia for establishing and operating in Washington, D. C., an Office of States' Regional Representative for the Coastal Plains Regional Commission. The Coastal Plains Regional Commission is expected to carry on programs within portions of the three states (including 45 counties of eastern North Carolina) which will be roughly equivalent to the Appalachian Development Program.

Stanly County became the last county in the state to come under the provisions of the state law authorizing county planning boards. Other special acts amended Wilmington's charter to authorize creation of a joint planning board, created a new Gaston Regional Planning Commission, modified the membership of Rocky Mount's planning board and board of adjustment, provided that a joint city-county planning board in Lee County could serve as an expanded planning board for Sanford if it wished to exercise its extraterritorial zoning authority, and made public hearings by the Hickory Regional Planning Commission discretionary rather than mandatory.

A Raleigh Historic Sites Commission and a Historic Murfreesboro Commission were also created, while the law under which the Chapel Hill Appearance Commission had been established last year was considerably modified.

Economic Development

Two measures of considerable importance to local economic development efforts were enacted. Ch. 535 (HB 298) represents a major shift in state policy, as it authorizes for the first time the issuance of revenue bonds to finance industrial facilities. Ch. 1006 (HB

296) authorizes state loans and grants to local governments and airport authorities for airport development and maintenance.

Industrial Development Bonds

Ch. 535 creates a new North Carolina Industrial Development Financing Authority, composed of seven members (the State Treasurer, the Chairman of the Department of Conservation and Development, and five members appointed by the Governor), to administer the new program. Any state or local agency can request the Authority to finance an industrial development project, such as preparation of a site and construction of industrial plants or related facilities. If the Authority finds the project to be feasible and desirable, it will notify the governing body of the unit in which the project would be located, which will have what amounts to a veto power over whether the project will be undertaken.

If the local governing body approves the project, the Authority may proceed to acquire property and let necessary contracts for construction. The completed facility will then be leased to an industrial concern (which shall have the responsibility for making payments in lieu of taxes that will be the equivalent of any ad valorem property taxes which would otherwise be levied on the property). The lessee may also be given an option to purchase the property at the expiration of the lease.

All financing by the state will be through the issuance of industrial revenue bonds, repayable out of the proceeds of fees, rents, and charges; however, the initial costs of organizing and administering the Authority may be paid out of the state's Contingency and Emergency Fund.

When all costs of the state have been recovered and the bonds have been repaid by a particular project, the Authority will convey all its remaining interest in the project to the local unit in which the project is located.

Airport Loans and Grants

Recognizing that "the economic growth of North Carolina depends to a great extent on the development throughout the State of modern airports and airport facilities," Ch. 1006 requires the Division of Commerce and Industry of the Department of Conservation and Development to prepare and keep current a state airport plan, together with standards and priorities for most efficient expenditures of state funds for planning, acquiring, constructing, or improving local airport facilities. The Division will be advised by an 11-member Governor's Aviation Committee.

The act authorizes loans and grants of state funds in amounts up to 25 per cent of the cost of any particular project, which projects must meet the criteria of a "general purpose non-carrier airport as defined by the Federal Aviation Agency" and must in general meet the standards for eligibility set forth in the Federal Airport Program or the National Airport Plan.

To get the new program under way, an appropriation of $250,000 for the 1967-68 fiscal year was made.

Miscellany

Among the other acts of interest to local planning officials, perhaps Resolution 76 (HR 944) will prove in the long run to have the greatest significance. This establishes a Local Government Study Commission of 15 members to "make a thorough study of the governmental structure, powers, public policies, duties, and limitations of counties, cities, towns, and other local governmental units in this State. . . and to make such recommendations for amendments to or revisions of the Constitution and statutes pertaining to local government as the Commission shall find would be most conducive to the maintenance of effective and responsible local government in North Carolina."

The Resolution directs that the Commission give particular attention: "(1) to a study of methods and procedures to reduce the volume of local legislation requiring the time and attention of the General Assembly; (2) to a study of possible changes in the organization and administration of county government which would realize the full potential of county government as an instrument for providing general purpose, area, and regional, local governmental services; (3) to a study of the impact of urbanization on municipal governments and their capability for furnishing a full range of public services and facilities for the expanding urban areas of this state; and (4) to a study of the purpose, function, and role of special districts, multi-unit and regional Boards, Commissions, and other special-purpose local government units in relation to the general purpose municipal and county governments."

Several acts provide for cooperative arrangements between local governments. Ch. 797 (HB 982) authorizes cities and counties to form regional councils of local officials to plan for and carry out cooperative activities. Ch. 1228 (HB 1372) authorizes local governments to create joint commissions for the provision of recreational facilities. A special act authorizes Wayne County and its incorporated municipalities to merge various departments and activities.

Ch. 1051 (SB 581) rewrites the law providing for a North Carolina Stadium Authority so as to permit this agency to build one or more stadium projects around the state in conjunction with local authorities. The basic financing of any such project would be through the issuance of revenue bonds.

Finally Ch. 1215 (HB 1271) and Ch. 1250 (HB 1289) enlarge municipal powers for disposing of abandoned vehicles, while Ch. 1000 (SB 679) and Ch. 707 (HB 699) grant counties power to issue bonds for sanitary land fills and authorize the State Highway Commission to cooperate with the counties in the operation of such facilities.

PROPERTY TAXATION

By Henry W. Lewis

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

Not since the Depression of the 1930's has the property tax received the degree of attention given it by the 1967 General Assembly. Partially spurred by proposals of the 1965 Tax Study Commission, partially pushed by the larger annual bite this tax is taking, and partially spurred by isolated cases of local concern, this legislature saw the introduction of more than forty measures designed to effect statewide changes in the property tax and its administration; in addition, there were nearly 100 bills to make property tax changes in specified counties and municipalities. This article is confined (with one exception) to comments on new property tax legislation of general application; *Property Tax Bulletin No. 32* will deal with local as well as statewide property tax laws. Changes made in the Machinery Act in 1967 will be codified and ultimately printed for distribution by the State Board of Assessment under the provisions of Ch. 1210 (HB 1254).

New Study Commissions

In 1955, in 1957, and again in 1965 the General Assembly made provision for commissions to study the state's revenue structure. The massive *Report of the Tax Study Commission of the State of North Carolina* published in 1966 summarized the most recent commission's study and recommendations for legislative action, several of which dealt with property taxation and are noted in this article. In language identical with that used in 1965, R. 67 (HR 1230) provides for the appointment and functioning of a similar commission charged with reporting its recommendations for action to the General Assembly of 1969. R. 76 (HR 944) creates a fifteen-member Local Government Study Commission with broad areas of investigative concern to report to the Governor and General Assembly in 1969. Not improbably, both commissions will turn their attention to property taxation or at least to selected areas in which legislative action has been sought or considered but not obtained in recent sessions.

Reorganization of the State Board of Assessment

The Tax Study Commission created by the General Assembly of 1965 devoted substantial time to a study of the State Board of Assessment, its membership, operations, and responsibilities. This examination led to five recommendations concerning the board's organization and administration:

1. That the State Board of Assessment be provided a full-time staff and a separate appropriation.
2. That the board be provided a staff of valuation and appraisal specialists, headed by an administrative officer appointed by the Commissioner of Revenue as chairman, after consultation with the board, and serving at the pleasure of the board.
3. That the expenses of the board be paid from the proceeds of the intangible personal property tax.
4. That the board conduct studies of ratios of appraised value to market value of property following general reappraisal of real estate in each county.
5. That the board be directed to maintain a register of professional appraisal firms. [*Report of the Tax Study Commission* (1966), pp. 9, 72-75].

When introduced, Ch. 1196 (SB 271) followed the commission's recommendations without change. As the result of legislative committee study, however, the Senate broadened the bill to change the make-up of the board itself. Effective as of July 1, 1967, there will be five rather than four members, and they will be chosen as follows: The Director of the Department of Tax Research will serve ex officio; one member will be appointed by the Governor to serve for four years; one will be appointed by the Lieutenant-Governor to serve for four years; one will be appointed by the Speaker of the House to serve for four years. As each of these appointments terminates, the same appointing authorities will name successors for four-year terms. In addition, as of July 1, 1967, the Governor will name one member to serve for a two-year term, and his successor will be appointed by the Governor on July 1, 1969, to serve for a four-year term, and quadrennially thereafter. Any vacancy in board membership will be filled for the unexpired term by the holder of the office making the original appointment. The State Board of Assessment will select its own chairman; it will also appoint the full-time administrative officer recommended in the Tax Study Commission's report, and he will serve as the board's secretary. Board members will be paid $15 a day and will be reimbursed for necessary travel.

