

STATE OF NORTH CAROLINA

RALEIGH

Y-2-058  
REPORT AND RECOMMENDATIONS

OF A

PROPOSED

NORTH CAROLINA PUBLIC UTILITIES ACT

## LEGISLATIVE LIBRARY

March 1963

The General Statutes Commission

Frank W. Hanft, Chairman

W. Lunsford Crew  
Hugh W. Divine  
W. C. Harris, Jr.  
Robin L. Hinson

H. Gardner Hudson  
W. Reid Thompson  
James L. Woodson  
E. C. Bryson,  
Vice Chairman

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S T A T E   O F   N O R T H   C A R O L I N A

General Statutes Commission  
Raleigh

Report of the General Statutes Commission to the Governor and the General Assembly on the Commission's proposed bill to amend the law relating to the regulation of public utilities.

On November 3, 1961, the Commission received a letter from the Governor which read:

"It is hereby requested that you study and analyze the laws relating to the regulation of utilities in North Carolina, recommending changes if you consider change or amendment is indicated. This should include the substantive law and the procedural law to the extent that you think appropriate."

Pursuant to this request such a study was undertaken by the Commission. Mr. Edward B. Hipp, a Raleigh attorney and former Revisor of Statutes, was appointed as Utilities Law Counsel to the Commission for the purpose of doing the necessary research and drafting. Mr. Hipp presented to the Commission a preliminary draft of a proposed revisal of the State's public utility laws. The Commission then spent several months examining this draft, discussing it, approving some of its provisions, and making changes in others. Suggestions from the Utilities Commission, as well as individual members thereof, were received and considered. The result was a tentative proposed revisal, which was widely distributed and published. On January 11 and 12, 1963, public hearings were held on the tentative revisal. Written comment, criticism, and suggestions were also solicited from all interested persons, and a large number were received. The Commission then considered the views, information and suggestions received, made further changes, and arrived at a recommended revisal which is hereby submitted. Comments explaining various sections are included along with the sections. However, since criticism of the tentative revisal centered largely on two sections, these will be first commented upon.

Section 62-111 (b) of our proposed bill authorizes investor owned public utilities to purchase electric and telephone membership corporations when the purchase is determined by the Utilities Commission to be in the public interest. The reason for this proposal is that these membership corporations, that is, the cooperatives, are subsidized by the taxpayers in two ways.

First they obtain loans from the federal government at two percent interest. The money costs the government more than that. The difference must be borne by the taxpayers. The amount involved

is large. A letter from the Administrator of the Rural Electrification Administration dated January 8, 1963, a copy of which was presented to the Commission at our public hearings, shows that loans in excess of 138 million dollars have been made to electric membership corporations in this State, in excess of 13 million dollars to telephone membership corporations, and in the amount of 17.5 million dollars to commercial telephone companies.

Second, membership corporations are freed from taxes paid by investor owned utilities. When enterprises are freed from taxation, the remaining taxpayers have an increased burden. At our public hearings uncontradicted evidence showed that whereas the membership corporations are tax exempt, 25¢ of every dollar of revenues of the investor owned electric companies goes to pay taxes.

We are aware of the great public service which has been rendered by the membership corporations in extending service into areas not theretofore served, and which could not at the time be served by investor owned utilities due to the sparsity of the population and the relatively small demand for service in those areas. Despite highly publicized statements to the contrary, this Commission has no hostility to these cooperatives, but shares the general appreciation of the public purpose they have served. However, when an area served by a membership corporation has developed to the point where the area can be served by an investor owned tax paying utility at reasonable rates, we believe that the mission of the membership corporation has been successfully accomplished and no reason exists why the taxpaying general public should continue to subsidize utility service in that area. The original purpose of the North Carolina Rural Electrification Authority was declared by statute, G.S. Section 117-2, enacted in 1935, to be "to secure electrical service for the rural districts of the State where service is not now being rendered." The purpose was not declared to be that subsidized membership corporations exist as an end in themselves.

It has been suggested that the properties of the membership corporations should not be subject to purchase without the consent of the members. If in a vote on such a purchase there could be devised a plan for including as voters the taxpayers who are subsidizing the cooperatives, such a vote would be fair. No such plan, however, is feasible.

Another solution of this problem which, in the opinion of the Commission, would be just would be to add to recommended Section 62-111 (b) a provision that the sale of the membership corporation's properties could be required only if the members approved, but that if they did not, then all tax exemptions to the membership corporation would cease and all government loans would have to be repaid within one year. This would terminate the subsidies to the cooperative involved. But such a provision would have to be implemented by both state and federal law, therefore is beyond the power of the General Assembly.

Accordingly, we see no fair and practicable method of making such sales dependent on the vote of those affected, including the taxpayers.

The Governor, in a press release dated January 3, 1963, expressed the hope that the commission would not forget that the public interest is the purpose of the law. With that view we are in hearty accord. It is because the Commission is keenly sensitive to the interests of the great but often inarticulate majority that we have made the recommendation contained in Section 62-111 (b). Often the increasing burden of taxation, which is incomparably heavier to the average citizen than the cost of his electricity, is said to be inevitable by reason of the expanding demands for governmental services by a modern society. Nevertheless the burden can be lightened by ending government subsidies when they cease to be necessary.

If the General Assembly disagrees with our recommendation and our reasons for it, Section 62-111 (b) can simply be deleted. But, if this is done, consideration should be given to deleting 62-111 (a) also, since otherwise publicly subsidized operations might be perpetuated in territory assigned to them.

The second section of the proposed bill on which criticism has centered is Section 62-133 providing the method for fixing rates in a general rate case. The criticism is mainly directed at the fact that the fair present value of the utility's property is made the rate base. This section, we believe, organizes and makes more comprehensible the present law of this State for fixing rates. We recommended this clarified version of the present law, rather than some different method of rate fixing, for the reason that we received no convincing evidence that any different method would in fact result in fairer or lower rates to the public. We do not intend to recommend changes in the law unless we are persuaded that there are sound reasons for the changes. The evidence we have received fails to show convincingly that rates in states having a statutory fair value rate base are higher than in states having other provisions for the rate base. Some of the evidence received tends to show that the rates in states which, like North Carolina, have fair value rate base provisions, average as low or lower than those in the other states. Electric and telephone rates in North Carolina appear to be lower than those in the majority of the states.

The fair value rate base enables the public utility to earn a return on the present value of its properties, not a return on what the value may have been in the past when the properties were built. The rule leads to higher valuation in times of inflation, but to lower valuation in times of deflation, as is true in the case of property owned by other persons generally. For example, the value of a house to be rented is higher in times of inflation, lower in times of deflation, and the rents vary accordingly.

If the General Assembly disagrees with this recommended section, it may be deleted and some other provision for determining rates in a general rate case be substituted.

At our public hearings an argument was made against eliminating separate sets of statutes for various public utilities, and for the preservation of the separate provisions for buses, trucks, railroads,

etc. Our policy has been to make applicable to all public utilities provisions which seem equally sound and applicable as to all, and to include in separate provisions for particular utilities only those provisions which are not properly applicable to others, thus eliminating purposeless variations and needless repetitions in the law. At our public hearings we requested interested groups who believed that some of our general provisions are not properly applicable to some particular utility to point out the specific sections, state why the sections should not apply to that utility, and state the changes recommended. We have endeavored to meet such valid specific suggestions.

Since public criticism has been made of some of the Commission's procedures a brief explanation here may be helpful.

The Commission decided not to furnish its minutes for public inspection. The reason was that full minutes are not kept. Such minutes as are kept are fragmentary, and do not include most of the motions and discussion by the members. The minutes are meaningful to the Commission, but being fragmentary, would be a source of erroneous impressions to others. We have accordingly treated them as memoranda for our own use. If the General Assembly desires that full minutes be kept of our proceedings, and that such minutes be open to the public, such a requirement can of course be made, but it would involve expense for very little purpose, since the great bulk of our work has to do with proposed statutes as to which no public interest has been shown in the nature and course of our deliberations. In the history of the Commission, so far as we recall, only in connection with one proposed statute has any demand been made for the inspection of our minutes. It would seem to be a waste of public funds to provide that full records be kept for such scant use.

Criticism has also been made by the press because some of our meetings have been closed to its representatives. If a different policy prevailed, then in our discussions the members of the Commission would not be freely exchanging views with one another, but would be speaking to the newspapers also, and full and candid discussion would become impossible.

It is further to be borne in mind that the statutes framed by the Commission are no more than recommendations to the General Assembly. When the recommendations are made there is nothing hidden or secret about them. We believe that the issue with regard to each proposed statute should be its merits. In our opinion issues as to who said what in our preliminary discussions would be more likely to obscure the merits of proposals than to shed light on them.

The question has been raised whether any member or members of the Commission should disqualify himself or themselves by reason of a conflict of interest in connection with our proposals; specifically whether any attorney representing any investor owned public utility should so disqualify himself when laws relating to public utilities are recommended by the Commission. So far as we

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are aware, no such issue has been raised in connection with the fact that a member of the Commission is also a member of an electric membership corporation. At any rate, we believe that the conflict of interest principle is irrelevant to the kind of work we do.

When governmental agencies award contracts, franchises, or other public benefits, the members of the agency should not have a pecuniary interest in any beneficiary of their action. When a court or administrative agency decides a case, the members should not have a financial interest in the outcome. But when a legislature enacts legislation, no such principle has hitherto been deemed applicable. When legislation affording advantages to farmers is being enacted, all the farmers in the legislature do not disqualify themselves. If a bill prohibiting certain unauthorized practice of law is under consideration, all the lawyers in the legislature do not disqualify themselves. If the conflict of interest principle is not applicable to legislatures, so much the more so should it be inapplicable to a state agency which does not even legislate, but merely makes studies and recommendations for legislation. It is for this reason that the Commission voted not to recommend to any of its members that they disqualify themselves. Further, we were quite conscious of the fact that all of us, as lawyers, taxpayers or users of public utility service, have a direct interest in public utility law. The conflict of interest principle, if made an absolute one to be rigidly applied, would have disqualified us all.

Our recommended bill follows.

Separate Statement of Mr. Hudson

I had not been able to review the decision of the Utilities Commission and the dissent of Mr. Eller in the Nantahala sale case until the middle of February. Considering these in the light of the decision of the Supreme Court of North Carolina in Utilities Commission v. Mead Corporation, 238 N. C. 451, I have reached the conclusion that the Commission's draft should be amended in those parts of the proposal which deal with the organization of the Commission and judicial review of its decisions. I think that there should also be amendments relating to the control of utilities, the withdrawal of a utility from public service and the disposition of assets which have been devoted to the public service.

I will submit my comments on these subjects as early as possible and will transmit them to the Governor, the Speaker of the House of Representatives and the President of the Senate.

In my judgment, it will be unfortunate if this General Assembly does not enact a revision of our utilities laws. However, I think that it will be an equally bad mistake if the statute which is finally enacted does not give effect to the obvious relevance of the Nantahala cases.

Respectfully submitted,

/S/ H. Gardner Hudson

H. Gardner Hudson

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A BILL TO BE ENTITLED AN ACT TO AMEND CHAPTERS 56, 60 AND 62 OF THE GENERAL STATUTES BY REWRITING SAID CHAPTERS INTO A SINGLE PUBLIC UTILITIES CHAPTER, INCLUDING CHANGES AND AMENDMENTS IN THE LAWS RELATING TO THE ORGANIZATION AND ADMINISTRATION OF THE UTILITIES COMMISSION AND TO PUBLIC UTILITIES.

The General Assembly of North Carolina do enact:

Section 1. Chapters 56, 60 and 62 of the General Statutes of North Carolina are hereby amended, revised, and recodified by rewriting said chapters as one new chapter to read as follows; provided, however, that this enactment shall not include any source references or comments at the end of the various sections hereinafter set out and not contained in the body thereof, nor shall it include the table of comparative sections, the table of contents or the report of transmittal attached hereto:

Chapter 62. Public Utilities  
Article 1.  
General Provisions

Sec. 62-1. Short title.--This chapter shall be known and may be cited as the Public Utilities Act.

Sec. 62-2. Declaration of Policy.--Upon investigation, it has been determined that the rates, services and operations of public utilities, as defined herein, are affected with the public interest and it is hereby declared to be the policy of the State of North Carolina to provide fair regulation of public utilities in the interest of the public, to promote the inherent advantage of regulated public utilities, to promote adequate, economical and efficient utility services to all of the citizens and residents of the State, to provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices, to encourage and promote harmony between public utilities and their users, to foster a state-wide planning and coordinating program to promote continued growth of economical public utility services, to cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility services, and to these ends, to vest authority in the Utilities Commission to regulate public utilities generally and their rates, services and operations, in the manner and in accordance with the policies set forth in this chapter.

SOURCE: From G.S. 62-121.5.

COMMENT: This declaration of policy is modeled after the present declaration of policy applicable to the Truck Act and Bus Act and is designed to answer several suggestions that the Commission be guided by a policy declaration applicable to all public utilities.

Sec. 62-3. Definitions.--As used in this chapter, unless the context otherwise requires, the terms:

(1) "Broker", with regard to motor carriers of passengers, means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which as principal or agent engages in the business of selling or offering for sale any transportation of passengers by motor carrier, or negotiates for or holds himself, or itself, out by solicitation, advertisements, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.

(2) "Certificate" means a certificate of public convenience and necessity issued by the Commission pursuant to the provisions of this chapter to a public utility.

(3) "Certified mail" means such mail only when a return receipt is requested.

(4) "Charter party", with regard to motor carriers, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the Commission, have acquired the exclusive use of a passenger carrying motor vehicle to travel together as a group from a point of origin to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin.

(5) "Commission" means the North Carolina Utilities Commission.

(6) "Common carrier" means any person which holds itself out to the general public to engage in transportation of persons or property for compensation, including transportation by train, bus, truck, boat or other conveyance, except as exempted in Sec. 62-260.

(7) "Common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property or any class or classes thereof for compensation, whether over regular or irregular routes, except as exempted in Sec. 62-260.

(8) "Contract carrier by motor vehicle" means any person which, under individual contracts or agreements, engages in the transportation, other than transportation referred to in paragraph (7) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempted in Sec. 62-260.

(9) "Contract carrier" means any person which under individual contracts or agreements engages in the transportation of persons or property for compensation, except as exempted in Sec. 62-260.

(10) "Foreign commerce" means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.

(11) "Franchise" means the grant of authority by the Commission to any person to engage in business as a public utility or contract carrier, whether or not exclusive or shared with others or restricted



as to terms and conditions and whether described by area or territory or not, and includes certificates and permits, and all other forms of licenses or orders and decisions granting such authority.

(12) "Highway" means any road or street in this State used by the public or dedicated or appropriated to public use.

(13) "Industrial plant" means any plant, mill, or factory engaged in the business of manufacturing.

(14) "Interstate commerce" means commerce between any place in a state and any place in another state or between places in the same state through another state.

(15) "Intrastate commerce" means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or foreign commerce which has been exempted by Congress from federal regulation.

(16) "Intrastate operations" means the transportation of persons or property for compensation in intrastate commerce.

(17) "Motor carrier" means both a common carrier by motor vehicle and a contract carrier by motor vehicle.

(18) "Motor vehicle" means any vehicle, machine, tractor, semi-trailer, or any combination thereof, which is propelled or drawn by mechanical power and used upon the highways within the State.

(19) "Municipality" means any incorporated community, whether designated in its charter as a city, town, or village.

(20) "Permit" means a permit issued by the Commission pursuant to the provisions of this chapter to a contract carrier by motor vehicle.

(21) "Person" means a corporation, individual, co-partnership, company, association, or any combination of individuals or organizations doing business as a unit, and includes any trustee, receiver, assignee, lessee, or personal representative thereof.

(22) "Private carrier" means any person not included in the definitions of common carrier or contract carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property for compensation.

(23) (a) "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

- (1) Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation.
  - (2) Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water to less than twenty-five (25) residential customers;
  - (3) Transporting persons or property by street, suburban or interurban bus or railways for the public for compensation;
  - (4) Transporting persons or property by railways or motor vehicles, or any other form of transportation or express service for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air.
  - (5) Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
  - (6) Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- (b) The term "public utility" shall for rate making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
- (c) The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

(23) (a) "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

- (1) Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation.
  - (2) Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water to less than twenty-five (25) residential customers;
  - (3) Transporting persons or property by street, suburban or interurban bus or railways for the public for compensation;
  - (4) Transporting persons or property by railways or motor vehicles, or any other form of transportation or express service for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air.
  - (5) Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
  - (6) Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- (b) The term "public utility" shall for rate making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
- (c) The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

COMMENT: This section is designed to provide continuity between the existing public utility laws and the proposed public utility laws.

Article 2.  
Organization of the Utilities Commission

Sec. 62-10. Number and appointment of commissioners; terms.--The North Carolina Utilities Commission shall consist of five commissioners who shall be appointed by the Governor. The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed. The appointments to fill the term expiring on July 1, 1963, and the two terms expiring July 1, 1965, shall be for 8 years, and the appointments to fill the two terms expiring July 1, 1967, shall be for 2 years, and thereafter for 8 years, with two regular 8-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The term of office of Utilities Commissioners thereafter shall be eight years, commencing on July 1 of the year in which the predecessor term expired, and ending on July 1 of the eighth year thereafter. A commissioner in office shall continue to serve until his successor is duly appointed and qualifies but such holdover shall not affect the expiration date of such succeeding term. On July 1, 1963, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission until July 1, 1965, and on July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is appointed and qualifies. In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner or the chairman prior to the expiration of his term of office or the time for which he was designated as chairman, his successor shall be appointed by the Governor to fill the unexpired term. The salary, retirement benefits, and age and tenure requirements for retirement benefits of each commissioner shall be the same as that fixed from time to time for judges of the Superior Court, except that the commissioner designated as chairman shall receive one thousand dollars additional compensation per annum. The prohibition of the practice of law by judges provided in G.S. 7-59 shall also apply to members of the Commission.

SOURCE: From G.S. 62-1.

COMMENT: This section amends G.S. 62-1 to (1) extend the term of commissioners from six to eight years, on a staggered term basis, (2) to fix the salaries and retirement of the commissioners the same as Superior Court judges and to pay the chairman an additional \$1,000.00 and (3) to provide for the designation by the Governor of the commissioner who shall serve as chairman every four years. The increase in term and salary is designed to make it possible to secure able men for appointment to these important posts. The quadrennial designation of the chairman is designed to operate in conjunction with proposed Sec. 62-13

in securing a strong administrative enforcement of the chapter through additional powers conferred upon the chairman, and to give the Governor's Office added responsibility for such administrative direction through quadrennial designation of the chairman.

Sec. 62-11. Oath of office.--Each Utilities Commissioner before entering upon the duties of his office shall file with the Secretary of State his oath of office to support the Constitution and laws of the United States and the Constitution and laws of the State of North Carolina, and to well and truly perform the duties of his said office as Utilities Commissioner, and that he is not the agent or attorney of any public utility, or an employee thereof, and that he has no interest in any public utility.

SOURCE: G.S. 62-3.

Sec. 62-12. Organization of Commission; adoption of rules and regulations therefor.--To facilitate the work of the Commission and for administrative purposes, the chairman of the Commission, with the consent and approval of the Commission, may organize the work of the Commission in several hearing divisions and operating departments and may designate a member of the Commission as the head of any division or divisions and assign to members of the Commission various duties in connection therewith. Subject to the provisions of the State Personnel Act (Article 2 of Chapter 143 of the General Statutes), the Commission shall prepare and adopt rules and regulations governing the personnel, departments or divisions and all internal affairs and business of the Commission.

SOURCE: From G.S. 62-2.

Sec. 62-13. Chairman to administer and execute internal rules and regulations, and direct the staff.--(a) In order to carry out the administrative purposes and objectives necessary for the efficient operation of the internal affairs and activities of the Commission, the chairman shall be the chief executive and administrative officer of the Commission, and shall execute, administer and carry out the rules and regulations prepared and adopted by the Commission governing the personnel, departments, or divisions and the internal affairs and business of the Commission.

(b) The chairman shall determine whether matters pending before the Commission shall be heard initially by the full Commission, by a division of the Commission or by a hearing commissioner or hearing examiner and shall assign the members of

the Commission to proceedings. The chairman may hear and determine, or assign to a single commissioner or division for decision, any procedural motion or petition made prior to hearings on the merits of the proceeding, including continuances, extensions, joinders, amendments, motions to strike, orders for examinations and depositions, temporary orders and other motions and orders of a similar nature not determinative of the merits of the controversy.

(c) The chairman acting alone, or any three commissioners, may initiate any investigations, complaints or any other proceedings within the jurisdiction of the Commission.

(d) The chairman shall be solely responsible for and charged with the duties of authorizing and approving all maintenance, subsistence and travel expense of all members of the Commission and its employees, and such expense shall be certified by the persons who incur same; the chairman shall not approve any such expense unless he is satisfied that it was incurred for necessary business of the Commission and the chairman may require the department or division heads to certify to him approval of such expense for employees in their departments or divisions.

SOURCE: From G.S. 62-4.

COMMENT: This section adds subsections (b) and (c) to present G.S. 62-4 to strengthen the administrative authority of the chairman in procedural matters. This will leave the remaining commissioners free from time-consuming administrative functions and conferences in order to devote their full time to hearing and deciding cases and studying and planning Commission policy.

Sec. 62-14. Economic and statistical studies.--The Commission shall make economic and financial studies and surveys of the public utility services in the State and evaluations of future needs for such services, and shall establish an economics and planning section within the Commission staff to compile financial and economic data and statistics and to perform economic research and analysis for the Commission.

SOURCE: New.

COMMENT: This section is designed to emphasize the role of economics in the functions of the Commission.

Sec. 62-15. Authority of Commission to employ technically qualified personnel.--The Commission is authorized and empowered to employ technically qualified personnel to serve as members of

its staff and under its direction and supervision, including a communications engineer, an electrical engineer, a gas and water engineer, a director of accounting, a director of traffic, a director of economics and planning, a transportation expert and such other experts as the Commission may determine to be necessary in the proper discharge of the Commission's duties as prescribed by law.

SOURCE: From G.S. 62-10.1.

COMMENT: This section amends G.S. 62-10.1 to add to the expert employees of the Commission a director of economics and planning and to complete the list of directors presently employed by inserting the director of traffic. Many Commission decisions depend upon economic and statistical data offered only as testimony from a partisan point of view. Future plans of the Commission and Commission policy frequently depend upon economic information and opinion. It is considered important to the policy and planning function of the Commission to secure this information from an employee concerned solely with the general public interest.

Sec. 62-16. Special investigators; clerical assistance.-- The Commission shall be allowed such stenographic and other clerical assistance, and special investigators, as it may require for the performance of the duties and functions of the said office, to be established and fixed by such department, bureau, or other State agency as may be charged by law with the duty of determining the extent of such assistance in said departments. All such stenographers, clerks, assistants, and special investigators so provided for shall be appointed by the Commission and subject to removal or discharge by it. The salaries and compensation of such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State departments.

SOURCE: From G.S. 62-5.

Sec. 62-17. Annual reports.--(a) It shall be the duty of the Commission to make and publish annual reports to the Governor of Commission activities, including copies of its general orders and regulations, comparative statistical data on the operation of the various public utilities in the State, comparisons of rates in North Carolina with rates elsewhere, a detailed report of its investigative division, a review of significant developments in the fields of utility law, economics and planning, a report of pending matters before the Commission, and a digest of the principal decisions of the Commission and the North Carolina courts affecting public utilities. A monthly or quarterly release of such information shall be made if the Commission deems it advisable or if the Governor shall so request.



(b) The Commission shall publish in a separate volume at least once each year its final decisions made on the merits in formal proceedings before the Commission, and may include significant procedural orders and decisions.

SOURCE: From G.S. 62-6.

COMMENT: This section is designated to make available to the public in timely fashion statistics and information on utility operation and rates which are now part of the public records but which are not presently published in convenient form. It would also require timely annual separate publications of the Commission's reported decisions rather than the present practice of biennial reports.

Sec. 62-18. Record of receipts and disbursements; payment into treasury.--(a) The Commission shall keep a record showing in detail all receipts and disbursements.

(b) All license fees and seal taxes, all money received from fines and penalties, and all other fees paid into the office of the Utilities Commission shall be turned in to the State treasury.

SOURCE: From G.S. 62-7, 8.

Sec. 62-19. Public record of proceedings; chief clerk; seal.--(a) The Commission shall keep in its office at all times a record of its official acts, rulings, determinations and transactions, which shall be public records of the State of North Carolina.

(b) The Commission shall have and appoint a chief clerk, who shall file with the Secretary of State an oath of office similar to that prescribed for Utilities Commissioners. The Commission may appoint a deputy clerk to act in the absence of the chief clerk, who shall also file such oath with the Secretary of State. The chief clerk and such deputy clerk shall serve at the pleasure of the Commission.

(c) The Commission shall have and adopt a seal with the words "North Carolina Utilities Commission" and such other design as it may prescribe engraved thereon by which it shall authenticate its proceedings and of which the courts shall take judicial notice. Where an exemplified copy of Commission records and proceedings is required for full faith and credit outside of the State, such records and proceedings shall be attested by the chief clerk, or deputy clerk, and the seal of the Commission annexed, and there shall be affixed a certificate of a member of the Commission that the said attestation is in proper

form. Such exemplification shall constitute an authenticated or exemplified copy of an official record of a court of record of the State of North Carolina.

SOURCE: G.S. 62-9, 10.

COMMENT: Subsection (c) amends present G.S. 62-9 to conform to the requirements for authenticated records under 28 USCA 1738.

Sec. 62-20. Assistant Attorney General assigned to Utilities Commission; to represent public.--The Attorney General shall assign an Assistant Attorney General and such staff attorneys as may be necessary to the handling of matters and proceedings before the Commission, who shall be under the direction of the Attorney General. Such Assistant Attorney General shall be assigned the duty and responsibility, when the Attorney General deems it to be advisable in the public interest, of intervening in proceedings before the Commission on behalf of the using and consuming public, including utility users generally and agencies of the State, such appearances including, but not being limited to, rate applications, rate changes and curtailments of service. He shall also have the authority to institute and originate proceedings before the Commission in the name of the State, its agencies and citizens, in all matters within the jurisdiction of the Commission, and shall have authority to appear before such other State and federal agencies and courts as he deems advisable on behalf of the State and its agencies and citizens in all matters affecting public utility services. Subject to the provisions of Sec. 62-70, he shall have the assistance and cooperation of the Commission's staff, when available, and access to the Commission's books, records, studies and reports.

SOURCE: From G.S. 62-10.2, 21.

COMMENT: This section amends G.S. 62-10.2 to place the responsibility on the Attorney General for representing the interest of the public as users and consumers in proceedings before the Commission, and gives him the authority to initiate investigations and complaints before the Commission or before other boards, agencies and courts on his own motion. It relieves the Attorney General of the present conflict arising from the obligation of serving as counsel to the Commission and at the same time intervening as a participant in Commission hearings. This duty as Commission Counsel would be performed by an attorney employed by the Commission as provided in Sec. 62-21.

Sec. 62-21. Commission attorney.--(a) The Commission is authorized to employ an attorney, to be known as the Commission Attorney, to perform legal services for the Commission in

proceedings and matters before the Commission, and to do research with respect to applicable utility laws for and on behalf of the Commission. The Commission Attorney shall represent the Commission on appeal from any Commission orders and shall represent the Commission before the various State and federal agencies and courts. He shall perform such other legal services for the Commission as the chairman and the members of the Commission shall request.

(b) In any hearing or proceeding in which the Commission exercises any function judicial in nature, the Commission Attorney, by leave of the Commission, may appear before the Commission in connection with the presentation of evidence and as an advocate, but after such leave is granted, he shall not advise with the Commission or participate in any manner in the determination or adjudication by the Commission of the issues in such hearing or proceeding.

SOURCE: New.

COMMENT: This section is designed as a partial answer to the request of the Commission for a general counsel to handle cases in which the Commission or its staff has not yet taken any position, but the Attorney General has already intervened and taken a position on behalf of the public. The change is proposed in answer to a situation arising with reasonable frequency in which the public needs to be represented by an independent counsel, such as the Assistant Attorney General, and still give the Commission the needed legal service of its own full-time attorney. It separates to some extent the prosecution function from the judicial function of the Commission.

Sec. 62-22. Utilities Commission and State Board of Assessment to coordinate facilities for rate making and taxation purposes.--The Commission, at the request of the State Board of Assessment, shall make available to the State Board of Assessment the services of such of the personnel of the Commission as may be desired and required for the purpose of furnishing to the State Board of Assessment advice and information as to the value of properties of public utilities, the valuations of which for ad valorem taxation are required by law to be determined by the State Board of Assessment. It shall be the duty of the Commission and the State Board of Assessment, with regard to the assessment and valuation of properties of public utilities doing business in North Carolina, to coordinate the activities of said agencies so that each of them shall receive the benefit of the exchange of information gathered by them with respect to the valuations of public utilities property for rate making and taxation purposes, and the facilities of each of said agencies shall be made fully available to both of them.

SOURCE: G.S. 62-10.3.

