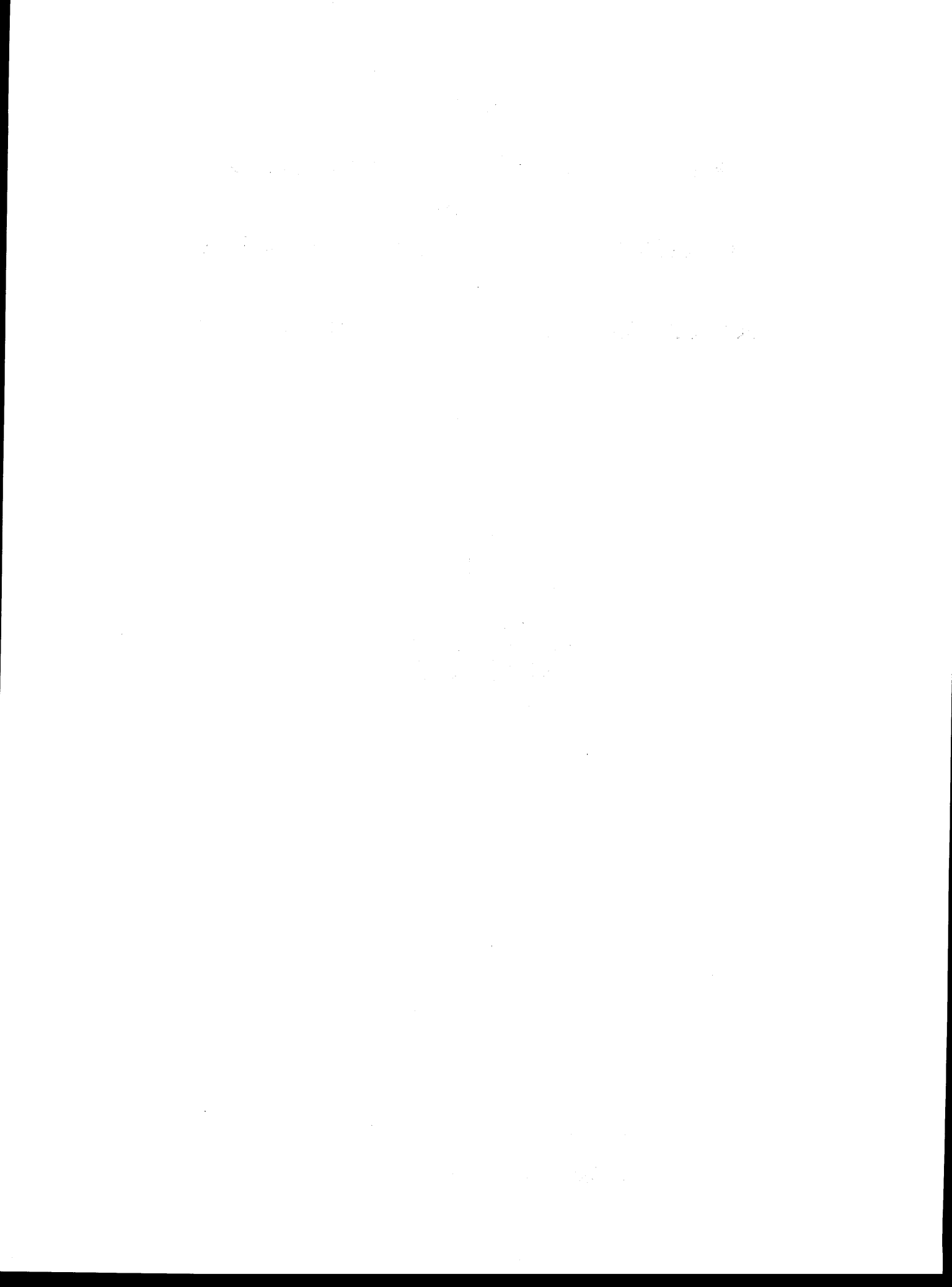


**Report of the
Committee on Water Resources
to the
Legislative Research Commission
of the
North Carolina General Assembly**



State Legislative Building
Raleigh, North Carolina 27602



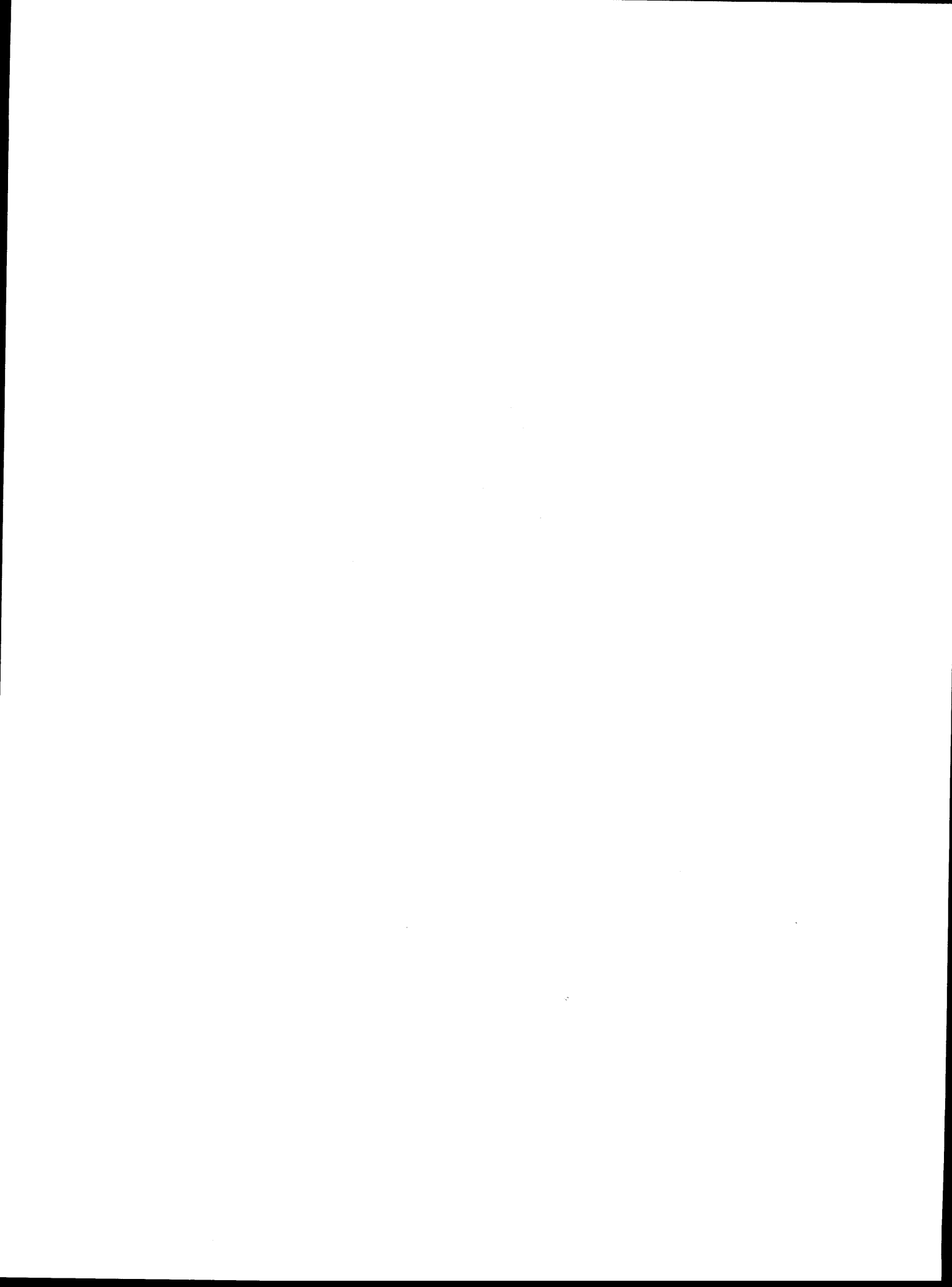
MEMBERS OF THE
COMMITTEE ON WATER RESOURCES

Representative Nelson W. Taylor, Chairman

Senator Joe K. Byrd

Senator Ashley B. Futrell

Representative Sneed High





North Carolina
Legislative Research Commission
STATE LEGISLATIVE BUILDING
Raleigh

February 15, 1969

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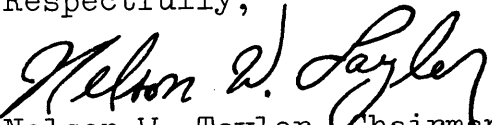
Senator Herman A. Moore and
Speaker Earl W. Vaughn, Co-Chairmen
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27602

Gentlemen:

The 1967 General Assembly adopted a joint resolution requesting the Legislative Research Commission to conduct an extensive study of the water resources legislation proposed and enacted by the 1967 General Assembly, the experience in applying such legislation, and the need for further legislation in light of such experience; the need for recodification of any water resources legislation; and the need for legislation providing for hearing procedures preliminary to orders and determinations of the State Board of Water and Air Resources. The commission appointed the following persons to constitute a committee on water resources and to report to the full commission concerning its findings and recommendations: Senator Joe K. Byrd, Senator Ashley B. Futrell, Representative Sneed High and Representative Nelson W. Taylor, Chairman.

The committee submits herein the unanimous report of the Commission's water resources committee to the Legislative Research Commission. The committee wishes to take this opportunity to thank Milton Heath, Associate Director of the Institute of Government of the University of North Carolina at Chapel Hill, for his great assistance in compiling the materials included in this report and preparing them for publication.