Implementing the commission's recommendation, the administrative officer, under board supervision, will be authorized to "employ valuation and appraisal specialists and other assistants as may be needed for the performance of the duties of the board and of the administrative officer." Board operations will be financed, in an amount approved by the Governor and the Advisory Budget Commission, from intangibles tax proceeds before they are allocated to local units of government.

The property tax duties heretofore assigned the State Board of Assessment under GS 105-275 remain unchanged except that those of an administrative character may be delegated to the administrative officer. In addition, under board supervision, the new administrative officer is required to conduct assessment ratio studies in each county in revaluation years, and "to maintain a register of persons, firms, associations, and corporations available for employment [as expert appraisers] under the provisions of GS 105-291; to review the work of registrants; and to advise the counties with respect to those registrants found to be complying with the terms of their employment and assisting counties in meeting statutory requirements for valuing property." To register, a professional appraisal company need only file with the administrative officer, "a resume of experience and a statement of financial condition in such detail as the registrant deems advisable," together with a statement of the firm's ownership and home office.

The act was not ratified until the last day of the session (July 6); thus it is provided that until the new board is appointed and organized, the State Board of Assessment as it existed on June 30 will continue to function.

Real Estate Transfer Tax

On January 1, 1968, the repeal of the federal tax on transfers of real property will become effective. However, by virtue of a recommendation of the Tax Study Commission enacted by the 1967 General Assembly, this valuable source of sales data will not be lost to local tax assessors and others. For example, the new administrative officer of the State Board of Assessment will find such data invaluable in the assessment ratio studies anticipated by Ch. 1196 (SB 271). In explaining and justifying its decision to impose this tax in Ch. 986 (HB 563), the legislature emphasized the value of sales ratio studies: ". . .the General Assembly finds and declares that because continuing ratio studies will aid materially in equalizing property values of public utilities, will serve to verify the competence of professional appraisals used in revaluations of property, will enable tax assessors to more equitably establish standards of value, and will enable individual property owners to better appeal from local tax valuations, that the excise stamp tax, which indicates sales prices, is in the public interest. . . ." Under the new act, as of January 1, 1968, all persons and firms (other than governmental units and agencies) conveying real property will be required to buy and affix a state excise tax stamp on the instrument of conveyance before it can be recorded by the register of deeds. The tax rate will be 50 cents for each $500 (or fraction thereof) of the consideration for the transfer (exclusive of the value of any mortgage, lien, or other encumbrance on the property at the time of the transfer). Instruments evidencing real estate transfers by the following means are exempted from the stamp requirement: by gift; by the terms of a will; by inheritance in the absence of a will; by lease for a term of years; by mortgage or deed of trust or other instrument securing an indebtedness; by merger or consolidation; by operation of law; or by any other transfer under which no consideration (in money or other property) is due or paid by the transferee to the transferor.

State Board of Assessment Hearings

The State Board of Assessment and persons appearing in proceedings before it will want to familiarize themselves with Ch. 930 (SB 425). The act deals with rules of evidence in proceedings before state boards of this type. In summary, it provides that (1) the rules of evidence applied in the superior and district courts must be followed; (2) documentary evidence may be received in the form of copies or excerpts if the original is not readily available; and (3) notice may be taken of "generally recognized technical or scientific facts within the agency's specialized knowledge" as well as of "judicially cognizable facts." In connection with the third provision, parties before the board must be notified "of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed."

County Board of Equalization and Review

At its annual sessions, the county board of equalization and review is required, upon request, to "hear any and all taxpayers who own or control taxable property assessed for taxation in the county in respect to the valuation of such property or the property of others." See GS 105-327 (g)(2). Should the board increase a value on appeal, it must give notice to the owner; otherwise he must keep himself informed as to board action. If an appellant is not satisfied with the review board's decision, he may appeal to the State Board of Assessment under GS 105-329. In such a case, however, he must give notice of appeal within sixty days of adjournment of the county board of equalization and review. In view of this deadline, the 1965 Tax Study Commission was concerned that the Machinery Act carried no provision assuring the taxpayer of notice of the county board's action in the event it made no change in a contested valuation. Upon commission recommendation, Ch. 1196 (SB 271) amends GS 105-327 (g)(2) to require the county board of equalization and review to notify by mail every person appealing a valuation "as to the action taken on his request no later than thirty days after adjournment of the board." The county tax supervisor, as secretary to the board, will no doubt find himself responsible for administering this new provision.

Listing and Assessing Procedures

Schedules of Values Used in Revaluations

Every eight years, according to the schedule established in GS 105-278, each county must conduct a

revaluation of all real property by actual visitation and appraisal. In preparation for each such revaluation, GS 105-295 imposes upon the tax supervisor the duty "to provide for the development and compilation of uniform standard schedules of values to be used in appraising real property in the county. . . in written or printed form. . . [to] be made available for public inspection upon request." Ch. 944 (SB 603) inserts an additional requirement; the schedules "shall be subject to the review and approval of the board of county commissioners." This amendment is made effective "on January 1, 1968, and shall apply to all valuations and revaluations taking place on and after such date."

The act contains no hint as to what is meant by "approval," but practical considerations would require formal action by the board in an official meeting.

At first impression, the amendment would seem merely to stipulate that when the tax supervisor has developed schedules for a future revaluation he must submit them to the county commissioners for review and approval. Such a procedure would not be unduly burdensome and might serve to insure commissioner understanding and sanction of value standards under which board members would perform their duties as a board of equalization and review at the close of a revaluation program. But it should be noted that no time for commissioner review and approval is specified. If approval is once given, is a board free to withdraw it? If so, how late and how often? Revaluation programs require many months of appraisal work before the date on which they become effective. Often commissioners in office when the schedules are prepared will have been replaced by the time the revaluation is to become effective. Will a new board of commissioners be free to revoke a prior board's approval and require a new set of schedules? If the answer is affirmative, the results might be chaotic. Note that the requirement will apply to revaluations "taking place on" January 1, 1968, as well as those coming after that date. A number of counties are already far advanced in programs scheduled to go into effect as of January 1, 1968, and later. Apparently the schedules of values being used in programs presently under way must be submitted to the commissioners for approval if that has not already been done.

Closer reading of the act poses even more troublesome problems. The effective date section quoted above states that the new requirement applies to "valuations" as well as "revaluations" which take place "on and after" January 1, 1968. Ordinarily, when used in such a context, the word "valuation" means "appraisal" or "assessment" of property for taxation. If that is the sense in which it is used in the new act, it would seem that schedules of value used in revaluation programs which have taken effect in any year since 1960 must be submitted for commissioner review and approval before they can be applied in making ordinary annual real property appraisals after January 1, 1968. Assuming that this interpretation was intended, and assuming that an existing schedule fails to win approval, may a new one be substituted? If so, when applied to new construction, for example, the resulting appraisal will not have been made on the same basis as that used in appraising the bulk of the real property in the county. Such an eventuality would pose a serious constitutional question of uniformity in taxation. It is apparent that Ch. 944 (SB 603) demands serious study by attorneys and tax officials.

Real Property Valuation Standards

GS. 105-295 contains the only Machinery Act instructions for assessors charged with determining the "true value in money" of land and buildings. With regard to land values, the assessors are directed to consider location, fertility, income capacity, a number of other listed elements, "and any other factors which may affect its value." Although not itemized in the section's list of such factors, acreage allotments for farm commodities are conceded by another section of the Machinery Act [GS 105-279 (3)(e)] to be included. County tax officials and appraisal firms differ as to the preferable technique for recording the effect of such allotments on land values. HB 639, which died in a House committee, would have added a sentence to GS 105-295 to give assessors sole discretion in whether to "assign a fixed value per acre for acreage allotment for any farm commodity accruing to the land." In the light of Ch. 944 (SB 603), noted above, this discretion will no doubt be transferred to the board of county commissioners.

Another unsuccessful bill, HB 1027, would have prohibited tax assessors from appraising real property at a figure higher than the price it may have brought in any "arm's length transaction during the calendar year next preceding the listing" date. This bill received an unfavorable report from the House Finance Committee.

Railroad and Public Utility Property

The Tax Study Commission set up by the 1965 General Assembly prepared and recommended passage of legislation modernizing and bringing into line with administrative practice the procedures by which the State Board of Assessment values the operating property of railroads and utilities for local taxation, and insuring that such taxpayers have a right of review before the State Board prior to seeking judicial review of assessment. [*Report of the Tax Study Commission* (1966), pp. 75-78.] These commission proposals were included in a pair of bills, SB 270 and HB 681. The Senate bill, after some amendment, passed the Senate, but, together with the House bill, received an unfavorable report from the House Finance Committee at the very end of the session.