Sec. 62-23. Commission as an administrative board or agency.--The Commission is hereby declared to be an administrative board or agency of the General Assembly created for the principal purpose of carrying out the administration and enforcement of this Act, and for the promulgation of rules and regulations and fixing utility rates pursuant to such administration; and in carrying out such purpose, the Commission shall assume the initiative in performing its duties and responsibilities in securing to the people of the State an efficient and economic system of public utilities in the same manner as commissions and administrative boards generally. In proceedings in which the Commission is exercising functions judicial in nature, it shall act in a judicial capacity as provided in Sec.62-60. The Commission shall separate its administrative or executive functions, its rule making functions, and its functions judicial in nature to such extent as it deems practical and advisable in the public interest.

SOURCE: New.

COMMENT: This section is designed to answer in a beginning way the constantly recurring question as to whether the Utilities Commission is actually a Commission or whether it is a court of law. It would indicate the legislative intent that the Utilities Commission function primarily in an executive or legislative capacity and serve as a court of record only in those instances where adversary proceedings would require such procedure as due process of law. It serves to place emphasis on the legislative intent that the Commission assume the principal responsibility of objectively seeking to promote economical and efficient utility service in the public interest, rather than to wait as a court for disputes among the regulated companies and their customers to be brought before it for decision.

Article 3  
Powers and Duties of Utilities Commission

Sec. 62-30. General powers of Commission.--The Commission shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties.

SOURCE: G. S. 62-27.

COMMENT: This article is taken largely from present Article 3, "Powers and Duties of the Utilities Commission" together with overlapping and additional sections from the Public Utilities Act of 1933 relating to Commission powers.

Sec. 62-31. Power to make and enforce rules and regulations for public utilities.--The Commission shall have and exercise full power and authority to administer and enforce the provisions of this chapter, and to make and enforce reasonable and necessary rules and regulations to that end.

SOURCE: G. S. 62-28, 121.6, 121.45.

Sec. 62-32. Supervisory powers; rates and service.--  
(a) Under the rules herein prescribed and subject to the limitations hereinafter set forth, the Commission shall have general supervision over the rates charged and service rendered by all public utilities in this State.

(b) The Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish and fix and regulate the reasonable rates and charges to be made for such service.

SOURCE: G. S. 62-30

COMMENT: This section comes from G. S. 62-30, but the definition of "public utility" in Sec. 62-3(23) makes it unnecessary to repeat the long list of regulated utilities from the present section.

Sec. 62-33. Commission to keep informed as to utilities.--The Commission shall at all times keep informed as to the public utilities, their rates and charges for service, and the service supplied and the purposes for which it is supplied.

SOURCE: G. S. 62-31.

Sec. 62-34. To investigate companies under its control; visitation and inspection.--(a) The Commission shall from time to time visit the places of business, and investigate the books and papers of all public utilities to ascertain if all the orders, rules and regulations of the Commission have been complied with, and shall have full power and authority to examine all officers, agents and employees of such public utilities, and all other persons, under oath or otherwise, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for carrying into effect and otherwise enforcing the provisions of this chapter.

(b) The commissioners and the officers and employees of the Commission may during all reasonable hours enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any power provided for in this article, and may set up and use on such premises any apparatus and appliances necessary therefor. Such public utility shall have the right to be represented at the making of such examinations, tests and inspections.

SOURCE: G.S. 62-32, 78

Sec. 62-35. System of accounts.--(a) The Commission may establish a system of accounts to be kept by the public utilities under its jurisdiction, or may classify said public utilities and establish a system of accounts for each class, and prescribe the manner of keeping such accounts.

(b) The Commission may require any public utility under its jurisdiction to keep separate or allocate the revenue from and the cost of doing interstate and intrastate business in North Carolina.

(c) The Commission may ascertain, determine, and prescribe what are proper and adequate charges for depreciation of the several classes of property for each public utility. The Commission may prescribe such changes in such charges for depreciation as it finds necessary.

SOURCE: G.S. 62-33, 77, 140.

COMMENT: Proposed subsection (c) is new and is designed to clarify the heretofore assumed power of the Commission to regulate depreciation rates under the authority to prescribe a system of accounts.

Sec. 62-36. Reports by utilities; cancelling certificates for failure to file.--The Commission may require any public utility to file annual reports in such form and of such content as the Commission may require and special reports concerning any matter about which the Commission is authorized to inquire or to keep informed, or which it is required to enforce. All reports shall be under oath when required by the Commission. The Commission may issue an order, without notice or hearing, cancelling or suspending any certificate of convenience and necessity thirty (30) days after the date of service of the order for failing to file the required annual report at the time it was due. In the event the report is filed during the thirty (30)-day period, the order of cancellation or suspension shall be null and void.

SOURCE: G. S. 62-34, 79.

Sec. 62-37. Investigations.--(a) The Commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of public utilities or of any particular public utility. In conducting such investigation the Commission may proceed either with or without a hearing as it may deem best, but shall make no order without affording the parties affected thereby notice and hearing.

(b) If after such an investigation, or investigation and hearing, the Commission, in its discretion, is of the opinion that the public interest shall be served by an appraisal of any properties in question, the investigation of any particular construction, the audit of any accounts or books, the investigation of any contracts, or the practices, contracts or other relations between the public utility in question and any holding or finance agency with which such public utility may be affiliated, it shall be the duty of the Commission to report its findings and recommendation to the Governor and Council of State with request for an allotment from the contingency and emergency fund to defray the expense thereof, which may be granted as provided by law for expenditures from such fund or may be denied.

SOURCE: G. S. 62-35, 80.

Sec. 62-38. Power to regulate public utilities in municipalities.--The Commission shall have the same power and authority to regulate the operation of privately owned public utilities within municipalities as it has to regulate such public utilities operating outside of municipalities, with the exception of the right of such municipalities to grant franchises for such operation under G. S. 160-2, Par. 6., and such public utilities shall be subject to the provisions of this chapter in the same

manner as public utilities operating outside municipalities.

SOURCE: From G.S. 62-36, 37, 38.

COMMENT: This section carries forward a shortened version of present 62-36 through 62-38 which is the original act conferring authority for regulation of utilities within cities. This is now intended to come under the general powers of the Commission, but is restated here as a precaution. The reference to G.S. 160-2 is included as a statutory cross-reference to the municipal franchise power.

Sec. 62-39. To regulate crossings of telephone, telegraph, electric power lines and pipelines and rights of way of railroads and other utilities by another utility.--(a) The Commission, upon its own motion or upon petition of any public utility or upon petition of the North Carolina Rural Electrification Authority on behalf of any electric membership corporation, shall have the power and authority, after notice and hearing, to order that the lines and right of way of any public utility or electric membership corporation may be crossed by any other public utility or electric membership corporation. The Commission, in all such cases, may require any such crossings to be constructed and maintained in a safe manner and in accord with accepted and approved standards of safety and may prescribe the manner in which such construction shall be done.

(b) The Commission shall also have the power and authority to discontinue and prohibit such crossings where they are unnecessary and can reasonably be avoided and to order changes in existing crossings when deemed necessary.

(c) In all cases in which the Commission orders such crossing to be made or changed and when the parties affected cannot agree upon the cost of the construction of such crossings or the damages to be paid to one of the parties for the privilege of crossing the lines of such party, it shall be the duty of the Commission to apportion the cost of such construction and to fix the damage if any to be paid and to apportion the damages, if any, among the parties in such manner as may be just and equitable.

(d) This section shall not be construed to limit the right of eminent domain conferred upon public utilities and electric membership corporations by the laws of this State or to limit the right and duty conferred by law with respect to crossing of railroads and highways or railroads crossing railroads, but the duty imposed and the remedy given by this section shall be in addition to other duties and remedies now prescribed by law. Any party shall have the right of appeal from any final order or decision or determination of the Commission as provided by law for appeals from orders or decisions or final determinations of the Commission.



SOURCE: G.S. 62-54.

COMMENT: This section amends present G.S. 62-54 by deleting the language "or church or other place of public worship" from the list of public utilities which are authorized to cross each others lines and rights of way. See comment in 27 NCLR 493, suggesting that this language was either inadvertently included in the course of an amendment or was intended to mean the utility service lines leading to a church or church right of way. In either event, the continued inclusion would seem incongruous as well as being beyond the authority of the Utilities Commission. The 1949 Act, inserting the reference to churches, did not indicate such a purpose in the title.

Sec. 62-40. To hear and determine controversies submitted.-- When a public utility embraced in this chapter has a controversy with another person, and all the parties to such controversy agree in writing to submit such controversy to the Commission as arbitrator, the Commission shall act as such, and after due notice to all parties interested shall proceed to hear the same, and its award shall be final. Such award in cases where land or an interest in land is concerned shall immediately be certified to the clerk of the superior court of the county or counties in which said land, or any part thereof, is situated, and shall by such clerk be docketed in the judgment docket for such county, and from such docketing shall have the same effect as a judgment of the superior court for such county. Parties may appear in person or by attorney before such arbitrator.

SOURCE: G.S. 62-61.

Sec. 62-41. To investigate accidents involving public utilities; promote general safety program.--The Commission may conduct a program of accident prevention and public safety covering all public utilities with special emphasis on highway safety and transport safety and may investigate the causes of any accident on a railroad or highway involving a public utility, or any accident in connection with any other public utility. Any information obtained upon such investigation shall be reduced to writing and a report thereof filed in the office of the Commission, which shall be subject to public inspection but such report shall not be admissible in evidence in any civil or criminal proceeding arising from such accident. The Commission may adopt reasonable rules and regulations for the safety of the public as affected by public utilities and the safety of public utility employees. The Commission shall cooperate with and coordinate its activities for public utilities with similar programs of the Department of Motor Vehicles, the Insurance Department, the Industrial Commission and other organizations engaged in the promotion of highway safety and employee safety.

SOURCE: From G.S. 62-62

COMMENT: This section amends present G.S. 62-62 authorizing the investigation of the causes of railroad and steamboat accidents. It grants the Commission authority to promote a general safety program for all public utilities, covering both their employees and the public. Accident prevention measures such as maximum working hours for train crews in G.S. 60-56, 57, 58, are included in proposed 62-230 for railroads; and inspection of motor vehicles and maximum hours for drivers in G.S. 62-121.9, 121.48 of the Truck Act and Bus Act, respectively, are included in proposed 62-261 for motor carriers. Precedent for employee safety is in present G.S. 62-74 (proposed 62-42).

Sec. 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.--(a) Whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds:

- (1) that the service of any public utility is inadequate, insufficient or unreasonably discriminatory, or
- (2) that persons are not served who may reasonably be served, or
- (3) that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility, or of any two or more public utilities ought reasonably to be made, or
- (4) that it is reasonable and proper that new structures should be erected to promote the security or convenience or safety of its patrons, employees and the public, or
- (5) that any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity,

the Commission shall enter and serve an order directing that such additions, extensions, repairs, improvements, or additional services or changes shall be made or effected within a reasonable time prescribed in the order.

(b) If such order is directed to two or more public utilities, the utilities so designated shall be given such reasonable time as the Commission may grant within which to agree upon the portion or division of the cost of such additions, extensions, repairs, improvements or changes which each shall bear. If at the expiration of the time limited in the order of the Commission, the utility or utilities named in the order shall fail to file with the Commission a statement that an agreement has been made for division or apportionment of the cost or expense, the Commission shall have the authority, after further hearing in the same proceeding, to make an order fixing the portion of such cost or expense to be borne by each public utility affected and the manner in which the same shall be paid or secured.

SOURCE: G.S. 62-74.

Sec. 62-43. Fixing standards, classifications; testing service.--(a) The Commission may, after notice and hearing, had upon its own motion or upon complaint, ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed or followed by any or all public utilities; ascertain and fix adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any and all public utilities; prescribe reasonable regulations for the examination and testing of such product, commodity or service and for the measurement thereof; establish or approve reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement; and provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any public utility.

(b) The Commission shall fix, establish and promulgate standards of quality and safety for gas furnished by a public utility and prescribe rules and regulations for the enforcement of and obedience to the same.

SOURCE: G. S. 62-57, 75.

Sec. 62-44. Commission may require continuous telephone lines.--The Commission may, upon its own motion or upon written complaint by any person, after notice and hearing, require any two or more telephone or telegraph utilities to establish and maintain through lines within the State between two or more localities, which cannot be communicated with or reached by the lines of either utility alone, where the lines or wires of such utilities form a continuous line of communication, or could be made to do so by the construction and maintenance of suitable connections or the joint use of equipment, or the transfer of messages at common points. The rate for such service shall be just and reasonable and the Commission shall have power to establish the same, and declare the portion thereof to which each utility affected thereby is entitled and the manner in which the same must be secured and paid. All necessary construction, maintenance and equipment in order to establish such service shall be constructed and maintained in such manner and under such rules, with such division of expense and labor, as may be required by the Commission.

SOURCE: G. S. 62-73.

Sec. 62-45. Determination of cost and value of utility property.--The Commission, after notice and hearing, may ascertain and fix the cost or value, or both, of the whole or any

part of the property of any public utility insofar as the same is material to the exercise of the jurisdiction of the Commission, make revaluations from time to time, and ascertain the cost of all new construction, extensions and additions to the property of every public utility.

SOURCE: G.S. 62-76.

COMMENT: Present G.S. 62-76 authorizes procedure for fixing the "value" of utility property and is amended to determine the "cost or value" of utility property.

Sec. 62-46. Water gauging stations.--The Commission may require the location, establishment, maintenance and operation of any water gauging station which it finds is needed in the State over and above those required by federal agencies, and the Commission may cooperate with federal and other state agencies as to the location, construction and reports and the results of operation of such station.

SOURCE: From G.S. 62-97.

Sec. 62-47. Reports from municipalities operating own utilities.--Every municipality furnishing gas, electricity or telephone service shall make an annual report to the Commission, verified by the oath of the general manager or superintendent thereof, on the same forms as provided for reports of public utilities, giving the same information as required of public utilities.

SOURCE: G.S. 62-98.

Sec. 62-48. Appearance before courts and agencies.--The Commission is authorized and empowered to initiate or appear in such proceedings before federal and state courts and agencies as in its opinion may be necessary to secure for the users of public utility service in this State just and reasonable rates and service.

SOURCE: G.S. 62-131.

COMMENT: Present G.S. 62-131 limits appearances before federal agencies to cases involving inter-state freight rates and is amended to include all public utility rates and all federal agencies, in order to clarify the authority of the Commission to appear and participate in natural gas cases and other federal rate hearings affecting North Carolina.

Sec. 62-49. Publication of utilities laws.--The Commission is authorized and directed to secure biennial publication of all North Carolina laws affecting public utilities, together with the Commission Rules and Regulations, in an annotated edition for economical, convenient distribution to the public generally at the minimum cost available.

SOURCE: New.

COMMENT: This section is designed to secure an economical annotated edition of public utilities laws comparable to the Workmen's Compensation laws and the Motor Vehicle laws now published for North Carolina. There is presently no complete publication of these laws with an index except the 11-volume edition of the General Statutes.

Article 4.  
Procedure Before the Commission

Sec. 62-60. Commission acting in a judicial capacity.--For the purpose of conducting hearings, making decisions and issuing orders, and in formal investigations where a record is made of testimony under oath, the Commission shall be deemed to exercise functions judicial in nature and shall have all the powers and jurisdiction of a court of general jurisdiction as to all subjects over which the Commission has or may hereafter be given jurisdiction by law. The Commissioners and members of the Commission's staff designated and assigned as examiners shall have full power to administer oaths and to hear and take evidence. The Commission shall render its decisions upon questions of law and of fact in the same manner as a court of record. A majority of the commissioners shall constitute a quorum, and any order or decision of a majority of the commissioners shall constitute the order or decision of the Commission, except as otherwise provided in this chapter.

SOURCE: G.S. 62-12.

COMMENT: This article is taken largely from present Article 2 - "Procedure before the Commission" designated as "North Carolina Utilities Commission Procedure Act of 1949." It has been amended on several occasions and is considered to follow the general current statutes on a national and State level, fixing administrative procedure. Several new provisions have been inserted as indicated in the respective section comments. See Secs. 62-13 (b) on procedural determinations, 62-65 (b) on judicial notice, 62-67 on examination before trial, 62-70 on ex parte communications, 62-76 (b) on hearing divisions, and 62-78 (e) on expediting cases. The wording of Sec. 62-60, above, was changed from present G.S. 62-12 to conform with the administrative agency provision of the 1962 amendment to the judicial article of the North Carolina Constitution.

Sec. 62-61. Witnesses; production of papers; contempt. -- The Commission shall have the same power to compel the attendance of witnesses, require the examination of persons and parties, and compel the production of books and papers, and punish for contempt, as by law is conferred upon the superior courts.

SOURCE: G.S. 62-13, 14.

COMMENT: This section replaces present G.S. 62-13 and 62-14, which provide alternative remedies for enforcement of subpoenas, either by contempt orders of the Commission itself or by criminal prosecution. The procedure recommended follows present G.S. 62-13. The General Statutes Commission considered the substitution of the more generally observed administrative law procedure of applying

to the superior court to enforce violations of the Commission's processes, but the proposal was abandoned due to the principle stated in In re Hayes, 200 N.C. 133, 156 S.E. 791, 73 ALR 1179 (1931), that any court, including an administrative tribunal such as the Industrial Commission, has the inherent right to punish for contempt.

Sec. 62-62. Subpoenas, issuance and service.--All subpoenas for witnesses to appear before the Commission, a division of the Commission or a hearing commissioner or examiner and notice to persons or corporations, shall be issued by the Commission or its chief clerk or a deputy clerk and be directed to any sheriff, constable or other officer authorized by law to serve process issued out of the superior courts, who shall execute the same and make due return thereof as directed therein, under the penalties prescribed by law for a failure to execute and return the process of any court. The Commission shall have the authority to require the applicant for a subpoena for persons and documents to make a reasonable showing that the evidence of such persons or documents will be material and relevant to the issue in the proceeding.

SOURCE: G.S. 62-15.

Sec. 62-63. Service of process and notices.--The chief clerk, a deputy clerk, or any authorized agent of the Commission may serve any notice issued by it and his return thereof shall be evidence of said service; and it shall be the duty of the sheriffs and all officers authorized by law to serve process issuing out of the superior courts, to serve any process, subpoenas and notices issued by the Commission, and such officers shall be entitled to the same fees as are prescribed by law for serving similar papers issuing from the superior court. Service of notice of all hearing investigations and proceedings by the Commission may be made upon any person upon whom a summons may be served in accordance with the provisions governing civil actions in the superior courts of this State, and may be made personally by an authorized agent of the Commission or by mailing in a sealed envelope, registered, with postage prepaid, or by certified mail.

SOURCE: G.S. 62-16.

Sec. 62-64. Bonds.--All bonds or undertakings required to be given by any of the provisions of this chapter shall be payable to the State of North Carolina, and may be sued on as are other undertakings which are payable to the State.

SOURCE: G.S. 62-17.

Sec. 62-65. Rules of evidence; judicial notice.--(a) When acting as a court of record, the Commission shall apply the rules

of evidence applicable in civil actions in the superior court, insofar as practicable, but no decision or order of the Commission shall be made or entered in any such proceeding unless the same is supported by competent material and substantial evidence upon consideration of the whole record. Oral evidence shall be taken on oath or affirmation. The rules of privilege shall be effective to the same extent that they are now or hereafter recognized in civil actions in the superior court. The Commission may exclude incompetent, irrelevant, immaterial and unduly repetitious or cumulative evidence. All evidence, including records and documents in the possession of the Commission of which it desires to avail itself, shall be made a part of the record in the case by definite reference thereto at the hearing. Any party introducing any document or record in evidence by reference shall bear the expense of all copies required for the record in the event of an appeal from the Commission's order. Every party to a proceeding shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any witness regardless of which party first called such witness to testify and to rebut the evidence against him. If a party does not testify in his own behalf, he may be called and examined as if under cross-examination.

(b) The Commission may take judicial notice of its decisions, the annual reports of public utilities on file with the Commission, published reports of federal regulatory agencies, the decisions of state and federal courts, state and federal statutes, public information and data published by official state and federal agencies and reputable financial reporting services, generally recognized technical and scientific facts within the Commission's specialized knowledge, and such other facts and evidence as may be judicially noticed by justices of the Supreme Court and judges of the superior courts. When any Commission decision relies upon such judicial notice of material facts not appearing in evidence, it shall be so stated with particularity in such decision and any party shall, upon petition filed within ten days after service of the decision, be afforded an opportunity to contest the purported facts noticed or show to the contrary in a rehearing set with proper notice to all parties; but the Commission may notify the parties before or during the hearing of facts judicially noticed, and afford at the hearing a reasonable opportunity to contest the purported facts noticed, or show to the contrary.

SOURCE: G.S. 62-18.

COMMENT: Subsection (b) is new, to spell out the authority for judicially cognizable facts, together with a procedure for rehearing, where they form a basis for the decision. See Sec. 10 (4) of Model State Administrative Procedure Act.



Sec. 62-66. Depositions.--The Commission or any party to a proceeding may take and use depositions of witnesses in the same manner as provided by law for the taking and use of depositions in civil actions in the superior court.

SOURCE: G.S. 62-19.

Sec. 62-67. Examination before hearing.--Any party to a proceeding may make application to the Commission for examination of any other party before hearing. The Commission, if it finds good cause therefor, shall issue the order for such examination, and the deposition taken thereunder shall be filed with the Commission's chief clerk, in accordance with and subject to the procedure prescribed for such examinations in the superior court. In cases in which the Commission is a party, it may order such examination upon its own motion, upon the affidavit of any member of the Commission's staff. The Commission may adopt rules for the taking of such examinations.

SOURCE: New. See G.S. 1-568.1, et seq.

COMMENT: This section is designed to adopt the present superior court discovery statutes for use in Commission hearings, modified to comply with administrative procedures. It was suggested by the contentions of some protestants that they are not presently able to secure sufficient evidence in advance of the trial from which to prepare their case.

Sec. 62-68. Use of affidavits.--At any time, ten or more days prior to a hearing or a continued hearing, any party or the Commission may send by registered or certified mail or deliver to the opposing parties a copy of any affidavit proposed to be used in evidence, together with the notice as herein provided. Unless an opposing party or the Commission at least five days prior to the hearing, if the affidavit and notice are received at least twenty days prior to such hearing, otherwise at any time prior to or during such hearing, sends by registered or certified mail or delivers to the proponent a request to cross-examine the affiant at the hearing, the right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant at the hearing is not afforded after request therefor is made as herein provided, the affidavit shall not be received in evidence. The notice accompanying the affidavit shall set forth the name and address of the affiant and shall contain a statement that the affiant will not be called to testify orally and will not be subject to cross-examination unless the opposing parties or the Commission demand the right

of cross-examination by notice mailed or delivered to the proponent at least five days prior to the hearing if the notice and affidavit are received at least twenty days prior to such hearing, otherwise at any time prior to or during such hearing.

SOURCE: G.S. 62-20.

Sec. 62-69. Stipulations and agreements; pre-hearing conference.--(a) In all contested proceedings the Commission, by pre-hearing conferences and in such other manner as it may deem expedient and in the public interest, shall encourage the parties and their counsel to make and enter stipulations of record for the following purposes:

- (1) eliminating the necessity of proof of all facts which may be admitted and the authenticity of documentary evidence,
- (2) facilitating the use of exhibits, and
- (3) clarifying the issues of fact and law.

The Commission may make informal disposition of any contested proceeding by stipulation, agreed settlement, consent order or default.

(b) Unless otherwise provided in the Commission's Rules of Practice and Procedure, such pre-hearing conferences may be ordered by the Commission or requested by any party to a proceeding in substantially the same manner, and with substantially the same subsequent procedure, as provided by law for the conduct of pre-trial hearings in the superior court.

SOURCE: G.S. 62-22.

COMMENT: Subsection (b) is new. See G.S. 1-169.1 et seq.

Sec. 62-70. Ex parte communications.--(a) In all matters and proceedings on the Commission's formal docket with adversary parties of record, all communications or contacts of any nature between any party and the Commission or any of its members or staff, whether verbal or written, formal or informal, which pertain to the merits of such matter or proceeding, shall be made only with full knowledge of or notice to all other parties of record. All parties shall have an opportunity to be informed fully as to the nature of such communication and to be present and heard with respect thereto.

(b) In the event any such communication or contact shall be received by the Commission or any commissioner or member of the staff without such knowledge or notice to all other parties, the Commission shall immediately cause a formal record

of such violation to be made in its docket and thereafter no ruling or decision shall be made in favor of such violating party until the aggrieved party shall waive such violation or the Commission shall find as a fact that such party was not prejudiced thereby or that any such prejudice, if present, has been removed.

(c) Any contacts or communications made in violation of this section which are not recorded by the Commission may be recorded by notice to the Commission by any aggrieved party and, unless the Commission shall find that such violation did not in fact occur, such recording shall have the same effect as if done by the Commission.

(d) In matters not under this section, the Commission may secure information and receive communications ex parte, it being the purpose of this section to protect adversary interests where they exist but not otherwise to restrict unduly the administrative and legislative functions of the Commission.

(e) This section shall not modify any notice required in the case of pleadings and proceedings which are subject to other requirements of notice to parties of record, whether by statute or by rule of the Commission, and the Commission may adopt reasonable rules to coordinate this section with such other requirements.

SOURCE: New.

COMMENT: This section is designed to clarify the area of proper communications with the Commission in contested matters, yet leave the Commission free in other matters to pursue necessary investigation and interchange information to carry out its other continuing duties. It does not prohibit or restrict open contacts and communications with the Commission in any way -- it simply says that the other side is entitled to know what is being said and to have a chance to answer it if he so desires. It penalizes only the one-sided or improper attempt to contact the Commission or get information to it without it being known to other parties in a proceeding. It is intended purely in a constructive way to aid all parties involved. It is not suggested by any complaints in North Carolina, but it has been a subject of much study and comment elsewhere. See Model State Administrative Practice Act, Sec. 13, and Federal Administrative Practice Act, Sec. 5 (c).

Sec. 62-71. Hearings to be public; record of proceedings. -- (a) All formal hearings before the Commission, a

hearing division, a commissioner or an examiner shall be public, and shall be conducted in accordance with such rules as the Commission may prescribe. A full and complete record shall be kept of all proceedings on any formal hearing, and all testimony shall be taken by a reporter appointed by the Commission. Any party to a proceeding shall be entitled to a copy of the record or any part thereof upon the payment of the reasonable cost thereof as determined by the Commission.

(b) The Commission in its discretion may approve stenographic or mechanical methods of recording testimony, or a combination of such methods, and a transcript of any such record shall be valid for all purposes, subject to protest and settlement by the Commission.

(c) The Commission is authorized to provide daily transcripts of testimony in cases of substantial public interest and in other cases where time is an important factor to the parties involved.

SOURCE: G.S. 62-23.

COMMENT: Subsections (b) and (c) of this section are new and are designed to authorize the Commission to use the best means possible to produce a transcript of testimony of its hearings and to expedite its cases by providing a daily transcript.

Sec. 62-72. Commission may make rules of practice and procedure.--Except as otherwise provided in this chapter, the Commission is authorized to make and promulgate rules of practice and procedure for the Commission hearings.

SOURCE: From last sentence of G.S. 62-26.

COMMENT: This provision is set forth as a new section because of the importance of the rule making power in the procedural article.

Sec. 62-73. Complaints against public utilities.--Complaints may be made by the Commission on its own motion or by any person having an interest, either direct or as a representative of any persons having a direct interest in the subject matter of such complaint by petition or complaint in writing setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation or rate heretofore established or fixed by or for any public utility in violation of any provision of law or of any order or rule of the Commission, or that any rate, service, classification, rule, regulation or practice is unjust and unreasonable.

Upon good cause shown and in compliance with the rules of the Commission, the Commission shall also allow any such person authorized to file a complaint, to intervene in any pending proceeding. The Commission, by rule, may prescribe the form of complaints filed under this section, and may in its discretion order two or more complaints dealing with the same subject matter to be joined in one hearing. Unless the Commission shall determine, upon consideration of the complaint or otherwise, and after notice to the complainant and opportunity to be heard, that no reasonable ground exists for an investigation of such complaint, the Commission shall fix a time and place for hearing, after reasonable notice to the complainant and the utility complained of, which notice shall be not less than ten days before the time set for such hearing.

SOURCE: G.S. 62-24.

COMMENT: This section substitutes a general authority for representatives of interested persons to file complaints and intervene in pending proceedings, in lieu of the present long list of specific representative agencies.

Sec. 62-74. Complaints by public utilities.--Any public utility shall have the right to complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint and notice of hearing shall be served by the Commission upon such interested persons as it may designate.

SOURCE: G.S. 62-25.

Sec. 62-75. Burden of proof.--In all proceedings instituted by the Commission for the purpose of investigating any rate, service, classification, rule, regulation or practice, the burden of proof shall be upon the public utility whose rate, service, classification, rule, regulation or practice is under investigation to show that the same is just and reasonable. In all other proceedings the burden of proof shall be upon the complainant.

SOURCE: G.S. 62-26.

Sec. 62-76. Hearings by Commission, hearing division of the Commission, commissioner, or examiner.--(a) Except as otherwise provided in this chapter, any matter requiring a

hearing shall be heard and decided by the Commission or shall be referred to a division of the Commission or one of the commissioners or a qualified member of the Commission staff as examiner for hearing, report and recommendation of an appropriate order or decision thereon. Subject to the limitations prescribed in this article, a hearing division, hearing commissioner or examiner to whom a hearing has been referred by order of the chairman shall have all the rights, duties, powers and jurisdiction conferred by this chapter upon the Commission. The chairman, in his discretion, may direct any hearing by the Commission or any division, commissioner or examiner to be held in such place or places within the State as he may determine to be in the public interest and as will best serve the convenience of interested parties. Before any member of the Commission staff enters upon the performance of duties as an examiner, he shall first take, subscribe to and file with the Commission an oath similar to the oath required of members of the Commission.