Respectfully,


Nelson W. Taylor, Chairman

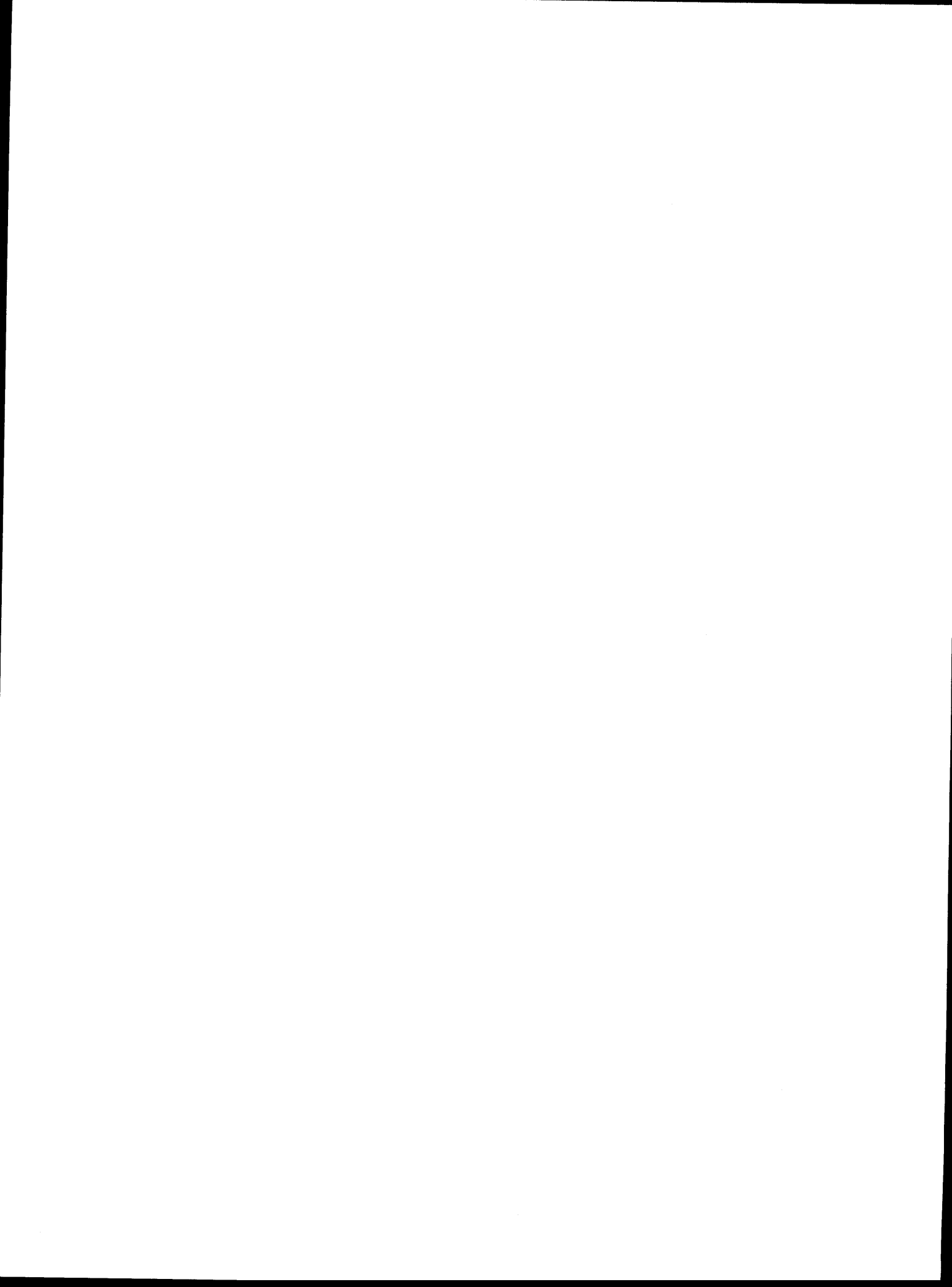


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I. INTRODUCTION

The year 1967 will be long remembered in North Carolina for an extraordinary output of new legislation regarding water resources. Two water laws of great potential significance were enacted by the 1967 General Assembly, one concerning the regulation of water use in "capacity use areas" and the other concerning organization of State water and air resources programs. It also saw the enactment of a quantity of related legislation on the subjects of dams, wells, watersheds, marshlands, flood plains, and local water and sewer utilities. For the record, a summary of the 1967 legislation is included in Appendix B of this Report.

In the wake of this flood of new water laws, the 1967 General Assembly on its final day in session adopted Resolution 83, which is the starting point of the studies conducted by this Committee. (A copy of Resolution 83 is set forth as Appendix A of this Report.) By this Resolution the Legislative Research Commission was directed to evaluate the actual operation of the new water laws, the need for amendments or further legislation, the need for recodification of water resources legislation, and the need for legislation providing a special master or hearing officer procedure in the new Department of Water and Air Resources.

The Committee has studied these subjects in some detail with the assistance of the Institute of Government, the Water Resources Research Institute of the University of North Carolina, and the Department of Water and Air Resources of the State of North Carolina. We have called three public hearings for our own education and to afford a full opportunity for interested parties to express their views. After reviewing the 1967 water

legislation, considering the advice of the professionals who have assisted us, and considering the views expressed at our public hearings, we have reached the conclusions that are set forth in Part III of this Report. By way of background, we believe that it will be helpful first to summarize the hearings that were held by this Committee.

II. HEARINGS BY THE COMMITTEE ON WATER RESOURCES

This Committee convened three public hearings in the Legislative Building to consider the subject assigned to it and to hear all interested witnesses. A general opening hearing was held on December 8, 1967, at which time the overall subject of water resources legislation was explored in a preliminary way and plans were made for further proceedings. A hearing was called for January 25, 1968 concerning proposed changes or new legislation regarding water use, but was not actually held because of the virtual absence of any requests to be heard on this subject. A third hearing was called and was conducted on March 29, 1968 concerning water pollution legislation.

The proceedings of these hearings are summarized in the ensuing paragraphs. Full records of the hearings have been filed with the Legislative Research Commission and are available for examination by all interested persons.

Hearings of December 8, 1967:

At this initial meeting and hearing of the Committee, the entire subject matter of this study was explored in a preliminary and general way. The Committee heard informal testimony from the Chairman, Director and Assistant Director, respectively, of the Department of Water and Air Resources; the Director of the Water Resources Research Institute of the University of North Carolina; the Administrator of the North Carolina Soil and Water Conservation Committee; and the Associate Director of the Institute of Government. Their testimony may be briefly summarized under the headings of recodification, special

master or hearing officer procedure, general evaluation of 1967 laws and possible new legislation, and pollution control.

Recodification: Three possible aspects of recodification were noted for the Committee -- a recodification of the 1967 water legislation affecting the Department of Water and Air Resources; a general review and recodification of the legislation concerning small watershed and drainage programs; and a codification of the law of water rights.

It was suggested that a review of the 1967 legislation affecting the Department of Water and Air Resources might be in order with a view to eliminating minor inconsistencies, examining the need for limited noncontroversial improvements, and reorganizing related legislation that is now codified in different portions of the General Statutes (for example, the well construction standards law in G. S. Chapter 87 and the departmental legislation in G. S. Chapter 143, Article 21). The gist of the views expressed before the Committee was that -- while the re-enactment of a revised water code along these lines might be helpful and useful -- it is not clear that the gains involved standing alone would justify a general recodification effort.

A study concerning the small watershed and drainage laws, to be begun by the Institute of Government in the latter half of 1968 under the sponsorship of the Water Resources Research Institute, was brought to the Committee's attention. The study is designed to lay the basis for what appears to be a much needed general review and recodification of the North

Carolina enabling legislation for small watershed or "watershed improvement" projects and for drainage projects. A detailed description of the study and its justification is set forth in Appendix C of this Report.

Finally, the Committee was advised of a third possible area of recodification -- an effort to develop a code or restatement of the law of water rights or water use in North Carolina, involving primarily case law. Such a study has been proposed and endorsed intermittently by various groups, going back to the predecessor of the present State Department of Water and Air Resources. If undertaken, it probably should involve a coordinating committee with broad representation of groups such as the law schools, the organized bar, the Institute of Government, and the Attorney General, or the sponsorship of an agency such as the General Statutes Commission.

Special Master or Hearing Officer Procedure: One of the topics specifically assigned to the Legislative Research Commission by Resolution 83 for investigation was the need for a special master or hearing officer procedure as a means of administering the regulatory laws under the jurisdiction of the State Department of Water and Air Resources. Although departmental legislation authorizes the holding of administrative hearings by one or more board members or qualified employees, it does not spell out in detail the procedures to be followed. While other applicable laws may be looked to for guidance in these matters, the subject of more detailed and specific regulation of hearing procedures was apparently thought worthy of

exploration by the 1967 General Assembly. For this reason, this Committee designated such procedures as among the topics to be considered at its second hearing concerning water use legislation.

General Evaluation of 1967 Water Laws and Possible New Legislation: The Committee was advised by the Department of Water and Air Resources of its progress in administering the new water legislation, and in particular the "capacity use area" law. Although the first steps have been taken toward establishing a capacity use area, it appears unlikely that the area will be fully operational and tested prior to the 1969 General Assembly. We were informed by the Department that it would have no recommendations concerning this legislation for the Legislative Research Commission this year. The Department indicated however, that recommendations should be forthcoming on the basis of another two year's experience, and suggested that we request an extension of this study to permit an evaluation of that experience.

We were advised of the pendency of a study of estuarine conservation under the auspices of the Interagency Council on Natural Resources, a coordinating group established by the Department of Conservation and Development. This study has resulted in a report which has been approved by the Interagency Council, and which proposes the initiation of a significant new program for the conservation and management of estuarine areas combining acquisition of certain estuarine areas, regulation of

estuarine land use, and strengthened technical staff resources for these programs. (See Appendix D.)

We were also advised of a pending study concerning the delivery of stored water for impoundments to down-stream cities and other water users. This investigation, like the small watershed-drainage law study, has been undertaken by the Institute of Government under the sponsorship of the Water Resources Research Institute. It is of sufficient potential importance for the present and future development of such projects as Kerr Scott Reservoir and New Hope Reservoir that we are including a detailed description of the research project in Appendix E of this Report.

Water Pollution Control: The Department of Water and Air Resources will recommend the initiation of a State grant-in-aid program to municipalities for construction of sewage treatment facilities at the rate of about \$2 million per year beginning in 1969. Whether such assistance should be funded by states borrowing or appropriations has not yet been determined. With the help of this additional incentive for local treatment facilities, the Department believes that North Carolina can reach a goal of providing adequate municipal waste treatment throughout the State by 1973. Adoption of such a program will both increase the amount of federal aid that will be available for waste treatment facilities in this State, and strengthen North Carolina's plan for water pollution abatement in the eyes of the Federal Water Pollution Control Administration, which passes upon the acceptability of the State program. (See Appendix F.)