Rolling Stock and Flight Equipment of Carriers

One of the strong recommendations of the Tax Study Commission had to do with the procedures by which certain properties of passenger and freight car-

riers are appraised for local taxation. In summary, "The Commission concluded that the flight equipment of air carriers and the rolling stock of motor carriers should be centrally assessed by the State Board of Assessment using a formula for apportioning the value of such equipment to the State and distribute the value among the various taxing jurisdictions in which each carrier has a terminal." [*Report of the Tax Study Commission* (1966, p. 77.] This recommendation was included in SB 270 and HB 681, neither of which was able to obtain House Finance Committee approval.

Property of Transportation Pipelines

At one time, through misinterpretation of existing statutes, pipeline companies engaged in the business of transporting petroleum products for a fee were assessed by the State Board of Assessment. The assessment of such property is now, however, left to the counties. The Tax Study Commission's examination of this subject showed that "The aggregate of the locally assessed values placed on the segments of the physical property of these pipelines is considerably less than the value which the State Board previously placed on the total property in the State. This resulted from the fact that the value of the franchise is reflected in the value set by the State Board of Assessment." Noting that railroads, natural-gas pipelines, and other public utilities were already being assessed centrally, the commission proposed that the property of pipelines should also be assessed by the State Board. [*Report of the Tax Study Commission* (1966), pp. 76-78.] This too was included in SB 270 and HB 681; the failure of these bills to win legislative approval has already been noted.

Use of Tax Abstracts and Scrolls

Under Ch. 218 (HB 348), each county will have a jury commission whose duty it will be to prepare by December, 1967, jury lists for use in local courts. The act directs the commission to use, among other sources of information, the county "tax lists," probably meaning abstracts and scrolls. Tax supervisors may welcome other provisions of this act which require the clerk of superior court to furnish the jury commission with clerical assistance and require the register of deeds to serve as custodian of the lists.

Exemption and Classification

Thirteen bills of statewide application introduced in the recent legislative session were designed to rid a variety of selected properties from the burden of county and municipal taxation, by far the largest number in this category attempted in any General Assembly since World War II. Ten were drawn to grant exemption directly; three employed the classification technique—two to effect total exemption, and one to assure partial exclusion. In addition, there were two bills to allow credit against state income tax liability for half the property taxes paid on business inventories of selected types. And, finally, there was a resolution to require study of the desirability of granting tax relief to elderly property owners. At a time when counties and cities have been seeking additional revenue with little legislative success, the fate of measures calculated further to reduce the property tax base has special significance. Five of the thirteen relief bills obtained legislative approval; eight failed. This article examines the unsuccessful as well as the successful attempts.

Property of Airport Authorities

N. C. Constitution, art. V, § 5, grants exemption from taxation to property belonging to "counties and municipal corporations." Effective January 1, 1968, for purposes of property taxes, Ch. 1160 (SB 564) declares that "as a matter of legislative determination," an airport authority, board, or commission created as a separate body politic and corporate by the General Assembly or by some county, city, or combination of counties and cities under legislative authority "is and shall be deemed to be a municipal corporation and all property owned by such authorities, boards and commissions shall be deemed to be held for a public purpose." Characterization as a municipal corporation, if agreed to by the courts, would warrant exemption under the quoted portion of N. C. Constitution, art. V, § 5, if under the decision in *Warrenton v. Warren County*, 215 N. C. 342, 2 S.E.2d 463 (1939), the property is held for a public purpose. Ch. 1160 (SB 564) goes further and amends the Machinery Act [GS 105-296 and -297] to grant specific exemption to the real and personal property of airport authorities without limitation or restriction as to the use to which it is devoted. Although the courts would no doubt give weight to the legislative determination, it is unlikely they would consider themselves bound by it. The exempt status of real and personal property of an airport authority which can be shown to be used for business purposes in the ordinary sense remains highly questionable.

North Carolina Stadium Authority

Ch. 1051 (SB 581) creates the North Carolina Stadium Authority and constitutes it a body politic and corporate, " a public agency," and provides that the exercise of its powers "shall be deemed and held to be the performance of a governmental function and in furtherance of a public purpose." As introduced, the measure contained affirmative language exempting authority property from taxation, but this section was deleted before passage. However, this deletion does not conclude the exemption question. The language of the act already noted imports a probable legislative intent to bring the authority within the definition of "municipal corporation" for tax-exemption purposes under N. C. Constitution, art. V, § 5. Furthermore, counties and cities, upon a favorable vote of the people, are permitted to levy special-purpose taxes for the benefit of Stadium Authority projects within their

borders. The questions posed by *Warrenton v. Warren County*, referred to in the discussion of airport authority property, above, would seem relevant here.

Property of Water and Sewerage Districts

Enacting and interpreting the language of N. C. Constitution, art V, § 5, quoted in the discussion of airport authority property above, GS 105-296(1) grants exemption to "real property lawfully owned and held by counties, cities, townships, rural fire protection districts, or school districts, used wholly and exclusively for public or school purposes." The words "rural fire protection districts" were inserted in this section in 1955, apparently in a legislative belief that they meet the constitutional definition of "municipal corporations." HB 1375 would have added "water and sewerage districts" to the list of agencies whose real property is granted exemption, but the bill received an unfavorable report from the House Finance Committee. Since committees do not explain their reports, it is not clear whether the bill was felt to be unnecessary (i.e., because such districts are already exempt by the constitutional provision itself) or unconstitutional (i.e., because such districts do not meet the requirements of municipal corporations).

Air Cleaning Devices

Since 1955, upon certification of the State Stream Sanitation Committee, exemption has been granted both real and personal property used exclusively for sewage and waste disposal or water pollution abatement "if designed to abate, reduce, or prevent pollution of water." Ch. 892 (HB 356) changes the name of the responsible agency to Board of Water and Air Resources to reflect its expanded responsibility and adds to the list of exempt properties, upon the same conditions, "air cleaning devices." The constitutional justification for the 1967 provision is at least as equivocal as was that for the 1955 act, although some argument may be made that both represent tacit, if inartistic, exercises of the classification power granted the General Assembly in N. C. Constitution, art. V, § 3. It should be noted, however, that the General Assembly does not seem to have shared this doubt as to its authority: HB 307, which would have submitted to the people the question of amending N. C. Constitution, art. V, § 5, to spell out such an exemption power, failed on second reading in the House.

Property of Industrial Development Authority

Ch. 535 (HB 298) creates the North Carolina Industrial Development Financing Authority with power to acquire properties, to erect and equip them, and to finance industrial development projects with revenue bonds. Under detailed criteria, the authority is authorized to lease developed projects to private firms. From the standpoint of property taxation there are three significant provisions in this act:

First, the authority itself is denominated an instrumentality of the state "for the performance of essential public functions," and all its property is granted exemption from taxation, presumably under N. C. Constitution, art. V, § 5.

Second, the act contains a very clear statement that "the leasehold interest of any lessee in any project or any other property or interest owned by any lessee" is *not* granted property tax exemption.

Third, the lease for each project must require the lessee to pay annually to appropriate local governmental units "an amount equal to the total amount of ad valorem taxes that would otherwise be levied upon the property owned and leased by the authority" were it not exempted from taxation. The procedural aspects of the matter are important for tax officials as well as lessees: For all tax purposes (from listing and assessing through collection), the lessee firm is to act and be treated as if it were the owner of the leased project. ". . . [T]he procedures and right of review and appeal of the lessee shall, to the fullest extent appropriate, be deemed to be the same as if such payment were an ad valorem tax payment and as if the property of the authority leased by the lessee thereunder were actually owned by the lessee and legally subject to ad valorem taxation. . . ." (Comments on the collection of these in lieu payments appear later in this article.)

Although the property of an industrial project developed under the plan envisioned in Ch. 535 (HB 298) is technically exempted from taxation, it must be listed by the lessee and appraised by the county tax officials as if it were taxable, for the lessee's in lieu payment must be computed at a figure equal to what the property taxes would be were the project property not exempt. Apart from the in lieu payment, lessees and county tax officials cannot ignore the act's plain statement that whatever property the lessee owns must be listed, assessed, and taxed; and this includes the lessee's "leasehold interest" in the exempt property. "A lease is. . . a chattel real. . . and as such a species of intangible personal property. But that does not mean that it can escape taxation. It is. . . subject to [local] ad valorem tax and not to the State intangible tax." [*Bragg Investment Co. v. Cumberland County*, 245 N. C. 492, 96 S.E.2d 341 (1957).]