(b) In all cases where a division of the Commission hears a proceeding and as many as three commissioners hearing the case approve the recommended order, such order shall thereby become and shall be issued as a final order of the Commission. If less than three commissioners approve such order, it shall be a recommended order only, subject to review by the full Commission, with all commissioners eligible to participate in the final arguments and decision.

(c) In all cases in which a pending proceeding shall be assigned to a hearing commissioner, such commissioner shall hear and determine the proceedings and submit his recommended order, but, in the event of a petition to the full Commission to review such recommended order, the hearing commissioner shall take no part in such review, either in hearing oral argument or in consideration of the Commission's decision, but his vote shall be counted in such decision to affirm his original order.

SOURCE: (a)G.S. 62-26.1; (b) and (c) are new.

COMMENT: This section amends present 62-26.1 to establish procedure for hearings by a 3-man division of the Commission or a hearing commissioner. The chairman is authorized to determine the place where hearings shall be conducted, in lieu of the Commission. In cases heard by a hearing commissioner, it is not considered appropriate that he participate in appeals from his order, but his vote should count in the Commission's decision. The use of the members of the Commission themselves as

hearing commissioners rather than the prevailing federal practice of hearing examiners is designed to insure that the members of the Commission shall hear the testimony in all cases. The authorization for staff hearing examiners would be retained only for occasions of an unusually crowded docket, to handle fairly routine cases. Subsection (b) is designed to clarify the procedure of the Commission in cases where a majority of the Commission hear a case and agree on a decision, by establishing such decision as a final order of the Commission.

Sec. 62-77. Recommended decision of a hearing division, commissioner or examiner.--Any report, order or decision made or recommended by a hearing division, commissioner or examiner with respect to any matter referred for hearing shall be in writing and shall set forth separately findings of fact and conclusions of law and shall be filed with the Commission. A copy of such recommended order, report and findings shall be served upon the parties who have appeared in the proceeding.

SOURCE: G.S. 62-26.2.

Sec. 62-78. Proposed findings, briefs, exceptions, orders, expediting cases, and other procedure.--(a) Prior to each decision or order by the Commission in a proceeding initially heard by it and prior to any recommended decision or order of a hearing division, commissioner or examiner, the parties shall be afforded an opportunity to submit, within the time prescribed by order entered in the cause, unless further extended by order of the Commission, for the consideration of the Commission, division, commissioner or examiner, as the case may be, proposed findings of fact and conclusions of law and briefs.

(b) Within the time prescribed by the hearing division, commissioner, or examiner, the parties shall be afforded an opportunity to file exceptions to the recommended decision or order and a brief in support thereof, provided the time so fixed shall be not less than fifteen days from the date of such recommended decision or order. The record shall show the ruling upon each requested finding and conclusion or exception.

(c) In all proceedings in which a hearing division, commissioner or examiner has filed a report, recommended decision or order to which exceptions have been filed, the Commission, before making its final decision or order, shall afford the party or parties an opportunity for oral argument.

When no exceptions are filed within the time specified to a recommended decision or order, such recommended decision or order shall become the order of the Commission and shall immediately become effective unless the order is stayed or postponed by the Commission; provided, the Commission may, on its own motion, review any such matter and take action thereon as if exceptions thereto had been filed.

(d) When exceptions are filed, as herein provided, it shall be the duty of the Commission to consider the same and if sufficient reason appears therefor, to grant such review or make such order or hold or authorize such further hearing or proceeding as may be necessary or proper to carry out the purposes of this chapter. The Commission, after review, upon the whole record, or as supplemented by a further hearing, shall decide the matter in controversy and make appropriate order or decision thereon.

(e) The Commission may expedite the hearing and decision of any case if the public interest so requires by the use of pre-trial conferences, daily transcripts of evidence, trial briefs, and prompt oral argument, and by granting priority to the hearing and decision of such case.

SOURCE: G.S. 62-26.3. (The fourth sentence of G.S. 62-26.3 is moved to proposed 62-79(a).)

COMMENT: Subsection (e) of this section is designed to relieve some of the delay found under the present rules of practice.

Sec. 62-79. Final orders and decisions; findings; service; compliance.--(a) All final orders and decisions of the Commission shall be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and shall include:

- (1) Findings and conclusions and the reasons or bases therefor upon all the material issues of fact, law, or discretion presented in the record, and
- (2) The appropriate rule, order, sanction, relief, or statement of denial thereof.

(b) A copy of every final order or decision under the seal of the Commission shall be served by registered or certified mail upon the person against whom it runs or his attorney and notice thereof shall be given to the other parties to the proceeding or their attorney. Such order shall take effect and become operative when issued unless otherwise designated therein and shall continue in force either for a period which may be designated therein or until changed or revoked by the



Commission: provided, upon filing of new, changed or additional rates, it shall not be necessary to obtain relief from an outstanding order of the Commission fixing rates except in the case of transportation rates where the rates have been in effect less than one year. If an order cannot, in the judgment of the Commission, be complied with within the time designated therein, the Commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

SOURCE: G.S. 62-26.3, 26.4.

Sec. 62-80. Powers of Commission to rescind, alter or amend a prior order or decision; rehearing.--The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

SOURCE: From G.S. 62-26.5.

Article 5.  
Review and Enforcement of Orders

Sec. 62-90. Right of appeal; filing of exceptions.---

(a) No party to a proceeding before the Commission may appeal from any final order or decision of the Commission unless within thirty (30) days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commission, by order made within thirty (30) days, the party aggrieved by such decision or order shall file with the Commission notice of appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission.

(b) The Commission shall within thirty (30) days after the filing of notice of appeal and exceptions to the final order or within thirty (30) days after any order which may be issued finally determining the exceptions to the final order, whichever is later, transmit the entire record in the proceeding, or a copy thereof, certified under the seal of the Commission, to the superior court of the county agreed upon by the parties, or in the absence of such agreement, to the superior court of any county in which the business involved in the proceeding is conducted, or is proposed to be conducted, or in which the remedy or relief sought is to be applied or enforced, together with the notice of appeal; provided, however, the Commission may, on motion of any party to the proceeding or on its own motion, set the exceptions to the final order upon which such appeal is based for further hearing before the Commission.

(c) Any party may appeal from all or any portion of any final order or decision of the Commission in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commission, to each party to the proceeding to the addresses as they appear in the files of the Commission in the proceeding. The failure of any party, other than the Commission, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.

(d) The judge holding the court for the county to which the record is sent or the resident judge of the judicial district embracing said county shall hear and determine all matters arising on such appeal, as in this article provided, and may, in the exercise of discretion, remove the case to any other county. After final determination of the appeal, the clerk of the superior court shall return to the Commission such records as were transmitted by it to such court,

together with a certified copy of the decision of the court.

SOURCE: From G.S. 62-26.6.

COMMENT: This article is taken from the final portion of present Article 2, "Procedure Before the Commission," and is established as a separate article as a matter of convenience. It has been re-numbered and subdivided in accordance with the new chapter structure.

Sec. 62-91. Appeal docketed; priority of trial.--The cause shall be entitled "State of North Carolina on relation of the Utilities Commission against (here insert name of appellant)." It shall be on the civil issue docket of such court and shall have priority over other civil actions.

SOURCE: From G.S. 62-26.7.

Sec. 62-92. Parties on appeal.--In any appeal to the superior court, the complainant in the original complaint before the Commission shall be a party to the record and each of the parties to the proceeding before the Commission shall have a right to appear and participate in said appeal.

SOURCE: G.S. 62-26.8.

Sec. 62-93. No evidence admitted on appeal; remission for further evidence.--No evidence shall be received at the hearing on appeal but if any party shall satisfy the court that evidence has been discovered since the hearing before the Commission that could not have been obtained for use at that hearing by the exercise of reasonable diligence, and will materially affect the merits of the case, the court may, in its discretion, remand the record and proceedings to the Commission with directions to take such subsequently discovered evidence, and after consideration thereof, to make such order as the Commission may deem proper, from which order an appeal shall lie as in the case of any other final order from which an appeal may be taken as provided in Sec. 62-90.

SOURCE: G.S. 62-26.9.

Sec. 62-94. Record on appeal; extent of review.--(a) On appeal the court shall review the proceedings without a jury in chambers or at term time and such review shall be confined to the record as certified by the Commission to the court, except that in cases of alleged irregularities in procedure before the Commission, not shown in the record, testimony thereon may be taken in the court.

(b) So far as necessary to the decision and where

presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. The court may affirm or reverse the decision of the Commission, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional provisions, or
- (2) In excess of statutory authority or jurisdiction of the Commission, or
- (3) Made upon unlawful proceedings, or
- (4) Affected by other errors of law, or
- (5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted, or
- (6) Arbitrary or capricious.

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in his notice of appeal filed with the Commission.

(d) The court shall also compel action of the Commission unlawfully withheld or unlawfully or unreasonably delayed.

(e) Upon any appeal to the superior court, the rates fixed, or any rule, regulation, finding, determination, or order made by the Commission under the provisions of this chapter shall be prima facie just and reasonable. If on any appeal the court determines that an issue is presented which, for constitutional reasons, must be submitted to a jury, the court shall order a jury trial as to such issue.

SOURCE: From G.S. 62-26.10.

Sec. 62-95. Relief pending review on appeal.-- Pending judicial review, the Commission is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the judge of the superior court is authorized to issue all necessary and appropriate process to postpone the effective date of any action by the Commission or take such action as may be necessary to preserve status or rights of any of the parties pending conclusion of the proceedings on appeal. The court may require the applicant for such stay to post adequate bond as required by the court.

SOURCE: G.S. 62-26.11.

Sec. 62-96. Appeal to Supreme Court.--Any party may appeal to the Supreme Court from the judgment of the superior court under the same rules and regulations as are prescribed by law for appeals, except that the Commission, if it shall appeal, shall not be required to give any undertaking or make any deposit to assure the cost of such appeal, and such court may advance the cause on its docket.

SOURCE: G.S. 62-26.12.

Sec. 62-97. Judgment on appeal enforced by mandamus.--In all cases in which, upon appeal, an order or decision of the Commission is affirmed, in whole or in part, the appellate court shall include in its decree a mandamus to the appropriate party to put said order in force, or so much thereof as shall be affirmed, or the appellate court may make such other order as it deems appropriate.

SOURCE: G.S. 62-26.13.

Sec. 62-98. Peremptory mandamus to enforce order, when no appeal.--(a) If no appeal is taken from an order or decision of the Commission within the time prescribed by law and the person to which the order or decision is directed fails to put the same in operation, as therein required, the Commission may apply to the judge regularly assigned to the superior court district which includes Wake County, or to the resident judge of said district at chambers, or to the judge holding the superior court in any judicial district in which the business is conducted upon ten days' notice, for a peremptory mandamus upon said person for the putting in force of said order or decision; and if said judge shall find that the order of said Commission was valid and within the scope of its powers, he shall issue such peremptory mandamus.

(b) An appeal shall lie to the Supreme Court in behalf of the Commission, or the defendant, from the refusal or the granting of such peremptory mandamus. The remedy prescribed in this section for enforcement of orders of the Commission is in addition to other remedies prescribed by law.

SOURCE: G.S. 62-26.14.

Article 6  
The Utility Franchise

Sec. 62-110. Certificate of convenience and necessity.---

(a) No person shall hereafter begin the construction, extension or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, extension, acquisition, or operation: Provided, that this section shall not apply to the construction or extension of facilities in an area included in the franchise of the person making the construction or extension.

(b) Notwithstanding the proviso in subsection (a) of this section, a certificate shall be required for the construction by any person of any steam, water or other plant for the generation of electricity, for the furnishing of public utility service, even though the facility be for furnishing the service already being rendered.

(c) For the purposes of this section, "person" shall include any municipality or electric or telephone membership corporation, and the term "public utility service" shall include the service rendered by any municipality or such membership corporation.

SOURCE: Subsection (a) is taken from G. S. 62-101.  
Subsections (b) and (c) are new.

COMMENT: This is a new article assembled from the certificate of convenience and necessity section, 62-101, in present Article 5, "Miscellaneous Provisions as to Public Utilities," plus the existing sections from the Bus Act and Truck Act and the Railroad chapter relating to transfers, conditions, abandonments and leases of franchises. In cases where it is deemed practical, these heretofore specified sections have been made applicable generally to all public utilities. A new section has been added as 62-111 to correct a deficiency in the present certificate system due to the large areas served by electric membership corporations.

Sec. 62-111. Commission to issue telephone and electric service area franchises; purchase of franchises and assets of electric and telephone membership corporations.---(a) The Commission is authorized and directed to fix and determine the present service areas of investor-owned electric power companies, electric membership corporations, and publicly-owned electric power systems

in the State, and the present service areas of investor-owned telephone companies, telephone membership corporations, mutual telephone companies, and publicly-owned telephone systems, and to issue franchise certificates for each of such areas. In such determination the Commission shall consider existing lines, and the present and future public convenience and necessity for service within such areas. From and after the effective date of this act, no such concern furnishing electric or telephone service nor any other public utility shall serve any customers outside of its service area without first making application to the Commission and receiving a certificate for such extension of service upon a finding of public convenience and necessity by the Commission after notice and hearing to affected parties. The Commission is authorized to conduct such hearings and to make such rules and regulations to carry out the provisions of this section as may be necessary or advisable.

(b) Any investor-owned electric power company or telephone company shall have the right, subject to the provisions of this section, to purchase the entire franchise, and all assets of any electric membership corporation or telephone membership corporation. Such purchase shall be instituted by application to the Commission, which after due notice shall conduct a hearing to determine whether such purchase is in the public interest, which determination shall include a finding by the Commission that the persons and areas served by the membership corporation can be adequately served at reasonable rates without loss to the purchaser. Upon approval by the Commission, it shall issue its certificate for such purchase for the fair value of the properties, excluding the value of the seller's franchise and good will, which value shall be fixed by the Commission: Provided, that such value shall not be less than the outstanding indebtedness upon the properties purchased, including membership fees and credits. In the event that more than one public utility shall apply to purchase the same such system, the Commission shall award its certificate to the applicant which it shall find will afford the best service at reasonable rates within said franchise area, except that if one of the public utilities applying to purchase is organized by a majority of the members of the seller, it shall be given the prior right to make such purchase and be entitled to assume such outstanding indebtedness as part of the purchaser price. By consent of the parties, a purchase of less than the entire franchise and assets of the seller may be made pursuant to this subsection. If two or more applications are made to purchase the seller's franchise and assets, the Commission may apportion the franchise and assets to the applicants if in the public interest and if the applicants consent to such apportionment.

SOURCE: This section is new.

COMMENT: North Carolina does not presently have a division of territory between regulated power companies and

the unregulated electric membership corporations and municipalities furnishing rural service. The Supreme Court has declared that under the law competition exists between the power companies and the cooperatives. Except for wholesale power contracts which contain certain restrictions against duplicating lines for customers, there is nothing to prevent wasteful duplication of facilities between the two systems. The result has been that some conflicts have arisen which have been litigated. The North Carolina Supreme Court has, in several such cases, indicated that solutions to such problems should come from the General Assembly rather than the courts. See POWER CO. v MEMBERSHIP CORP., 253 NC 596 (1961); second appeal 256 NC 62 (1961); MEMBERSHIP CORP. v LIGHT CO., 255 NC 258 (1961); MEMBERSHIP CORP. v LIGHT CO., 253 NC 610 (1961); second appeal 256 NC 56 (1961).

Subsection (a) of this section provides for allocation of territories to the various suppliers of electricity so as to prevent further duplication of facilities. Subsection (b) provides for the purchase of the franchise assets of a cooperative by a public utility, either existing or newly organized by the members of the cooperative.

Sec. 62-112. Transfers of franchises; mergers, consolidations and combinations of public utilities.--(a) No franchise now existing or hereafter issued under the provisions of this chapter shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition of control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the above provisions shall not apply to regular trading in listed securities on recognized markets.

(b) No sale of a franchise shall be approved by the Commission until the seller shall have filed with the Commission a statement under oath of all debts and claims against the seller, of which such seller has any knowledge or notice, (1) for gross receipts, use or privilege taxes due or to become due the State, as provided in the Revenue Act, (2) for wages due employees of the seller, other than salaries of officers and in the case of motor carriers (3) for unremitted C.O.D. collections due shippers, (4) for loss of or damage to goods transported, or received for transportation, (5) for overcharges on property transported, and, (6) for interline accounts due other carriers, together with a bond, if required by the Commission, payable to the State, executed by a surety company authorized to do business in the State, in an



amount double the aggregate of all such debts and claims conditioned upon the payment of the same within the amount of such bond as the amounts and validity of such debts and claims are established by agreement of the parties, or by judgment. This subsection shall not be applicable to sales by personal representatives of deceased or incompetent persons, receivers or trustees in bankruptcy under court order.

(c) No person shall obtain a franchise for the purpose of transferring the same to another, and an offer of such transfer within one year after the same was obtained shall be prima facie evidence that such certificate or permit was obtained for the purpose of sale.

SOURCE: From G. S. 62-121. 26, 62-121.62

Sec. 62-113. Effective date, suspension or revocation of franchises.--(a) Franchises shall be effective from the date issued unless otherwise specified therein, and shall remain in effect until terminated under the terms thereof, or until suspended or revoked as herein provided.

(b) Any franchise may be suspended or revoked, in whole or in part, in the discretion of the Commission, upon application of the holder thereof; or, after notice and hearing, may be suspended or revoked, in whole or in part, upon complaint, or upon the Commission's own initiative, for willful failure to comply with any provision of this chapter, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such franchise; provided, however, that any such franchise may be suspended by the Commission upon notice to the holder or lessee thereof without a hearing for any one or more of the following causes:

(1) For failure to provide and keep in force at all times security, bond, insurance or self-insurance for the protection of the public as required in Sec. 62-268 of this chapter.

(2) For failure to file and keep on file with the Commission applicable tariffs or schedules of rates as required in this chapter.

(3) For failure to pay any gross receipts, use or privilege taxes due the State of North Carolina within thirty (30) days after demand in writing from the agency of the State authorized by law to collect the same; provided, that this subdivision shall not apply to instances in which there is a bona fide controversy as to tax liability.

(4) For failure for a period of sixty (60) days after execution to pay any final judgment rendered by a court of

competent jurisdiction against any holder or lessee of a franchise for any debt or claim specified in Sec. 62-112(b)

(5) For failure to begin operations as authorized by the Commission within the time specified by order of the Commission, or for suspension of authorized operations for a period of thirty (30) days without the written consent of the Commission, save in the case of involuntary failure or suspension brought about by compulsion upon the franchise holder or lessee.

SOURCE: From G. S. 62-121.27, 62-121.63.

Sec. 62-114. Terms and conditions of franchises.--Each franchise shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, a motor carrier or other public utility is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the privileges granted by the franchise such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of a carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of a carrier or other public utility, the requirements established by the Commission under this chapter; provided, however, that no terms, conditions, or limitations shall restrict the right of a motor carrier of property only to add to its equipment and facilities over the routes, between the termini, or within the territory specified in the franchises, as the development of the business and the demands of the public shall require.

SOURCE: G. S. 62-121.16, 62-121.53.

Sec. 62-115. Contract carriers; issuance of permits; terms and conditions.--When the Commission issues a permit to any contract carrier, it shall specify in the permit, or amendment thereto, the business of the contract carrier covered thereby and the scope thereof and shall attach to it, at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations consistent with the character of the holder as a contract carrier as are necessary to carry out, with respect to the operations of such carrier, the requirements established by the Commission under Sec. 62-261, provided, that no terms, conditions, or limitations shall restrict the right of the carrier to substitute

or add contracts within the scope of the permit, as the development of the business and the demands of the public may require.

SOURCE: G. S. 62-121.17, 62-121.54.

Sec. 62-116. Issuance of partnership franchises.--No franchise shall be issued under this article to two or more persons until such persons have executed a partnership agreement, filed a copy of said agreement with the Commission, and indicated to the Commission, in writing, that they have complied with Article 14 of Chapter 66 relating to doing business under an assumed name.

SOURCE: From G. S. 62-121.18, 62-121.56.

Sec. 62-117. Issuance of temporary authority.--Upon the filing of an application in good faith for a franchise, the Commission may in its discretion, upon a finding that no other adequate existing service is available, pending its final decision on the application, issue to the applicant appropriate temporary authority to operate under such just and reasonable conditions and limitations as the Commission deems necessary or desirable to impose in the public interest; provided, however, that pending such final decision on the application, the applicant shall comply with all the provisions of this chapter, and with the lawful orders, rules and regulations of the Commission promulgated thereunder, applicable to holders of franchises, and upon failure of an applicant so to do, after reasonable notice from the Commission requiring compliance therewith in the particulars set out in the notice, and after hearing, the application may be dismissed by the Commission without further proceedings, and temporary authority issued to such applicant may be revoked.

SOURCE: From G. S. 62-121.14, 62-121.51, although general effect is new.

Sec. 62-118. Same or similar names prohibited.--No public utility holding or operating under a franchise issued under this chapter shall adopt or use a name used by any other public utility, or any name so similar to a name of another public utility as to mislead or confuse the public, and the Commission may, upon complaint, or upon its own initiative, in any such case require the public utility to discontinue the use of such name, preference being given to the public utility first adopting and using such name.

SOURCE: From G. S. 62-121.19, 62-121.57.

Sec. 62-119. Abandonment and reduction of service.---  
Upon finding that public convenience and necessity are no longer served, or that there is no reasonable probability of a public utility realizing sufficient revenue from a service to meet its expenses, the Commission shall have power, after petition, notice and hearing, to authorize by order any public utility to abandon or reduce such service.

SOURCE: G. S. 62-96.

Article 7.  
Rates of Public Utilities

Sec. 62-130. Commission to make rates for public utilities.--(a) The Commission shall make just and reasonable rates for all public utilities subject to its jurisdiction. A rate is made, fixed, established or allowed when it becomes effective pursuant to the provisions of this chapter.

(b) The Commission may make or approve in its discretion special passenger or excursion rates.

(c) The Commission may make, require or approve for intrastate shipments what are known as milling-in-transit, processing-in-transit, or warehousing-in-transit rates on grain, lumber to be dressed, cotton, peanuts, tobacco, or such other commodities as the Commission may designate.

(d) The Commission shall from time to time as often as circumstances may require, change and revise or cause to be changed or revised any rates fixed by the Commission, or allowed to be charged by any public utility.

SOURCE: From G.S. 60-89, 62-122, 62-127.

COMMENT: This article assembles the various sections relating to rates and charges which are presently distributed over the Railroad chapter, the Public Utilities Act of 1933, the Bus Act, the Truck Act and various special acts included under present Article 3, "Powers and Duties of the Commission." In so far as practical, the various sections dealing with the same subject have been merged and made equally applicable to all public utilities in order that the Commission's decisions and the decisions of the courts may be equally pertinent for all utilities. The principal rate making section is proposed Sec. 62-133, rewriting present G.S. 62-124, as construed in decisions of the North Carolina Supreme Court.

Sec. 62-131. Rates must be just and reasonable; service efficient.--(a) Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable.

(b) Every public utility shall furnish adequate, efficient and reasonable service.

SOURCE: From G.S. 62-66, 62-67.

Sec. 62-132. Rates established deemed just and reasonable.--The rates established by the Commission shall be deemed just and reasonable, and any rate charged by any public utility different from those so established shall be deemed unjust and unreasonable. Provided, however, that upon petition filed by any interested person, and a hearing thereon, if the Commission shall find the rates or charges collected to be other than the rates established by the Commission, and to be unjust, unreasonable, discriminatory or preferential, the Commission may enter an order awarding such petitioner and all other persons in the same class a sum equal to the difference between such unjust, unreasonable, discriminatory or preferential rates or charges and the rates or charges found by the Commission to be just and reasonable, non-discriminatory and nonpreferential, to the extent that such rates or charges were collected within two years prior to the filing of such petition.

SOURCE: G.S. 62-123.

Sec. 62-133. How rates fixed.--(a) In fixing the rates for any public utility subject to the provisions of this chapter, other than motor carriers, the Commission shall fix such rates as shall be fair both to the public utility and to the consumer.

(b) In fixing such rates, the Commission shall:

(1) Ascertain the fair value of the public utility's property used and useful in providing the service rendered to the public within this State, considering the reasonable original cost of the property less that portion of the cost which has been consumed by previous use recovered by depreciation expense, the replacement cost of the property, and any other factors relevant to the present fair value of the property. Replacement cost may be determined by trending such reasonable depreciated original cost to current cost levels, or by any other reasonable method.

(2) Estimate such public utility's revenues under the present and proposed rates.

(3) Ascertain such public utility's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation.

(4) Fix such rate of return on the fair value of the property as will enable the public utility by sound management to produce a fair profit for its stockholders, considering changing economic conditions and other factors, as they then exist, to maintain and expand its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

(5) Fix such rates to be charged by the public utility as will earn in addition to reasonable operating expenses ascertained pursuant to paragraph (3) of this subsection the rate of return fixed pursuant to paragraph (4) on the fair value of the public utility's property ascertained pursuant to paragraph (1).

(c) The public utility's property and its fair value shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time.

(d) The Commission shall consider all other material facts of record that will enable it to determine what are reasonable and just rates.

(e) The fixing of a rate of return shall not bar the fixing of a different rate of return in a subsequent proceeding.

SOURCE: G.S. 62-124.

COMMENT: This section rewrites present G.S. 62-124 for clarity and to codify important interpretations by the North Carolina Supreme Court. It is designed to present a more clearly stated general rate statute, carrying forward the present rate making process, with some refinements in the form and language of the section. For the North Carolina decisions, see North Carolina ex rel. Util. Comm. v. Public Service Co., 257 N.C. 233 (1962); North Carolina ex rel. Util. Comm. v. Piedmont Natural Gas Co., 254 N.C. 536 (1960); Util. Comm. v. CP&L, 250 N.C. 421 (1959); Util. Comm. v. Sou. Bell T. & T., 239 N.C. 333 (1954). Motor carrier rates are based on other factors, including operating ratios, G.S. 62-121.64 (f) and (g), proposed Sec. 62-146 (g) and (h).

Sec. 62-134. Change of rates; notice; suspension and investigation.--(a) Unless the Commission otherwise orders, no public utility shall make any changes in any rate which has been duly established under this chapter, except after thirty days notice to the Commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The public utility shall also give such notice, which may include notice by publication, of the proposed changes to other interested persons as the Commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. The Commission, for good cause shown in writing, may allow changes in rates without requiring the thirty days notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such public utility.

(b) Whenever there is filed with the Commission by any public utility any schedule stating a new rate or rates, the Commission may, either upon complaint or upon its own initiative, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate or rates. Pending such hearing and the decision thereon, the Commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before they become effective, suspend the operation of such rate or rates, but not for a longer period than 270 days beyond the time when such rate or rates would otherwise go into effect. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate shall go into effect at the end of such period. After hearing, whether completed before or after the rate goes into effect, the Commission may make such order with respect thereto as would be proper in a proceeding instituted after it had become effective.

(c) At any hearing involving a rate changed or sought to be changed by the public utility, the burden of proof shall be upon the public utility to show that the changed rate is just and reasonable.

SOURCE: From G.S. 62-71, 62-121.28 (f), 62-121.64 (e), 62-125.

COMMENT: This proposed section carries forward the requirement that any change in rates be subject to suspension and investigation as contained in present G.S. 62-71, relating to public utilities generally, G.S. 62-121.28 (f), relating to trucks, G.S. 62-121.64 (e), relating to buses and G.S. 62-125 applicable to public carriers generally, amended to fix a uniform suspension period of 270 days. These sections conflict with the last proviso in present G.S. 62-31, "Commission to keep itself informed as to utilities; reduction of rates," stating: "Provided, however, that nothing herein shall be construed to prevent any public service corporation under the jurisdiction of the Commission from reducing its rates either directly or by a change in classification." In Corp. Comm. v. Mfg. Co., 185 N.C. 17 (1923), the Court held the Commission had authority over both increases and decreases in rates. In State v. N.C. Motor Carriers Ass'n., 253 N.C. 432, 117 S.E. 2d 271 (1960), the Court declined to decide the question and remanded it to the Commission for further hearing.

Sec. 62-135. Temporary rates under bond.--(a) Notwithstanding an order of suspension of an increase in rates, any public utility except a common carrier may, subject to the provisions of subsections (b), (c) and (d) hereof:



(1) Apply to the Commission for authority to put such suspended rate or rates into effect on the date when it or they would have become effective, if not so suspended. Upon filing such application for a temporary rate increase, the public utility shall give such notice of the proposed changes, which may include notice by publication, to such interested parties as the Commission in its discretion may direct. The Commission shall set the application for temporary increase for preliminary hearing on affidavits within thirty days of the filing of the application. If the Commission finds probable cause for said increase or any part thereof based upon affidavits and the pleadings, it may authorize such temporary rate increase; or

(2) Put such suspended rate or rates into effect, without applying to the Commission for authority so to do, upon the expiration of 120 days after the date when such rate or rates would have become effective, if not so suspended.