Hearings Called for January 25, 1968:

A public hearing was scheduled by the Committee for January 25, 1968 concerning "the dual question of whether changes are necessary in the 1967 legislation relating to water use and whether additional legislation is advisable." Notices of the proposed hearing were addressed to all persons and groups on the Committee's mailing list (see Appendix G to this Report). At the Committee's first meeting in December 1967, it was made clear that the January hearing was intended to cover all issues and proposals regarding water use legislation that ought to be brought to the Committee's attention, including the subject of a special master or hearing officer procedure and any other new legislative proposals concerning water use.

Notices for the January 25 hearing were mailed on the date of December 12 to our entire mailing list of over 100 persons known to be interested in water use legislation, including all known major water users in the State. In response to these notices only one request to be heard was received by the Committee, from the Washington Chamber of Commerce. Since the Washington Chamber requested only two minutes of time, the Committee asked this group to file its brief with the Committee for its records, and no public hearing was held in January. (See Appendix H.)

Hearings of March 29, 1968:

The final public hearing of the Committee was devoted exclusively to the subject of water and air pollution.

Representatives of the Department of Water and Air Resources reviewed in detail the available federal matching grants for municipal waste treatment facilities, and renewed their recommendation for a new 2 million dollar annual State aid program. This would permit grants to municipalities either to match municipal contributions (50% federal, 25% state and 25% municipal) or to provide assistance to smaller municipalities which cannot otherwise finance the necessary work. The Department also asked for support of its B Budget requests for approximately \$45,000 additional annual operating funds in order to permit employment of an additional five employees, thereby bringing departmental staff levels up to recommended minimum needs.

In response to questions, departmental representatives indicated that the existing hearing procedures of the Department have thus far proved satisfactory. The Department has felt that the prestige of having Board members serve as hearing officers has been helpful; that the volume of cases has been manageable; and that no cases have yet been contested after Board action.

In response to questions by Committee members, Department representatives indicated that there has been no systematic review as yet of the original stream classifications adopted for the river basins of the State. Nor has it been possible to establish and maintain a suitable stream monitoring program to gauge the overall direction of the quality of our waters. The necessity of focussing on completing the original classifications and on instituting comprehensive pollution abatement plans has prevented the staff from devoting any

significant attention either to general reclassifications or stream monitoring. A recent reorganization of the Water Pollution Control Division, however, has established a Stream Monitoring Section, and the B Budget requests of the Department for additional staff may help to make possible more attention to stream monitoring and systematic reclassification in the future.

On the subject of air pollution controls, the Department has encountered some questions regarding organization and legal powers at the county level for air pollution abatement and control. Specifically, questions have been raised concerning the authority of counties to adopt or enforce air pollution regulations except in cases where the public health is affected. (Thus, for example, doubts have been expressed whether counties can enforce regulations against air pollution that adversely affects business or agricultural interest but does not involve the public health.) In addition, the Department believes that the legal structure for organizing and financing county and multi-county programs should be studied. Since the Department feels that sound local programs are an essential element of an effective air pollution control effort, the Department has requested the Attorney General in cooperation with the Institute of Government to review these matters in order to identify any needed legislation that should be proposed to the 1969 General Assembly.

The Department also reviewed its current thinking concerning additional State Budget requests in the field of air pollution control. The Air Pollution Control Division is now operating on an annual State appropriation of \$37,500 which,

together with federal grants, will fund the program at the level of \$112,500 for fiscal year 1967-68 and at \$163,500 for fiscal year 1968-69. The Department is requesting an increase in State operating appropriations to the level of \$100,000 for each year of the 1969-71 biennium. This will provide a total annual budget of \$242,000 including federal grants -- permitting the employment of two additional engineers, one chemist and two engineering technicians, for a total staff of nineteen.

The Department is also requesting additional appropriations of \$228,000 by the 1969 General Assembly for State grants-in-aid to local air pollution control programs. Together with federal grants available in matching local programs on a 3:1 basis, the program proposed by the Department would make possible a total federal-state-local expenditure for local programs of \$2,336,000. Of the \$228,000 requested for State grants, \$100,000 would be made available in basic grants of \$1,000 to each county matched 1:1 plus 5¢ per capita grants matched 2:1 by the counties.

A letter from the Department of Water and Air Resources concerning their budgetary problem is attached at Appendix F.



III. FINDINGS AND RECOMMENDATIONS

On the basis of its investigations and hearings, the Committee to Study Certain Water Resources Laws proposes the following findings and recommendations to the Legislative Research Commission concerning the studies assigned to the Committee.

(1) Evaluation of Operation of 1967 Water Laws. We find that insufficient experience has been accumulated under the 1967 water laws for any meaningful evaluation of the operation of these laws. Accordingly, we recommend an extension of this study for another two years by the 1969 General Assembly in order to permit the evaluation of these laws that was intended by Resolution 83 of the 1967 General Assembly. If an extension is approved, we recommend that the studies should explicitly include air as well as water resources.

(2) Recodification of Water Laws. We find a possible need for at least three separate forms of recodification, within the intent of Resolution 83: the recodification of those portions of the 1967 legislation most directly affecting the Department of Water and Air Resources; the recodification of small watershed and drainage enabling laws; and the codification or restatement of the principles of water rights law.

(a) As to the possible recodification of the legislation most directly affecting the Department of Water and Air Resources, we find that -- while it would be of some value to recodify this legislation with minor revisions -- the gains

involved, standing alone, do not justify the work that would be required at this time. However, such action might be desirable in conjunction with a general review in light of later experience with actual operation of this legislation. Accordingly, we recommend that no recodification of this nature be attempted at this time. We recommend further that, if this study is extended by the 1969 General Assembly as previously suggested, the need for recodification be reconsidered in conjunction with the extended study.

(b) As to the possible recodification of small watershed and drainage legislation, we find that studies are now underway which may point to the need for such action by the 1969 General Assembly. Although we can make no recommendation on the subject at this time, we may forward supplemental or informal recommendations thereon at a later date.

(c) As to the possible recodification or restatement of the principles of water rights law, we find that -- while this may be a worthy project for a more broadly based study group -- it is beyond the scope of this Committee. Accordingly, we make no recommendation concerning this subject.

(3) Special Master or Hearing Officer Procedure and Burden of Proof. We find that there is an insufficient demand for a special master or special hearing officer procedure to administer regulatory laws under the jurisdiction of the Department of Water and Air Resources to justify its enactment. Such evidence as was presented to the Committee indicated that the existing hearing procedures are working satisfactorily.

Accordingly, we recommend against the enactment of a special master or special hearing officer procedure. We feel that the protection of this vital public resource dictates that the burden be left on the user to satisfy the hearing officer or hearing board that no damage to the resource will occur from the proposed use. We therefore oppose any amendment to Chapter 933 of the Session Laws of 1967, Subsection (f) (7) of Section 5, to shift the burden of proof to the Department or Board.

(4) The Need for Other Amendments or New Water Legislation.

(a) Estuarine Area Conservation. The study and recommendations of the Interagency Council on Natural Resources concerning conservation and management of estuarine areas was brought to this Committee's attention. We commend these recommendations to the consideration of the 1969 General Assembly.

(b) Delivery of Stored Water From Impoundments to Downstream Users. We find that studies are now underway which may point to the need for legislation to implement the delivery of stored water from impoundments to downstream users. Although we can make no recommendation on the subject at this time, we may forward supplemental or informal recommendations thereon at a later date.

(c) Water Pollution Control. We find that there is a need for a system of State grants-in-aid to municipalities for waste treatment plant construction in order to stimulate needed additional treatment facilities. We recommend that the

\$2,000,000 annual State aid program for waste treatment proposed by the Department of Water and Air Resources be approved by the 1969 General Assembly.

We further find that there is a need for additional professional water pollution control staff for the State Department of Water and Air Resources in order to bring staff levels up to minimum needs. Among the unmet program needs that require additional staffing and which we find to be of special importance are needs for systematic review of the original stream classifications, and for stream monitoring activity to make possible an accurate appraisal of water quality trends. We recommend that the additional funds requested by the Department of Water and Air Resources for staffing of water pollution control activities be approved by the 1969 General Assembly (approximately \$45,000 for each year of the 1969-71 biennium).

(5) Air Pollution Control. This Committee was not specifically directed to inquire into legislation concerning air pollution. However, we have received testimony on the subject from representatives of the Department of Water and Air Resources who are responsible for air pollution as well as water resources programs. Department representatives on their own initiative have made several recommendations to this Committee concerning air pollution, which we deem appropriate to reflect in this Report.