Arriving at a proper market value figure on the leasehold interest, a complicated appraisal problem in any event, will be especially complicated here by virtue of the lessee's obligation to make a payment in lieu of taxes on the very property leased. Confusion may be reduced, however, if all parties keep firmly in mind the fact that the in lieu payment is a part of the lessee's rent, not taxes.

Personal Property Stored in Public Warehouses

Ch. 1185 (HB 1171) is entitled "An Act to Classify Personal Property in Interstate Commerce Stored in Public Warehouses in North Carolina for Ad Valorem

Tax Purposes." The drafting technique adopted is to amend GS 105-281—the statute defining property tax coverage as "all property, real and personal, within the jurisdiction of the State, not especially exempted. . . ."—so as to exclude from the definition of the word "property" those items described in the legislation.

Since at least 1872, the United States Supreme Court has refused to sanction state taxation of articles in interstate transit [*Case of the State Freight Tax,* 82 U. S. (15 Wall.) 232 (1872)]. On the other hand, if an interstate journey has not yet begun, the fact that such a movement of personal property is contemplated does not cut off a state's power to tax it. [See *Heisler v. Thomas Colliery Co.,* 260 U. S. 245 (1922), and other cases cited in Hartman, *State Taxation of Interstate Commerce* (1953), p. 77.] Similarly, if, after an interstate journey, the property has come to rest in and has become a part of the common mass of property within the state of destination, that state is not prohibited from taxing it [*Minnesota v. Blasius*, 290 U. S. 1 (1933)], and this is true whether or not it is still in its original package [*Sonneborn Brothers v. Cureton,* 262 U. S. 506 (1923)]. Most of the questions have arisen in situations in which the property's interstate movement has been interrupted. If the "property has come to rest within a State, being held there at the pleasure of the owner, for disposal or use, so that he may dispose of it either within the State, or for shipment elsewhere, as his interests dictate, it is deemed to be a part of the general mass of property within the State and is thus subject to its taxing power." [290 U. S. at 10.] But if the interruption in the property's interstate movement "is temporarily caused by the necessity of the journey, or for the purpose of safety and convenience in the course of movement . . . the property is immune from a property tax." [Hartman, *op. cit.* at 76.]

If this is an accurate summary of the law with respect to the protection from taxation afforded property in interstate commerce, the coverage afforded by Ch. 1185 (HB 1171) warrants careful examination.

First, the act applies to personal property in its original package or, if fungible, in bulk. Second, it applies only if the property has been placed in a public warehouse and only so long as it remains there in that condition. (Portions of "a premises owned or leased by a consignor or consignee, or a subsidiary of a consignor or consignee. . . despite any licensing as" a public warehouse are specifically excluded from the definition of public warehouse.) If the property belongs to a nonresident, it must have been shipped into North Carolina and placed in a public warehouse for trans-shipment (to a location either outside or within North Carolina), and the original bill of lading must show this fact. If the property belongs to a North Carolina resident, it must have been placed in a public warehouse for trans-shipment outside this state, and the original bill of lading must so indicate. From what has been said, it appears that personal property which has come to rest in North Carolina while awaiting trans-shipment to another destination within this state and also personal property already within the state before trans-shipment outside, having no Commerce Clause protection from taxation here, are the chief beneficiaries of this legislation. That which has been brought in from outside and placed in a public warehouse here while awaiting trans-shipment to another state may or may not need the protection afforded by the act, depending upon judicial attitudes toward its Commerce Clause immunity. The act itself expresses the legislative intent in these words: "It is hereby declared to be the policy of this State to use its system of property taxation in such manner, through the classification of the aforementioned property, to encourage the development of the State of North Carolina as a distribution center."

Originally designed to become effective on July 1, 1967, the act was amended to become effective on July 1, 1969. Selection of a July 1 effective date seems odd for legislation concerned with property taxation, for the date on which property taxability is determined is January 1 under GS 105-280. Thus, benefits of this classification cannot be accorded covered property until January 1, 1970, with regard to taxes which may be levied for the fiscal year opening on July 1, 1970. By that date the General Assembly will have met again.

Personal Property Awaiting Out-of-State Shipment

Closely allied to the issues discussed in the preceding section is the subject matter of HB 1311, a bill "relating to the taxable situs of goods held by manufacturers on January 1st but which have been sold to and are awaiting shipment to out-of-state customers." This bill, echoing the objectives of an unsuccessful 1965 proposal, would have amended GS 105-281, the section defining property tax coverage, in a rather curious manner. The proposed amendment would have defined as a special class "manufactured goods held by their manufacturer on January 1 which have been sold to and are awaiting shipment to an out-of-state customer." But rather than exclude this class from the section's definition of "property," the bill declared that when such goods have been sold to an out-of-state customer "other than a subsidiary or affiliated corporation . . ." and "have been billed to the customer," they have no taxable situs in North Carolina "if they have been so held for less than one year." In other words, the legislation proposed a special definition of situs for the classified property. A portion of the bill calculated to cause serious concern among local tax officials provided that "No report or return of such property shall be required." The bill was passed by the House and, minus the provision just quoted, received a favorable report from the Senate Calendar Committee. On July 5, however, the bill was tabled in the Senate.

Business and Manufacturers' Inventories

In the General Assembly of 1963 a strong though unsuccessful effort was made to grant exemption to the inventories of manufacturers and processors, and it was generally understood that the 1965 Tax Study Commission would give consideration to the subject. The commission's report rejected partial as well as total exemption of manufacturers' inventories if local governments would be required to absorb the revenue loss; as an alternative, it recommended that a credit against the state income tax be allowed "equal to 50% of property taxes paid by companies engaged in manufacturing in North Carolina on their inventory of raw materials and goods in the process of manufacture." The inventories of processors and wholesale and retail merchants were not mentioned; neither were inventories of finished products. [*Report of the Tax Study Commission* (1966), pp. 7, 12, and 13.]

The 1967 session saw introduction of two bills embodying this recommendation, both of them going beyond the commission's proposal. Under HB 1020, an amount equal to 50 per cent of taxes paid on the inventories of wholesale merchants and brokers held primarily for sale to a manufacturer for further processing, as well as 50 per cent of taxes paid by manufacturers on inventories of raw materials and goods in process of manufacture, would have been allowed as a credit against income taxes. Under HB 1080, all merchants and brokers, as well as manufacturers, would have been allowed the 50 per cent income tax credit for taxes paid local units of government on finished products and stocks of goods held for sale as well as on raw materials and goods in process. Both bills received unfavorable reports from the House Finance Committee.

N. C. Constitution, art. V, § 3, states that "Only the General Assembly shall have the power to classify property and other subjects for taxation, which power shall be exercised only on a State-wide basis. . . and every classification shall be uniformly applicable in every county, municipality, and other local taxing unit of the State." In the light of this constitutional language, it is interesting to consider Ch. 965 (HB 883), an act which applies to only two counties, Alexander and Caldwell. It is concerned with the listing date for inventories. Under the general law of the state, GS 105-280, all property must be listed according to ownership and value as of January 1 each year. Under this local act a different valuation date is set in Alexander and Caldwell for "inventories," a term which is defined to include "goods held for resale, raw materials, goods in process and other goods and materials held and used in connection with the taxpayer's mercantile or manufacturing business." Instead of January 1, the valuation date for such property is to be "the first day of the taxpayer's last fiscal year which began prior to the date on which such property is required to be listed. . . ."

The expression "last fiscal year" is not entirely clear in this context. Does it refer to the "completed," or "current" fiscal year? One might argue either interpretation, but regardless of the decision, the significant point is that, for inventories, a tax date different from that used for other property is intended. Inventories, it would appear, have been defined by the General Assembly as a special class of property to be treated in a way different from other property. But the act does not apply to inventories throughout North Carolina; it affects inventories in only Alexander and Caldwell counties. The constitutional language states that "every classification shall be uniformly applicable in every county, municipality, and other local taxing unit of the State." In the two counties affected, Ch. 965 (HB 883) may come under severe examination by owners of property other than inventories.

Agricultural Land

Owners of land being used for agricultural, forestry, and comparable purposes in North Carolina, as well as elsewhere, find themselves at odds with standard property tax appraisal criteria illustrated by the following language in GS 105-295: "In determining the value of land the assessors shall consider as to each tract. . . at least its advantages as to location, quality of soil, quantity and quality of timber, . . . fertility, adaptability for agricultural, commercial or industrial uses, the past income therefrom, its probable future income, . . . and any other factors which may affect its value." "Location" near expanding r e s i d e n t i a l, business, and industrial sections and "probable future income" if its "adaptability for . . . commercial or industrial uses" is realized can both produce market value appraisals for such property considerably higher than would be the case if those factors were ignored.