(b) No rate or rates placed in effect pursuant to this section shall result in an increase of more than twenty per cent (20%) on any single rate classification of the public utility.

(c) No rate or rates shall be placed in effect pursuant to this section until the public utility has filed with the Commission a bond in a reasonable amount approved by the Commission, with sureties approved by the Commission, or an undertaking approved by the Commission, conditioned upon the refund in a manner to be prescribed by order of the Commission, to the persons entitled thereto of the amount of the excess and interest at the rate of six per cent (6%) per annum from the date that such rates were put into effect, if the rate or rates so put into effect are finally determined to be excessive.

(d) If the rate or rates so put into effect are finally determined to be excessive, the public utility shall make refund of the excess plus interest to its customers within thirty days after such final determination, and the Commission shall set forth in its final order the terms and conditions for such refund. If such refund is not paid in accordance with such order, any persons entitled to such refund may sue therefor, either jointly or severally, and be entitled to recover, in addition to the amount of the refund, all court costs and reasonable attorney fees for the plaintiff, to be fixed by the court.

SOURCE: G.S. 62-71.

COMMENT: This section is designed to place certain restrictions upon the present unlimited right of public utilities to put increases into effect under bond as provided in present G.S. 62-71.

Sec. 62-136. Investigation of existing rates; changing unreasonable rates; certain refunds to be distributed to customers.--(a) Whenever the Commission, after a hearing had after reasonable notice upon its own motion or upon complaint of anyone directly interested, finds that the existing rates in effect and collected by any public utility are unjust, unreasonable, insufficient or discriminatory, or in violation of any provision of law, the Commission shall determine the just, reasonable, sufficient and non-discriminatory rates to be thereafter observed and in force, and shall fix the same by order.

(b) All municipalities in the State are deemed to be directly interested in the rates and service of public utilities operating in such municipalities, and may institute or participate in proceedings before the Commission involving such rates or service. Any municipality may institute proceedings before the Commission to eliminate unfair and unreasonable discrimination in rates or service by any public utility between such complainant or its inhabitants and any other municipality or its inhabitants, and the Commission shall, upon complaint, after hearing afforded to the public utility affected and to all municipalities affected, have authority to remove such discrimination.

(c) If any refund is made to a distributing company operating as a public utility in North Carolina of charges paid to the company from which the distributing company obtains the energy, service or commodity distributed, the Commission may, if practicable, in cases where the charges have been included in rates paid by the customers of the distributing company, and where the company had a reasonable return exclusive of the refund, require said distributing company to distribute said refund among said customers in proportion to their payment of the charges refunded.

SOURCE: G.S. 62-72, 62-136.

COMMENT: Subsection (c) is a new provision designed to provide for refunds to customers of a utility when the utility in turn secures a refund from the basic supplier of the commodity distributed.

Sec. 62-137. Scope of rate case.--In setting a hearing on rates upon its own motion, upon complaint, or upon application of a public utility, the Commission shall declare the scope of the hearing by determining whether it is to be a general rate case, under Sec. 62-133, or whether it is to be a case confined to the reasonableness of a specific single rate, a small part of the rate structure, or some classification of users involving questions which do not require a determination of the entire rate structure and overall rate of return.

SOURCE: Util. Comm. v. Area Development, Inc., 257 N.C. 560 (1962).

COMMENT: The section codifies the present case law establishing a distinction between a "general rate case" involving the overall property valuation and a "complaint case" involving the reasonableness of a single rate.

Sec. 62-138. Utilities to file rates, service regulations and service contracts with Commission; to make public.--(a) Under such rules as the Commission may prescribe, every public utility: (1) shall file with the Commission all schedules of rates, service regulations and forms of service contracts, used or to be used within the jurisdiction of the Commission; and (2) shall keep copies of such schedules, service regulations and contracts open to public inspection.

(b) Every regular route common carrier of general commodities and every common carrier of passengers shall file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of property or passengers in intrastate commerce and all services in connection therewith between points on its own routes and between points on its own routes and points on the routes of other such common carriers, and if it establishes joint rates with other common carriers, it shall include in its schedules so filed such joint rates.

(c) Every irregular route common carrier shall file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of property in intrastate commerce between points within the area of its authorized operation, and if it establishes joint rates with other common carriers, it shall include in its schedules so filed such joint rates between points within the area of its own authorized operation and points on the line or route of such other common carriers.

(d) The schedules required by this section shall be published, filed, and posted in such form and manner and shall contain such information as the Commission may prescribe; and the Commission is authorized to reject any schedule filed with it which is not in compliance with this section. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) No public utility, unless otherwise provided by this chapter, shall engage in service to the public unless its rates for such service have been filed and published in accordance with the provisions of this section.

SOURCE: From G. S. 62-68, 62-121.29, 62-121.65, 62-130.

Sec. 62-139. Rates varying from schedule prohibited; refunding overcharge; penalty.--(a) No public utility shall directly or indirectly, by any device whatsoever, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this article, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed in such schedules.

(b) Any public utility in the State which shall willfully charge a rate for any public utility service in excess of that prescribed in the schedules of such public utility applicable thereto then filed under this article, and which shall omit to refund the same within thirty days after written notice and demand of the person overcharged, unless relieved by the Commission for good cause shown, shall be liable to him for double the amount of such overcharge, plus a penalty of ten dollars per day for each day's delay after thirty days from such notice or date of denial of relief by the Commission, whichever is later. Such overcharge and penalty shall be recoverable in any court of competent jurisdiction.

SOURCE: From G. S. 60-110, 62-69, 62-135, 62-138.

Sec. 62-140. Discrimination prohibited.--(a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section.

(b) The Commission shall make reasonable and just rules and regulations--

- (1) To prevent discrimination in the rates or services of public utilities.
- (2) To prevent the giving, paying or receiving of any rebate or bonus, directly or indirectly, or misleading or deceiving the public in any manner as to rates charged for the services of public utilities.

SOURCE: From G. S. 62-56, 62-70.

Sec. 62-141. Long and short hauls.--(a) Except when expressly permitted by the Commission, it shall be unlawful for any common carrier to charge or receive any greater compensation in the

aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this chapter to charge and receive as great compensation for a shorter as for a longer distance.

(b) Upon application to the Commission, common carriers may in special cases be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

SOURCE: G. S. 62-128, omitting second proviso as unnecessary.

Sec. 62-142. Contracts as to rates.--All contracts and agreements between public utilities as to rates shall be submitted to the Commission for inspection that it may be seen whether or not they are a violation of law or the rules and regulations of the Commission, and all arrangements and agreements whatever as to the division of earnings of any kind by competing public utilities shall be submitted to the Commission for inspection and approval insofar as they affect the rules and regulations made by the Commission to secure to all persons doing business with such utilities just and reasonable rates. The Commission may make such rules and regulations as to such contracts and agreements as the public interest may require.

SOURCE: G. S. 62-129.

Sec. 62-143. Schedule of rates to be evidence.--The schedule of rates fixed by statute or under this article, in suits brought against any public utility involving the rates of a public utility or unjust discrimination in relation thereto, shall be taken in all courts as prima facie evidence that the rates therein fixed are just and reasonable. Any such schedule when certified by a clerk of the Commission as a true copy of a schedule on file with the Commission shall be received in all courts as prima facie evidence of such schedule without further proof, and, if the clerk certifies that said schedule has been approved by the Commission, as prima facie evidence of such approval.

SOURCE: G. S. 62-132.

Sec. 62-144. Free transportation.--(a) All common carriers under the supervision of the Commission shall furnish free transpor-

tation to the members of the Commission, and, upon written authority of the Commission, such carriers shall also furnish free transportation to such persons as the Commission may designate in its employ or in the employ of the Department of Motor Vehicles for the inspection of equipment and supervision of safe operating conditions and of traffic upon the highways of the State.

(b) Except as provided in subsection (a), no common carrier shall, directly or indirectly, issue, give, tender, or honor any free fares except to its bona fide officers, agents, commission agents, employees and retired employees, and members of their immediate families: Provided, that common carriers under this article may exchange free transportation within the limits of this section and may accept as a passenger a totally blind person accompanied by a guide at the usual and ordinary fare charged to one person under such reasonable regulations as may have been established by the carrier and approved by the Commission.

(c) Any person except those permitted by law accepting free transportation shall be guilty of a misdemeanor, and on conviction shall be fined or imprisoned, or both, in the discretion of the court.

(d) Nothing in this section shall prohibit the carriage, storage or handling of property free or at reduced rates for the United States, State or municipal governments, or for charitable or educational purposes, or the use of passes for journeys wholly within this State which have been or may be issued for interstate journeys under the authority of the United States Interstate Commerce Commission.

SOURCE: From G. S. 60-92, 62-121.69, 62-133, 62-134.

COMMENT: This section is taken from present G.S. 62-133 and the "free carriage" section of the Bus Act, 62-121.69, with the addition of portions of G.S. 62-134 covering government and charitable shipments and retired employees. The present section controlling free carriage by rail and all other transportation companies, G.S. 62-134, contains ten itemized categories of persons who may be granted free carriage. Inasmuch as the Bus Act is the more recent expression of limitations upon free carriage, it is considered more in line with current legislative intent. Subsection (c) carries forward present G.S. 60-92 making it unlawful to accept unauthorized transportation.

Sec. 62-145. Rates between points connected by more than one route.--When there is more than one route between given points in North Carolina, and freight is routed or directed by the shipper

or consignee to be transported over a shorter route, and it is in fact shipped by a longer route between such points, the rate fixed by law or by the Commission for the shorter route shall be the maximum rate which may be charged, and it shall be unlawful to charge more for transporting such freight over the longer route than the lawful charge for the shorter route.

SOURCE: G. S. 62-137.

Sec. 62-146. Rates and service of motor common carriers.--

(a) It shall be the duty of every common carrier by motor vehicle to provide safe and adequate service, equipment, and facilities for transportation in intrastate commerce and to establish, observe and enforce just and reasonable regulations and practices relating thereto, and, in the case of property carriers, relating to the manner and method of presenting, marking, packing and delivering property for transportation in intrastate commerce.

(b) Except under special conditions and for good cause shown, a common carrier by motor vehicle authorized to transport general commodities over regular routes shall establish reasonable through routes and joint rates, charges, and classifications with other such common carriers by motor vehicle; and such common carrier may establish, with the prior approval of the Commission, such routes, joint rates, charges and classifications with any irregular route common carrier by motor vehicle, or any common carrier by rail, express, or water.

(c) It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, and the carrying of personal, sample and excess baggage.

(d) In case of joint rates between common carriers, it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein, which shall not unduly prefer or prejudice any of such participating carriers. Upon investigation and for good cause, the Commission may, in its discretion, prohibit the establishment of joint rates or service.

(e) Any person may make complaint in writing to the Commission that any rate, classification, rule, regulations, or practice in effect or proposed to be put into effect, is or will be in violation of this article. Whenever, after hearing, upon complaint

or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate demanded, charged, or collected by any common carrier or carriers by motor vehicle, or by any such common carrier or carriers in conjunction with any other common carrier or carriers, for transportation of property in intrastate commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate or the value of the service thereunder, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate or the minimum or maximum, or the minimum and the maximum rate thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective, and in the case of passenger carriers, the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes, and joint rates, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maximum or minimum, or maximum and minimum to be charged, and the terms and conditions under which such through routes shall be operated.

(f) Whenever, after hearing upon complaint or upon its own initiative, the Commission is of the opinion that the divisions of joint rates applicable to the transportation of property in intrastate commerce between a common carrier by motor vehicle and another carrier are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable division thereof to be received by the several carriers; and in cases where the joint rate or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers in accordance with the order from the date of filing the complaint or entry of order of investigation or such other dates subsequent thereto as the Commission finds justified, and in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) In any proceeding to determine the justness or reasonableness of any rate of any common carrier by motor vehicle, there shall not be taken into consideration or allowed as evidence any elements of value of the property of such carrier, good will, earning power, or the certificate under which such carrier is operating, and such rates shall be fixed and approved, subject to the provisions of subsection (h) hereof, on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their



operating revenues, at a ratio to be determined by the Commission; and in applying for and receiving a certificate under this chapter any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of every transferee of such certificate or of any part thereof.

(h) In the exercise of its power to prescribe just and reasonable rates and charges for the transportation of property in intrastate commerce by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon movement of traffic by the carrier or carriers for which rates are prescribed; to the need in the public interest of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers under honest, economical, and efficient management to provide such service.

(i) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith. This section shall be in addition to other provisions of this chapter which relate to public utilities generally, except that in cases of conflict between such other provisions and this section, this section shall prevail for motor carriers.

SOURCE: From G.S. 62-121.28; 62-121.64.

COMMENT: This section prescribes rules and regulations for fixing rates of motor carriers in greater detail and with somewhat stronger powers of regulation than is found for public utilities generally. It is, therefore, carried forward here from the Bus Act and the Truck Act by merging of the principal provisions of the respective two corresponding sections not covered by the general rate sections, in order to retain the present powers for motor carriers without attempting to apply them in detail to all public utilities. The operating ratio theory fixing rates for motor carriers is derived from G.S. 62-121.64 (f) of the Bus Act, applied to all motor carriers, under the present practice of the Commission, with amendments for clarity.

Sec. 62-147. Rates of motor contract carriers.--(a) It shall be the duty of every contract carrier to establish and observe reasonable minimum rates for any service rendered or to be rendered in the transportation of property or in connection therewith, and to establish and observe reasonable regulations and practices to be applied in connection with said reasonable minimum rates. It shall be the duty of every contract carrier to

file with the Commission, publish, and keep open for public inspection, in the form and manner prescribed by the Commission, schedules containing the minimum rates of such carrier actually maintained and charged for the transportation of property in intrastate commerce, and any rule, regulation, or practice affecting such rates and the value of the service thereunder. No such contract carrier, unless otherwise provided by this article, shall engage in transportation in intrastate commerce unless the minimum rates for such transportation by said carrier have been published, filed, and posted in accordance with the provisions of this article. No reduction shall be made in any such rate either directly or by means of any change in any rule, regulation or practice affecting such rate or the value of service thereunder, except after 30 days' notice of the proposed change filed in the aforesaid form and manner, but the Commission may, in its discretion and for good cause shown, allow such change upon less notice, or modify the requirements of this paragraph with respect to posting and filing of such schedules, either in particular instances or by general order applicable to special or peculiar circumstances or conditions. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. No such carrier shall demand, charge, or collect a less compensation for such transportation than the rates filed in accordance with this paragraph, as affected by any rule, regulation, or practice so filed, or as may be prescribed by the Commission from time to time, and it shall be unlawful for any such carrier, by the furnishing of special services, facilities, or privileges, or by any other device whatsoever, to charge, accept, or receive less than the minimum rates so filed or prescribed; provided, that any such carrier or carriers, or any class or group thereof, may apply to the Commission for relief from the provisions of this paragraph, and the Commission may, after hearing, grant such relief to such extent and for such time, and in such manner as in its judgment is consistent with the public interest and the policy declared in this chapter.

(b) Whenever, after hearing, upon complaint or upon its own initiative, the Commission finds that any minimum rate of any contract carrier by motor vehicle, or any rule, regulation, or practice of any such carrier affecting such minimum rate, or the value of the service thereunder, contravenes the policy declared in this chapter, or is in contravention of any provision of this chapter, the Commission may prescribe such just and reasonable minimum rate, or such rule, regulation, or practice as in its judgment may be necessary or desirable in the public interest and to promote such policy and will not be in contravention of any provision of this chapter. Such minimum rate, or such rule, regulation, or practice, so prescribed by the Commission, shall give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this chapter, which the Commission may find to be undue or inconsistent with the public interest and the policy declared in this chapter, and

the Commission shall give due consideration to the cost of the services rendered by such carriers, and to the effect of such minimum rate, or such rule, regulation, or practice, upon the movement of traffic by such carriers. All complaints shall state fully the facts complained of and the reasons for such complaint and shall be made under oath.

(c) Whenever there shall be filed with the Commission by any such contract carrier any schedule stating a rate for a new service or a reduced rate, directly or by means of any rule, regulation, or practice, for transportation in intrastate commerce, the Commission is hereby authorized and empowered upon complaint of interested parties or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested party, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, or such rule, regulation, or practice, but not for a longer period than 270 days beyond the time when such rate or rates would otherwise go into effect. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change in any rate or rule, regulation, or practice shall go into effect at the end of such period. After hearing, whether completed before or after the rate, or rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective.

(d) At any hearing before the Commission under this paragraph, the burden of proof shall be upon the carrier to show that the changed rate, rule, regulation or practice, or the proposed changed rate, rule, regulation or practice, is just and reasonable.

(e) If any provision of this section is in conflict with any other provisions of this chapter, the provisions of this section shall prevail.

SOURCE: From G.S. 62-121.30, 121.66.

Sec. 62-148. Rates on leased or controlled utility.--If any public utility operating in the State is owned, controlled or operated by lease or other agreement by any other public utility doing business in the State, its rates may, in the discretion of the Commission, be determined for such public utility by the rates prescribed for the public utility which owns, controls or operates it.

SOURCE: From G.S. 60-90.

COMMENT: This section is taken from present G.S. 60-90 covering rates on leased or controlled railroads, and is made applicable to all public utilities, in the discretion of the Commission. It is supplementary to the "affiliates" rule in the definition of a public utility in proposed 62-3 (23) (c).

Sec. 62-149. Unused tickets to be redeemed.--Whenever any ticket is sold and is not wholly used by the purchaser, it shall be the duty of the carrier selling such ticket to redeem it or the unused portion thereof at the price paid for it, or in such manner and at such price as the Commission shall prescribe by regulation.

SOURCE: From G.S. 60-99.

Sec. 62-150. Ticket may be refused intoxicated person.--The ticket agent of any common carrier of passengers shall at all times have power to refuse to sell a ticket to any person applying for the same who may at the time be intoxicated. The conductor, driver or other person in charge of any conveyance for the use of the traveling public shall at all times have power to prevent any intoxicated person from entering such conveyance. If any intoxicated person, after being forbidden by the conductor, driver or other person having charge of any such conveyance for the use of the traveling public, shall enter such conveyance, he shall be guilty of a misdemeanor.

SOURCE: G.S. 60-100.

Sec. 62-151. Passenger refusing to pay fare and violating rules may be ejected.--If any passenger shall refuse to pay his fare, or be or become intoxicated, or violate the rules of a common carrier, it shall be lawful for the conductor or driver of the train or bus, or other conveyance, and servants of the carrier, on stopping the conveyance, to put him and his baggage out of the conveyance, using no unnecessary force.

SOURCE: G. S. 60-103; 62-121.72 (g).

Sec. 62-152. Carriers to establish joint rates.--Any railroad is authorized and directed to enter into arrangements for the establishment of joint rates and through routes with common carriers by water and with other railroads for the transportation of persons and property transported wholly within the State of North Carolina, and it may, with approval of the

of the Commission, establish such joint rates with common carriers by motor vehicle under the provisions of Sec. 62-146.

SOURCE: G.S. 60-88.

COMMENT: This section is taken from present G.S. 60-88 directing all railroad companies to establish joint rates with other railroads and with common carriers by water, amended by adding the final phrase to permit establishment of such joint rates with motor carriers upon approval by the Commission, in order that the section may be compatible with present G.S. 62-121.28 providing for joint rates between motor carriers and rail and water carriers. The motor carrier provision is carried forward in proposed Sec. 62-146.

Sec. 62-153. Contracts of public utilities with certain companies and for services.--(a) All public utilities shall file with the Commission copies of contracts with any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency, and when requested by the Commission, copies of contracts with any person selling service of any kind. The Commission may disapprove, after hearing, any such contract if it is found to be unjust or unreasonable, and made for the purpose or with the effect of concealing, transferring or dissipating the earnings of the public utility. Such contracts so disapproved by the Commission shall be void and shall not be carried out by the public utility which is a party thereto, nor shall any payments be made thereunder.

(b) No public utility shall pay any fees, commissions or compensation of any description whatsoever to any affiliated or subsidiary holding, managing, operating, constructing, engineering, financing or purchasing company or agency for services rendered or to be rendered without first filing copies of all proposed agreements and contracts with the Commission and obtaining its approval.

SOURCE: G.S. 62-81, 62-102.

COMMENT: This section carries forward present 62-102, "Contracts of public service corporations," as a very important feature of public utility law, amended to provide that the utility shall submit all copies of contracts with holding, managing or operating companies and, when requested by the Commission, any contract with any person selling service of any kind, in lieu of the present language putting the burden on the Commission to request such contracts. Subsection (b) comes from 62-81, covering such payments where there is no formal written contract to file.

Sec. 62-154. Surplus power rates.--The Commission is authorized to investigate the sale of surplus electric power and the rates made for such energy, and to prescribe reasonable rules and rates for such sales.

COMMENT: This section is new and is designed primarily to give the Commission authority in the sale of surplus power. See Utilities Comm. v. Meade Corp., 238 N.C. 451 (1953).

Article 8.  
Securities Regulation

Sec. 62-160. Permission to pledge assets.--No public utility shall pledge its faith, credit, moneys or property for the benefit of any holder of its preferred or common stocks or bonds, nor for any other business interest with which it may be affiliated through agents or holding companies or otherwise by the authority of the action of its stockholders, directors, or contract or other agents, the compliance or result of which would in any manner deplete, reduce, conceal, abstract or dissipate the earnings or assets thereof, decrease or increase its liabilities or assets, without first making application to the Commission and by order obtain its permission so to do.

SOURCE: G.S. 62-81 (first clause).

COMMENT: This article is taken in its entirety from Secs. 62-81 through 62-92 of the Public Utilities Act of 1933, with changes only to establish a uniform numbering system. No amendments have been proposed for these sections. The second clause of G.S. 62-81 has been covered by Sec. 62-153 for clarity.

Sec. 62-161. Assumption of certain liabilities and obligations to be approved by the Commission; refinancing of public utility securities.--(a) No public utility shall issue any securities, or assume any liability or obligation as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect to the securities of any other person unless and until, and then only to the extent that, upon application by such utility, and after investigation by the Commission of the purposes and uses of the proposed issue, and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, the Commission by order authorizes such issue or assumption.

(b) The Commission shall make such order only if it finds that such issue or assumption is (1) for some lawful object within the corporate purposes of the public utility, (2) is compatible with the public interest, (3) is necessary or appropriate for or consistent with the proper performance by such utility of its service to the public and will not impair its ability to perform that service, and (4) is reasonably necessary and appropriate for such purpose.

(c) Any such order of the Commission shall specify the purposes for which any such securities or the proceeds thereof may be used by the public utility making such application.

(d) If a public utility shall apply to the Commission

for the refinancing of its outstanding shares of stock by exchanging or redeeming such outstanding shares, the exchange or redemption of such shares of any dividend rate or rates, class or classes, may be made in whole or in part, in the manner and to the extent approved by the Commission, notwithstanding any provisions of law applicable to corporations in general: Provided, that the proposed transactions are found by the Commission to be in the public interest and in the interest of consumers and investors, and provided that any redemption shall be at a price or prices, not less than par, and at a time or times, stated or provided for in the utility's charter or stock certificates.

SOURCE: G.S. 62-82.

Sec. 62-162. Commission may approve in whole or in part or refuse approval.--The Commission, by its order, may grant or deny the application provided for in the preceding section as made, or may grant it in part or deny it in part or may grant it with such modification and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises and may, from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate and may, by any such supplemental order, modify the provisions of any previous order as to the particular purposes, uses, and extent to which or the conditions under which any securities so authorized or the proceeds thereof may be applied; subject always to the requirements of the foregoing section.

SOURCE: G.S. 62-83.

Sec. 62-163. Contents of application for permission.--Every application for authority for such issue or assumption shall be made in such form and contain such matters as the Commission may prescribe. Every such application and every certificate of notification hereinafter provided for shall be made under oath, signed and filed on behalf of the public utility by its president, a vice-president, auditor, comptroller, or other executive officer duly designated for that purpose by such utility.

SOURCE: G.S. 62-84.

Sec. 62-164. Applications to receive immediate attention; continuances.--All applications for the issuance of securities or assumption of liability or obligation shall be placed at the head of the Commission's docket and disposed of promptly, and all such applications shall be disposed of in thirty (30) days after the same are filed with the Commission, unless it is necessary for good cause to continue the same for a longer period for consideration. Whenever such application is continued beyond thirty (30) days after the time it is filed, the order making such continuance must state



fully the facts necessitating such continuance.

SOURCE: G.S. 62-85.

Sec. 62-165. Notifying Commission as to disposition of securities.--Whenever any securities set forth and described in any such application for authority or certificate of notification as pledged or held unencumbered in the treasury of the utility shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of, by the utility, such utility shall, within ten days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission.

SOURCE: G.S. 62-86.

Sec. 62-166. No guarantee on part of State.--Nothing herein shall be construed to imply any guarantee or obligation as to such securities on the part of the State of North Carolina.

SOURCE: G.S. 62-87.

Sec. 62-167. Article not applicable to note issues and renewals; notice to Commission.--The provisions of the foregoing sections shall not apply to notes issued by a utility for proper purposes and not in violation of law, payable at a period of not more than two (2) years from the date thereof, and shall not apply to like notes issued by a utility payable at a period of not more than two (2) years from date thereof, to pay, retire, discharge, or refund in whole or in part any such note or notes, and shall not apply to renewals thereof from time to time not exceeding in the aggregate six (6) years from the date of the issue of the original note or notes so renewed or refunded. No such notes payable at a period of not more than two (2) years from the date thereof, shall, in whole or in part, directly or indirectly, be paid, retired, discharged or refunded by any issue of securities or another kind of any term or character or from the proceeds thereof without the approval of the Commission. Within ten (10) days after the making of any such notes, so payable at periods of not more than two (2) years from the date thereof, the utility issuing the same shall file with the Commission a certificate of notification, in such form as may be determined and prescribed by the Commission.

SOURCE: G.S. 62-88, 89.

COMMENT: The second sentence of G.S. 62-89 is moved to this section for clarity.

Sec. 62-168. Not applicable to debentures of court receivers.--Nothing contained in this article shall limit the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity.

SOURCE: G.S. 62-89.

Sec. 62-169. Periodical or special reports.--The Commission shall require periodical or special reports from each public utility issuing any security, including such notes payable at periods of not more than two (2) years from the date thereof, which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds.

SOURCE: G.S. 62-90.

Sec. 62-170. Failure to obtain approval not to invalidate securities or obligations.--(a) Securities issued and obligations and liabilities assumed by a public utility, for which the authorization of the Commission is required, shall not be invalidated because issued or assumed without such authorization therefor having first been obtained or because issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption.

(b) Securities issued or obligations or liabilities assumed in accordance with all the terms and conditions of the order of authorization therefor shall not be affected by a failure to comply with any provision of this article or rule or regulation of the Commission relating to procedure and other matters preceding the entry of such order of authorization or order supplemental thereto.

(c) A copy of any order made and entered by the Commission and certified by a clerk of the Commission approving the issuance of any securities or the assumption of any obligation or liability by a public utility shall be sufficient evidence of full and complete compliance by the applicant for such approval with all procedural and other matters required precedent to the entry of such order.

(d) Any public utility which willfully issues any such securities, or assumes any such obligation or liability, or makes any sale or other disposition of securities, or applies any securities or the proceeds thereof to purposes other than the purposes specified in an order of the Commission with respect thereto, contrary to the provisions of this article,

shall be liable to a penalty of not more than ten thousand dollars, but such utility is only required to specify in general terms the purpose for which any securities are to be issued, or for which any obligation or liability is to be assumed, and the order of the Commission with respect thereto shall likewise be in general terms.

SOURCE: G.S. 62-91.

Sec. 62-171. Commission may act jointly with agency of another state where public utility operates.--If a commission or other agency or agencies is empowered by another state to regulate and control the amount and character of securities to be issued by any public utility within such other state, then the Utilities Commission of the State of North Carolina shall have the power to agree with such commission or other agency or agencies of such other state on the issue of stocks, bonds, notes or other evidences of indebtedness by a public utility owning or operating a public utility both in such state and in this State, and shall have the power to approve such issue jointly with such commission or other agency or agencies and to issue joint certificate of such approval: Provided, however, that no such joint approval shall be required in order to express the consent to an approval of such issue by the State of North Carolina if said issue is separately approved by the Utilities Commission of the State of North Carolina.

SOURCE: G.S. 62-92.

## Article 9.

## Acquisition and Condemnation of Property

Sec. 62-180. Use of railroads and public highways.-- Any person operating electric power, telegraph or telephone lines or authorized by law to establish such lines, has the right to construct, maintain and operate such lines along any railroad or public highway, but such lines shall be so constructed and maintained as not to obstruct or hinder unreasonably the usual travel on such railroad or highway.

SOURCE: G.S. 56-1

COMMENT: This entire article is taken from present Article 1 of Chapter 56, Electric, Telegraph and Power Companies, together with four related sections from the railroad chapter relating to condemnation. No changes are proposed for the sections included in this article, except in Sec. 62-184 adopting uniform language with counterpart section G. S. 40-10, and Sec. 62-190 omitting the proviso that pipelines must originate within this State to qualify. See 15 N.C.L.R. 363, questioning the meaning and validity of such a proviso.