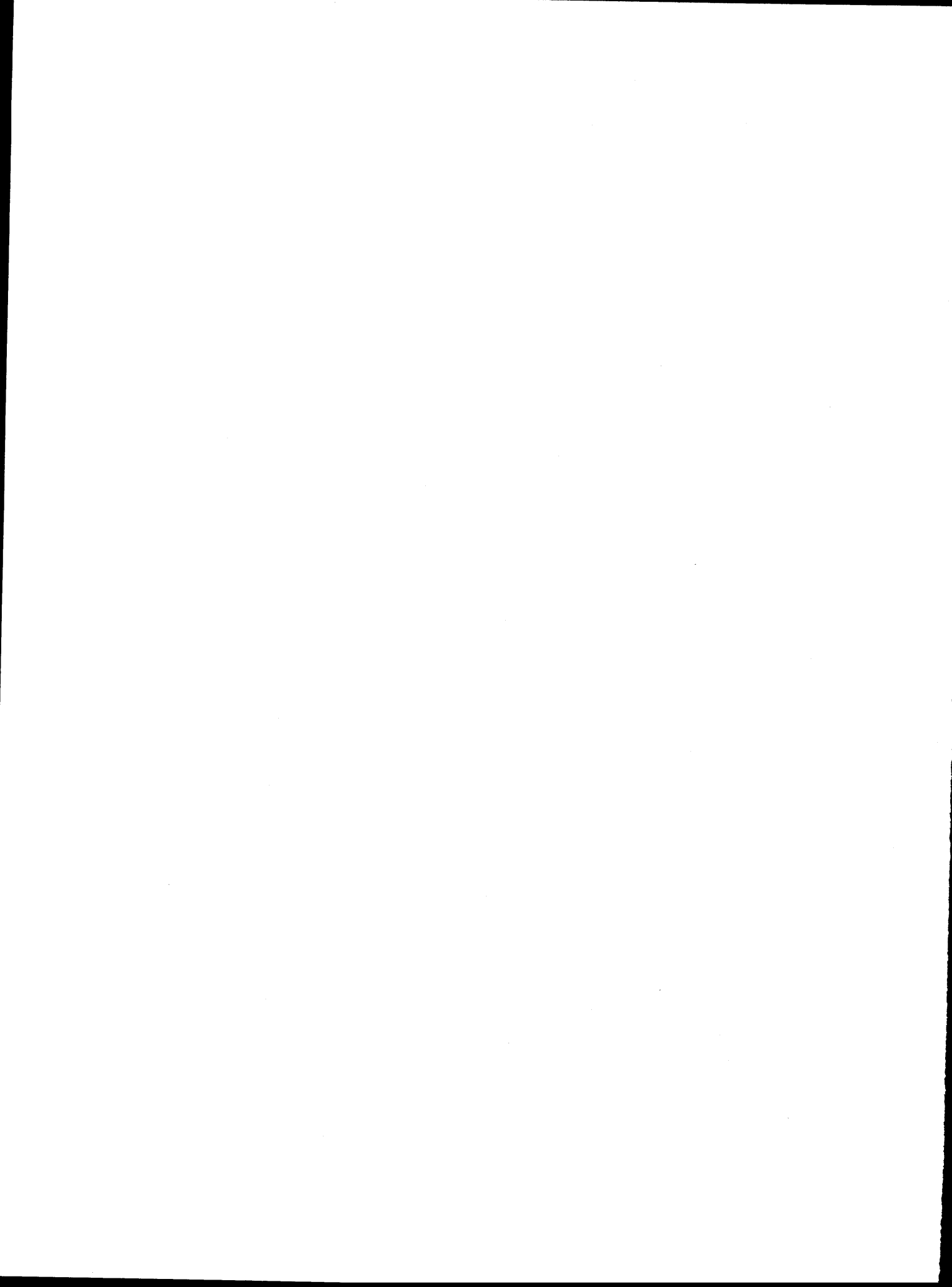
We find that the legal authority of counties to adopt and enforce air pollution regulations is subject to question except in situations where the public health is affected. We

further find that, as a part of an effective overall air pollution control program, counties as well as the State should be empowered to control injurious air pollution even though the public health may not be affected. And we further find that there is a need for analysis of the legal structure for organization and financing of county and multi-county air pollution control programs. We recommend that the Attorney General and the Institute of Government study these subjects, and we recommend the adoption of such legislation as their studies may indicate is needed in order to clarify county legal powers and to provide for sound organization and financing of county and multi-county air pollution control programs.

We find that additional State funds are needed in order to make adequate provision for the operation of the State water pollution control program and to stimulate the development of local air pollution control programs through State grants-in-aid. We recommend the approval by the 1969 General Assembly of the budgetary proposals of the Department of Water and Air Resources for: (a) increased operating appropriations for the Division of Air Pollution Control to the level of \$100,000 for each year of the 1969-71 biennium, and (b) appropriation of \$228,000 for State grants-in-aid to local air pollution control programs. The proposed State appropriations, together with available federal aid, would make possible an annual State operating budget of \$242,000 supporting a staff of nineteen employees, and would also make possible total federal-state-local expenditures of \$2,336,000 for local air pollution control programs.

Finally, your Committee recommends that the budgetary requests made by the Department of Water and Air Resources be given serious consideration by the General Assembly. The Department is dealing with matters not only important to economic development but to the sustaining of human life. This is not an area in which we should pinch pennies.

APPENDIXES



APPENDIX A

RESOLUTION 83 OF THE 1967 GENERAL ASSEMBLY

A JOINT RESOLUTION DIRECTING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CERTAIN WATER RESOURCES LAWS, AND TO REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE 1969 GENERAL ASSEMBLY.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Legislative Research Commission is hereby directed to study:

(a) the water resources legislation proposed and enacted by the 1967 General Assembly, the experience in applying such legislation, and the need for further legislation in light of such experience;

(b) the need for recodification of any water resources legislation enacted by the 1967 General Assembly and of other water resources legislation; and

(c) the need for legislation providing for a special master or hearing officer procedure for proceedings preliminary to orders and determinations of the State Board of Water and Air Resources.

Section 2. The Legislative Research Commission shall report its findings and any recommendations resulting from this study to the 1969 General Assembly.

Section 3. This Resolution shall become effective upon its adoption. In the General Assembly read three times and ratified, this the 6th day of July, 1967.



APPENDIX B

WATER AND AIR RESOURCES LEGISLATION ENACTED

BY THE 1967 GENERAL ASSEMBLY*

Two landmark water laws were enacted by the 1967 General Assembly, one concerning the regulation of water use in "capacity use areas" and the other concerning organization of state water and air programs. This year also saw the enactment of a large volume of related legislation concerning dams, wells, watersheds, marshlands, flood-plains, and local water and sewer utilities.

Very briefly summarized, the principal new water laws put on the statute books this year were:

. . . Air and Water Board Reorganization: This act brought about the merger of the old Board of Water and Air resources and the stream Sanitation Committee into a unified Board of Water Resources, adding air pollution control to the jurisdiction of the new board and to the staff functions of the new department. (The air pollution control authority is the first legislation on

* This summary of 1967 water legislation is extracted from an article written for the February, 1968 issue of the North Carolina Architect, by Professor Milton S. Heath, Jr., Associate Director, Institute of Government: The 1967 North Carolina Legislative Record on Conservation Laws, and Prospects for the Future.

this subject in North Carolina, and is patterned after the State Stream Sanitation Law.) The act also introduced some important procedural reforms, including addition of streamlined procedures for air and water pollution emergencies; doubling of maximum and minimum fines for pollution violations; and granting to the Department the power to seek injunctions to restrain violations.

. . . Capacity-Use-Areas: This act gives the new Department limited authority to regulate the use of water in areas where it finds that water shortages or conflicts exist or are impending. The kinds of controls that may be imposed include protections against salt water encroachment and against unreasonable interferences with other water users; well spacing and well pumping limits; and provisions on timing of water withdrawals. In capacity-use-areas, permits containing these controls may be required of all users of over 100,000 gpd. This is the first regulatory authority over water use to be adopted in North Carolina, other than an unworkable irrigation permit law that was passed in 1953 and repealed in 1961.

. . . Well Construction Standards: Under this act the Department can adopt rules concerning well location, construction, repair and abandonment, and can require permits for wells of 100,000 gpd design capacity or larger. The act also lays down some specific requirements on well construction and maintenance, and prohibits injection of wastes into the ground through wells without approval of the Water and Air Board after consultation with the State Board of Health.

. . . Dam Safety: This act authorizes a program of inspection and certification of dams for public safety and stream flow-maintenance, with exemptions for small dams.

. . . Watershed Amendments: Some major changes were made this year in the enabling legislation for "small watershed" programs (water conservation and flood protection projects assisted primarily by the Soil Conservation Service under Public Law 566). Among other things, these changes broadened the authority of cities and counties to finance such projects; enacted general condemnation powers for watershed programs; and authorized local sponsors to include recreational features in their projects and to promote fish and wildlife habitat preservation.

. . . Marshland Dredging: An effort was made this year to obtain strong controls over dredging and earth moving projects in state-owned marshlands, beaches, and tidelands. The compromise bill that was enacted, however, was limited to a registration measure for earth moving equipment in these areas.

. . . Miscellaneous: Other significant new water laws adopted this year include statutes authorizing a program of flood plains management; authorizing conditional assurances by the Water and Air Board for non-federal cooperation in water supply aspects of federal reservoir projects (an essential prerequisite for building water supply storage into federal flood control projects); authorizing a water use reporting system for the

Department; and strengthening the statute that requires well drillers to furnish samples of well cuttings to the Department.

The immediate stimulus for this outpouring of water legislation was a Department of Water Resources study of the need for water-use legislation, directed by the 1965 General Assembly. Though sparked by the growing ground-water problems of the phosphate mining areas in and around Beaufort County, this study covered the entire range of water resource programs and laws.

The more fundamental origins of the 1967 water laws can be traced to a decade of patient planning and study by state water agencies.

Twelve years ago a mildly revolutionary proposal, born of the extended drought of the early 1950's, was offered to the 1955 General Assembly: to replace the traditional riparian rights doctrine that has perennially guided the use of Carolina surface waters with the rule of prior appropriation, modeled on the principles that govern water use in the arid western states. Strong backing from agricultural and municipal interests met with stronger resistance from industrial water users, and the proposal was rejected in favor of a compromise solution, involving the creation of a water-policy study group (the State Board of Water Commissioners) with limited authority to control water use in local water-supply emergencies.

During the late 1950's the water commissioners led by General James Townsend, and early backer of water-law reform studied and ruminated. In 1959 the old Board was transformed into a new one, the State Board of Water Resources, originally conceived as a single coordinating board from all state water programs to be

staffed by a single Water Resources Department. Nominally, a single Department was created by the 1959 Assembly; but instead of fashioning a unitary water board, the 1959 legislation created one Department with two policy heads: the State Board of Water Resources, to carry forward the water-use policy and development functions of the old water board, and the Stream Sanitation Committee, to continue as master of the State's water pollution control program. General Townsend moved over from the old board to head the new Board of Water Resources, while former Senator J. Vivian Whitfield, the father of the Stream Sanitation Law, stayed on as head of the stream Sanitation Committee. Through the early 1960's the fledgling Department slowly gathered its forces, strengthening and expanding the stream sanitation program, building a ground-water staff, and initiating a planning program.

From this long and slow evolution finally emerged in 1967 the first substantial policy output of a decade of study and appraisal -- legislation unifying the direction of the Water Resources Department under a single board and separate acts granting additional powers to the Department, including the authority to regulate water use in "capacity water use areas."

The combination of the water and air board reorganization and the capacity-use-areas law gives North Carolina the statutory basis for a unified program of coordination and control of both water quality and quantity that is matched by few if any eastern states. Soon after enactment of these laws, the retirement of General Townsend from the former Board of Water Resources and the appointment of Senator Whitfield as Chairman of the new Board of Water and Air Resources were announced. The new laws serve as

both a fitting tribute to General Townsend upon his retirement and a solid starting point for Senator Whitfield in his new assignment.