SB 532 and HB 1116 were identical attempts to have North Carolina deal with this issue in a manner roughly comparable to what has been done in a few other states. They proposed to classify "land which is actively devoted to agricultural uses" and, regardless of ownership, if "so devoted for at least two successive years immediately preceding" any given tax year, those responsible for fixing its tax value would be permitted to "consider only those indicia of value which such land has for agricultural use." Land would have fallen within the class "when used in the production or growing of crops, plants or animals or other farm commodities for sale for human use or consumption," including, among others, production of "trees and forest products," "nursery, floral, ornamental and greenhouse products," and also land "devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation or other program under an agreement with an agency of the federal government." Each of the bills embodying this proposal was given an unfavorable report by the committee to which referred upon introduction.

Agricultural Products

With doubtful constitutional backing, GS 105-297(18) grants exemption for the year following that in which raised to "wheat grown in North Carolina and stored in an unmanufactured state, owned or held by one other than a processor of wheat, upon which there is money borrowed and said money borrowed being secured by a mortgage on said wheat." SB 729 would have extended the statute's coverage to include all agricultural commodities. Introduced late in the session, this bill died in the Senate Calendar Committee.

Real Property of the Elderly

Since 1936, under N. C. Constitution, art. V § 5, the General Assembly has held authority to "exempt from taxation not exceeding one thousand dollars ($1,000.00) in value of property held and used as the place of residence of the owner." That authority has, however, never been exercised. In HB 445 an attempt was made to get the 1967 General Assembly to use this power in freeing from taxation, to a value of $1,000, "the real property owned in whole or in part by a resident of this State who is already sixty-five years of age or older, or who reaches such age before January 1, 1968, and who occupies such real property as his principal dwelling place." But the House Finance Committee gave the bill an unfavorable report. More ambitious efforts to grant property tax relief to the elderly were embodied in HB 67 and HB 1159, both of which met a similar fate at the hands of the House Committee on Constitutional Amendments. HB 67 would have called for a vote of the people on amending N. C. Constitution, art V, § 5, so as to exempt from taxation the first $10,000 "of the appraised value of the principal residence of persons sixty-five years of age or older and if such principal residence is owned by a husband and wife by the entireties, such exemption shall be allowed if either is of the age of sixty-five years or older and such exemption shall extend to the survivor of such tenancy by the entireties." HB 1159 would have set the figure at $5,000.

Apparently in response to the concern evidenced by the three unsuccessful bills, R. 69 (HR 1113) directs the Governor's Coordinating Council on Aging to consider and, if found to be needed, to make recommendations to the 1969 General Assembly with regard to exempting the "principal dwelling place" of residents of the state who are sixty-five years of age or older.

Collection

Very few bills dealing with tax collection procedures were introduced in the 1967 session, although at least one of them dealing with refunds may have a wider effect than appears at first examination.

Municipal Collector's Bond

GS 105-373 requires the governing body of each city and town to "prescribe the amount of [the municipal tax collector's] bond and approve the sureties thereon." It is further stipulated that "No tax collector shall be allowed to begin his duties until he shall have furnished bond satisfactory to the governing body. . . ." Ch. 800 (HB 1062) amends GS 160-277 to allow blanket fidelity bonds for municipalities in lieu of fidelity bonds required of individual municipal officers and employees. Presumably this would apply to tax collectors.

Payments in Lieu of Taxes

In an earlier part of this article the tax provisions of Ch. 535 (HB 298) establishing the North Carolina Industrial Development Financing Authority have been analyzed in some detail. In that discussion it was pointed out that the lessee of a project owned by the authority would be required to make a payment in lieu of taxes. The exact wording of the act will be of interest to county and city tax collectors:

> The amount imposed in lieu of taxes against such property shall constitute the amount of payment in lieu of taxes required to be made by the lessee hereunder and such amount shall be imposed and *collected* in the same manner and at such time as ad valorem taxes under [the] Machinery Act. . . .

The word "collected" is emphasized to draw attention to several matters of concern. It is clear that each year the amount of the in lieu payment must be computed and billed at the time property taxes are billed; it is also clear that the annual payment will become due on the first Monday in October. But what remedies may the tax collector assert if a lessee should fail to pay on time? Taxes are made a lien on real property owned by the taxpayer by GS 105-340(a), and taxes on leasehold improvements are made a lien on both the improvements and the lessor's land by GS 105-301(h). But since a lessee from the authority will own neither the land nor the improvements, there would seem to be no basis for asserting a lien for payments in lieu of taxes against any project real property. Furthermore, while the act provides that the lessee is to be treated as the owner for listing and assessing purposes, it does not specifically provide for treating him as the owner for collection purposes. It merely states that the payments in lieu of taxes are to be "collected in the same manner and at such time as ad valorem taxes under [the] Machinery Act. . . ." Thus, it is unlikely that tangible personal property owned by the authority would be subject to levy should a lessee become delinquent in making in lieu payments. Attachment and garnishment of intangible assets of the lessee and levy on tangibles owned by the lessee appear to be the only reliable collection remedies open to the local tax collector should a lessee fail to make timely in lieu payment.

Lien on Real Property Owned by the Entirety

In *Duplin County v. Jones*, 267 N. C. 68, 147 S.E. 2d 603 (1966), the North Carolina Supreme Court reiterated what was supposedly common knowledge among property tax officials: When land owned by a husband and wife as tenants by the entirety is listed for taxation by one of them (the husband, for example) in his name as owner, it is not subject to a lien for taxes imposed on personal property listed by him at the same time in his own name, some of which is owned by him and some by his wife, but none by both together. The failure of county tax supervisors to require strict compliance with the listing provisions of GS 105-301 and -304 accounts for the difficulties collectors face in tenancy by the entireties cases. HB 1196 was an unsuccessful attempt to deal with the result rather than the cause; it would have amended GS 105-304(a), which creates a lien for taxes against real property "of the taxpayer," to define "taxpayer" to include "a husband and wife owning property as tenants by the entirety." The bill received an unfavorable report from House Judiciary Committee 2.

Tax Refunds

Both GS 105-406 and GS 105-267 prescribe rigid procedural requirements for the taxpayer who seeks to obtain the refund of a tax asserted to be illegal or improperly computed or assessed. And GS 105-403 prohibits refunds, even when the illegality is conceded, unless the requirements of the first two sections are carefully observed. Recognizing the desirability of empowering county and city governing bodies to use some discretion in meritorious cases, GS 105-405.1 permits a local governing board wishing to do so to make a refund when the provisions of GS 105-406 and GS 105-267 have not been followed (1) if the tax is wholly or partially illegal or incorrectly computed or entered, and (2) if the taxpayer makes written demand for a refund within *two* years from the date the tax was originally *due*—that is, within *two* years from the first Monday in October of the year in which it was levied. Ch. 1138 (SB 609) amends GS 105-405.1 to permit such a refund if the written demand is made within *eight* years from the date the tax was originally due.

Foreclosure

Two acts of the 1967 General Assembly deal directly with aspects of real estate foreclosure for tax purposes. They will be of particular interest to attorneys engaged in bringing actions under GS 105-391 and GS 105-414.

Advance Court Costs under New District Court System

In response to an unexpected complication experienced by taxing units initiating foreclosure in counties which have come under the new court system, Ch. 691 (SB 292) inserts a new section, GS 7A-317, exempting counties and municipalities from having to advance the cost of facilities fees, the General Court of Justice fee, the miscellaneous fees set in GS 7A-308, and the civil process fees set by GS 7A-311. This exemption will apply in foreclosure actions. Its effective date was July 1, 1967.

Distribution of Proceeds of Foreclosure Sale

GS 105-391(s) sets out in detail how the commissioner in a tax foreclosure is to apply the proceeds of the sale, and closes with the statement that "any balance then remaining shall be paid in accordance with any directions given by the court and, in the absence of such directions, shall be paid into court for the benefit of the persons entitled thereto." Ch. 705 (HB 539) is intended to assist the court in handling sums received under this statute; it provides that if the clerk is in doubt as to the proper distribution, or if adverse claims have been asserted, he is to await the outcome of a special proceeding brought under GS 1-339.71.

By Mason P. Thomas, Jr.