Sec. 62-181. Electric and hydro-electric power companies may appropriate highways; conditions.--Every electric power or hydro-electric power corporation, person, firm or copartnership which may exercise the right of eminent domain under the chapter Eminent Domain, where in the development of electric or hydro-electric power it shall become necessary to use or occupy any public highway, or any part of the same, after obtaining the consent of the public road authorities having supervision of such public highway, shall have power to appropriate said public highway for the development of electric or hydro-electric power: Provided, that said electric power or hydro-electric power corporation shall construct an equally good public highway, by a route to be selected by and subject to the approval and satisfaction of the public road authorities having supervision of such public highway: Provided further, that said company shall pay all damages to be assessed as provided by law, by the damming of water, the discontinuance of the road, and for the laying out of said new road.

SOURCE: G.S. 56-2.

Sec. 62-182. Acquisition of right of way by contract.-- Such telegraph, telephone, or electric power or lighting company has power to contract with any person or corporation, the owner

of any lands or of any franchise or easement therein, over which its lines are proposed to be erected, for the right of way for planting, repairing and preservation of its poles or other property, and for the erection and occupation of offices at suitable distances for the public accommodation. This section shall not be construed as requiring electric power or lighting companies to erect offices for public accommodation.

SOURCE: G.S. 56-4

Sec. 62-183. Grant of eminent domain; exception as to mills and water powers.---Such telegraph, telephone, electric power or lighting company shall be entitled, upon making just compensation therefor, to the right of way over the lands, privileges and easements of other persons and corporations, including rights of way for the construction, maintenance, and operation of pipe lines for transporting fuel to their power plants; and to the right to erect poles and towers, to establish offices, and to take such lands as may be necessary for the establishment of their reservoirs, ponds, dams, works, railroads, or sidetracks, or powerhouses, with the right to divert the water from such ponds or reservoirs, and conduct the same by flume, ditch, conduit, waterway or pipe line, or in any other manner, to the point of use for the generation of power at its said powerhouses, returning said water to its proper channel after being so used. Nothing in this section authorizes interference with any mill or power plant actually in process of construction or in operation; or the taking of water powers, developed or undeveloped, with the land adjacent thereto necessary for their development: Provided, however, that if the court, upon filing of the petition by such electric power or lighting company, shall find that any mill, excepting cotton mills now in operation, whether operated by water power or otherwise, together with the lands and easements adjacent thereto or used in connection therewith, or that any water power, developed or undeveloped, with land adjacent thereto necessary for its development, excepting any water power, right or property of any person, firm or corporation engaged in the actual service of the general public where such water power, right or property is being used or held to be used or to be developed for use in connection with or in addition to any power actually used by such person, firm or corporation serving the general public, is necessary for the development of any hydro-electric power plant which is to be operated for the purpose of generating electric power for sale to the general public, and that said electric power or lighting company is unable to agree for the purchase of such property with the owners thereof, and that the failure to acquire such property will affect the ability of such electric power or lighting company to supply power to the general public,

and that the taking of such mill or water power will be greatly more to the benefit of the public than the continued existence of such mill or the continuation of the existing ownership of such water power, then the court, upon such finding, shall make an order authorizing the condemnation of such property and easements in all respects as in the cases of other property referred to in this section. Any provisions in conflict with this chapter in any special charters granted before January thirty-first, one thousand nine hundred and seven, in respect to the exercise of the right of eminent domain are repealed.

SOURCE: G.S. 56-5.

Sec. 62-184. Dwelling house of owner, etc., may be taken under certain cases.--The dwelling house, yard, kitchen, garden or burial ground of the owner may be taken under Sec. 62-183 when the company alleges, and upon the proceedings to condemn makes it appear to the satisfaction of the court, that it owns or otherwise controls not less than seventy-five per cent of the fall of the river or stream on which it proposes to erect its works, from the location of its proposed dam to the head of its pond or reservoir; or when the Commission, upon the petition filed by the company, shall, after due inquiry, so authorize. Nothing in this section repeals any part or feature of any private charter, but any firm or corporation acting under a private charter may operate under or adopt any feature of this section.

SOURCE: G.S. 56-6.

COMMENT: This section amends G. S. 56-6 to conform with the language of G. S. 40-10 prohibiting condemnation of an owner's dwelling unless so authorized.

Sec. 62-185. Condemnation on petition; parties' interests only taken; no survey required.--When such telegraph, telephone, electric power or lighting company fails on application therefor to secure by contract or agreement such right of way for the purposes aforesaid over the lands, privilege or easement of another person or corporation, it is lawful for such company, first giving security for costs, to file its petition before the superior court for the county in which said lands are situate, or into or through which such easement, privilege or franchise extends, setting forth and describing the parcels of land, privilege or easement over which the way, privilege or right of use is claimed, the owners of the land, easement or privilege, and their place of residence, if known, and if not known that fact shall be stated, and such petition shall set forth the use, easement, privilege or other right claimed, and must be sworn to, and if the use or right sought be over

or upon an easement or right of way, it shall be sufficient to give jurisdiction if the person or corporation owning the essement or right of way be made a party defendant.

Only the interest of such parties as are brought before the court shall be condemned in any such proceedings, and if the right of way of a railroad or railway company sought to be condemned extends into or through more counties than one, the whole right and controversy may be heard and determined in one county into or through which such right of way extends.

It is not necessary for the petitioner to make any survey of or over the right of way, nor to file any map or survey thereof, nor to file any certificate of the location of its line by its board of directors.

SOURCE: G.S. 56-7.

Sec. 62-186. Copy of petition to be served.--A copy of such petition, with a notice of the time and place the same will be presented to the superior court, must be served on the persons whose interests are to be affected by the proceeding at least ten days prior to the presentation of the same to the said court.

SOURCE: G.S. 56-8.

Sec. 62-187. Proceedings as under eminent domain.--The proceedings for the condemnation of lands, or any easement or interest therein, for the use of telegraph, telephone, electric power or lighting companies, the appraisal of the lands, or interest therein, the duty of the commissioners of appraisal, the right of either party to file exceptions, the report of commissioners, the mode and manner of appeal, the power and authority of the court or judge, the final judgment, and the manner of its entry and enforcement, and the rights of the company pending the appeal, shall be as prescribed in Article 2 entitled Condemnation Proceedings of the chapter entitled Eminent Domain.

SOURCE: G.S. 56-9.

Sec. 62-188. Commissioners to inspect premises.--In considering the question of damages when the interest sought is over an easement, privilege or right of way, the commissioners may inspect the premises or rest their finding on such testimony as to them may be satisfactory.

SOURCE: G.S. 56-10.

Sec. 62-189. Powers granted corporations under chapter exercisable by persons, firms or copartnerships.--All the rights, powers and obligations given, extended to, or that may be exercised by any corporation or incorporated company under this chapter shall be extended to and likewise be exercised and are hereby granted unto all persons, firms or copartnerships engaged in or authorized by law to engage in the business herein described. Such persons, firms, copartnerships and corporations engaging in such business shall be subject to the provisions and requirements of the public laws which are applicable to others engaged in the same kind of business.

SOURCE: G.S. 56-3.

Sec. 62-190. Right of eminent domain conferred upon pipe line companies; other rights.--Any pipe line company transporting or conveying natural gas, gasoline, crude oil, coal in suspension, or other fluid substances by pipe line for the public for compensation, and incorporated under the laws of the State, or foreign corporations domesticated under the laws of North Carolina, may exercise the right of eminent domain under the provisions of the chapter, Eminent Domain, and for the purpose of constructing and maintaining its pipe lines and other works shall have all the rights and powers given railroads and other corporations by this chapter and acts amendatory thereof. Nothing herein shall prohibit any such pipe line company granted the right of eminent domain under the laws of this State from extending its pipe lines from within this State into another state for the purpose of transporting natural gas or coal in suspension into this State, nor to prohibit any such pipe line company from conveying or transporting natural gas, gasoline, crude oil, coal in suspension, or other fluid substances from within this State into another state. All such pipe line companies shall be deemed public utilities and shall be subject to regulation under the provisions of this chapter.

SOURCE: G.S. 60-146.

COMMENT: This section omits the requirement of G. S. 60-146 that the pipe line originate in North Carolina. See 15 NCLR 363, questioning such a provision.

Sec. 62-191. Flume companies exercising right of eminent domain become common carriers.--All flume companies availing themselves of the right of eminent domain under the provisions of the chapter Eminent Domain shall become common carriers of freight, for the purposes for which they are adapted, and shall be under the direction, control and supervision of the Commission in the same manner and for the same purposes as is by



law provided for other common carriers of freight.

SOURCE: G.S. 60-113.

Sec. 62-192. Map required for railroad condemnation.---

(a) Whenever it shall become necessary to condemn any land for the purposes of a railroad, at the time that the summons for such condemnation is served there shall also be served by the railroad company a map showing how the line of the road is to be located on the land sought to be condemned, and a profile showing the depth of the cuts and the height of the embankments on the land so sought to be condemned, and at what points on such land such cuts and embankments are to be located. This section shall not apply to street railways.

(b) Every railroad company shall, within a reasonable time after its road shall be constructed, cause to be made a map and profile thereof, and of the land taken or obtained for the use thereof, and shall file the same in the office of the Commission. Every such map shall be drawn on a scale and on paper to be designated by the Commission, and shall be certified and signed by the president or engineer of such company.

SOURCE: (a) G.S. 60-71; (b) 60-72.

Article 10.  
Transportation in General

Sec. 62-200. Duty to receive and forward freight tendered; penalty; regulations; changes.--(a) Agents or other officers of railroads and other common carriers whose duty it is to receive freight shall receive all articles of the nature and kind received by such carriers for transportation whenever tendered at a regular depot, station, terminal or boat landing, and every loaded car tendered at a side-track, or any warehouse connected with the railroad by a siding. The carrier shall forward such freight or cars by the route selected by the person tendering the freight under the existing laws. If such loaded car be tendered at any siding or warehouse at which there is no agent, notice shall be given to an agent at the nearest regular station at which there is an agent that such car is loaded and ready for shipment.

(b) The Commission shall make reasonable and just rules --

- (1) For the handling of freight and baggage at stations of all common carriers.
- (2) As to charges by any person engaged in the carriage of freight or express for the necessary handling and delivery of the same at all stations.

(c) The common carrier represented by any person unlawfully refusing to receive such freight shall forfeit and pay to the party aggrieved the sum of fifty dollars for each day such carrier refuses to receive such shipment of freight, and all damages actually sustained by reason of the refusal to receive freight.

SOURCE: G.S. 60-111, 62-55.

COMMENT: This article consists of various sections taken from present Chapters 60 and 62 relating to transportation generally by all common carriers, both of passengers and freight. The present sections in some instances refer only to rail carriers or to motor carriers but in many of the sections they apply to "common carriers" or to "transportation companies" and there does not appear any valid reason for continued distinction in the coverage of these sections between the different modes of transportation. The proposed sections have, therefore, been

made applicable to all common carriers unless by the very nature of the subject it must be limited to rails or trucks. In some cases the existing rules for trucks are at variance with those for rails without any apparent reason other than the historical difference in the time when they were enacted. The proposed sections are designed to begin the same legal treatment for the various carriers where possible.

Sec. 62-201. Duty to transport freight within a reasonable time.--(a) It shall be unlawful for any common carrier of property doing business in this State to omit or neglect to transport within a reasonable time any goods, merchandise or other articles of value received by it for shipment and billed to or from any place in this State, unless otherwise agreed upon between the carrier and the shipper, or unless the same be burned, stolen or otherwise destroyed, or unless otherwise provided by the Commission.

(b) Any common carrier violating any of the provisions of this section shall forfeit to the party aggrieved the sum of fifteen dollars for the first day and two dollars for each succeeding day of such unlawful detention or neglect where such shipment is made in carload lots, and in less quantities there shall be a forfeiture in like manner of ten dollars for the first day and one dollar for each succeeding day, but the forfeiture shall not be collected for a period exceeding thirty days.

(c) In reckoning what is a reasonable time for such transportation, it shall be considered that such common carrier has transported freight within a reasonable time if it has done so in the ordinary time required for transporting such articles of freight between the receiving and shipping stations. The Commission is authorized to establish reasonable times for transportation by the various modes of carriage which shall be held to be *prima facie* reasonable, and a failure to transport within such times shall be held *prima facie* unreasonable. This section shall be construed to refer not only to delay in starting the freight from the station where it is received, but to require the delivery at its destination within the time specified: Provided, that if such delay shall be due to causes which could not in the exercise of ordinary care have been foreseen or which were unavoidable, then upon the establishment of these facts to the satisfaction of the court trying the cause, the defendant common carrier shall

be relieved from any penalty for delay in the transportation of freight, but it shall not be relieved from the costs of such action. In all actions to recover penalties against a common carrier under this section, the burden of proof shall be upon such carrier to show where the delay, if any, occurred. The penalties provided in this section shall be in addition to the damages recoverable for failure to transport within a reasonable time.

SOURCE: G.S. 60-112.

COMMENT: Subsection (c) authorizes the Commission to fix reasonable times for transportation in lieu of the present statutory provision for 48 hours delay for each one hundred miles of distance.

Sec. 62-202. Freight charges to be at legal rates; penalty for failure to deliver to consignee on tender of same.---  
All common carriers doing business in this State shall settle their freight charges according to the rate stipulated in the bill of lading, provided the rate therein stipulated be in conformity with the classifications and rates made and filed with the North Carolina Utilities Commission in the case of intrastate shipments, by which classifications and rates all consignees shall in all cases be entitled to settle freight charges with such carriers; and it shall be the duty of such common carriers to inform any consignee of the correct amount due for freight according to such classification and rates. Upon payment or tender of the amount due on any shipment which has arrived at its destination according to such classification and rates, such common carrier shall deliver the freight in question to the consignee. Any failure or refusal to comply with the provisions hereof shall subject such carrier so failing or refusing to liability for actual damages plus a penalty of fifty dollars for each such failure or refusal, to be recovered by any consignee aggrieved by a suit in a court of competent jurisdiction.

SOURCE: G.S. 60-114.

COMMENT: This section amends G.S. 60-114 to delete the reference to interstate shipments, as being beyond state jurisdiction.

Sec. 62-203. Partial charges for partial deliveries.---  
Whenever any freight of any kind shall be received by any common carrier in this State to be delivered to any consignee in this State, and a portion of the same shall not have been re-

ceived at the place of destination, it shall not be lawful for such carrier to demand any part of the charges for freight or transportation due for such portion of the shipment as shall not have reached the place of destination. Such carrier shall be required to deliver to the consignee such portion of the consignment as shall have been received upon the payment or tender of the freight charges due upon such portion. But nothing in this section shall be construed as interfering with or depriving a consignor, or other person having authority, of his rights of stoppage in transit.

SOURCE: G.S. 60-117.

Sec. 62-204. Baggage and freight to be carefully handled.--All common carriers shall handle with care all baggage and freight placed with them for transportation, and they shall be liable in damages for any and all injuries to the baggage or freight of persons from whom they have collected fare or charged freight while the same is under their control. Upon proof of injury to baggage or freight in the possession or under the control of any such carrier, it shall be presumed that the injury was caused by the negligence of the carrier.

SOURCE: G.S. 60-119.

Sec. 62-205. Claims for loss or damage to goods; filing and adjustment.--(a) Every common carrier receiving property for transportation in intrastate commerce shall issue a bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it, or by any carrier participating in the haul when transported on a through bill of lading, and any such carrier delivering said property so received and transported shall be liable to the lawful holder of said bill of lading or to any party entitled to recover thereon for such loss, damage, or injury, notwithstanding any contract or agreement to the contrary; provided, however, the Commission may, by regulation or order, authorize or require any such common carrier to establish and maintain rates related to the value of shipments declared in writing by the shipper, or agreed upon as the release value of such shipments, such declaration or agreement to have no effect other than to limit liability and recovery to an amount not exceeding the value so declared or released, in which case, any tariff filed pursuant to such regulation or order shall specifically refer thereto; provided further, that a rate shall be afforded the shipper covering the full value of the goods shipped; provided further, that nothing in this section shall deprive any lawful holder of such bill

of lading of any remedy or right of action which such holder has under existing law; provided further, that the carrier issuing such bill of lading, or delivering such property so received and transported, shall be entitled to recover from the carrier on whose route the loss, damage, or injury shall have been sustained the amount it may be required to pay to the owners of such property.

(b) Every claim for loss of or damage to property while in possession of a common carrier, including every express company or person doing an express business within the State, shall be adjusted and paid within ninety days after the filing of such claim with the agent of such carrier at the point of destination of such shipment, or point of delivery to another common carrier, by the consignee, or at the point of origin by the consignor, when it shall appear that the consignee was the owner of the shipment: Provided, that no such claim shall be filed until after the arrival of the shipment, or some part thereof, at the point of destination, or until after the lapse of a reasonable time for the arrival thereof.

(c) In every case such common carrier shall be liable for the amount of such loss or damage, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods respectively herein prescribed shall subject each common carrier so failing to a penalty of fifty dollars for each and every such failure, to be recovered by any consignee aggrieved (or consignor, when it shall appear that the consignor was the owner of the property at the time of shipment and at the time of suit, and is, therefore, the party aggrieved), in any court of competent jurisdiction: Provided, that unless such consignee or consignor recover in such action the full amount claimed, no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid; and that no penalty shall be recoverable under the provisions of this section where claims have been filed by both the consignor and consignee, unless the time herein provided has elapsed after the withdrawal of one of the claims.

(d) A check shall be affixed to every parcel of baggage when taken for transportation by the agent or servant of a common carrier, if there is a handle, loop or fixture so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf. If such check be refused on demand, the common carrier shall

pay to such passenger the sum of ten dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare the same shall be refunded by the carrier.

(e) If a passenger, whose bag has been checked, shall produce the check and his baggage shall not be delivered to him, he may by an action recover the value of such baggage.

(f) Causes of action for the recovery of the possession of the property shipped, for loss or damage thereto, and for the penalties herein provided for, may be united in the same complaint.

(g) This section shall not deprive any consignee or consignor of any other rights or remedies existing against common carriers in regard to freight charges or claims for loss or damage to freight, but shall be deemed and held as creating an additional liability upon such common carriers.

(h) This section shall not apply to motor carriers of passengers.

SOURCE: (a) G.S. 62-121.31; (b) 60-120  
(c) 60-120; (d) 60-106;  
(e) 60-106; (f) 60-120;  
(g) 60-121.

COMMENT: This section is made inapplicable to busses because the present sections from which it derives apply only to trucks and trains.

Sec. 62-206. Notice of claims, statute of limitations for loss, damage or injury to property.--Any claim for loss, damage or injury to property while in the possession of a common carrier shall be filed by the claimant with the carrier in writing within nine (9) months after the same occurred, and the cause of action with respect thereto shall be deemed to have accrued at the expiration of thirty (30) days after the date of such notice, and action for the recovery thereon may be commenced immediately thereafter or at any time within two (2) years after notice in writing shall have been given to the claimant by the adverse party that the claim or any part thereof specified in such notice has been disallowed, and neither party shall by rule, regulation, contract, or otherwise, provide for a shorter time for filing such claims or for commencing actions thereon than the periods set out in this section.

SOURCE: G.S. 62-121.25.

Sec. 62-207. Joinder of causes of action.--To expedite the settlement of claims between shippers and common carriers, a shipper may join in the same complaint against a common carrier any number of claims for overcharges, or a common carrier may join in the same complaint any number of claims against a shipper for undercharges, whether such claims arose at the same time or in the course of shipments at different times; provided, that each such claim shall be so identified that the same and the allegations with respect thereto may be distinguished from other claims so joined in the complaint, and in cases in which the right of subrogation may be invoked the judgment shall specify the amount of recovery, if any, on each such claim. For the purpose of jurisdiction under this section the aggregate amount set out in the complaint shall be deemed the sum in controversy.

SOURCE: G.S. 62-121.24.

Sec. 62-208. Carrier's right against prior carrier.--Any common carrier shall have all the rights and remedies herein provided for against a common carrier from which it received the freight in question.

SOURCE: G.S. 60-122.

Sec. 62-209. Regulation of demurrage.--(a) The Commission shall make rules and fix rates governing demurrage and storage charges by common carriers and shall make rules governing railroad companies in the placing of cars for loading and unloading.

(b) No common carrier doing business in the State shall make any charge on account of demurrage while a car or other equipment, whether the same be refrigerated or not, is being loaded for shipment, until such car or such other equipment has remained at the place of loading for a period of time in excess of that approved by the Commission as free time for such car or such other equipment.

SOURCE: From G.S. 60-123, 62-59.

Sec. 62-210. Common carriers to settle promptly for cash-on-delivery shipments; penalty.--Every common carrier which shall fail to make settlement with the consignor of a cash-on-delivery shipment, either by payment of the moneys stipulated to be collected upon the delivery of the articles



so shipped or by the return to such consignor of the article so shipped, within twenty days after demand made by the consignor and payment or tender of payment by him of the lawful charges for transportation, shall forfeit and pay to such consignor a penalty of twenty-five dollars, where the value of the shipment is twenty-five dollars or less; and, where the value of the shipment is over twenty-five dollars, a penalty equal to the value of the shipment; the penalty not to exceed fifty dollars in any case: Provided, no penalty shall be collectible where the shipment, through no act of negligence of the common carrier is burned, stolen or otherwise destroyed: Provided further, that the penalties here named shall be cumulative and shall not be in derogation of any right the consignor may have under any other provision of law to recover of the common carrier damages for the loss of any cash-on-delivery shipment or for negligent delay in handling the same.

SOURCE: G.S. 60-126.

COMMENT: Proposed Sec. 62-273 carries forward additional provisions for C.O.D. shipments by motor carrier, declaring withholding of collections to be evidence of a willful conversion and a felony.

Sec. 62-211. Sale of unclaimed baggage or freight; notice; sale of rejected property; escheat.--(a) Any common carrier which has had in its possession on hand at any destination in this State any article whether baggage or freight, for a period of sixty days from its arrival at destination, which said carrier cannot deliver because unclaimed, may at the expiration of said sixty days sell the same at public auction at any point where in the opinion of the carrier the best price can be obtained: Provided, however, that notice of such sale shall be mailed to the consignor and consignee, by registered or certified mail, if known to such carrier, not less than fifteen days before such sale shall be made; or if the name and address of the consignor and consignee cannot with reasonable diligence be ascertained by such carrier, notice of the sale shall be published once a week for two consecutive weeks in some newspaper of general circulation published at the point of sale; Provided, that if there is no such paper published at such point, the publication may be made in any paper having a general circulation in the State: Provided further, however, that if the nondelivery of said article is due to the consignee's and consignor's rejection of it, then such article may be sold by the carrier at public or private sale, and at such time and place as will in the carrier's judgment net the best price, and this without further notice to either consignee or consignor, and without the necessity of publication.

(b) Where the article referred to in this section is live freight, or perishable freight, or freight of such low value as would not bring the accrued transportation and other charges if held for sixty days as provided in this section, the common carrier may, with or without advertisement, sell the same in such manner and at such time and place as will in its judgment best protect the interests of the carrier, the consignor and the consignee, and whenever practicable the consignor and consignee shall be notified of the proposed sale of such freight.

(c) The common carrier shall keep a record of the articles sold and of the prices obtained therefor, and shall, after deducting all charges and the expenses of the sale, including advertisement, if advertised, pay the balance to the owner of such articles on demand therefor made at any time within five years from the date of the sale. If no person shall claim the surplus within five years, such surplus shall be paid to the University of North Carolina.

SOURCE: (a) G.S. 60-131; (b) 60-132; (c) 60-130,  
60-133.

COMMENT: The time for demanding the excess of any sale over the freight charges in present 60-133 is extended from two to five years to conform with the refund provision of present 60-130.

Sec. 62-212. Discrimination between connecting lines.---  
All common carriers subject to the provisions of this chapter shall afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the forwarding and delivering of passengers and freight to and from their several lines and those connecting therewith, and shall not discriminate in their rates, routes and charges against such connecting lines, and shall be required to make as close connection as practicable for the convenience of the traveling public. Common carriers shall obey all rules and regulations made by the Commission relating to trackage. Irregular route motor carriers shall interchange traffic only with the approval of the Commission.

SOURCE: G.S. 62-143.

COMMENT: The last sentence is added to this section to conform with present G. S. 62-121.28(b), in Sec. 62-146(b) of this proposed Act.

Sec. 62-213. To establish and regulate stations for freight and passengers.--(a) The Commission is empowered and directed to require, where the public necessity demands, and it is demonstrated that the revenue received will be sufficient to justify it, the establishment of stations or terminals by any common carrier, to require the erection of depot accommodations commensurate with such business and revenue, and to require the erection of accommodations for loading and unloading livestock and for feeding, sheltering and protecting the same in transportation. The Commission shall not require any common carrier to establish any station nearer to another station than five miles.

(b) The Commission is empowered and directed to require a change of any station or terminal or the repair, addition to, or change of any station or terminal by any common carrier in order to promote the security, convenience and accommodation of the public.

(c) A common carrier which has established and maintained for a year or more a passenger station or freight depot at a point upon its road or route shall not abandon such station or depot, nor substantially diminish the accommodation furnished by the stopping of trains, except by consent of the Commission. Freight or passenger depots may be relocated upon the written approval of the Commission.

SOURCE: (a) G.S. 62-41; (b) 62-42, omitting last clause, which is covered in Sec. 62-237; (c) 62-53.

Sec. 62-214. To regulate shipment of inflammable substances.--The Commission is authorized and empowered to adopt and promulgate rules for the shipment of inflammable and explosive articles, cotton which has been partially consumed by fire, and such other like articles as in its opinion may render transportation dangerous. After the promulgation of such rules, no common carrier shall be required to receive or transport any such articles except when tendered in accordance with the said rules; nor shall such common carrier be liable for any penalty for refusal to receive such articles for shipment until all the rules prescribed by the Commission in regard to the shipment of the same shall be complied with.

SOURCE: G.S. 62-58.

Article 11.  
Railroads

Sec. 62-220. Powers of railroad corporations.--Every railroad corporation shall have power:

(1) To Survey and Enter on Land.--To cause such examination and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route; and for such purpose, by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damages which shall be done thereto.

(2) To Condemn Land under Eminent Domain.--To appropriate land and rights therein by condemnation, as provided in the chapter Eminent Domain.

(3) To Take Property by Grant.--To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

(4) To Purchase and Hold Property.--To purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railroad, the stations and other accommodations necessary to accomplish the object of its incorporation.

(5) To Grade and Construct Road.--To lay out its road, not exceeding one hundred feet in width, and to construct the same; to take, for the purpose of cuttings and embankments, as much more land as may be necessary for the proper construction and security of the road; and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided in the chapter Eminent Domain.

(6) To Intersect with Highways and Waterways.--To construct its road across, along or upon any stream, watercourse, street, highway, turnpike, railroad or canal which the route of its road shall intersect or touch; but the company shall restore the stream, watercourse, street, highway or turnpike, thus intersected or touched, to its former state or to such state as not unnecessarily to impair its usefulness. Nothing in this chapter shall be construed to authorize the erection of any bridge or any other obstruction across, in or over any stream or lake navigated by motor boats commensurate in size to sailboat, or sailboats or vessels, at the place where any bridge or other obstructions may be proposed to be placed, nor to authorize the construction of any railroad not already located in, upon or across any streets in any municipality without the assent of such municipality.

(7) To Intersect with Other Railroads.--To cross, intersect, join and unite its railroad with any other railroad at any point on its route and upon the grounds of such other railroad, with the necessary turnouts, sidings, switches and other conveniences in furtherance of the object of its connections. Every company whose railroad is or shall be hereafter intersected by any other railroad shall unite with the owners of such other railroad in forming such intersections and connections and grant the facilities aforesaid, and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by the Commission.

(8) To Transport Persons and Property.--To take and convey persons and property on its railroad or by water by the power or force of steam, electricity, or by any other power, and to receive compensation therefor.

(9) To Erect Stations and Other Buildings.--To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business.

(10) To Borrow Money, Issue Bonds and Execute Mortgages.--From time to time to borrow such sums of money as may be necessary for completing and finishing or operating its railroad, to issue and dispose of its bonds for any amount so borrowed, to mortgage its corporate property and franchises and to secure the payment of any debt contracted by the company for the purposes aforesaid; and the directors of the company may confer on any holder of any bond issued for money borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of such company at any time under such regulations as the directors may see fit to adopt.

(11) To Lease Rails.--To lease iron rails to any person for such time and upon such terms as may be agreed on by the contracting parties, and upon the termination of the lease by expiration, forfeiture or surrender, to take possession of and remove the rails so leased as if they had never been laid.

(12) To Establish Hotels and Eating Houses.--To purchase, lease, hold, operate or maintain eating houses, hotels and restaurants for the accommodation of the traveling public along the line of its road.

SOURCE: G.S. 60-37.

COMMENT: This article consists of sections from both Chapter 60 and 62 relating to railroads, which are not suitable for general application to the transportation article or the articles on rates, franchises and

general Commission powers and procedures. Several sections have been merged into other sections covering the same subject and some of the material has been renumbered to conform to the standard codification system. Many of the sections dealing with railroads from Chapter 60 have been deleted as being obsolete, as shown in the table of distribution of present sections. There have been no major substantive changes proposed in the sections included in this article.

Sec. 62-221. Engaging in unauthorized business.--(a) It shall be unlawful for any railroad company incorporated under the laws of this State, or any railroad company incorporated under the laws of any other state and operating one or more railroads in this State, to engage in any business other than the business authorized by its or their charter.