APPENDIX C

A STUDY TO PROVIDE THE BASIS FOR THE REVIEW AND RECODIFICATION OF DRAINAGE AND WATERSHED IMPROVEMENT

LEGISLATION*

Background

In the past decade a number of local governmental units in North Carolina have been authorized by legislation to sponsor or participate in activities collectively labeled as "small watershed" or "watershed improvement" programs. The original impulse for these programs came from the soil conservation movement. Their activating purpose, initially, was to provide a vehicle for agricultural flood protection, water conservation (irrigation) and incidental drainage improvements. Philosophically, these programs were oriented toward encouraging farmers in upstream tributary areas to organize for mutual protection and benefit. The basic organizational vehicle for these purposes was conceived to be the watershed improvement district, a subdistrict of a soil conservation district. A federal aid program administered by the U. S. Soil Conservation Service and based on Public Law 566 of 1954 was a major stimulus for these watershed improvement activities.

* Excerpted from an application for a research grant by the Institute of Government to the Water Resources Research Institute of the University of North Carolina. This grant was funded and the study is being conducted in the summer of 1968.

Since the conception of the original N.C. small watershed enabling law in 1959, the program has been expanded and diffused in many directions. Counties and drainage districts have displaced watershed improvement districts as the primary organizational forms. Program definition has been enlarged to encompass a number of related water resource activities -- including recreation, municipal and industrial water supply, fish and wildlife habitat preservation, and flood plains management. And, at least in suburban areas, the exclusively rural flavor of the original small watershed programs has been modified to include urban as well as rural problems. The upstream orientation of the early programs -- typified in the phrase, "Hold the water on the land" -- has been adapted, in eastern North Carolina, to the conditions prevailing in that region, by accepting drainage improvements as a primary goal in wetland areas.

The North Carolina General Assembly has struggled to keep up with this decade of change in small watershed program concepts. But it is not surprising that the present statutes concerning small watershed programs -- never having been generally reviewed and overhauled -- are somewhat confusing and disorganized. The soil and water conservation organizations of North Carolina have for some time recognized the need for a recodification effort that would bring some pattern into the present laws concerning small watersheds. A form to consider a recodification proposal is now available in the Water Resources Subcommittee of the Legislative Research Commission.

It is clear that some kind of recodification of the small watershed enabling laws of North Carolina is in order. At a minimum, it would be useful to review and reorganize the provisions of General Statutes Chapter 139 concerning small watershed programs. (Chapter 139 contains the enabling provisions for watershed improvement districts, county watershed programs, and soil and water conservation districts). If feasible, it would be desirable to go one step further and include the drainage district laws in this project as well.

North Carolina's drainage laws (GS Ch. 156) long antedate the small watershed program, but in recent years they have been modified in some ways to permit drainage districts to serve as vehicles for small watershed activities. It requires a very practiced eye, however, to fit the drainage laws into this pattern. And, in numerous respects, there are inconsistencies and divergencies between the drainage districts laws of GS Chapter 156 and the watershed laws of GS Chapter 139. Moreover, the workings of drainage district programs have never been described or evaluated in print. Acquaintance with their functioning is largely limited to a few drainage engineers and attorneys who have specialized in organizing and managing drainage districts in eastern North Carolina.

Proposed Research

The Institute of Government has been invited to consult with the Legislative Research Commission in considering the need for recodification of water resource legislation. The local and State soil and water conservation agencies of North Carolina have

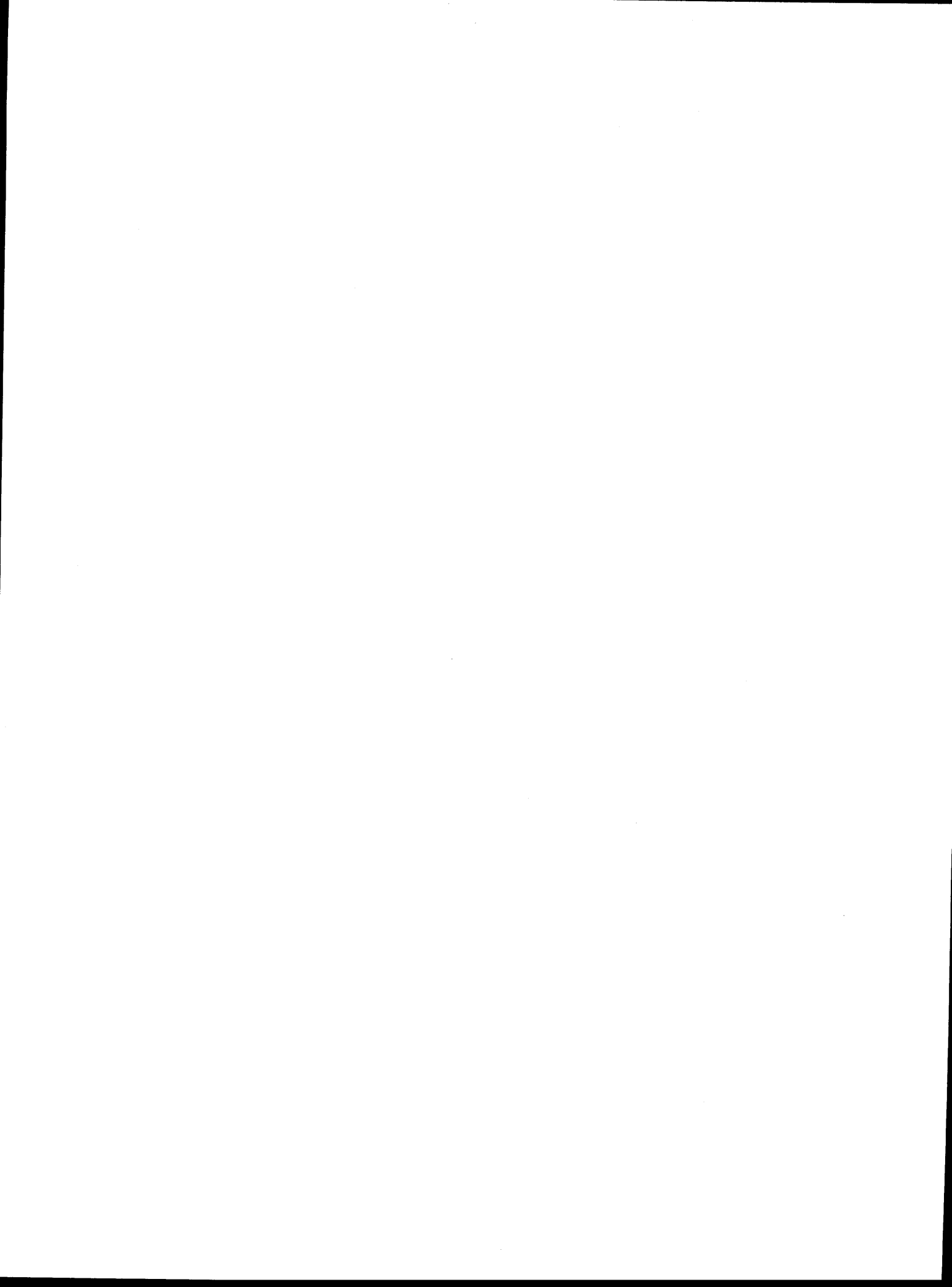
previously indicated an interest in reviewing and recodifying the laws relating to small watershed programs.

The Institute of Government has assisted the soil and water conservation agencies for years in connection with the administration of small watershed programs under the provisions of Chapter 139 of the General Statutes, and could readily take part in recodifying these provisions. A broader project embracing the drainage laws as well, however, would require a substantial independent research effort. Cooperation from attorneys and engineers versed in drainage district work would be a prerequisite of any such project.

An optimal project for the review and recodification of small watershed laws should include the drainage districts laws, as well as the statutes concerning county watershed programs and watershed improvement districts. While it cannot be assumed that a viable and legislatively acceptable recodification of all of these laws will result, the research that would be required concerning drainage district programs should be useful in itself.

It is proposed that the Institute of Government undertake to prepare the basis for a recodification of the small watershed laws of North Carolina, including the drainage laws of GS Chapter 156 as well as the legislation contained in GS Chapter 139. Incidental to this study, it is proposed that the Institute seek to secure research assistance from one or more drainage attorneys or engineers concerning drainage improvement programs. (The funds requested in this application would make possible the necessary research concerning drainage laws and programs.) On the basis of this work an overall report would be prepared by the

Institute of Government which might be submitted to the
Legislative Research Commission and the State Soil and Water
Conservation Committee.



APPENDIX D

A

COMPREHENSIVE ESTUARINE PROGRAM

FOR THE

STATE OF NORTH CAROLINA

A Report Prepared

By

The Estuarine Study Committee

for presentation to

The Inter-Agency Council on Natural Resources

May, 1968

CONTENTS

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FOREWORD

On November 21, 1967, the Inter-Agency Council on Natural Resources considered the problems relating to the public use of North Carolina's estuaries and explored means of more efficiently managing these resources. The proceedings of this meeting, consisting of contributions from the Department of Conservation and Development, the Wildlife Resources Commission, the Department of Water and Air Resources, and the Attorney General's Office, have been furnished to all members of the Council and are available for public distribution.

As a result of the November meeting, the Council designated an Estuarine Study Committee, which was to develop a comprehensive state program for multiple use of the State's estuaries, and to present this program to the Council in time for implementation by the 1969 General Assembly. Members of the Estuarine Study Committee are:

<u>NAME</u>	<u>AFFILIATION</u>
Clyde P. Patton	Wildlife Resources Commission
David A. Adams	Commercial & Sports Fisheries
Chester Davis	Winston-Salem Journal-Sentinel
R. J. B. Page	Department of Water & Air Resources
Milton S. Heath, Jr. (Advisory)	Institute of Government, UNC
Parks H. Icenhour	Attorney General's Office
Frank Turner	Department of Administration
W. C. Bell	State Planning Task Force

The Study Committee was divided into the following subcommittees, each of which was assigned a specific task:

A. Survey of Resources	Patton (Chairman), Adams, Davis, Page
B. Means of Control	Heath (Chairman), Icenhour, Page, Turner
C. Jurisdiction	Turner (Chairman), Bell, Heath, Icenhour
D. Public Awareness	Davis (Chairman), Adams, Bell, Patton

The Subcommittee findings form the basis for the estuarine program proposed in this report. Reports of Subcommittee A, B, and C are included as appendices. Much of the work of Subcommittee D will be contingent upon acceptance of this report by the Inter-Agency Council.