PUBLIC WELFARE AND DOMESTIC RELATIONS

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

Other articles in this issue—e.g., those on The Counties and the 1967 General Assembly, Courts and Court Officials, Penal-Correctional Administration—and the article on Public Health in the October issue of Popular Government*—will be of interest to readers of this section.*

PUBLIC WELFARE

This year marks the fiftieth anniversary of North Carolina's approach in public welfare administration — state supervision of local administration. The General Assembly of 1917 enacted the legislation that structured this approach. There are many practical problems in providing a statewide public welfare program with one hundred units of local administration. Some of these problems were presented in legislation considered during the 1967 General Assembly.

The North Carolina State Board of Public Welfare approved eight bills for introduction into the 1967 General Assembly; five were passed (some in modified form). The legislation enacted was designed largely to clarify existing policies or programs. No major changes in approach, no new programs emerged, no new solutions to the many unsolved problems in public welfare were included.

Much public criticism has been made of public welfare. Members of the General Assembly seemed quite aware of this attitude. The dominant theme of the 1967 General Assembly regarding public welfare was "hold the line." This philosophy was reflected in appropriations, in a reluctance to increase state authority in local administration, and in its refusal to give the State Board of Public Welfare licensing authority over day-care facilities for children.

The one major exception to the "hold the line" approach concerned jails. The State Board of Public Welfare has long had a jail-inspection program without any real authority to do anything about poor jail conditions. The Legislative Research Commission studied conditions in local jails and related laws. This study resulted in legislation that strengthened and expanded the role of the State Board of Public Welfare in relation to local jails and juvenile detention facilities.

Public Welfare Administration

Nursing Homes Operated by Designated Officials or Their Relatives

GS 108-9(b) prohibits the payment of public welfare funds to nursing homes or homes for the aged that are owned or operated by designated officials connected with the public welfare program, including state or county welfare board members, employees of the state or a county welfare department, and county commissioners. Further, this statute prohibited specified relatives of these officials from receiving public funds for giving nursing care, including a parent, grandparent, child, grandchild, brother, sister, spouse, or the spouse of a parent, child, brother, or sister.

Ch. 983 (HB 321) amends GS 108-9(b) to eliminate most of the restrictions on the eligibility of relatives of the specified officials to operate a nursing home or home for the aged supported by public welfare funds. The only relative now ineligible is the spouse of one of the designated officials.

Adequacy of Staff in County Welfare Departments

The Social Security Act requires that the single state agency which supervises county welfare departments in the administration of public assistance programs have legal authority to provide for methods of administration that are necessary for the "proper and efficient" operation of the state plan. This provision has been interpreted by federal authorities to mean that the State Board of Public Welfare should have authority to require a county to have an adequate staff in the welfare department in order for the state plan to be in conformity with federal law.

The Attorney General (in an opinion dated August 26, 1966) ruled "that the State Board of Public Welfare does not have the authority to impose upon the counties the requirements of the Board as to the number of staff in various categories, or the compensation of the staff, of the county departments of public welfare, and that such matters are to be decided by the county commissioners, the county boards of public welfare, and the State Personnel Board." This interpretation of state law raised a question concerning whether the state welfare program was in conformity with federal law. If the state plan is not in conformity with federal law, federal public assistance funds (which provide two-thirds of the cost of public welfare) might be terminated.

One statute in question was GS 108-38, which required that the board of county commissioners and the county welfare board hold a joint session to determine the "number and salary of employees" of the county welfare department; it specified that the welfare board members would have no vote at such a joint session.

The State Board of Public Welfare sought legislation to clarify its authority to require a county welfare department to have an adequate staff for proper administration. While the State Board's bill (SB 164) did not pass, a subsequent bill (HB 1246) was ratified after being rewritten in committee. Ch. 898 (HB 1246) rewrites GS 108-38 to eliminate the requirement for a joint session of the board of county commissioners and the welfare board to determine the number and salary of the staff. GS 108-38 now provides that the board of county commissioners shall "determine the number and salary of county welfare employees" consistent with the "provisions of the Federal Social Security Act, the State Personnel Act, and the County Fiscal Control Act" after being advised by the county director and the State Board of Public Welfare.

The Commissioner of Public Welfare then sought an opinion from the Attorney General concerning the authority of the State Board of Public Welfare under GS 108-38 as amended. The Attorney General ruled (in an opinion dated July 6, 1967) "that the State Board of Public Welfare has authority to make rules and regulations as to the minimum number of employees in the various categories to be hired by the counties. . . and that the boards of county commissioners are legally obligated to comply with such rules and regulations. . . ." This new interpretation of GS 108-38 appears to mean that the state plan is in conformity with federal requirements.

Study of Public Welfare Laws

Persons who try to understand the laws affecting public welfare in North Carolina find them confusing and contradictory. The need for revision and review of public welfare laws was recognized by an unnumbered House Resolution adopted on June 30, 1967. It directs the Legislative Research Commission to make a study "of the laws under the jurisdiction of the North Carolina Department of Public Welfare. . . ." Special attention is to be devoted to Ch. 108 (Board of Public Welfare) and Ch. 111 (Commission for the Blind). The Legislative Research Commission is directed to be "cognizant of federal programs as they may relate to the administration of the North Carolina laws and the distribution of said funds within and without the State." Its findings and recommendations are to be reported to the 1969 General Assembly.

Public Assistance

Residence for Aid to Families with Dependent Children

GS 108-49 defines a "dependent child" under the AFDC program and includes a residence requirement of one year. It provided that residence might be acquired in two ways: (1) if the child has resided in the State for one year prior to the application; (2) if the mother has resided in the State for one year prior to the birth of the child, then any child born within the State is considered a resident. These residence requirements have caused some confusion in administration of the AFDC program.

An example may clarify the problem. Suppose that a mother and two children move from Tennessee to North Carolina on June 1, 1965. She subsequently delivers a third child on November 1, 1965. The mother and two older children would meet the residence requirement for aid to families with dependent children on June 1, 1966. The third child would not meet the residence requirement under the statute until he had resided in the State for one year on November 1, 1966.

Ch. 660 (HB 935) amends GS 108-49 to delete the reference to whether the child was born within the State if the mother has resided in the State for one year prior to birth of the child. If the mother has resided in the State for one year prior to an application for aid to families with dependent children, then all of her children would meet the residence requirement under GS 108-49 as amended.

Transfer of County Funds Between Public Assistance Programs

GS 108-25 (dealing with old-age assistance), GS 108-54 (dealing with aid to families with dependent children), and GS 108-73.12 (dealing with aid to the permanently and totally disabled) provided for transfer of county funds from one of these public assistance programs to another, but these statutes were not consistent. It was not clear whether approval from the State Board of Allotments and Appeal was required for all such transfers.

Ch. 554 (SB 163) repeals each of these statutes and rewrites GS 108-73.12 to clarify county authority to transfer county funds from one public assistance program to another. GS 108-73.12 now provides that county appropriations for public assistance programs shall

not lapse or revert, but unexpended balances may be considered by county commissioners in making further public assistance appropriations. It authorizes counties to transfer county funds from one public assistance program to another at any time during the fiscal year with the approval of the State Board of Allotments and Appeal.

Vendor Payments to Nursing Homes

Article 4A of GS Ch. 108 (formerly "State Boarding Fund for the Aged and Infirm") established a fund from which the State Board of Public Welfare could pay for boarding care of aged or infirm persons in a licensed boarding home under specified conditions.

Ch. 1211 (HB 1260) rewrites Art. 4A (new title: "Direct Payments for Nursing Care" to authorize the State Board of Public Welfare to make vendor payments (as is now done with hospitals) to licensed nursing homes and extended-care facilities on behalf of persons who are eligible for old-age assistance or aid to the permanently and totally disabled when nursing care is considered essential by the State Board of Public Welfare.

Soliciting Funds for Charitable Purposes

Article 5 of GS Ch. 108 requires that organizations or individuals that solicit funds for charitable purposes from the public must secure a license from the State Board of Public Welfare. Ch. 607 (SB 407) adds new GS 108-83.1 to require such organizations or individuals to file a detailed financial report each year with the State Treasurer. This financial report must show receipts and expenditures on an itemized basis so as to disclose the various purposes for which the organization solicited and expended funds. These records are open for public inspection in the office of the State Treasurer. If an organization fails to file the required financial report, it may not receive a license or renewal of a license through the State Board of Public Welfare.