(b) Any railroad company violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in the discretion of the court.

SOURCE: G.S. 60-38.

Sec. 62-222. Agreements for through freight and travel.--The directors representing the stock held in the various railroad corporations are hereby authorized and empowered to enter into such agreements and terms with each other as to secure through freight and travel without the expense of transfer of freight, or breaking the bulk thereof, at different points along the lines, and for this purpose may use the road or roads and the rolling stock of such corporations or companies on such terms as may be agreed upon by them.

SOURCE: From G.S. 60-41.

Sec. 62-223. Intersection with highways.--Whenever the track of a railroad shall cross a highway or turnpike, such highway or turnpike may be carried under or over the track, as may be found most expedient; and in cases where an embankment or cutting shall make a change in the line of such highway or turnpike desirable, then the railroad company may take such additional lands for the construction of the road, highway or turnpike on such new line as may be deemed requisite. Unless the land so taken shall be purchased for the purposes aforesaid, compensation therefor shall be ascertained in the manner prescribed in the chapter Eminent Domain, and duly made by such corporation to the owners and persons interested in such land. The same when so taken shall become a part of such intersecting highway or turnpike in such manner and by such tenure as the adjacent parts of the same highway or turnpike may be held for highway purposes.

SOURCE: G.S. 60-42.

Sec. 62-224. Obstructing highways; defective crossings; notice; failure to repair after notice misdemeanor.--(a) Whenever, in their construction, the works of any railroad corporation shall cross established roads or ways, the corporation shall so construct its works as not to impede the passage or transportation of persons or property along the same. If any railroad corporation shall so construct its crossings with public streets, thoroughfares or highways, or keep, allow or permit the same at any time to remain in such condition as to impede, obstruct or endanger the passage or transportation of persons or property along, over or across the same, the governing body of the county, city or town, or other public road authority having charge, control or oversight of such roads, streets or thoroughfares may give to such railroad notice, in writing, directing it to place any such crossing in good condition, so that persons may cross and property be safely transported across the same.

(b) The notice may be served upon the agent of the offending railroad located nearest to the defective or dangerous crossing about which the notice is given, or it may be served upon the section master whose section includes such crossing. Such notice may be served by delivering a copy to such agent or section master, or by registered or certified mail addressed to either of such persons.

(c) If the railroad corporation shall fail to put such crossing in a safe condition for the passage of persons and property within thirty days from and after the service of the notice, it shall be guilty of a misdemeanor and shall be punished in the discretion of the court. Each calendar month which shall elapse after the giving of the notice and before the placing of such crossing in repair shall be a separate offense.

(d) This section shall in nowise be construed to abrogate, repeal or otherwise affect any existing law now applicable to railroad corporations with respect to highway and street crossings; but the duty imposed and the remedy given by this section shall be in addition to other duties and remedies now prescribed by law.

SOURCE: From G.S. 60-43, 60-44.

Sec. 62-225. Joint construction of railroads having same location.--Whenever two railroad companies shall, for a portion of their respective lines, embrace the same location of line, they may by agreement provide for the construction of so much of said line as is common to both of them, by one of the companies, and for the manner and terms upon which the business thereon shall be performed.

SOURCE: From G.S. 60-73.

Sec. 62-226. Cattle guards and private crossings; failure to erect and maintain misdemeanor.--Every company owning, operating or constructing any railroad passing through and over the enclosed land of any person shall, at its own expense, construct and constantly maintain, in good and safe condition, good and sufficient cattle guards at the points of entrance upon and exit from such enclosed land and shall also make and keep in constant repair crossings to any private road thereupon. Every railroad corporation which shall fail to erect and constantly maintain the cattle guards and crossings provided for by this section shall be liable to an action for damages to any party aggrieved, and shall be guilty of a misdemeanor and fined in the discretion of the court. Any cattle guard approved by the Commission shall be deemed a good and sufficient guard under this section.

SOURCE: From G.S. 60-48.

Sec. 62-227. Change of route of railroad.--The directors of any railroad corporation may by a vote of two-thirds of their whole number at any time alter or change the route, or any part of the route, of their road, if it shall appear to them that the line can be improved thereby, and they shall have the same right and power to acquire title to any lands required for the purpose of the company in such altered or changed route, as if the road had been located there in the first instance; but no such alteration shall be made in any city or town after the road shall have been constructed, unless the same is sanctioned by a vote of two-thirds of the corporate authorities of such city or town. In case of any alteration made in the route of any railroad after the company has commenced grading, compensation shall be made to all persons for injury so done to any lands that may have been donated to the company. When any route or line is abandoned in the exercise of the power herein granted, full compensation shall be made by the company for all money, labor, bonds or material contributed to the construction of the roadbed or its superstructure by those so interested by their contributions in the abandoned route or line. All the provisions of this chapter relative to the first location and to acquiring title to land shall apply to every such new or altered portion of the route.

SOURCE: G.S. 60-49.

Sec. 62-228. Obtaining temporary track across railroad.--Whenever any railroad line, track and right of way shall lie between any body of merchantable timber, quarry or other kind or class of heavy property requiring machinery for transportation and any body of navigable water over which such property could be floated or shipped, and the owner of such timber or property shall desire to transport such property to water for purposes of floating or shipping, such property owner shall have the right to file petition before the Commission for a right to cross such railroad with



any other railroad track or tramway. The procedure for the hearing of the petition shall be the same as other proceedings of the Commission. The Commission shall hear the facts and if it be found reasonably necessary that the railroad track and right of way shall be crossed by a temporary railroad track, the Commission shall so order and prescribe the payment of the expense and the cost.

SOURCE: G.S. 60-53.

Sec. 62-229. Shelter at division points required.--(a) It shall be the duty of every person that may now or hereafter own, control, or operate any line of railroad in this State, to erect and maintain at every division point where cars are regularly taken out of trains for repairs or construction work, or where other railroad equipment is regularly made, repaired, or constructed, a building or shed with a suitable and sufficient roof over the repair and construction track or tracks so as to provide that all men or employees permanently employed in the construction and repair of cars, trucks, or other railroad equipment of whatever description shall be under shelter and protected during snows, rains, sleet, hot sunshine, and other inclement weather: Provided, the Commission shall have the power to direct the points at which sheds shall be erected, and the character of the sheds: Provided further, that such order shall only be made after a hearing of which public notice shall have been given.

(b) Any person failing to comply with the requirements of this section shall be guilty of a misdemeanor, and for each offense shall be fined not less than one hundred dollars nor more than five hundred dollars. Each day of such failure shall constitute a separate offense.

SOURCE: From G.S. 60-54.

Sec. 62-230. Maximum working hours and continuous service of employees; penalty; Commission to enforce.--(a) It shall be unlawful for any railroad company, its officers or agents, subject to this article, to require or permit any employee, subject to this article, to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such railroad company shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: Provided, that no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a period longer than nine hours in any twenty-four-hour period in

all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period or not exceeding three days in any week: Provided further, the Commission may, after a full hearing in a particular case and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

(b) Any such railroad company, or any officer or agent thereof, requiring or permitting any employee to go, be or remain on duty in violation of this section shall be liable to a penalty of not to exceed five hundred dollars for each and every violation, to be recovered in suit or suits to be brought in the name of the State of North Carolina on relation of the Commission in the superior court of Wake County or of the county in which the violation of this article occurred; and it shall be the duty of the said Commission to bring such suits upon satisfactory information lodged with it; but no such suit shall be brought after the expiration of one year from date of such violation; and it shall be the duty of said Commission to lodge with the proper solicitors information of any such violations as may come to its knowledge. In all prosecutions under this article the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: Provided, that the provisions of this article shall not apply to any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time the said employee left a terminal, and which could not have been foreseen: Provided further, that the provisions of this article shall not apply to the crews of wrecking or relief trains.

(c) It shall be the duty of the Commission to execute and enforce the provisions of this article, and all powers granted to the Commission are extended to it in the execution thereof.

SOURCE: From G.S. 60-56, 60-57, 60-58.

Sec. 62-231. Union depots required under certain conditions.--The Commission is empowered and directed to require, when practicable, and when the necessities of the case, in its judgment, require, any two or more railroads which now or hereafter may enter any city or town to have one common or union passenger depot for the security, accommodation and convenience of the traveling public, and to unite in the joint undertaking and expense of erecting, constructing and maintaining such union passenger depot, commensurate with the business and revenue of such railroad companies or corporations, on such terms, regulations,

provisions and conditions as the Commission shall prescribe. The railroads so ordered to construct a union depot shall have power to condemn land for such purpose, as in case of locating and constructing a line of railroad: Provided, that nothing in this section shall be construed to authorize the Commission to require the construction of such union depot should the railroad companies at the time of application for said order have separate depots, which, in the opinion of the Commission, are adequate and convenient and offer suitable accommodations for the traveling public.

SOURCE: G.S. 62-43.

Sec. 62-232. Construction of sidetracks.--The Commission is empowered and directed to require the construction of sidetracks by any railroad company to industries already established or to be established: Provided, it is shown that the proportion of such revenue accruing to such sidetrack is sufficient within five years to pay the expenses of its construction. This shall not be construed to give the commission authority to require railroad companies to construct sidetracks more than five hundred feet in length.

SOURCE: G.S. 62-45.

Sec. 62-233. Operation according to public schedule; certain trains and connections may be required.--(a) Every railroad corporation shall start and run its cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junction of other railroads and at usual stopping places established for receiving and discharging way passengers and freights for that train, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the freight or fare legally authorized therefor, and shall be liable to the party aggrieved, in an action for damages, for any neglect or refusal in the premises.

(b) The Commission is empowered and directed to require, when practicable and when the necessities of the traveling public, in the judgment of the Commission, demand, that any railroad in this State shall install and operate one or more passenger or freight trains over its road, and also require any two or more railroads having intersecting points to make close connection at such points: Provided, that no order under this section shall be made unless the business of the railroad justifies it.

SOURCE: G.S. 60-75, 62-46.

Sec. 62-234. May authorize operation of fast mail trains; discontinuance of passenger service.--The Commission is hereby

empowered, whenever it shall appear wise and proper to do so, to authorize any railroad company to run one or more fast mail trains over its road, which shall stop only at such stations on the line of the road as may be designated by the company: Provided, that in addition to such fast mail train such railroad company shall run at least one passenger train in each direction over its road on every day except Sunday, which shall stop at every station on the road at which passengers may wish to be taken up or put off: Provided further, that nothing in this section shall be construed as preventing the running of local passenger trains on Sunday. The Commission shall have the power in any case in which the convenience and necessity of the traveling public do not require the running of passenger trains upon its railroad to authorize such railroad company to cease the operation of passenger trains as long as the convenience and necessity of the traveling public shall not require such operation.

SOURCE: G.S. 62-47.

Sec. 62-235. To inspect railroads as to equipment and facilities, and to require repair.--The Commission is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees; and if any are found by it to be unsafe, it shall at once notify and require the railroad company to put the same in repair.

SOURCE: From G.S. 62-48.

COMMENT: This proposed section is taken from present 62-48, amended to include the safety of railroad employees with the safety of the public in the scope of the Commission's safety inspection.

Sec. 62-236. To require installation and maintenance of block system and safety devices; automatic signals at railroad intersections.--(a) The Commission is empowered and directed to require any railroad company to install and put in operation and maintain upon the whole or any part of its road a block system of telegraphy or any other reasonable safety device, but no railroad company shall be required to install a block system upon any part of its road unless at least eight trains each way per day are operated on that part.

(b) The Commission is empowered and directed to require, when public safety demands, where two or more railroads cross each other at a common grade, or any railroad crosses any stream or harbor by means of a bridge, to install and maintain such a system of interlocking or automatic signals as will render it safe for engines and trains to pass over such crossings or bridge without stopping, and to apportion the cost of installation and maintenance between said railroads as may be just and proper.

SOURCE: From G.S. 62-49, 62-51.

Sec. 62-237. To regulate crossings and to abolish grade crossings.--The Commission may require the raising or lowering of any tracks or roadway at any grade crossing in a road or street not forming a link in or part of the State Highway System and designate who shall pay for the same by partitioning the cost of said work and the maintenance of such crossing among the railroads and municipalities interested in accordance with the formula provided for grade crossing alterations or eliminations on the State Highway System in G.S. 136-20 (b).

SOURCE: From G.S. 62-42, 62-50.

COMMENT: This section amends G.S. 62-50 to conform with G.S. 136-20, placing control of all crossings in the State Highway System under the State Highway Commission.

Sec. 62-238. To require extension or contraction of railroad switching limits.--(a) The Commission may require, after notice and hearing to affected persons, the extension or contraction of the switching limits of any railroad or of any terminal or junction served by more than one railroad, in order to prevent discrimination or to serve the public convenience and necessity.

(b) The boundaries of switching limits which have been or may be established hereunder shall be boundaries to be observed by the railroad company, carrier or carriers whether or not the traffic moving into said boundaries or out of said boundaries is either interstate or intrastate in character.

(c) The failure or refusal of any railroad company, carrier or carriers to conform to or obey any decision, rule, regulation or order made by the Commission under the provisions of this section shall subject said railroad company, carrier or carriers refusing or failing to comply herewith to a penalty of five hundred dollars (\$500.00); and each day that such failure or refusal to conform to or obey any decision, rule, regulation or order of the Commission shall subject said railroad company, carrier or carriers to a separate and distinct penalty of five hundred dollars (\$500.00), the same to be certified to and prosecuted by the Attorney General.

SOURCE: G.S. 62-56.1.

Sec. 62-239. To fix rate of speed through municipalities; procedure.--(a) If a railroad company is of the opinion that an ordinance of a municipality through which a line of its railroad passes regulating the speed at which trains may run while passing through said municipality is unreasonable or oppressive, such railroad company may file its petition before the Commission,

setting forth all the facts, and asking relief against such ordinance, and that the Commission prescribe the rate of speed at which trains may run through said municipality. Upon the filing of the petition a copy thereof shall be mailed, by registered or certified mail, to the mayor or chief officer of the town or municipality, together with a notice from the Commission, setting forth that on a day named in the notice the petition of the railroad company will be heard, and that the municipality named in the petition will be heard at that time in opposition to the prayer of the petition. And upon the return day of the notice the Commission shall hear the petition, but any hearing granted by the Commission shall be had at the municipality where the conditions complained of are alleged to exist, or some member of the said Commission shall take evidence, both for the petition and against it, at such municipality, and report to the full Commission before any decision is made by the Commission.

(b) If the Commission finds that such ordinance is reasonable and just the petition shall be dismissed, and the petitioner shall be taxed with the cost. If the Commission is of the opinion that the ordinance is unreasonable, it shall prescribe the maximum rates of speed for passing through such municipality. Thereafter, the railroad company may run its trains through such municipality at speeds not greater than those prescribed by the Commission, and the ordinance adjudged to be unreasonable shall not be enforced against such railroad company.

(c) If the judgment of the Commission is in favor of the petitioner, the Commission may make such order as to the payment of the costs as shall seem just. It may require either party to pay the same or it may divide the same.

SOURCE: G.S. 62-60.

Sec. 62-240. Injury to passenger while in prohibited places.--If any passenger on any railroad is injured in any portion of a train where passengers are prohibited by notice conspicuously posted in its passenger cars, such railroad shall not be liable for the injury, provided the railroad has furnished sufficient room within its passenger cars for the proper accommodation of all passengers on the train.

SOURCE: G.S. 60-105.

Sec. 62-241. Negligence presumed from killing livestock.--When any cattle or other livestock shall be killed or injured by the engine or cars running upon any railroad, it shall be prima facie evidence of negligence on the part of the railroad company in any action for damages against such company: Provided, that no person shall be allowed the benefit of this section unless he shall bring his action within six months after his cause of action shall have accrued.

SOURCE: G.S. 60-81.

Sec. 62-242. Liability of railroads for injuries to employees; fellow-servant rule; defective machinery; contributory negligence; assumption of risk; contracts void.--(a) Any servant or employee of any railroad company operating in this State who shall suffer injury to his person, or the personal representative of any such servant or employee who shall have suffered death in the course of his services or employment with such company, by the negligence, carelessness or incompetence of any other servant, employee or agent of the company, or by any defect in the machinery, ways or appliances of the company, shall be entitled to maintain an action against such company. Any contract or agreement, expressed or implied, made by any employee of such company to waive the benefit of this section shall be null and void.

(b) Every common carrier by railroad shall be liable in damages to any person suffering injury while he is employed by such carrier, or in the case of the death of such employee, to his or her personal representative, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engine, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(c) In all actions hereafter brought against any common carrier by railroad to recover damages for personal injury to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: Provided, however, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(d) In any action brought against any common carrier under or by virtue of any of the provisions of this section to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risk of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee, or the death or injury was caused by negligence.

(e) Any contract, rule, regulation or device whatsoever, the purpose and intent of which shall be to enable any common carrier by railroad to exempt itself from any liability created by this section, shall to that extent be void: Provided, that in any action brought against such common carrier, under and by virtue of any of the provisions of this section, such common carrier may set off therein any sum it has contributed or paid to

any insurance or relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto, on account of the injury or death for which such action was brought.

(f) The provisions of this section relating to liability for damages shall also apply to logging roads and tramroads.

(g) The term "common carrier" as used in this section shall include the receiver or receivers, or other persons or corporations charged with the duty of the management of the business of a common carrier. The term "employee" or "servant" as used in this section shall include any person carried on the payroll of such railroad company and required to be on its property regardless of whether such person is receiving compensation at the time or not.

SOURCE: G.S. 60-64 to 70.

Sec. 62-243. Violation of rules causing injury; damages.-- If any railroad company doing business in this State shall, in violation of any rule or regulation provided by the Commission, inflict any wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in an action between individuals, except that in case of willful violation of law such railroad company shall be liable to exemplary damages: Provided, that all suits under this chapter shall be brought within one year after the commission of the alleged wrong or injury.

SOURCE: G.S. 62-146.

Sec. 62-244. Certain employees to wear badges.--Every conductor, baggage-master, engineer, brakeman or other servant of any railroad corporation employed on a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters of the title of the corporation by which he is employed. No conductor or collector without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office.

SOURCE: G.S. 60-3.



Article 12  
Motor Carriers

Sec. 62-260. Exemptions from regulations.--(a) Nothing in this chapter shall be construed to include persons and vehicles engaged in one or more of the following services by motor vehicle if not engaged at the time or other times in the transportation of other passengers or other property by motor vehicle for compensation:

(1) Transportation of passengers or property for or under the control of the United States government, or the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State;

(2) Transportation of passengers by taxicabs when not carrying more than six (6) passengers or transportation by other motor vehicles performing bona fide taxicab service and not carrying more than six (6) passengers in a single vehicle at the same time when such taxicab or other vehicle performing bona fide taxicab service is not operated on a regular route or between fixed termini; provided, no taxicab while operating over the regular route of a common carrier outside of a municipality and a residential and commercial zone adjacent thereto, as such zone may be determined by the Commission as provided in (8) of this subsection, shall solicit passengers along such route, but nothing herein shall be construed to prohibit a taxicab operator from picking up passengers along such route upon call, sign or signal from prospective passengers;

(3) Transportation by motor vehicles owned or operated by or on behalf of hotels while used exclusively for the transportation of hotel patronage between hotels and local railroad or other common carrier stations;

(4) Transportation of passengers to and from airports and passenger airline terminals when such transportation is incidental to transportation by aircraft;

(5) Transportation of passengers by trolley buses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service;

(6) Transportation by motor vehicles used exclusively for the transportation of passengers to or from religious services;

(7) Transportation of bona fide employees of an industrial plant to and from their regular employment;

(8) Transportation of passengers when the movement is within a municipality exclusively, or within contiguous municipalities

and within a residential and commercial zone adjacent to and a part of such municipality or contiguous municipalities; provided, the Commission shall have power in its discretion, in any particular case, to fix the limits of any such zone;

(9) Transportation in bulk of sand, gravel, dirt, debris, and other aggregates, or ready-mixed paving materials for use in street or highway construction or repair;

(10) Transportation of newspapers;

(11) Transportation of insecticides, fungicides and the ingredients thereof; transportation of farm, dairy or orchard products from farm, dairy or orchard to warehouse, creamery, or other original storage or market;

(12) Transportation for and under the control of co-operative associations organized and operating under the Federal Agricultural Marketing Act, U.S.C.A. Title 12, Section 1141(j), or under the State Co-operative Marketing Act, Chapter 54, Subchapter 5, General Statutes of North Carolina, as amended, or for any federation of such co-operative associations; provided, such federation possesses no greater powers or purposes than such co-operative associations;

(13) Transportation of livestock, or fish, including shellfish and shrimp, but not including manufactured products thereof;

(14) Transportation of raw products of the forest, including firewood, logs, crossties, stavebolts, pulpwood, and rough lumber, but not including manufactured products therefrom;

(15) Pick-up, delivery, and transfer service for railroads, express companies, water carriers and motor carriers in connection with their respective line-haul services within the commercial zone of any municipality, as defined by the Commission between their terminals and places of collection or delivery of freight;

(16) Transportation by a bona fide private carrier, as defined in Sec. 62-3(22);

(17) Transportation of any commodity anywhere of a character not hauled in the ordinary course of business by a common carrier by motor vehicle.

(b) The Commission shall have jurisdiction to fix rates of carriers of passengers operating as described in (5) and (8) of subsection (a) of this section in the manner provided in this chapter, and shall have jurisdiction to hear and determine controversies with respect to extensions and services, and the Commission's rules of practice shall include appropriate provisions

for bringing such controversies before the Commission and for the hearing and determination of the same; provided nothing in this paragraph shall include taxicabs.

(c) The Commission may conduct investigations to determine whether any person purporting to operate under the exemption provisions of this section is, in fact, so operating, and make such orders as it deems necessary to enforce compliance with this section.

(d) The venue for any action commenced to enforce compliance with the terms of this article against any person purporting to operate under any of the exemptions provided in this section shall be in one of the counties of the judicial district wherein the violation is alleged to have taken place and such person shall be entitled to trial by jury.

(e) None of the provisions of this section nor any of the provisions of this Chapter shall be construed so as to prohibit or regulate the transportation of property by any motor carrier when the movement is within a municipality or within contiguous municipalities and within a zone adjacent to and commercially a part of such municipality or contiguous municipalities, as defined by the Commission. The Commission shall have the power in its discretion, in any particular case, to fix the limits of any such zone. Nothing herein shall be construed as an abridgement of the police powers of any municipality over such operation wholly within any such municipality. Nothing in this Chapter shall be construed to prohibit or regulate the transportation of household effects of families from one residence to another by persons who do not hold themselves out as being, and are not generally engaged in the business of transporting such property for compensation.

SOURCE: G.S. 62-121.8, 62-121.47.

COMMENT: This article consists of those portions of the Bus Act and the Truck Act which have not been placed in the general transportation article or other articles of general application. The Bus Act and the Truck Act are substantially identical in all respects, except one uses the term "motor carriers of property" and the other uses the term "motor carriers of passengers." The Bus Act was enacted in 1949 in practically the same form and sections as the Truck Act of 1947, with the change of the word "property" to the word "passengers." To this extent, the two lengthy Acts duplicate each other. For this reason the two Acts have been combined in this article on Motor Carriers when the sections are applicable to both trucks and buses in the same fashion, except for those particular instances which

can involve by the nature of the subject only passengers or property. No substantial amendments to the substance of the Acts have been proposed, although there have been minor changes to meet suggestions that are noted under the respective sections. In a few instances there are provisions presently applicable only to trucks or to buses, which are proposed to apply equally to both types of carriers.

Sec. 62-261. Additional powers and duties of the Commission applicable to motor vehicles.--The Commission is hereby vested with the following powers and duties:

(1) To regulate the transportation of newspapers, mail, and light express by buses.

(2) To supervise the operation of passenger bus stations in any manner necessary to promote harmony among the carriers using such stations and efficiency of service to the traveling public.

(3) To prescribe qualifications and maximum hours of service of drivers and their helpers, and rules regulating safety of operation and equipment; and in the interest of uniformity of intrastate and interstate rules and regulations applicable within the State with respect to maximum hours of service of vehicle drivers and their helpers, and safety of operation and equipment, the Utilities Commission may adopt and enforce the rules and regulations adopted and promulgated by the Interstate Commerce Commission with respect thereto, insofar as the Utilities Commission finds the same to be practical and advantageous for application in this State and not in conflict with this article. In order to promote safety of operation of motor carriers, the Utilities Commission may avail itself of the assistance of any other agency of the State having special knowledge of such matters and it may make such investigations and tests as may be deemed necessary to promote safety of equipment and operation of vehicles upon the highways.

(4) For the purpose of carrying out the provisions of this article, the Utilities Commission may avail itself of the special information of the State Highway Commission in promulgating safety requirements and in considering applications for certificates or permits with particular reference to conditions of the public highway or highways involved, and the ability of the said public highway or highways to carry added traffic; and the State Highway Commission, upon request of the Utilities Commission, shall furnish such information.

(5) The Commission may, without prior notice and hearing, make and enter any order, rule, regulation, or requirement, not affecting rates, upon unanimous finding by the Commission of the existence of an emergency and make such order, rule, regulation or requirement effective upon notice given to each affected motor carrier by registered mail, or by certified mail, pending a hearing thereon as provided in this subdivision. It shall not be necessary for the Commission to give notice to the carriers affected or to hold a hearing prior to a revision in the rules regarding procedures to be followed in filing rates. Any such emergency order, rule, regulation or requirement shall be subject to continuation, modification, change, or revocation after notice and hearing and all such emergency orders, rules, regulations and requirements shall be supplanted and superseded by any final order, rule, regulation or requirement entered by the Commission.

(6) The Commission shall regulate brokers and make and enforce reasonable requirements respecting their licenses, financial responsibility, accounts, records, reports, operations and practices.

(7) The Commission and its duly authorized inspectors and agents shall have authority at any time to enter upon the premises of any motor carrier, subject to the provisions of this article, for the purpose of inspecting any motor vehicles and equipment used by such motor carriers in the transportation of passengers, and to prohibit the use by any motor carrier of any motor vehicle or parts thereof or equipment thereon adjudged by such agents and inspectors to be unsafe for use in the transportation of passengers upon the public highways of this State; and when such agents or inspectors shall discover any motor vehicle of such motor carrier in actual use upon the highways in the transportation of passengers to be unsafe or any parts thereof or any equipment thereon to be unsafe, such agents or inspectors may, if they are of the opinion that further use of such vehicle, parts or equipment are imminently dangerous, stop such vehicle and require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is in operative condition and its further movement is not dangerous to the passengers and to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point for substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers by a motor carrier subject to the provisions of this article and to eject therefrom any driver or operator who

shall be operating or be in charge of such motor vehicle while under the influence of intoxicating liquors. It shall be the duty of all inspectors and agents of the Commission to make a written report, upon a form prescribed by the Commission, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of the laws of this State or of the orders, rules and regulations of the Commission.

(8) To determine, upon its own motion, or upon motion by a motor carrier, or any other party in interest, whether the transportation of property in intrastate commerce performed by any motor carrier or class of motor carriers lawfully engaged in operation in this State is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in intrastate commerce. Upon so finding, the Commission shall issue a certificate of exemption to such motor carrier or class of motor carriers which, during the period such certificate shall remain effective and unrevoked, shall exempt such carrier or class of motor carriers from compliance with the provisions of this article, and shall attach to such certificate such reasonable terms and conditions as the public interest may require. At any time after the issuance of any such certificate of exemption, the Commission may by order revoke all or any part thereof, if it shall find that the transportation in intrastate commerce performed by the carrier or class of carriers designated in such certificate will be, or shall have become, or is reasonably likely to become, of such nature, character, or quantity as in fact substantially to affect or impair uniform regulation by the Commission of intrastate transportation by motor carriers in effectuating the policy declared in this chapter. Upon revocation of any such certificate, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the authority, if any, to operate in intrastate commerce held by such carrier or carriers at the time the certificate of exemption pertaining to such carrier or carriers became effective. No certificate of exemption shall be denied, and no order of revocation shall be issued, under this paragraph, except after reasonable opportunity for hearing to interested parties.

(9) To inquire into the management of the business of motor carriers and into the management of business of persons controlling, controlled by or under common control with, motor carriers to the extent that such persons have a pecuniary interest in the business of one or more motor carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this article.

(10) To relieve the highways of all undue burdens and safeguard traffic thereon by promulgating and enforcing reasonable rules, regulations and orders designed and calculated to minimize the dangers attending transportation on the highways of all commodities including explosives or highly inflammable or combustible liquids, substances or gases.

(11) The Commission may from time to time establish such just and reasonable classifications of groups of carriers included in the term "common carrier by motor vehicle" or contract carrier by motor vehicle as the special nature of the service performed by such carriers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this article, to be observed by such carriers so classified or grouped, as the Commission deems necessary or desirable in the public interest.

SOURCE: G.S. 62-121.9, 121.48, omitting duplicating provisions.

Sec. 62-262. Applications and hearings.--(a) Except as otherwise provided in Secs. 62-260 and 62-265, no person shall engage in the transportation of passengers or property in intrastate commerce unless such person shall have applied to and obtained from the Commission a certificate or permit authorizing such operations, and it shall be unlawful for any person knowingly or willfully to operate in intrastate commerce in any manner contrary to the provisions of this article, or of the rules and regulations of the Commission. No certificate or permit shall be amended so as to enlarge or in any manner extend the scope of operations of a motor carrier without complying with the provisions of this section.