RECOMMENDATIONS

I. Introduction

For generations, the estuaries received little public attention, but recent years have seen a blossoming of both public and private interest in these lands and waters. Today, we are faced with a variety of uses -- fishing, navigation, real estate, hunting, boating, other forms of recreation, industry -- actively competing for the State's estuaries. Although all uses are justified in their own right, many of them conflict with each other, some cannot co-exist in the same local area, and some pre-empt any alternative uses for all time to come.

The program described herein is designed to provide a means for allocating uses throughout the estuarine system in such a manner as to ensure that future generations of North Carolinians may participate in the diverse coastal activities that we enjoy today, supported by facilities and services adequate to serve their needs.

II. Elements of the Program

- A. Fixing Authority. The Department of Administration should be designated the agency responsible for the State's estuarine program.
- B. Providing Coordination. Provisions for full coordination among all affected State and local agencies should be required. This responsibility should be placed upon the Department of Administration by statute. This will provide for cases which vary in the agencies and local interests which they affect, and which cannot be covered by a Board or Committee with established membership. However, there should be an Estuarine Council, composed of representatives of affected State agencies, supplemented by private citizens appointed by the Governor. Representatives of governmental agencies should include the State Board of Health, the Wildlife Resources Commission, the Department of Conservation and Development, and the Department of Water and Air Resources. Non-governmental members should include representatives of the academic community and residents of the estuarine region.
- C. Providing Control Authority. The estuarine agency should be given authority to control the uses of estuarine lands and waters through the following processes:
 1. Reviewing all public projects and programs affecting estuarine lands and waters in coordination with other State agencies and transmitting its suggestions and recommendations to the proper authority.

2. Acquiring interests in estuarine lands and waters in the public interest through purchase, gift, lease, easement, or condemnation. Requests for acquisition may come from the program staff or any State agency responsible for the natural resources therein or for the potential public use of such resources. Upon approval of the Estuarine Council, the Department of Administration would acquire the desired interest in the manner provided in Chapter 146 of the General Statutes, and delegate administration and management to the appropriate natural resource agency. Based upon preliminary estimates, it will probably be necessary to acquire 100,000 to 150,000 acres for fish, wildlife, and recreational purposes.
3. Maintaining a continuing inventory of the State's estuaries in order to provide a basis for decisions.
4. Regulating private uses which may affect the public interest through a permit system which would:
 - a. require permits for all alterations below the elevation of Mean High Water adjacent to the State's estuaries.
 - b. provide for a review of all permit applications by other interested State agencies and the Estuarine Council prior to action by the estuarine agency. Where a federal permit for work in navigable waters is also required, the state permit will represent the State's estuarine area interests, and will be consolidated with the views of other agencies and local governments by the Department of Water and Air Resources in the formulation of an overall State position on the issuance of a federal permit by the Army Engineers.
 - c. provide for public hearings on permit applications, upon request of the applicants or opponents.
 - d. provide an appeal procedure through the Department of Administration and through the courts, in the event a permit denial or approval is contested. The proposed permit controls do not represent a major departure or change in policy. Rather, they are an extension of controls already being exercised through a permit procedure administered by the Corps of Engineers (covering lands under navigable waters), and the granting of easements by the State Department of Administration (covering State-owned lands).

D. Providing Staff. A small technical staff, under the direction of a trained Natural Resources Administrator, should be provided. The staff will be primarily responsible for preparing master plans for estuarine use and maintaining an inventory of estuarine land. It will have to draw heavily on field personnel of the Wildlife Resources Commission, the Department of Conservation and Development, the Department of Water and Air Resources, and the State Board of Health for field investigations and technical assistance.

E. Providing Adequate Funds. Estimated fiscal requirements for the 1969-71 biennium are summarized below:

(1) Operating Funds ¹

<u>Salaries</u>	<u>1969-70</u>	<u>1970-71</u>
Natural Resources Administrator (Grade 73)	10,320	10,848
Community Planner I (Grade 69)	8,520	9,384
Wildlife Biologist II (Grade 69)	8,520	9,384
Draftsman I (Grade 56)	4,584	5,040
Steno II (Grade 54)	<u>4,176</u>	<u>4,584</u>
Sub-total	36,120	39,240
Supplies & Materials	1,000	2,000
Postage, Tel. & Tel.	500	1,000
Travel Expenses	1,500	3,000
Equipment	<u>1,500</u>	<u>1,000</u>
Total	40,620	46,240

¹The above funds should be requested as a part of the 1969-71 "B" Budget request of the Department of Administration.

(2) Land Acquisition, including legal fees, surveys, etc. ²

	500,000	500,000
--	---------	---------

²These funds would best be provided on a continuing basis through an annual appropriation of \$375,000 from the General Fund and allocation of 1/8 of 1% of the net proceeds of the taxes on motor fuels levied under G.S. 105-434 (estimated to be approximately \$125,000/yr. and less than 1/4 of the contribution to the highway fund from non-rebated marine fuel taxes) to the estuarine acquisition program. Federal funds, equivalent to the State's contribution, may also become available through provisions of the Land and Water Conservation Fund Act of 1965.

F. Providing Surveillance, and Enforcement. The Department of Administration currently has no field enforcement capability. Rather than create capability in this agency, law enforcement personnel of the Wildlife Resources Commission and the Department of Conservation and Development, Division of Commercial and Sports Fisheries, should be assigned the mission of maintaining surveillance over coastal alterations and informing the Department of Administration of acts of trespass upon State estuarine lands and waters and violations of permit requirements and provisions. The Department of Administration, with the assistance of the Attorney General's Office, would be responsible for taking any necessary legal action to protect the State's interests. Although this procedure appears unwieldy and contrary to normal administrative procedure, both enforcement agencies have a deep interest in and responsibility for the future of the State's estuaries and hopefully would be able to undertake the additional work in conjunction with their normal duties.

OUTLINE OF PROPOSED LEGISLATION

I. Dredge-and-Fill Permits or Regulations

New legislation will be needed in order to establish a permit system for dredging, filling, or otherwise altering privately-owned coastal marshlands. Probably a bill similar to S.B. 400, as originally introduced in 1967, would provide an adequate working model. If rule-making powers are desired in addition to or as an alternative to permits, an existing Massachusetts statute might be used as a model. Proposals under consideration in the San Francisco Bay area will also provide useful working guides.

II. Land Acquisition Program

Adequate estuarine land acquisition authority already exists in the Department of Conservation and Development /G.S. 113-226(a)/. However, with program responsibility shifted to the Department of Administration, it may be necessary or desirable to enact a statute transferring this authority. This legal issue should be explored by the Attorney General's Office.

III. Administrative Provisions.

New legislation will probably be needed to spell out administrative organization details.

In order to avoid double-office holding questions, legislation would be needed to set up an Estuarine Council with governmental powers.

New legislation is probably desirable to spell out administrative organization for program operation within the Department of Administration. Although it might be possible to carry out the program without new legislation concerning administrative organization and powers, it would be better to spell these matters out for the sake of clarity. Some thought needs to be given to the relationship of C & D's existing statutory responsibilities concerning estuaries (and DWAR's existing administrative responsibilities) to the proposed new responsibilities of the Department of Administration.

IV. Financing Provisions

The matter of financing can be handled simply as an appropriation item, unless some special or new revenue source is to be earmarked for this program.

APPENDIX E

A STUDY CONCERNING THE LEGAL FRAMEWORK FOR DELIVERY OF STORED WATER FROM IMPOUNDMENTS*

When a stream is impounded for water supply storage some arrangement must be made to convey the water from storage to its ultimate use. In the typical case a pipeline or canal is laid to transmit the impounded waters to a municipal distribution system. Ordinarily the legal actions required to implement such arrangements involved only routine right-of-way acquisition by purchase or condemnation.

Some novel ways of conveying stored waters that are being planned in North Carolina and elsewhere may present more substantial legal problems. The arrangements that may present legal problems include plans for distribution of waters stored in Federal reservoirs, and plans of both governmental and private interests to use impounded waters for stream flow augmentation. The North Carolina Department of Water and Air Resources has a special interest in some of these plans because it has given assurances to the Federal Government of non-federal cooperation for water supply storage in Federal reservoirs.

* Excerpted from an application for a research grant by the Institute of Government to the Water Resources Research Institute of the University of North Carolina. This grant was funded and the study is being conducted in the summer of 1968.

In some cases involving water supply storage as well as stream flow augmentation, it is proposed that the channel of the stream below a reservoir be utilized for transmission of the stored waters to their intended beneficiaries for water supplies or flow augmentation. Several legal issues are raised by these proposals.

Where stream channels are used to convey stored water, two basic questions must be considered. First, can the intended beneficiaries of water supply storage or stream flow augmentation legally prevent intervening water users from diverting the augmented stream flows? Second, would legal objections be sustained against the use of a stream channel below an impoundment as a means of water carriage for artificially stored waters? In at least one eastern state (New York) whose water rights traditions are comparable to North Carolina's new legislation was recently required to settle these issues. The need for such legislation in North Carolina cannot be accurately assessed without a study of the questions raised above. Such a study should begin with an examination of the law concerning rights in natural and artificial water courses.