Jails and Juvenile Detention

Ch. 581 (SB 289) rewrites and revises most laws relating to local jails and strengthens the role of the State Board of Public Welfare in providing jail-inspection services. The Commissioner of Welfare is to develop standards governing jails and juvenile detention facilities in consultation with specified organizations representing local government and law enforcement and designated state departments (Correction, Health, Mental Health, Insurance). These standards are to be effective by January 1, 1969, after approval by the State Board of Public Welfare and the Governor. The new law requires semiannual inspection of local jails and juvenile detention facilities, with written reports to the responsible local officials. The Commissioner has authority to close a jail or juvenile detention facility that does not meet the standards if the responsible unit of local government does not take appropriate corrective action.

The law now requires continuous supervision of confined persons, including a specified plan for medical care in a jail or juvenile detention facility. It gives public health sanitarians new authority and responsibility in inspection of sanitary conditions in jails, jail kitchens, and juvenile detention facilities. The Commissioner of Public Welfare is to provide training for jail and juvenile detention home personnel, using existing educational resources and in consultation with officials of local government and law enforcement and the Department of Correction. The new law requires such training as a condition of employment in jails and juvenile detention facilities.

The General Assembly realized that this legislation would not solve the complex problems of state and local government related to jails or juvenile detention, including local financing. The Jail Study Commission was created by Resolution 53 (SR 290) to study these and other specified problems and report to the 1969 General Assembly. [See the article on Penal-Correctional Administration for other details concerning this legislation.]

Other Related Legislation

Illegitimacy

Unmarried mothers frequently seek services through the county welfare department, including financial support, placement in a maternity home, adoption or placement services, and others. If the issue of paternity or financial support from the father must be settled by court action, county welfare departments have depended upon the criminal statutes and procedures under GS Ch. 49. These procedures sometimes have unfortunate social consequences.

Ch. 993 (SB 108) offers an alternative civil procedure for a county welfare director who wishes to determine paternity and secure financial support for an illegitimate child if the child or the mother's medical expenses are likely to become a "public charge." The civil action may also be brought by the mother, father, child, or a personal representative. This new procedure requires proof of paternity beyond a reasonable doubt (the same standard as used under the criminal law). If paternity is established, the father may be held responsible for medical expenses incident to pregnancy and birth of the child. If paternity is established under this statute, the rights of the father and mother in relation to support and custody are the same as if the child were legitimate, but he is *not* legitimated by this procedure.

Dependents of Prisoners on Work-Release

Under the work-release program of the Department of Correction, some prisoners are employed in the free community and confined at night. They are required to surrender their earnings to the Department.

After certain specified deductions for the cost of the prisoner's care and other expenses, GS 148-33.1(f) required that the Department pay whatever part of the remaining balance is needed for the support of the prisoner's family through the county welfare department.

Ch. 684 (HB 945) rewrites GS 148-33.1(f) to clarify the priorities for disbursement of the prisoner's earnings. The Department is not now required to make support payments for dependents through the county department of public welfare. The Department is authorized "to make payments for the support of the prisoner's dependents in accordance with an order of a court of competent jurisdiction, or in the absence of a court order, in accordance with a determination of dependency status and need made by the local department of public welfare in the county of North Carolina in which such dependents reside." Thus, the Department of Correction appears to have authority to make payments direct to the prisoner's dependents, based upon a study of need by the county welfare department.

Sterilization of Epileptics

Article 7, GS Ch. 35 deals with sterilization of persons who are mentally diseased, feeble minded, or epileptic.

Ch. 138 (HB 192) eliminates all references to epileptics in the statutes as persons who are eligible for sterilization through the Eugenics Board. Persons who are mentally diseased or feeble-minded continue to be eligible for sterilization.

Child Welfare

Study of Day Care for Children by the Legislative Research Commission

For forty-one years the State Board of Public Welfare has had a voluntary program of licensing facilities which provide day care for children. In two previous General Assemblies (1955 and 1961), the Board has requested legislation which would require a license from the State Board of Public Welfare in order to operate a day-care facility. These efforts were unsuccessful. The Board again sought mandatory licensing authority over day-care programs in the 1967 General Assembly through HB 353. Another bill (HB 280) sought to give similar day-care licensing authority to the State Board of Health. The General Assembly did not pass either bill.

The controversy concerning day care seemed to focus around several issues: (1) Should the State require a license in order to operate a day-care program? (2) If so, should the licensing agency have authority to set standards or should the standards be specified in law? (3) Should the licensing authority be placed in the health or welfare programs?

The House of Representatives adopted an unnumbered resolution on June 21, 1967, directing the Legislative Research Commission "to make a thorough study of a state wide inspection and licensing program for child care facilities to the end that, if feasible, appropriate legislation establishing such a program may be enacted in North Carolina." This resolution refers to the large number of working mothers in the State who require day care for their children; it notes that these day-care facilities are not required to meet any standards.

Marriage of Minors; Authority of County Welfare Director

GS 51-2 now authorizes persons over the age of eighteen years to marry and allows a register of deeds to issue a marriage license to minors who are 16 or 17 upon specified parental consent.

Ch. 957 (HB 542) rewrites GS 51-2 to increase the authority of an agency holding custody or the county welfare director to consent to marriage of minors in certain situations. Persons who are 16 or 17 may now marry with specified parental consent or with the consent of the agency holding custody. GS 51-2 now makes special provisions for consent to the marriage of an unmarried girl between the ages of 12 and 18 who is pregnant or has a child; if she and the putative father agree to marry, consent may be given by a parent or by the agency having custody. Further, consent for such a girl to marry may also be given by the county welfare director in the county of residence of the girl or of the putative father.

Adoptions

Adoption of Persons Over 21

The title of Ch. 48 of the General Statutes (formerly "Adoption of Minors") is changed to "Adoptions" by Ch. 880 (HB 1152). This change is appropriate because Ch. 880 adds new GS 48-36, which authorizes adoption of persons over the age of 21 by persons over 21, provided the adopted person consents. This new procedure requires that the clerk of superior court post the petition and consent at the courthouse door for ten days immediately prior to issuing the order of adoption.

Residence

In order to be eligible to adopt a child under North Carolina law, a couple must have resided in the state for one year. Ch. 693 (SB 403) amends GS 48-4(c) to reduce the residence requirement to six months.

This residence requirement is waived in cases of adoption of a stepchild; in such a case, the adopting parent need only reside in the State when the petition to adopt is filed. Ch. 619 (HB 512) amends GS 48-4(b) to waive the six-month residence requirement in two additional situations: (1) when the adopted child is a grandchild of one of the adopting parents; (2) when a child is adopted by his putative father, who files a proper affidavit that he is the natural father of the child. New GS 48-4(d) specifies the type of affi-

davit to be filed by the putative father adopting his natural child; this affidavit is to be forwarded to the State Board of Public Welfare in the same way as the petition, consent, agency report, etc. under GS 48-24(b) as amended.

Waiver of Interlocutory Period

The court of adoptions now has discretionary authority to waive the interlocutory period and enter a final order of adoption in the following situations: (1) when the child is related by blood to the adopting parents as a grandchild, great-grandchild, nephew, niece, grandnephew or grandniece; (2) if the child is a stepchild of the adopting parent; (3) when the child is sixteen years of age, has resided with the adopting parents for five years prior to filing the petition, and consents to the adoption. Ch. 19 (HB 62) amends GS 48-21(c) to waive the interlocutory period also when the child adopted is a brother, sister, half-brother, or half-sister of the adopting parents. The interlocutory period can now be waived if the child is twelve years of age and has resided with the adopting parents for five years prior to the filing of the petition. Ch. 619 (HB 512) amends GS 48-21(c) to allow waiver of the interlocutory period when a putative father adopts his natural child and files the affidavit as prescribed in new GS 48-4(d).

Meaning of Surrender and Consent

Ch. 926 (SB 405) adds a new section (GS 48-9.1) to the adoption statutes to clarify the legal status of a child who has been surrendered and released for adoption to a county welfare department or licensed child-placing agency. The agency is to have legal custody and the "rights of the consenting parties" (except inheritance rights): (1) until the interlocutory order is entered; (2) if the interlocutory period is waived, until the final order of adoption is entered; or (3) until the adoption consent is revoked within the time permitted by law (30 days under GS 48-11). The adoption agency is to pay the costs of child care prior to placement for adoption.