(b) Upon the filing of an application for a certificate or a permit, the Commission shall, within a reasonable time, fix a time and place for hearing such application. For bus applications, the Commission shall cause notice of the time and place of hearing to be given by mail to the applicant, to other motor carriers holding certificates or permits to operate in the territory proposed to be served by the applicant, and to other motor carriers who have pending applications to so operate. The Commission shall from time to time prepare a truck calendar containing notice of such hearings, a copy of which shall be mailed to the applicant and to any other persons desiring it, upon payment of charges to be fixed by the Commission. The notice or calendar herein required shall be mailed at least twenty (20) days prior to the date fixed for the hearing, but the failure of any person, other than applicant, to receive such notice or calendar shall not, for that reason, invalidate the action of the Commission in granting or denying the application.

(c) The Commission may in its discretion require the applicant to give notice of the time and place of such hearing,

together with a brief description of the purpose of said hearing and the exact route or routes and authority applied for, to be published not less than once each week for two successive weeks in one or more newspapers of general circulation in the territory proposed to be served. The Commission may in its discretion require the applicant to give such other and further notice in the form and manner prescribed by the Commission to the end that all interested parties and the general public may have full knowledge of such hearing and its purpose. If the Commission requires the applicant to give notice by publication, then a copy of such notice shall be immediately mailed by the applicant to the Commission, and upon receipt of same the chief clerk shall cause the copy of notice to be entered in the Commission's docket of pending proceedings. The applicant shall, prior to any hearing upon his application, be required to satisfy the Commission that such notice by publication has been duly made, and in addition to any other fees or costs required to be paid by the applicant, the applicant shall pay into the office of the Commission the cost of the notices herein required to be mailed by the Commission.

(d) Any motor carrier desiring to protest the granting of an application for a certificate or permit, in whole or in part, may become a party to such proceedings by filing with the Commission, not less than ten (10) days prior to the date fixed for the hearing, unless the time be extended by order of the Commission, its protest in writing under oath, containing a general statement of the grounds for such protest and the manner in which the protestant will be adversely affected by the granting of the application, in whole or in part. Such protestant may also set forth in his protest its proposal, if any, to render, either alone or in conjunction with other motor carriers, the service proposed by the applicant, either in whole or in part. Upon the filing of such protest it shall be the duty of the protestant to file three copies with the Commission, and the applicant shall certify that a copy of said protest has been delivered or mailed to the applicant or applicant's attorney. When no protest is filed with the Commission within the time herein limited, or as extended by order of the Commission, the Commission may proceed to hear the application and make the necessary findings of fact and issue or decline to issue the certificate or permit applied for without further notice. Persons other than motor carriers shall have the right to appear before the Commission and give evidence in favor of or against the granting of any application, and with permission of the Commission may be accorded the right to examine and cross-examine witnesses.

(e) If the application is for a certificate, the burden of proof shall be upon the applicant to show to the satisfaction of the Commission:

(1) That public convenience and necessity require



the proposed service in addition to existing authorized transportation service, and

(2) That the applicant is fit, willing and able to properly perform the proposed service, and

(3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

(f) No certificate for the transportation of passengers shall be granted to an applicant proposing to serve a route already served by a previously authorized motor carrier unless and until the Commission shall find from the evidence that the service rendered by such previously authorized motor carrier or carriers on said routes is inadequate to meet the requirements of public convenience and necessity; and if the Commission shall find that the service being rendered by such certificate holder or holders on said routes is inadequate to meet the requirements of public convenience and necessity, such certificate holder or holders who have protested the application as provided in subsection (d) of this section, shall be given reasonable time to remedy such inadequacy before any certificate shall be granted to an applicant proposing to operate on such routes, unless the Commission finds that the previously authorized carrier, filing such protest, is either financially unable, or otherwise unqualified, or is unwilling to render, on a continuing basis, the service applied for or the service found by the Commission to meet the requirements of public convenience and necessity. In all cases in which applications affect local intracity bus service, the Commission shall give consideration to all interests involved and make appropriate provision for the protection thereof, and to that end local intracity operators shall have the right to be heard as protestants, or intervenors.

(g) A certificate for the transportation of passengers may include authority to transport in the same vehicle with passengers the baggage of such passengers, newspapers, express parcels or United States mail when authorized so to do by the government of the United States of America; or to transport baggage of passengers in a separate vehicle. The Commission, in its discretion, may require through joint routes and rates for the transportation of newspapers and express parcels.

(h) Common carriers by motor vehicle transporting passengers under a certificate issued by the Commission may operate to any place in this State, pursuant to charter party or parties, trips originating on such common carrier's authorized routes or in the territory served by its routes under such reasonable rules and regulations as the Commission may prescribe.

(i) If the application is for a permit, the Commission shall give due consideration to

(1) Whether the proposed operations conform with the definition in this chapter of a contract carrier,

(2) Whether the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,

(3) Whether the proposed service will unreasonably impair the use of the highways by the general public,

(4) Whether the applicant is fit, willing and able to properly perform the service proposed as a contract carrier.

(5) Whether the proposed operations will be consistent with the public interest and the policy declared in this chapter; and

(6) Other matters tending to qualify or disqualify the applicant for a permit.

(j) After the issuance of a certificate or permit for the transportation of passengers, as provided in this section, such certificate or permit may thereafter be amended, changed or modified, by requiring the holder to furnish more or less transportation service, or by changing the routes over which service has been authorized, or by imposing other reasonable terms, conditions, restrictions, and limitations as public convenience and necessity or reasonable regulation of traffic upon the highways may require; provided, that the procedure in all such cases as to notice and hearing shall be the same as provided in this section for the issuance of a certificate or permit.

(k) The Commission shall by general order, or rule, having regard for the public convenience and necessity, provide for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.

SOURCE: G.S. 62-121, 15, 62-121.52.

Sec. 62-263. Application for broker's license.--(a) No person shall engage in the business of a broker in intrastate operations within this State unless such person holds a broker's license issued by the Commission.

(b) The Commission shall prescribe the form of application and such reasonable requirements and information as may in its judgment be necessary.

(c) Upon the filing of an application for license the Commission may fix a time and place for the hearing of the application and require such notices, publications, or other service as it may prescribe by the general rule or regulation.

(d) A license shall be issued to any qualified applicant therefor authorizing the whole or any part of the operations covered by the application if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this article and the requirements, rules and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the license, is or will be consistent with the public interest and policy declared herein.

(e) The Commission shall have the same authority over persons operating under and holding a brokerage license as it has over motor carriers under this article, and shall require a broker to furnish bond or other security approved by the Commission and sufficient for the protection of travelers by motor vehicle.

SOURCE: G.S. 62-121.55.

Sec. 62-264. Dual operations.--Unless the Commission, in its discretion, finds that the public interest so requires, no person or any person controlling, controlled by, or under common control with such person, shall hold both a certificate as a common carrier and permit as a contract carrier.

SOURCE: G.S. 62-121.20, 62-121.58.

t. Sec. 62-265. Emergency operating authority.--To meet unforeseen emergencies, the Commission may, upon its own initiative, or upon written request by any person, department or agency of the State, or of any county, city or town, with or without a hearing, grant appropriate authority to any owner of a duly licensed vehicle or vehicles, whether such owner holds a certificate or permit or not, to transport passengers or property, baggage, mail, newspapers and light express between such points, or within such area during the period of the emergency and to the extent necessary to relieve the same, as the Commission may fix in its order granting such authority; provided, that unless the emergency is declared by the General Assembly or under its authority, the Commission shall find from such request, or from its own knowledge of conditions, that a real emergency exists and that relief to the extent authorized in its order is immediate, pressing and necessary in the public interest, and that the carrier so authorized has the necessary equipment and is willing to perform the emergency service as prescribed by the order. In all cases, under this section, the Commission shall first afford

the holders of certificates or permits operating in the territory affected an opportunity to render the emergency service. Upon the termination of the emergency, the operating privileges so granted shall automatically expire and the Commission shall forthwith withdraw all operating privileges granted to any person under this section.

SOURCE: G.S. 62-121.21, 62-121.59.

Sec. 62-266. Interstate carriers.---(a) This article shall apply to persons and vehicles engaged in interstate commerce over the highways of this State, except insofar as the provisions of this article may be inconsistent with, or shall contravene, the Constitution or laws of the United States, and the Commission may, in its discretion, require such carriers to file with it copies of their respective interstate authority and registration of their vehicles operated in the State, and to observe such reasonable rules and regulations as the Commission may deem advisable in the administration of this article and for the protection of persons and property upon the highways of the State.

(b) The Commission or its authorized representative is authorized to confer with and to hold joint hearings with the authorities of other states or with the Interstate Commerce Commission or its representatives, or any other federal or State agency in connection with any matter arising under this chapter, or under the Federal Motor Carrier Act, or under any other federal law which may directly or indirectly affect the interests of the people of this State or the policy declared by this chapter or by the Interstate Commerce Act.

SOURCE: G.S. 62-121.39, 62-121.74.

Sec. 62-267. Deviation from regular route operations.---(a) A common carrier of passengers by motor vehicle operating under a certificate issued by the Commission may occasionally deviate from the routes over which it is authorized to operate under the certificate, under such general or special rules and regulations as the Commission may prescribe.

(b) Any common carrier by motor vehicle, now or hereafter holding a certificate issued by the Commission authorizing the transportation of general commodities over regular routes between fixed termini, may, under such rules and regulations as the Commission may prescribe,

(1) Transport from origin to destination, over any convenient highway or highways, shipments in truckloads originating at or destined to points on the regular routes of such carrier, and

(2) Move shipments in truckloads from any point on its regular routes to any other points on its regular routes over any convenient highway or highways between such points, whether over the routes of another carrier or not, where such movement over the carrier's own routes would otherwise be unnecessarily circuitous.

(c) In no event shall the operation of empty equipment by any carrier over any route or highway be construed as a violation of the rights of any carrier.

SOURCE: G.S. 62-121.22, 62-121.60.

Sec. 62-268. Security for protection of the public.-- No certificate, permit or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Commission such security bond, insurance or self-insurance for the protection of the public as the Commission shall by regulation require.

SOURCE: G.S. 62-121.23, 62-121.61.

Sec. 62-269. Accounts, records and reports.--The Commission may prescribe the forms of any and all accounts, records, and memoranda to be kept by motor carriers, brokers, and lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys; and it shall be unlawful for such carriers, brokers, and lessors, to keep any accounts, records, and memoranda contrary to any rules, regulations, or orders of the Commission with respect thereto. The Commission may issue orders specifying such operating, accounting, or financial papers, records, books, blanks, stubs, correspondence, or documents of motor carriers, brokers, or lessors, as may after a reasonable time be destroyed, and prescribing the length of time they shall be preserved. The Commission or its duly authorized special agents, accountants, or examiners shall at all times have access to and authority, under its order, to inspect and examine any and all lands, buildings, or equipment of motor carriers, brokers, and lessors; and shall have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of such carriers, brokers, and lessors, and such accounts, books, records, memoranda, correspondence, and other documents of any person controlling, controlled by, or under common control with any such carrier, as the Commission deems relevant to such person's relation to or transactions with such carrier. Motor carriers, brokers, lessors, and persons shall submit their accounts, books, records, memoranda, correspondence, and other documents for the inspection and copying authorized by this subsection, and motor carriers, brokers, and lessors, shall submit their lands, buildings, and equipment for examination and inspection, to any

duly authorized special agent, accountant, auditor, inspector, or examiner of the Commission upon demand and the display of proper credentials.

SOURCE: G.S. 62-121.32, 62-121.67, omitting duplicated provisions.

Sec. 62-270. Orders, notices, and service of process.--- It shall be the duty of every motor carrier operating under a certificate or permit issued under the provisions of this article to file with the Commission a designation in writing of the name and post office address of a person upon whom service of notices or orders may be made under this article. Such designation may from time to time be changed by like writing similarly filed. Service of notice or orders in proceedings under this article may be made upon a motor carrier by personal service upon it or upon the person so designated by it, or by registered mail, return receipt requested, or by certified mail with return receipt requested, addressed to it or to such person at the address filed. In proceedings before the Commission involving the lawfulness of rates, charges, classifications, or practices, service of notice upon the person or agent who has filed a tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier.

SOURCE: G.S. 62-121.33, 62-121.68.

Sec. 62-271. Collection of rates and charges.---No common carrier by motor vehicle shall deliver or relinquish possession at destination of any freight transported by it in intrastate commerce until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges, including rules and regulations for weekly or monthly settlement, and to prevent unjust discrimination or undue preference or prejudice; provided, that the provisions of this section shall not be construed to prohibit any such carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for the State, or political subdivision thereof. Where any common carrier by motor vehicle is instructed by a shipper or consignor to deliver property transported by such carrier to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (i) is an agent only and had no beneficial title in the property, and (ii) prior to delivery of the property has notified the delivering carrier in writing of the fact of such

agency and absence of beneficial title, and, in the case of shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper and consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. If the consignee has given to the carrier erroneous information as to who is the beneficial owner, such consignee shall himself be liable for such additional charges, notwithstanding the foregoing provisions of this section. On shipments reconsigned or diverted by an agent who has furnished the carrier with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith.

SOURCE: G.S. 62-121.35.

Sec. 62-272. Allowance to shippers for transportation services.--If the owner of property transported under the provisions of this article directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in the tariffs or schedules filed in the manner provided in this article and shall be no more than is just and reasonable; and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order.

SOURCE: G.S. 62-121.36.

Sec. 62-273. Embezzlement of C.O.D. shipments.--Property received by any motor carrier to be transported in intrastate commerce and delivered upon collection on such delivery and remittance to the shipper of the sum of money stated in the shipping instructions to be collected and remitted to the shipper, and the money collected upon delivery of such party, is hereby declared to be held in trust by any carrier having possession thereof or the carrier making the delivery or collection, and upon failure of any such carrier to account for the property so received, either to the shipper to whom the collection is payable or the carrier making delivery to any carrier handling the property or making the collection, within fifteen (15) days after demand in writing by the shipper, or carrier, or upon failure of the delivering carrier to remit the sum so directed to be collected and remitted to the shipper, within fifteen (15) days after collection is made, shall be prima facie evidence that the property

so received, or the funds so received, has been willfully converted by such carrier to its own use, and the carrier so offending shall be guilty of a felony and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court, and such carrier may be indicted, tried, and punished in the county in which such shipment was delivered to the carrier or in any other county into or through which such shipment was transported by such carrier.

SOURCE: G.S. 62-121.37.

Sec. 62-274. Evidence; joinder of surety.--No report by any carrier of any accident arising in the course of the operations of such carrier, made pursuant to any requirement of the Commission, and no report by the Commission of any investigation of any such accident, shall be admitted as evidence, or used for any other purpose in any suit or action for damages growing out of any matter mentioned in such report or investigation; nor shall the discharge by any carrier of any truck driver or other employee after any such accident be offered or admitted in evidence for any purpose in any suit or action against such carrier for damages arising out of any such accident; nor shall any insurance company or surety executing any insurance policy, bond, or other security for the protection of the public, as provided in Sec. 62-268, or as provided in Sec. 62-112, be joined with the assured carrier in any action or suit for damages, debt, or claim thereby secured; nor shall evidence of any such policy, bond, or other security be offered or received in any such action or suit against the carrier, but the surety or insurer shall be obligated within the amount of such policy, bond or other security to pay any final judgment against the carrier.

SOURCE: G.S. 62-121.38, 62-121.73.

Sec. 62-275. Depots and stations.--Upon notice and hearing and upon a finding by the Commission that public convenience and necessity so requires, the Commission is authorized and empowered to compel any common carrier of passengers by motor vehicle operating under the provisions of this article and serving any municipality to establish and maintain a passenger depot or station for the security, accommodation and convenience of the traveling public. When two or more such carriers operating under the provisions of this article shall serve any municipality, the Commission is authorized and empowered to require such carriers to establish and maintain a union passenger depot or station for the security, accommodation and convenience of the traveling public, and to unite in the joint undertaking and expense of securing, erecting, constructing and maintaining such union passenger depot or station, commensurate with the business and revenue of such motor carriers, on such terms, regulations, provisions and conditions as the Commission shall prescribe: Provided, that



whenever the Commission shall require that a union depot or station shall be provided, it shall first allow the carriers required to provide such station an opportunity to submit to the Commission for approval any agreement between or among such carriers for the securing, construction, maintenance and operation of such station or depot. The Commission shall approve such agreement or agreements, if the same be, in the Commission's discretion, reasonable and just and in the public interest.

SOURCE: G.S. 62-121.70.

Sec. 62-276. Construction of article.--Nothing herein contained shall be construed to relieve any motor carrier from any regulation otherwise imposed by law or lawful authority, and this article shall not be construed to relieve any such motor carrier from any obligation or duty imposed by Chapter 20 of the General Statutes of North Carolina.

SOURCE: G.S. 62-121.77.

Sec. 62-277. Commission investigators and inspectors given enforcement authority.--The transportation inspectors and special investigators employed by the Commission shall have the same enforcement authority and police powers as members of the State Highway Patrol in enforcing this article and other provisions of this chapter applicable to motor transportation, and they are empowered to make complaint for the issue of appropriate warrants, informations, presentments or other lawful process for the enforcement and prosecution of violations of the transportation laws against all offenders, whether they be regulated motor carriers or not, and to appear in court or before the Commission and offer evidence at the trial pursuant to such processes.

SOURCE: New.

COMMENT: This section is designed to clarify the present uncertainty as to the enforcement authority of the Commission's transportation inspectors and to authorize them to sign complaints for warrants and appear as prosecuting witnesses in any violations of the public utility laws which they discover in their inspection of motor vehicles and motor carriers.

Sec. 62-278. Revocation of license plates by Utilities Commission.--(a) The license plates of any carrier of persons or property by motor vehicle for compensation may be revoked and removed from the vehicles of any such carrier for willful violation of any provision of this chapter, or for the willful

Article 13  
Reorganization of Public Utilities

Sec. 62-290. Corporations whose property and franchises sold under order of court or execution.--When the property and franchises of a public utility corporation are sold under a judgment or decree of a court of this State, or of the district court of the United States, or under execution, to satisfy a mortgage debt or other encumbrance thereon, such sale vests in the purchaser all the right, title, interest and property of the parties to the action in which such judgment or decree was made, to said property and franchises, subject to all the conditions, limitations and restrictions of the corporation; and the purchaser and his associates thereupon become a new corporation, by such name as they select, and they are the stockholders in the ratio of the purchase money by them contributed; and are entitled to all the rights and franchises and subject to all the conditions, limitations and penalties of the corporation whose property and franchises have been so sold. In the event of the sale of a railroad in foreclosure of a mortgage or deed of trust, whether under a decree of court or otherwise, the corporation created by or in consequence of the sale succeeds to all the franchises, rights and privileges of the original corporation only when the sale is of all the railroad owned by the company and described in the mortgage or deed of trust, and when the railroad is sold as an entirety. If a purchaser at any such sale is a corporation, such purchasing corporation shall succeed to all the properties, franchises, powers, rights, and privileges of the original corporation: Provided, that this shall not affect vested rights and shall not be construed to alter in any manner the public policy of the State now or hereafter established with reference to trusts and contracts in restraint of trade.

SOURCE: G. S. 62-102.1.

COMMENT: This entire article follows present Article 5A of Chapter 62 with the addition under proposed Sec. 62-291(b), (c), of Secs. 60-62 and 60-63, respectively, from the chapter on Railroads.

Sec. 62-291. New owners to meet and organize; special rule for railroads.--(a) The persons for whom the property and franchises have been purchased pursuant to Sec. 62-290 shall meet within thirty days after the delivery of the conveyance made by virtue of said judgment or decree, and organize the new corporation, ten days written notice of the time and place of the meeting having been given to each of said persons. At this meeting they shall adopt a corporate name and seal, determine the amount of the capital stock of the corporation, and shall have power and authority to make and issue certificates of stock in shares of such amounts as they see fit. The corporation may then, or at any time thereafter, create and issue preferred stock to such an amount, and at such time, as they may deem necessary.

violation of any lawful rule or regulation made and promulgated by the Utilities Commission. To that end the Commission shall have power upon complaint or upon its own motion, after notice and hearing, to order the license plates of any such offending carrier revoked and removed from the vehicles of such carrier for a period not exceeding thirty (30) days, and it shall be the duty of the Department of Motor Vehicles to execute such orders made by the Utilities Commission upon receipt of a certified copy of the same.

(b) This section shall be in addition to and independent of other provisions of law for the enforcement of the motor carrier laws of this State.

SOURCE: G.S. 20-64.1.

COMMENT: This section is transferred from its present location in the Motor Vehicles chapter in order that it may appear as a direct enforcement procedure of the Utilities Commission.

Sec. 62-279. Injunction for unlawful operations.--If any motor carrier, or any other person or corporation, shall operate a motor vehicle in violation of any provision of this chapter applicable to motor carriers or motor vehicles generally, except as to the reasonableness of rates or charges and the discriminatory character thereof, or shall operate in violation of any rule, regulation, requirement or order of the Commission, or of any term or condition of any certificate or permit, the Commission or any holder of a certificate or permit duly issued by the Commission may apply to the resident superior court judge of any judicial district where such motor carrier or other person or corporation so operates, or to any superior court judge holding court in such judicial district, for the enforcement of any provisions of this article, or of any rule, regulation, requirement, order, term or condition of the Commission. Such court shall have jurisdiction to enforce obedience to this article or to any rule, order, or decision of the Commission by a writ of injunction or other process, mandatory or otherwise, restraining such carrier, person or corporation, or its officers, agents, employees and representatives from further violation of this article or of any rule, order, regulation, or decision of the Commission.

SOURCE: G.S. 62-121.34(b), 62-121.72(b).

(b) Whenever the purchaser of the real estate, track and fixtures of any railroad corporation which has heretofore been sold, or may hereafter be sold, by virtue of any mortgage executed by such corporation or execution issued upon any judgment or decree of any court, shall acquire title to the same in the manner prescribed by law, such purchaser may associate with him any number of persons, and make and acknowledge and file articles of association as prescribed by this chapter. Such purchaser and his associates shall thereupon be a new corporation, with all the powers, privileges and franchises and subject to all of the provisions of this chapter.

(c) When any railroad corporation shall be dissolved, or its property sold and conveyed under any execution, deed of trust, mortgage or other conveyance, the owner or purchaser shall constitute a new corporation upon compliance with law.

SOURCE: G.S. 60-62, 60-63; 62-102.2.

Sec. 62-292. Certificate to be filed with Secretary of State.--It is the duty of the new corporation provided for by this article, within one month after its organization, to make certificate thereof, under its common seal, attested by the signature of its president, specifying the date of the organization, the name adopted, the amount of capital stock, and the names of its president and directors, and transmit the certificate to the Secretary of State, to be filed and recorded in his office. A certified copy of this certificate so filed shall be recorded in the office of the clerk of the superior court of the county in which is located the principal office of the corporation, and is the charter and evidence of the corporate existence of the new corporation.

SOURCE: G. S. 62-102.3.

Sec. 62-293. Effect on liens and other rights.--Nothing contained in this article in any manner impairs the lien of a prior mortgage, or other encumbrance, upon the property or franchises conveyed under a sale pursuant to this article when by the terms of the judgment or decree under which the sale was made, or by operation of law, the sale was made subject to the lien of any such prior mortgage or other encumbrance. No such sale and conveyance or organization of such new corporation in any way affects the rights of any person or body politic not a party to the action in which the judgment or decree was made, nor of any party except as determined by the judgment or decree. When a trustee has been made a party to such action and his cestui que trust, for reason satisfactory to the court, has not been made a party thereto, the rights and interest of the cestui que trust are concluded by the decree.

SOURCE: G. S. 62-102.4.

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Article 14.  
Fees and Charges

Sec. 62-300. Particular fees and charges fixed; payment.  
--(a) The Commission shall receive and collect the following fees and charges, and no others:

(1) \$25.00 with each notice of appeal to the superior court, and with each notice of application for a writ of certiorari.

(2) \$25.00 with each application for a certificate or permit for motor carrier operating rights, and with each application to amend such certificate or permit so as to extend or enlarge the scope of operations thereunder, or as filing fee for each broker who applies for a brokerage license under the provisions of this chapter.

(3) \$25.00 with each application for a general increase in rates, fares or charges. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations.

(4) \$25.00 with each application for discontinuance of train service, or for a change in or discontinuance of station facilities and with each application by a motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.

(5) \$25.00 with each application for a certificate of public convenience and necessity, or for any amendment thereto so as to extend or enlarge the scope of operations thereunder.

(6) \$25.00 with each application for approval of the issuance of securities, or for approval of any sale, lease, hypothecation, lien, or other transfer of any property or operating rights of any carrier or public utility over which the Commission has jurisdiction.

(7) \$10.00 with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service from a public utility.

(8) \$1.00 for the registration with the Commission of each motor vehicle to be put in operation by a motor carrier operating

under the jurisdiction of the Commission, and a fee of twenty-five cents (25¢) for the annual re-registration of each such motor vehicle.

(9) Thirty cents (30¢) for each page (8½ x 11 inches) of transcript of testimony, but not less than \$5.00 for any such transcript.

(10) Fifteen cents (15¢) for each one hundred words of copies of papers, orders, certificates or other records, but not less than \$1.00 for any such record, plus \$1.00 for certifying any such paper, order or record.

(11) Twenty cents (20¢) for each page reproduced by photo-static or similar process and for each page of an order which can be made available without the necessity of copying or reproduction.

(b) All witness fees, officers' fees for serving papers, and cost of serving notice by publication shall be paid by the party at whose instance or for whose benefit such fees and costs are incurred.

(c) No application, petition, complaint, notice of appeal, notice of application for writ of certiorari, or other document or paper, the filing of which requires the payment of a fee under this article, shall be deemed filed until the fees herein required shall have been paid to the Commission.

(d) The fees and charges as set forth in subdivisions (1), (7), (9) and (10) of subsection (a) of this section shall not apply to the State of North Carolina or to any board, department, commission, institution or other agency of the State; and all applications, petitions or complaints submitted by the State of North Carolina or any board, department, commission, institution or other agency of the State shall be filed without the payment of the fees required by this section. All transcripts, papers, orders, certificates, or other records necessary to perfect an appeal, or to determine whether an appeal is to be taken, shall be furnished without charge to the Attorney General upon his request in cases in which the Attorney General appears in the public interest or as representing any board, department, commission, institution or other agency of the State.

SOURCE: G.S. 62-26.16.

COMMENT: This entire article follows the present Article 2A of Chapter 62 with the exception as to the amount of fees which are considered totally inadequate for the costs of the proceedings involved. The present fees, together with the proposed fees in the above subsections, are as follows:

(1) Appeal to superior court, remains at \$25.00.

(2) Motor carrier application for rights, increased from \$15.00 to \$25.00.

(3) Rate cases, increased from \$15.00 to \$25.00 in general increases.

(4) Discontinue train service or bus route, increased from \$15.00 to \$25.00.

(5) Application for certificate of convenience, increased from \$15.00 to \$25.00.

(6) Issuance of securities, transfers of rights, increased from \$10.00 to \$25.00.

The proposed fees will not pay the costs of the hearings by any means but they will be some improvement over the present inadequate fees.

Sec. 62-301. Fees and charges supplemental; disposition.---

All fees and charges received by the Commission under Sec. 62-300 shall be in addition to any other tax or fee provided by law and shall be paid by the Commission to the State Treasurer to be credited to the Commission as an allotment deposit.

SOURCE: G. S. 62-26.17.

Article 15.  
Penalties and Actions

Sec. 62-310. Public utility violating any provision of chapter, rules or orders; penalty.--Any public utility which violates any of the provisions of this chapter or refuses to conform to or obey any rule, order or regulation of the Commission shall, in addition to the other penalties prescribed in this chapter, forfeit and pay a sum up to one thousand dollars for each offense, to be recovered in an action to be instituted in the Superior Court of Wake County, in the name of the State of North Carolina on the relation of the Utilities Commission; and each day such public utility continues to violate any provision of this chapter or continues to refuse to obey or perform any rule, order or regulation prescribed by the Commission shall be a separate offense.

SOURCE: G.S. 62-100, 62-142.

COMMENT: This section combines two very similar sections from the 1899 Act and the 1933 Act, using the \$1,000 penalty from G.S. 62-100 and providing for the action to be in Wake County from G.S. 62-142.

Sec. 62-311. Willful acts of employees deemed those of public utility.--The willful act of any officer, agent, or employee of a public utility, acting within the scope of his official duties of employment, shall, for the purpose of this article, be deemed to be the willful act of the utility.

SOURCE: G.S. 62-93.

Sec. 62-312. Actions to recover penalties.--Except as otherwise provided in this chapter, an action for the recovery of any penalty under this chapter shall be instituted in Wake County, and shall be instituted in the name of the State of North Carolina on the relation of the Utilities Commission against the person incurring such penalty; or whenever such action is upon the complaint of any injured person, it shall be instituted in the name of the State of North Carolina on the relation of the Utilities Commission upon the complaint of such injured person against the person incurring such penalty. Such action may be instituted and prosecuted by the Attorney General, the solicitor of the Wake County Superior Court, or the injured person. The procedure in such actions, the right of appeal and the rules regulating appeals shall be the same as provided by law in other civil actions.