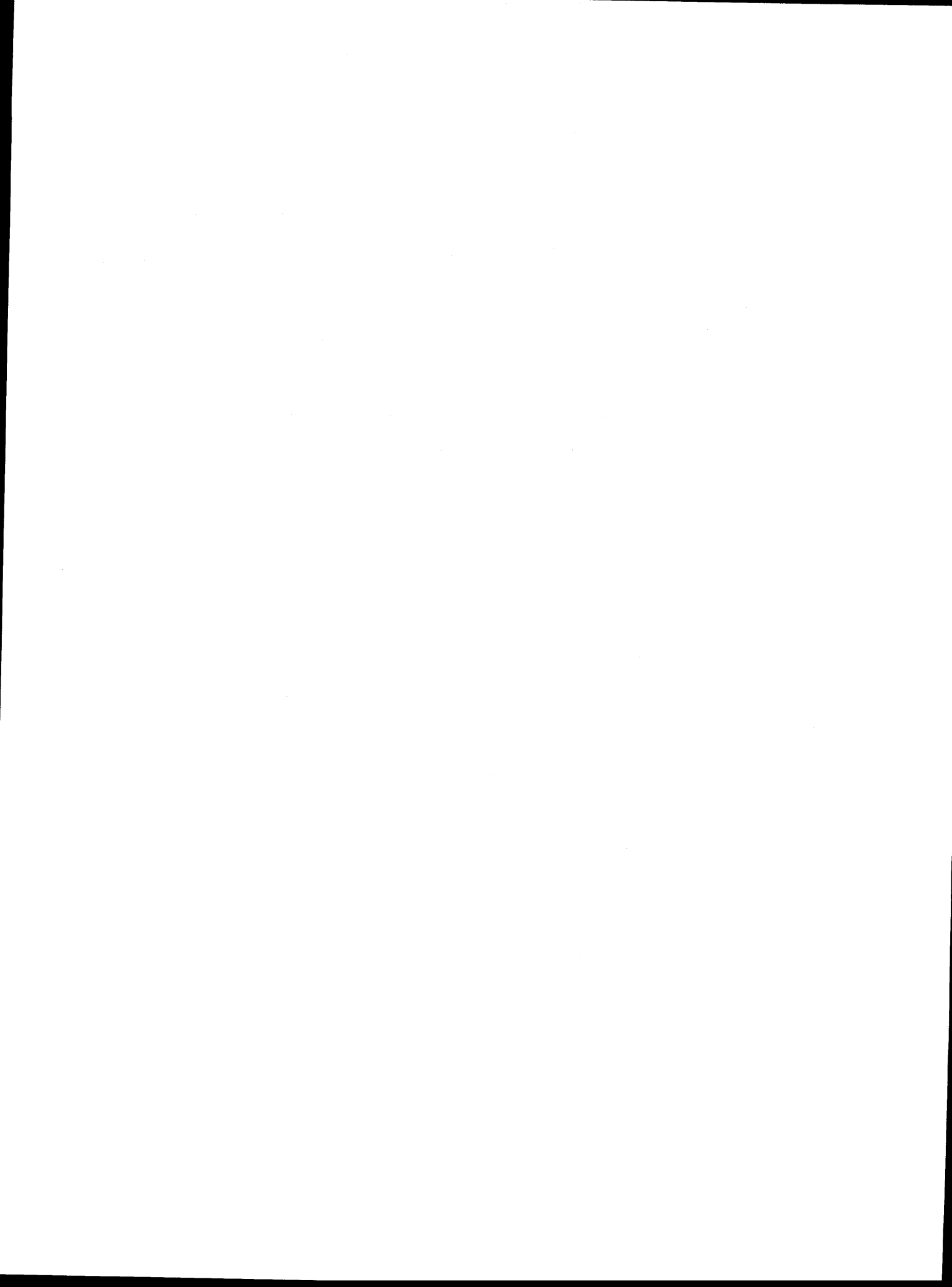
Some study will also be needed concerning the Department's statutory authority in such matters as:

- * * * Monitoring releases from storage to cities and counties;
- * * * Determining how much water the participating localities are entitled to demand; and

* * * Determining what discretion the Department has in these respects, as well as in related matters such as the timing of releases.

A related question that may be raised in connection with interstate projects involves condemnation powers for pipeline rights-of-ways that cross state lines.

To summarize, a research project is needed which will explore these questions concerning the Department's legal authority, as well as the issues described previously relating to rights to use and convey stored waters.



APPENDIX F

STATE OF NORTH CAROLINA
DEPARTMENT OF WATER AND AIR RESOURCES

DAN K. MOORE
GOVERNOR

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H. GRADY FARTHING
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J. M. JARRETT
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P. O. BOX 9392
RALEIGH, N. C. 27603
TELEPHONE 829-3003

December 6, 1967

Honorable Nelson W. Taylor, Chairman
Water Resources Subcommittee
Legislative Research Commission
Legislative Building
Raleigh, North Carolina

Dear Mr. Taylor:

Reference is made to our conversations and your letter dated November 21 concerning the study being made by the Water Resources Subcommittee of the Legislative Research Commission. Your Subcommittee will submit a report on the water legislation passed by the 1967 General Assembly to the 1969 General Assembly. The following water legislation was passed by the 1967 General Assembly:

(HB 356) Chapter 892 - An Act to Create a Board of Water and Air Resources and to Define its Duties and Powers Relating to Water and Air Pollution Control and Water Resource Management.

(SB 465) Chapter 933 - Water Use Act.

(SB 466) Chapter 1157 - Well Construction Act.

(HB 993) Chapter 1068 - Dam Safety Law of 1967.

(HB 995) Chapter 1069 - An Act to Amend the Well Drillers Registration Act as Set Forth in Article 38 of Chapter 143 of the General Statutes of North Carolina.

(HB 996) Chapter 1117 - An Act to Authorize the North Carolina Board of Water Resources to Establish a System of Reporting Water Use Information.

(HB 997) Chapter 1070 - An Act to Authorize the North Carolina Department of Water Resources to Assist, Coordinate, and Otherwise Participate with Local Levels of Government in a Program of Flood Plain Management.

(HB 998) Chapter 1071 - An Act to Amend Article 38 of Chapter 143 of the North Carolina General Statutes Relating to the Powers and Duties of the Board of Water Resources.

Sufficient experience has not been obtained in the administration of these laws to afford us the opportunity to make constructive comments. In general, these laws are sound; however, there are a few points of concern that will be included in future amendments submitted by this Department.

The administration of these new laws, as well as the continuing increase in water resources services being rendered due to the rapidly expanding economy places an urgent need for an increase in the appropriation of funds to support the activities of this Department. Our "B" Budget request for the 1967-69 Biennium was drastically cut as well as our request for funds to support the newly created air pollution control activities. This has greatly curtailed the services we are able to render.

A summary of the estimate of funds needed to provide the personnel wages, equipment and administrative cost necessary to administer the legislation enacted by the 1967 General Assembly, including the increase in water resources services being provided to the general public, is stated below.

	<u>1969-70</u>	<u>1970-71</u>	<u>Biennium</u>
<u>Salaries and Wages</u>			
Administrative Services	\$ 10,008	\$ 10,008	\$ 20,016
Ground Water	121,428	121,428	242,856
Water Pollution Control	34,872	34,872	69,744
Water Management	20,000	20,000	40,000
Air Pollution Control	<u>37,496</u>	<u>37,496</u>	<u>74,992</u>
	\$223,804	\$223,804	\$447,608

Honorable Nelson W. Taylor

December 6, 1967

	<u>1969-70</u>	<u>1970-71</u>	<u>Biennium</u>
<u>Administrative Support-</u> <u>ing Cost</u>			
Administrative Services	\$ 750	\$ 350	\$ 1,100
Ground Water	224,500	134,500	359,000
Waterways and Seashore	7,000	7,000	14,000
Water Pollution Control	9,600	10,542	20,142
Water Management	6,000	6,000	12,000
Air Pollution Control	<u>25,004</u>	<u>25,004</u>	<u>50,008</u>
	\$272,854	\$183,396	\$456,250

Salaries and Wages	\$447,608
Administrative Supporting Cost	<u>456,250</u>
	\$903,858

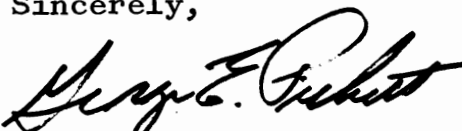
A more detailed breakdown of this requirement for funds along with a justification is attached as an enclosure.

Our municipal waste treatment plant program is making progress with the assistance of the 30-percent Federal grant program. However, many of our municipalities, especially our smaller ones, are having trouble paying the remaining 70 percent of the cost of the waste treatment facility. This program (P.L. 660), as an incentive for State financial participation, provides additional Federal grant funds if the State will provide funds to match this 30-percent grant program.

A budget request for \$2,000,000 was made to the 1967 General Assembly for the purpose of providing financial assistance to municipalities for the construction of waste treatment plants. No funds were appropriated for this purpose.

It is urgently recommended that \$2,000,000 be made available for the 1967-69 biennium to match or supplement Federal funds which would be administered by the Board of Water and Air Resources in accordance with the policy expressed by the General Assembly or by the Budget Advisory Commission.

Sincerely,


George E. Pickett

Enclosure
cc: Hon. J. V. Whitfield

SALARIES AND WAGES

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Administrative Services</u>	\$ 10,008	\$ 10,008	\$ 20,016
1 Stenographer II @ \$4,176			
1 Eng. Tech. II @ \$5,832			

At the present time, there are only four stenographers to provide secretarial services for the Director, three division heads, and the budget officer. Due to the amount of daily correspondence and continuing demands on these secretaries to type, collate, staple, and mail out reports and publications, it is difficult for the administrative personnel to schedule their work load. This requested stenographer would assist the Department's file clerk and take over the duties of operating the veritype machine. She will work in close connection with the reproduction unit keeping up with publications and mailing reports. She would be responsible for verityping instructions to be sent out concerning the Department's new Air Pollution Control regulations. Also, she would release the Ground Water secretary from having to type Ground Water reports put out periodically by that division's hydrologist. By her taking on these duties and responsibilities, it would release the other secretaries to carry on with the daily correspondence and general office duties.

The requested Engineering Technician will do minor technical work as requested by the Director. He will prepare charts and graphs, do some drafting work, and make presentations to the public on our various water resources programs.

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Ground Water Division</u>	\$121,428	\$121,428	\$242,856
3 Hydrologist III @ \$9,852			
1 Chemist II @ \$6,408			
7 Eng. Tech. II @ \$5,832			
8 Eng. Tech. I @ \$4,584			
2 Clerk-Typist II @ \$3,984			

Due to the passage of the Water Use, Well Construction, and Water Reporting

Acts of 1967, the Division of Ground Water cannot satisfactorily develop and effectively implement these acts without additional staffing. The above mentioned new personnel will enable the division to conduct investigations and research to determine the extent, character, capacity and potential of the various ground water reservoirs; to develop and maintain a statewide program of monitoring water levels, water quality, and water supply development and use; for the collection, processing, cataloging and analysis of other basic data such as well-construction records, samples of cuttings from wells, geophysical logs and aquifer-test data; water development; for field inspection of well construction and supply development for compliance with existing and future regulations and requirements; processing applications for well-construction permits; for providing data, analysis and technical services in the planning development of industrial, public, and individual water supplies; to provide the framework for planned development, conservation and management of the State's ground water resources.