If a child becomes unadoptable after surrender for adoption, this new statute provides that the county welfare department in the county of the child's legal settlement at the time of his birth is responsible and must assume custody and full responsibility for care. If a private agency or county welfare department has accepted surrender of such an unadoptable child, it must give written notice to the welfare department in the county of legal settlement, which must acknowledge acceptance of custody and responsibility in writing. Certified copies of this notice and acceptance must be filed by the county welfare department with the State Department of Public Welfare. The department of public welfare in the county of legal settlement is to receive the surrender, release, and consent and thereafter to have the same authority to place the child and give consent for its adoption as the agency to which the child was originally surrendered. If there is a controversy concerning which is the county of legal settlement, the court is to determine which county is responsible according to GS 110-29(3). The new law contemplates that the county agency in the county of legal settlement of an unadoptable child may contact the natural parent who surrendered the child in its discretion and place the child with the natural family "provided the placement is approved by a court of competent jurisdiction."

Change of Name

GS 48-29(a) now allows the court of adoptions to decree that the name of an adopted child be changed to the name requested in the adoption petition. Ch. 1042 (HB 921) amends this section to authorize a petition for a name change to be filed subsequent to the adoption petition by the adoptive parents.

Appropriations

Financing public welfare programs is complex due to complicated matching formulas for state (approximately 14 per cent) and county (approximately 14 per cent) funds to match available federal funds (approximately 72 per cent). The amount that the General Assembly appropriates for public welfare determines the level of financing for the program, for it fixes the amount of money to be matched by federal and county funds.

The State Board of Public Welfare requested $56,441,311 for the biennium; the total state appropriation for public welfare amounted to $39,873,-919 (70 per cent of the amount requested). Most of this amount ($35,200,000) was for the "A" budget to continue the present level of operations. The Board requested $9,665,000 in its "B" budget for increases and new programs; it received $4,032,000, but $1,925,000 of this amount were funds for hospitalization and limited physicians' services which had not been requested by the State Board of Public Welfare. Thus, the Board received only $2,107,000 of the $9,665,000 which it had requested in the "B" budget for expansion of the program.

The Board made supplemental requests for several purposes: It requested $475,333 to continue certain programs already under way in the State office (including Community Services, data-processing operations, a work-training program for assistance recipients, and the food-stamp program); it received none of these funds, leaving a number of positions in the State office unfunded. It requested $10,155,133 to provide a small increase in allowances for food and clothing to recipients of public assistance (unchanged since 1952); this effort was also unsuccessful. It requested $1,263,933 to raise the rates for nursing homes and homes for the aged; it received $600,000 for this purpose. Thus, the State Board received $600,000 of the $11,894,399 it requested in supplemental funds.

Welfare Funds for Counties

The State Board requested $2,720,400 in county equalizing funds for public assistance programs; $2,082,400 was appropriated. The Board requested $8,398,200 for aid to county administration; it received $3,495,600. Thus, the Board received $5,578,000 of $11,118,600 requested, or 50.17 per cent.

House Resolution Commending Community Services

Even though the General Assembly failed to appropriate any funds for the support of the Community Services project, the House adopted an unnumbered resolution on July 4, 1967, commending the Community Services approach to combatting poverty through organization of local community resources. It praised in particular the P. A. C. E. program, which offers students summer employment to earn money to pay for their college education. The resolution encourages the State Board of Public Welfare to continue the program and to "find whatever sources of financial assistance it can to perpetuate this approach."

DOMESTIC RELATIONS AND JUVENILE COURTS

Clerks of Domestic Relations Courts

GS 7-104 now authorizes the judge of a domestic relations and juvenile court to appoint a clerk of court, but it contains no specific authority for deputy clerks.

Ch. 962 (HB 618) amends GS 7-104 specifically to authorize the judge of a domestic relations court to appoint "such deputy clerks as are needed." GS 7-106 is also amended to authorize deputy clerks to have the same authority as the clerk of the domestic relations court to administer oaths and issue warrants and other process of the court.

Attorneys in Juvenile Court

In the Matter of Gerald Gault (18 L.Ed. 2d 527 (1967) is a recent decision of the U. S. Supreme Court which specifies certain constitutional rights that are applicable to delinquency proceedings in a juvenile court in which a child might be committed to a state institution. The Court ruled that ". . . the child and his parent must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child." This new constitutional requirement creates many practical problems for juvenile court judges. One problem is that there was no authority in the juvenile court law (GS 110-21 to 110-44) for a judge to appoint or compensate counsel.

Ch. 870 (HB 1103) adds new GS 110-29.1 to specify that any judge who is authorized to conduct juvenile hearings must inform a child and his parents that the child is entitled to representation by counsel prior to conducting a delinquency hearing when commitment to an institution is possible (this would include any delinquency hearing). If the family is "financially unable to retain counsel," the court is authorized to appoint and fix the fee for counsel using the same standards of indigency applied in adult cases under GS 15-5.1. The Administrative Officer of the Courts is authorized to promulgate rules for the guidance of juvenile court judges in fixing fees in order to assure a reasonable degree of uniformity.

Detention of Children in Jails

GS 110-30 forbids the detention of a child in any local jail where he could have contact with any adult offender. A child alleged to be delinquent may be detained in a separate juvenile detention home which is to be operated as a part of the juvenile court program. While this law is based upon sound social policy, the lack of available juvenile detention homes in most parts of the State creates practical problems for juvenile correctional authorities.

There are only six juvenile detention homes in the State, located in urban counties. If an alleged delinquent child is behaving in such a way as to threaten the community, the juvenile judge or law enforcement officer may find it necessary to detain the child. There may be no available resource for detention except the local jail. Thus, judges and law enforcement officers have been put in the position of violating the law to protect the community; jails are used at times for detention of children. Placement of a child in jail can have many unfortunate consequences for the child.

Ch. 1207 (HB 1231) adds new subsection(b) to GS 110-30 to authorize jail detention of children in certain circumstances. It authorizes the judge exercising juvenile court jurisdiction to order temporary detention of a child in any section of a jail which is so arranged that a child detained there cannot converse with, see, or be seen by other jail inmates under specified conditions: (1) if there is sufficient need for secure restraint of a child in the opinion of the judge; (2) if there is no other adequate detention facility available.

Family Counselor Services

GS 7A-134 authorizes family counselor services in any district court district which contains a county with a population in excess of 100,000. These counselors are to provide services to district court judges hearing domestic relations and juvenile cases. This program is now operating in Durham, Cumberland, and Hoke counties.

Ch. 691 (SB 292) amends GS 7A-134 to reduce the county population requirement for eligibility of the district for this program from 100,000 to 85,000. This change will mean that District 16 (Robeson and Scotland counties) is eligible for the family counselor program in July, 1967. The following districts will have the family counselor program when the second phase of the district court plan is implemented in December, 1968: District 15 (Alamance, Chatham and Orange counties); District 18 (Guilford County); District 21 (Forsyth County); District 26 (Mecklen-

burg County); and District 27 (Cleveland, Gaston, and Lincoln counties).

Ch. 1164 (SB 651) further amends GS 7A-134 to give family court counselors the same powers and authority as juvenile probation officers under GS 110-33.

Juvenile Delinquency; Glue-Sniffing; LSD

Ch. 552 (SB 135) makes it a misdemeanor to smell or inhale glue fumes which produce intoxication, inebriation, or excitement. It is also unlawful to possess or sell glue for these purposes.

It is unlawful to possess, sell, or administer any narcotic drug under GS 90-88 except as authorized by the Narcotic Drug Act (GS 90-86 to 90-113). Ch. 193 (HB 147) amends GS 90-87 to include LSD within the definition of "narcotic drug" under this law.

Divorce, Alimony, and Custody

The General Assembly passed with some modifications two General Statutes Commission bills relating to domestic relations. Ch. 1152 (SB 106) consolidates and revises existing statutes relating to alimony and divorce, primarily in GS Ch. 50. Ch. 1153 (SB 107) rewrites the statutes relating to custody and civil support of minor children under GS Ch. 50. These two bills are designed primarily to clarify and simplify existing law with little substantive change.

October at the Institute

Driver License Examiners	Oct. 2-5
	Oct. 9-12
	Oct. 16-19
	Oct. 23-26
N. C. Section, American Institute of Planners	Oct. 6
Bench-Bar-Press-Broadcasters Committee	Oct. 7
IAPES	Oct. 12-13
Wildlife Screening	Oct. 16-17
Police Administration	Oct. 16-19
Training Impact Project	Oct. 17-19
Municipal and County Administration	Oct. 19-21
School Board Attorneys*	Oct. 20-21
School for New Tax Supervisors	Oct. 23-27
Public Welfare Case Consultants	Oct. 24-26
Preparation for Retirement, Department of Correction	Oct. 26-27
Superior Court Judges	Oct. 27-28
Driver License Hearing Officers	Oct. 30-31
Highway Patrol Basic School No. 40	Through Dec. 15

*Tentative

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