SOURCE: G.S. 60-4, 62-63, 62-94 and 62-147.

COMMENT: This section combines substantially similar sections from the Railroad chapter and from the various Utilities Acts in Chapter 62. It provides for the action



to be brought in Wake County, to conform with present 62-142.

Sec. 62-313. Refusal to permit Commission to inspect records made misdemeanor.--Any public utility, its officers or agents in charge thereof, that fails or refuses upon the written demand of the Commission, or a majority of said Commission, and under the seal of the Commission, to permit the Commission, its authorized representatives or employees to examine and inspect its books, records, accounts and documents, or its plant, property, or facilities, as provided for by law, shall be guilty of a misdemeanor. Each day of such failure or refusal shall constitute a separate offense and each such offense shall be punishable by a fine of not less than five hundred and not more than five thousand dollars.

SOURCE: G.S. 62-99.

Sec. 62-314. Violating rules, with injury to others.--If any public utility doing business in this State by its agents or employees shall be guilty of the violation of the rules and regulations provided and prescribed by the Commission, and if after due notice of such violation given to the principal officer thereof, if residing in the State, or, if not, to the manager or superintendent or secretary or treasurer if residing in the State, or, if not then to any local agent thereof, ample and full recompense for the wrong or injury done thereby to any person as may be directed by the Commission shall not be made within thirty days from the time of such notice, such public utility shall incur a penalty for each offense of five hundred dollars.

SOURCE: G.S. 62-141.

COMMENT: This section is presently applicable to railroad companies only and is amended to apply to all public utility companies.

Sec. 62-315. Failure to make report; obstructing Commission.--Every officer, agent or employee of any public utility, who shall willfully neglect or refuse to make and furnish any report required by the Commission for the purposes of this chapter, or who shall willfully or unlawfully hinder, delay or obstruct the Commission in the discharge of the duties hereby imposed upon it, shall forfeit and pay five hundred dollars for each offense, to be recovered in an action in the name of the State. A delay of ten days to make and furnish such report shall raise the presumption that the same was willful.

SOURCE: G.S. 62-144.

COMMENT: This section is presently applicable to railroad, express or telegraphic companies only and is amended to apply to all public utility companies.

Sec. 62-316. Disclosure of information by employee of Commission unlawful.--It shall be unlawful for any agent or employees of the Commission knowingly and willfully to divulge any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this chapter, except as otherwise provided by this chapter or as he may be directed by the Commission or by a court or judge thereof.

SOURCE: G.S. 62-121.34(d), 121.72(d).

or. COMMENT: This provision from the Truck Act and Bus Act has been made applicable to all Commission inspections.

Sec. 62-317. Remedies for injuries cumulative.--The remedies given by this chapter to persons injured shall be regarded as cumulative to the remedies otherwise provided by law against public utilities.

SOURCE: G.S. 62-148.

f, COMMENT: This section is presently applicable to railroad corporations only and is amended to apply to all public utility companies.

Sec. 62-318. Allowing or accepting rebates a misdemeanor.--If any person shall participate in illegally pooling freights or shall directly or indirectly allow or accept rebates on freights, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one thousand dollars or imprisoned not less than twelve months.

SOURCE: G.S. 60-116.

m. COMMENT: This section is amended by inserting the word "illegally" in the first line in front of the words "pooling freights" in order to recognize the present practice and licensing of freight forwarders.

d, Sec. 62-319. Beating way on trains misdemeanor; venue.---If any person, with the intention of being transported free in violation of law, rides or attempts to ride on top of any car, coach, engine or tender, on any railroad in this State, or on the drawheads between cars, or under cars, on truss rods, or trucks, or in any freight car, or on a platform of any baggage car, express car or mail car on any train, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding fifty dollars or imprisoned not more than thirty days. Any person charged with a violation of this section may be tried in any county

in this State through which such train may pass carrying such person, or in any county in which such violation may have occurred or may be discovered.

SOURCE: G.S. 60-104.

Sec. 62-320. Failure to place name on produce misdemeanor.  
--Any person, selling or offering for sale or consignment any barrel, crate, box, case, package or other receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or other produce of any kind whatsoever, to be shipped to any point within or without this State, without the true name of the grower or packer either written, printed, stamped or otherwise place thereon in distinct and legible characters, shall be guilty of a misdemeanor and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that this section shall not apply to railroads, express companies and other carriers selling or offering for sale, for transportation or storage charges or any other charges accruing to such railroads, express companies or other carriers, any barrel, crate, box, case, package, or other receptacle containing berries, fruit, melons, potatoes, vegetables, truck or other produce.

SOURCE: G.S. 60-127.

Sec. 62-321. Penalty for nondelivery of intrastate telegraph message.--Any telegraph company doing business in this State that shall fail to transmit and deliver any intrastate message within a reasonable time shall forfeit and pay to anyone who may sue for same a penalty of twenty-five dollars. Such penalty shall be in addition to any right of action that any person may have for the recovery of damages. Proof of the sending of any message from one point in this State to another point in this State shall be prima facie evidence that it is an intrastate message.

SOURCE: G.S. 56-11.

Sec. 62-322. Unauthorized manufacture or sale of switch-lock keys misdemeanor.--It shall be unlawful for any person to make, manufacture, sell or give away to any other person any duplicate key to any lock used by any railroad company in this State on its switches or switch tracks, except upon the written order of that officer of such railroad company whose duty it is to distribute and issue switch-lock keys to the employees of such railroad company. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court.

SOURCE: G.S. 60-77.

Sec. 62-323. Willful injury to property of public utility misdemeanor.--If any person shall willfully do or cause to be done

any act or acts whatever whereby any building, construction or work of any public utility, or any engine, machine or structure or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, he shall be guilty of a misdemeanor.

SOURCE: G.S.60-78.

Sec. 62-324. Disclosure of information as to shipments unlawful.--(a) It shall be unlawful for any common carrier engaged in intrastate commerce or any officer, receiver, trustee, lessee, agent, or employee of such carrier, or for any other person authorized by such carrier, to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for such transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

(b) Nothing in this section shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the State or of the government of the United States, in the exercise of his power, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crimes or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

SOURCE: G.S. 62-121.34(e)(f).

COMMENT: This provision from the Truck Act has been made applicable to all common carriers.

Sec. 62-325. Unlawful motor carrier operations.--(a) Any person, whether carrier, passenger, shipper, consignee, or any officer, employee, agent, or representative thereof, who shall knowingly offer, grant, or give or solicit, accept, or who shall knowingly offer, grant, or give or solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of this chapter, or who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and willfully by any such means or otherwise fraudulently seek to evade or defeat regulations as in this chapter provided for motor carriers, shall be deemed guilty

of a misdemeanor and upon conviction thereof be fined not more than five hundred dollars (\$500.00) for the first offense and not more than two thousand dollars (\$2,000.00) for any subsequent offense.

(b) Any motor carrier, or other person, or any officer, agent, employee, or representative thereof, who shall willfully fail or refuse to make a report to the Commission as required by this article, or other applicable law, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, or to keep accounts, records, and memoranda in the form and manner prescribed by the Commission, or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully neglect or fail to make true and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this article to keep the same, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject for each offense to a fine of not more than five thousand dollars (\$5,000.00). As used in this subsection the words "kept" and "keep" shall be construed to mean made, prepared, or compiled, as well as retained. It shall be the duty of the Commission to prescribe and enforce such general rules and regulations as it may deem necessary to compel all motor carriers to keep accurate records of all revenue received by them to the end that any tax levied and assessed by the State of North Carolina upon revenues may be collected. Any agent or employee of a motor carrier who shall willfully and knowingly make a false report or record of fares, charges, or other revenue received by a carrier or collected in its behalf shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

(c) Any person who, at any bus terminal, solicits or otherwise attempts to induce any person to use some form of transportation for compensation other than that lawfully using said terminal premises by contract with the terminal operator or by valid order of the Commission shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than fifty dollars (\$50.00) or imprisoned not to exceed thirty (30) days, or both, in the discretion of the court.

SOURCE: G.S. 62-121.34, 62-221.72, omitting duplicated provisions and subsections made applicable to all public utilities.

COMMENT: This section merges similar provisions from the Truck Act and the Bus Act.

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Sec. 2. Sections 60-82 through 60-87 of the General Statutes, heretofore being Article 10 of Chapter 60 entitled "Railroad and Other Company Police," are hereby transferred and rewritten to become a new chapter of the General Statutes entitled Chapter 74A, "Company Police", to read as follows:

Chapter 74A  
Company Police

Sec. 74A-1. Governor may appoint and commission police for public utility and other companies; civil liability of companies.  
--Any public utility company, construction company or manufacturing company may apply to the Governor to commission such persons as the corporation or company may designate to act as policemen for it. The Governor upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the persons so appointed a commission to act as such policemen. Nothing contained in the provisions of this section shall have the effect to relieve any such company from any civil liability for the acts of such policemen, in exercising or attempting to exercise the powers conferred by this chapter.

SOURCE: G.S. 60-83.

COMMENT: This entire chapter is taken from Article 10, Chapter 60, slightly modified to cover all public utilities as well as industrial and manufacturing companies, and rearranged to conform to the new chapter.

Sec. 74A-2. Oath, bond, and powers of company police.--- Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the usual oath. Such policemen shall severally possess, within the limits of each county in which the public utility for which such policemen are appointed may run or in which the company may be engaged in work or business, all the powers of policemen in the several towns, cities and villages in any such county: Provided, that every policeman appointed under this chapter shall, before entering upon the duties of his office, file in the Governor's office a bond in the sum of five hundred dollars (\$500.00), payable to the State of North Carolina, conditioned upon the faithful performance of the duties of his office. This bond may be in cash, or it may be executed by a surety company duly authorized to transact business in this State, or it may have at least two individual sureties each owning real estate in this State, and together having equities in such real estate over and above any encumbrances thereon equal in value to at least twice the amount of such bond: Provided, that where individual sureties are used, the sufficiency of each such surety must be passed upon and approved by the clerk of the superior court of the county in which the surety resides.

SOURCE: G.S. 60-84.

Sec. 74A-3. Company police to wear badges.--Such policemen shall, when on duty, severally wear a shield with the words "Railway Police" or "Company Police" and the name of the corporation for which appointed inscribed thereon, and this shield shall always be worn in plain view except when such police are employed as detectives.

SOURCE: G.S. 60-85.

Sec. 74A-4. Compensation of company police.--The compensation of such police shall be paid by the companies for which the policemen are respectively appointed, as may be agreed on between them.

SOURCE: G.S. 60-86.

Sec. 74A-5. Police powers cease on company's filing notice.--Whenever any company shall no longer require the services of any policeman so appointed as aforesaid, it may file a notice to that effect in the office of the Governor and thereupon the power of such officer shall cease and determine.

SOURCE: G.S. 60-87.

Sec. 74A-6. Railway conductors and station agents declared special police.--All passenger conductors of railroad trains and station or depot agents are hereby declared to be special police of the State of North Carolina, with full power and authority to make arrests for offenses committed in their presence or view, or for felony, or on sworn complaint for misdemeanor, except that the conductors shall have such power only on their respective trains or their railroad right of way, and the agents at their respective stations; and such conductors and agents may cause any person so arrested by them to be detained and delivered to the proper authority for trial as soon as possible. Nothing contained in the provisions of this section shall have the effect to relieve any such railroad company from any civil liability for the acts of such conductors, station or depot agents, in unlawfully exercising or attempting to exercise the powers herein conferred.

SOURCE: G.S. 60-82.

Sec. 3. The provisions of this Act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Sec. 4. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 5. This Act shall be in full force and effect from and after January 1, 1964.

TABLE OF COMPARATIVE SECTIONS  
with disposition in  
PROPOSED UTILITIES ACT

<u>Present Section (caption abbreviated)</u>		<u>Proposed Disposition</u>	
		Sec.	Art. Title
56-	1 Use of highways	62-180	Eminent Domain
	2 Elec. & hydro-electric companies	181	"
	3 Powers granted corporations	189	"
	4 Right of way by contract	182	"
	5 Exceptions	183	"
	6 Residences, etc.	184	"
	7 Condemnation on petition	185	"
	8 Petition to be served	186	"
	9 Proceedings	187	"
	10 Commissioners inspect premises	188	"
	11 Nondelivery telegraph message	321	Penalties
60-	1 Railroad charters		Delete
	2 Roads must be authorized		"
	3 Conductor - badges	244	Railroads
	4 Actions in name of State	312	Penalties
	5 Discrimination in charges		Delete
	6 Discrimination by rebate		"
	7 Discrimination vs. connecting lines		"
	8 Discrimination vs. A&NC RR		"
	9 Articles of association		"
	10 Prerequisites of filing		"
	11 Amendment of RR charter		"
	12 Evidence of incorporation		"
	13 Subscription books		"
	14 How stock paid for		"
	15 (Repealed.)		"
	16 Liability for unpaid stock		"
	17 Liability of trustees		"
	18 Directors & presidents		"
	19 Appt. officers & agents		"
	20 Officials to account to successors		"
	21 Counties subscribe stock		"
	22 Elec. on county aid		"
	23 Conduct of election		"
	24 Interest on bonds		"
	25 Collection & disposition of taxes		"
	26 Townships subscribe stock		"
	27 Election on township aid		"
	28 Conduct of election		"
	29 Bond issue; special tax		"
	30 Levy, collection & disposition of tax		"
	31 Tax kept separate		"
	32 Township purchase of RR corps.		"
	33 Election on question of purchase		"
	34 Increase of interest		"



Present Section (caption abbreviated)

Proposed Disposition

		<u>Sec.</u>	<u>Art. Title</u>	<u>P.</u>
60-35	Execution & sale of bonds		Delete	
36	Proxies; report; vacancies		"	61
37	Powers of RR corporations	62-220	Railroads	
38	Unauthorized business	221	"	
39	Aid construction lines		Delete	
40	Power to seize fuel		"	
41	Through freight and travel	222	Railroads	
42	Intersection with highways	223	"	
43	Obstructing highways; defective crossing	224	"	
44	Notice of defective crossings	224	"	
45	Change of highway location		Delete	
46	Damages due to change		"	
47	Old road not impeded		"	
48	Cattle guards & private crossings	226	Railroads	
49	Change of railroad route	227	"	
50	Failure to begin or complete RR		Delete	
51	Secretary of State extend time		"	
52	Preferences to shippers		"	
53	Temporary track across railroad	228	Railroads	
54	Shelter at RR division points	229	"	
55	RR employees paid twice month		Delete	
56	Maximum continuous service	230	Railroads	
57	Penalty for violation	230	"	
58	Utilities Commission to enforce article	230	"	
59	Noncompeting RR stock		Delete	
60	Lease or merger competing carrier		"	
61	Acquisition of interest		"	
62	Purchaser may incorporate	291	Reorg. of Utili-	
63	Sale of RRs	291	" ties	
64	Common carrier defined	242	Railroads	
65	Fellow-servant rule	242	"	
66	Injuries	242	"	
67	Contributory negligence	242	"	
68	Assumption of risk as defense	242	"	
69	Contracts & rules	242	"	
70	Applicable logging & tramroads	242	"	
71	Map of rt. for condemnation	192	Eminent Domain	
72	Map of RR to be made & filed	192	"	
73	Joint construction of RRs	225	Railroads	
74	Const. part of line in another state		Delete	
75	Public schedule	233	Railroads	
76	Cars in passenger trains		Delete	
77	Sale of switch-lock keys	322	Penalties	
78	Willful injury to RR property	323	Penalties	
79	Headlights on locomotives		Delete	
80	(Repealed.)			
81	Killing livestock	241	Railroads	
82	Special police	74A-6	Company police	
83	Governor appt. police for RR, etc.	74A-1	"	
84	Powers of Company police	74A-2	"	

Present Section (caption abbreviated)

Proposed Disposition

		<u>Sec.</u>	<u>Article Title</u>
60-85	Company police wear badges	74A-3	"
86	Compensation	74A-4	"
87	Police powers cease on filing notice	74A-5	"
88	Carriers establish joint rates	152	Rate Regulatio
89	RR passenger fares	130	"
90	Leased or controlled lines	148	"
91	Violations of or charging unreasonable rates		Delete
92	Free transportation	144	Rate Regulatio
93	Powers of Utilities Comm. over rates		Delete
94	Separate accommodations		"
95	Exemption of certain carriers		"
96	Use of same coach		"
97	Penalty for failing provide separate coaches		"
98	Exceptions to separate coach requirement		"
99	Unused tickets	149	Rate Regulatio
100	Intoxicated person	150	"
101	Entering cars after being forbidden		Delete
102	First-class cabin w/second-class ticket		"
103	Passenger refusing to pay fare	151	Rate Regulatio
104	Beating way on trains	319	Penalties
105	Injury on platform	240	Railroads
106	Baggage; liability for loss	205	Transportation
107	Cars kept clean		Delete
108	Failure to order cleaning of cars		"
109	Surcharge on Pullman		"
110	Rates varying from schedule	139	Rate Regulatio
111	Failure to receive & forward freight	200	Transportation
112	Failure to transport within reasonable time	201	"
113	Flume companies become common carriers	191	Eminent Domain
114	Freight charges at legal rate	202	Transportation
115	Unreasonable freight rates		Delete
116	Rebates or pooling freights	318	Penalties
117	Partial deliveries	203	Transportation
118	(Repealed.)		
119	Baggage & freight carefully handled	204	"
120	Loss or damage to goods	205	"
121	Existing remedies	205	"
122	Right against prior carrier	208	"
123	Demurrage	209	"
124	Livestock on Scuppernong River		Delete
125	Shipments of watermelons regulated		"
126	Settlements for cash-on-delivery	210	Transportation
127	Name on produce shipped	320	Penalties
128	(Repealed.)		
129	(Repealed.)		
130	Funds from unclaimed freight to State U.	211	Transportation
131	Sale of unclaimed freight; escheat	211	"
132	Sale of live or perishable freight	211	"
133	Record of articles & prices	211	"

Utilities

main

police

Present Section (caption abbreviated)Proposed Disposition  
Sec. Article Title

<u>Present Section (caption abbreviated)</u>		<u>Proposed Disposition</u>	
		<u>Sec.</u>	<u>Article Title</u>
60-134	Build & maintain water-power plants		Delete
135	Separate Accommodations		"
136	Passengers take certain seats		"
137	Mistake in assigning passengers wrong seat		"
138	Misconduct on car		"
139	Buses used as common carriers		"
140	Riding on rear platform		"
141	Vestibule in streetcars		"
142	Fenders on streetcars		"
143	Organization-Elec. Interurban Rwys.		"
144	Right of eminent domain		"
145	Status defined		"
146	Rights of pipe line companies	62-190	Eminent Domain
62-	1 Appt. of Commissioners	10	Organization of U.C.
	2 Adoption rules and regulations	12	"
	3 Oath	11	"
	4 Com'rs; chairman; rules & regulations	13	"
	5 Clerical assistance	16	"
	6 Biennial report	17	"
	7 Receipts & disbursements	18	"
	8 Money into treasury	18	"
	9 Seal; certificate	19	"
	10 Record of proceedings; chief clerk	19	"
10.1	Technically qualified personnel	15	"
10.2	Ass't. Atty. Gen. assigned to U.C.	20	"
10.3	Rate making & taxation	22	"
	11 Short title		Delete
	12 Commission court of record	60	Procedure
	13 Witnesses; production of papers	61	"
	14 Refusal to testify		Delete
	15 Subpoenas	62	Procedure
	16 Service of process	63	"
	17 Bonds	64	"
	18 Rules of evidence	65	"
	19 Depositions	66	"
	20 Affidavits	68	"
	21 Attorney General may intervene	20	Organization
	22 Stipulations & agreements	69	Procedure
	23 Hearings public; record of pro- ceedings	71	"
	24 Complaints against utilities	73	"
	25 Complaints by utilities	74	"
	26 Burden of proof; rules of practice	75	"
26.1	Hearings by Comm., com'r. or examiner	76	"
26.2	Decision of Com'r. or examiner	77	"
26.3	Rules of practice	78	"
26.4	Final orders & decisions	79	"
26.5	Prior orders	80	"
26.6	Appeal; exceptions	90	Review
26.7	Appeal; priority of trial	91	"

Present Section (caption abbreviated)

Proposed Disposition  
Sec. Article Title

<u>Present Section (caption abbreviated)</u>		<u>Proposed Disposition</u>	
		<u>Sec.</u>	<u>Article Title</u>
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26.9	No evidence on appeal	93	"
26.10	Record on appeal	94	"
26.11	Relief pending review	95	"
26.12	Appeal to Supreme Court	96	"
26.13	Judgment on appeal enforced	97	"
26.14	Mandamus to enforce order, when no appeal	98	"
26.15	Procedural provisions not repealed		Delete
26.16	Fees & charges fixed; payment	300	Fees
26.17	Supplemental; disposition	301	"
27	Powers of Commission	30	Powers
28	Make and enforce rules	31	"
29	Express and implied powers		Delete
30	Supervisory powers	32	Powers
31	Utilities; reduction of rates	33	"
32	Investigate companies & businesses	34	"
33	System of Accounts	35	"
34	Reports; cancelling certificates	36	"
35	Investigations	37	"
36	Rates for public utilities in cities	38	"
37	Enforcing above regulations	38	"
38	Sections not to affect existing power		Delete
39	Companies to maintain facilities		"
40	Lumber companies transport commodities		"
41	Stations for freight and passengers	213	Transportation
42	Change, repair, additions to stations	213, 237	"
43	Union depots	231	Railroads
44	Separate waiting rooms		Delete
45	Construction of sidetracks	232	Railroads
46	Connections at intersections	233	"
47	Fast mail trains	234	"
48	Inspect equipment and facilities; repair	235	"
49	Block system and safety devices	236	"
50	Grade crossings	237	"
51	Automatic signals	236	"
52	Depots in certain cases		Delete
53	Abandonment or relocation of depots	213	Transportation
54	Power Company, etc., lines	39	Powers
55	Delivery of freight, express, baggage	200	Transportation
56	Discriminations	140	Rate Regulation
56.1	RR switching limits	238	Railroads
62- 57	Standard for gas	43	Powers
58	Inflammable substances	214	Transportation
59	Demurrage, storage, etc., regulation	209	"
60	Speed through towns	239	Railroads
61	Hear controversies	40	Powers
62	Investigate accidents	41	"
63	Violation of rules and institute suit	312	Penalties
64	Oyster beds in New River		Delete
65	Definitions	3	Definitions

Present Section (caption abbreviated)

Proposed Disposition  
Sec. Article Title

<u>Present Section (caption abbreviated)</u>		<u>Proposed Disposition</u>		
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	67 Service	131	"	
	68 Rate schedules	138	"	
	69 Rates varying from schedule	139	"	62.
	70 Discrimination prohibited	140	"	
	71 Change of rates	134,135	"	
	72 Changing unreasonable rates	136	"	
	73 Continuous lines of telephone & Tel. Co.	44	Powers	
	74 Efficient service, extension of services	42	"	
	75 Standards, classifications	43	"	
	76 Valuing utility property	45	"	
	77 Accounting system	35	"	
	78 Inspection powers of Commission	34	"	
	79 Annual reports; failure to file	36	"	
	80 Management of utilities; investi- gation	37	"	
	81 Pledge assets or pay fees	153,160	Securities	
	82 Refinancing of utility securities	161	"	
	83 Approval or refusal	162	"	
	84 Contents of application	163	"	
	85 To receive immediate attention	164	"	
	86 Disposition of securities	165	"	
	87 No guarantee on part of State	166	"	
	88 Not applicable to note issues; renewals	167	"	
	89 Not applicable to debentures or court rec'rs	168	"	
	90 Periodical or special reports	169	"	
	91 Approval not to invalidate securities	170	"	
	92 Comm. act jointly w/agency of other state	171	"	
	93 Acts of employees those of utility	311	Penalties	
	94 Actions to recover penalties	312	"	
	95 Penalties to school fund		Delete	
	96 Abandonment & reduction of service	119	Franchise	
	97 Water gauging stations	46	Powers	
	98 Municipalities operating own utilities	47	"	
	99 Refusal to permit Comm. inspect records	313	Penalties	
	100 Willful disobedience to orders	310	"	
	101 Cert. of convenience & necessity	110	Franchise	
	102 Contracts of public service corps.	153	Rate Regulation	
102.1	Franchises sold under order of court	290	Reorganization	
102.2	New owners	291	"	
102.3	Certificate filed with Sec. of State	292	"	

Present Section (caption abbreviated)

Proposed Disposition  
Sec. Article Title

62- 102.4	Effect on liens	62-293	Reorganization
121.5	Policy		Delete (See 62-2)
121.6	Jurisdiction	31	Powers
121.7	Definitions	3	Definitions
121.8	Exemption from regulations	260	Motor Carriers
121.9	Powers and duties of Commission	261	"
121.10	Certificate in lieu of outstanding certs.		Delete
121.11	Certs. for operations since Jan 1, 1947		"
121.12	Permits for operations since Jan 1, 1947		"
121.13	Abandoned operations		"
121.14	Issuance of temporary authority	117	Franchise
121.15	Applications & hearings	262	Motor Carriers
121.16	Terms of certificate	114	Franchise
121.17	Terms & conditions of permits	115	"
121.18	Partnership certificates or permits	116	"
121.19	Similar trade names	118	"
121.20	Dual operations	264	Motor Carriers
121.21	Emergency operating authority	265	"
121.22	Deviation from regular route	267	"
121.23	Security for protection of public	268	"
121.24	Joinder of causes of action	207	"
121.25	Claims for loss, damage, injury	206	"
121.26	Transfers of certificates & permits	112	Franchise
121.27	Suspension of certificates & permits	113	"
121.28	Common carrier rates	146	Rate Regulation
121.29	Tariffs	138	"
121.30	Schedules of contract carriers	147	"
121.31	Liability for damage to property	205	Transportation
121.32	Accounts, records, reports	269	Motor Carriers
121.33	Orders, notices, service of process	270	"
121.34	Unlawful operation	279, 316, 324, 325	Penalties
121.35	Collection of rates & charges	271	Motor Carriers
121.36	Allowance for transportation services	272	"
121.37	C.O.D. shipments	273	"
121.38	Evidence; joinder of surety	274	"
121.39	Interstate carriers	266	Transportation
121.40	(Repealed.)		
121.41	Allocation of funds		Delete
121.42	Title		"
121.43	Short title		"
121.44	Policy		Delete (See 62-
121.45	Delegation of jurisdiction	31	Powers
121.46	Definitions	3	Definitions
121.47	Exemptions from regulations	260	Motor Carriers
121.48	Powers & duties of Commission	261	"
121.49	Certificates in lieu of outstanding certs.		Delete

Present Section (caption abbreviated)

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Disposition  
Article Title

62-121.50	Permits to contract carriers		Delete
121.51	Temporary authority	62-117	Franchise
121.52	Applications and hearings	262	Motor Carriers
121.53	Terms & conditions of certificate	114	Franchise
121.54	Terms & conditions of permits	115	"
121.55	Broker's license	263	Motor Carriers
121.56	Partnership certificates	116	Franchise
121.57	Similar trade names	118	"
121.58	Dual operations	264	Motor Carriers
121.59	Emergency operating authority	265	"
121.60	Regular route deviation	267	"
121.61	Insurance or bond required	268	
121.62	Transfers of certificates, permits	112	Franchise
121.63	Suspension or revocation	113	"
121.64	Common carrier rates, charges	146	Rate Regulation
121.65	Tariffs	138, 146	"
121.66	Contract carrier rates, charges	147	"
121.67	Accounts, records, reports	269	Motor Carriers
121.68	Process agent; service of notices	270	"
121.69	Free transportation	144	Rate Regulation
121.70	Depots and stations	275	Motor Carriers
121.71	Separate accommodations		Delete
121.72	Unlawful operation	151, 279, 316, 325	Penalties
121.73	Liability of surety or insurer	274	Motor Carriers
121.74	Interstate carriers	266	Transportation
121.75	(Repealed.)		
121.76	Procedure Act of 1949		Delete
121.77	Construction of article	276	Motor Carriers
121.78	Allocation of funds		Delete
121.79	Repeal of inconsistent acts		"
62-122	Rates fixed for public utilities	130	Rate Regulation
123	Deemed just and reasonable	132	"
124	How maximum rates fixed	133	"
125	Hearing upon request for rate change	134	"
126	Notice required	134	"
127	Revision	130	"
128	Long and short hauls	141	"
129	Contracts as to rates	142	"
130	Rates published	138	"
131	Interstate commerce	48	Powers
132	Rates to be evidence	143	Rate Regulation
133	Commission entitled to free carriage	144	"
134	Free carriage	144	"
135	Greater rates forbidden	139	"
136	Investigation of rates	136	"
137	Points connected by more than one route	145	"
138	Double amount of overcharge	139	"
139	Double penalty		Delete

Present Section (caption abbreviated)

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Article Title

62-140	Penalties; accounts & receipts		Delete
141	Violating rules	314	Penalties
142	Refusing to obey orders	310	"
143	Discrimination between connecting lines	212	Transportation
144	Failure to make reports	315	Penalties
145	Offenses by RRs not otherwise provided for		Delete
146	Violation of rules	243	Railroads
147	Action for penalty	312	Penalties
148	Remedies, cumulative	317	"
149	Notice served by certified mail		Delete