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Water Pollution Control Division</u>	\$ 34,872	\$ 34,872	\$ 69,744
2 Sanitary Eng. II @ \$8,940			
2 Chemist II @ \$6,408			
1 Stenographer II @ \$4,176			

It is the opinion of the Department that the present staff of 42 employees in the Division of Water Pollution Control is not adequate to provide essential services. These services are to provide for the continuation of an effective statewide Water Pollution Control program if adequate state funds are made available to permit expansion of the program commensurate with increased activities brought about by continued population and industrial growth.

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Water Management Division</u>	\$ 20,000	\$ 20,000	\$ 40,000
2 Consulting Eng. II or III approx. @ \$10,000			

Additional engineer-type employees are required to establish and maintain an effective water management program and, at the same time, perform essential functions related to administering the 1967 Water Use Act.

Effective long-range water management depends on a continuing accurate assessment of water needs throughout the State and a marshaling of available and potential resources to meet present and projected requirements. These tasks involve many basic functions that must be performed in the field, through local surveys, investigations and discussions. This requires qualified men working almost continuously in the field. The Department does not have manpower available for these assignments. Consequently, we are not in a position to establish and maintain a satisfactory water management program.

In addition, we lack sufficient personnel to perform adequately all functions required of the Department in administering the Water Use Act of 1967. These functions become quite extensive when the Board directs the Department to conduct a "capacity use area" study comparable to the one recently directed for an eight-county area in Eastern North Carolina. Each such study should receive the full-time effort of at least one engineer for one year. The Department has no employee who can be assigned full-time to the study that has been directed or to any future study the Board may direct.

Two additional engineers will enable us to move, steadily though slowly, toward establishing an effective water management program while, at the same time, carrying out the Department's responsibilities under the 1967 Water Use Act. We will still be undermanned and unable to move at the desired rate, but at least we can move forward.

In the light of recent experiences, it is clear that the type of man we need cannot be obtained below a salary range of \$10,000.

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Air Pollution Control Division</u>	\$ 37,496	\$ 37,496	\$ 74,992
2 Air Hygienist @ \$10,000			
1 Chemist II @ \$5,832			
2 Eng. Tech. II @ \$5,832			

The request made to the 1967 General Assembly for the State's Air Pollution Control Program was for \$75,000 each year of the biennium. The Department received only \$37,500 each year. This cut seriously damaged our matching ability with the Federal Government which offer a matching grant available at a 2 to 1 rate. It is important to realize that the policy of the Federal Government relating to grants for the support of local and State air pollution

control programs, once such programs have been established, is that of matching increased non-Federal funds. This means that at the end of the initial grant period (1970), an application for a continuation grant must be filed and that only those State funds made available by the General Assembly in excess of \$37,500 can be utilized in matching Federal funds. It is believed, therefore, that the 1969 General Assembly should be requested to increase the appropriation of State funds by \$62,500 each year of the 1969-71 biennium. If this increase is appropriated and if the State is successful in obtaining a Federal grant, the program would then be supported by a budget of \$242,000 each year. This budget would make it possible to employ and support (travel, equipment, supplies, etc.) two additional Air Hygienists, one Chemist I, and two Engineering Technicians II, bringing to 17 the total employees assigned to the air pollution control program. It is felt that these funds are essential to establish and maintain an effective statewide program.

In addition to the above, it is suggested that the Legislative Study Commission might give consideration to the possibility of establishing funds with which to assist local governmental agencies (counties and municipalities) in the establishment and maintenance of local air pollution control programs. At present there are 9 local programs established in County and District Health Departments throughout the State. These programs involve only 14 counties. In consideration of the vast amount of study, surveillance and enforcement efforts necessary to the establishment and maintenance of an effective Statewide program, it is believed that considerable reliance must be placed upon local programs. Such funds would, likewise, encourage the appropriation of local funds which could be used, together with the State funds, to participate in available Federal grants.

ADMINISTRATIVE SUPPORT COST AND EQUIPMENT

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Administrative Services</u>			
Supplies	\$ 50	\$ 50	\$ 100
Postage, Telephone, and Telegraph	50	50	100
Travel	225	200	425
Equipment	425	50	475
	<u>\$ 750</u>	<u>\$ 350</u>	<u>\$ 1,100</u>

The above amounts are what we feel it will take to get into operation the requested Stenographer II and Engineering Technician II. The \$425 requested for equipment during the 1969-70 year of the 1969-71 Biennium is to purchase the necessary equipment such as desk, chairs, and typewriter for the above mentioned personnel.

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Ground Water Division</u>			
Supplies and Materials	\$ 48,000	\$ 48,000	\$ 96,000
Travel	27,000	27,000	54,000
Equipment	135,000	45,000	180,000
General Expense	3,000	3,000	6,000
Motor Vehicle Operation	8,000	8,000	16,000
Repairs and Alterations	3,500	3,500	7,000
	<u>\$224,500</u>	<u>\$134,500</u>	<u>\$359,000</u>

The above supplies and materials, travel, and general expense are requested to support personnel requested in the Salaries and Wages portion of this report for the Ground Water Division. In support of the equipment, motor vehicle, and repairs and alterations request this Department feels that the Coastal Plains major aquifers must be developed and managed properly to fully utilize the potential and to preclude problems of overdevelopment. To provide data for initial analysis and evaluation of the aquifer systems and continued monitoring of water levels and water quality, construction, and instrumentation of a regional network of permanent multi-well data stations is essential. An adequate primary network

will require about 250 to 300 stations, and in order to complete such a network during the next ten years, 2 additional drilling rigs and related equipment, well construction supplies, and station instruments.

A drilling program is also urgently needed in ground-water studies in the Piedmont and Mountain Regions, particularly in the evaluation of flood plain deposits as sources of industrial supplies, and possibly augmentation of low stream flow to aid in pollution abatement. Exploratory drilling and construction of test and observation wells in the several major river basins will require a period of about ten years to complete. A core-auger drill rig, auxiliary equipment, and supplies are required to begin this program.

The requested personnel and equipment will greatly expedite the completion of these observation wells; however, we anticipate a ten year period to complete this program.

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Waterways and Seashore Division</u>	\$ 7,000	\$ 7,000	\$ 14,000
Consultant Services			

The requested \$14,000 for the 1969-71 Biennium is in connection with administering the Chapter 1068 Dam Safety Law passed by the 1967 General Assembly. It is felt that contracts with practicing consultants will be necessary to administer this law. It is estimated that there will be approximately 10 cases per year and that each case will require 7 days of consulting services at \$100 per day.

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Water Pollution Control</u>			
Supplies and Materials	\$ 500	\$ 500	\$ 1,000
Postage, Telephone, and Telegraph	600	600	1,200
Travel	7, 000	7,000	14,000
Equipment	1, 500	750	2,250
Merit Increments		1,692	1,692
	<u>\$ 9, 600</u>	<u>\$ 10,542</u>	<u>\$ 20,142</u>

The above mentioned administrative supporting costs and equipment are to provide the necessary requirements for the additional requested personnel.

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Water Management Division</u>			
Supplies and Materials	\$ 300	\$ 300	\$ 600
Postage, Telephone, and Telegraph	400	400	800
Travel	4,000	4,500	8,500
Equipment	1,000	300	1,300
General Expense	300	500	800
	<u>\$ 6,000</u>	<u>\$ 6,000</u>	<u>\$ 12,000</u>

The requested money is to provide funds for travel and related costs for the two consulting engineers requested for this Division. Since the main objective of these men will be to get out in the public to learn the state's problems, we feel that the Travel amount requested is a minimum amount. The equipment and other funds requested are to set up and keep the additional requested personnel in operation.

	<u>1969-70</u>	<u>1970-71</u>	<u>1969-71 Biennium</u>
<u>Air Pollution Control Division</u>			
Supplies and Materials	\$ 3,500	\$ 3,500	\$ 7,000
Postage, Telephone, and Telegraph	600	600	1,200
Travel	9,400	9,400	18,800
General Expense	304	304	608
Equipment	11,200	11,200	22,400
	<u>\$ 25,004</u>	<u>\$ 25,004</u>	<u>\$ 50,008</u>

The above figures represent the amount of administrative supporting costs for the two Air Hygienists, one Chemist and two Engineering Technicians requested in the Salary and Wages for the Air Pollution Control Division. The funds requested for equipment will be used for instruments and sampling equipment for the collection and analysis of air samples.

"B" BUDGET 1967-69 BIENNIUM

	<u>Requested</u>			<u>Received</u>		
	<u>1967-68</u>	<u>1968-69</u>	<u>1967-69 Biennium</u>	<u>1967-68</u>	<u>1968-69</u>	<u>1967-69 Biennium</u>
Office of Director	\$ 33,910	\$ 33,910	\$ 67,820	\$ 8,810	\$ 8,810	\$ 17,620
Staff Services	15,212	13,712	28,924	-	-	-
Ground Water	186,905	175,275	362,180	32,736	30,626	63,362
Navigable Waterways	13,410	13,085	26,495	4,000	4,000	8,000
Stream Sanitation and Hydrology	87,885	83,885	171,770	30,460	30,928	61,388
Water Management	21,684	20,984	42,668	12,774	12,774	25,548
Air Pollution Control	75,000	75,000	150,000	37,500	37,500	75,000
Merit Salary Increments	552	11,824	12,376	-	1,018	1,018
	<u>\$434,558</u>	<u>\$427,675</u>	<u>\$862,233</u>	<u>\$126,280</u>	<u>\$125,656</u>	<u>\$251,936</u>

Not included in the above is a request of \$2,000,000 for the 1967-69 Biennium for Construction Grant Funds for Municipal Waste Treatment Works. There were no funds approved for this program by the 1967 General Assembly.

Also not included are funds in the amount of \$187,500 requested in the 1967-68 fiscal year for Maintenance of Civil Works Projects. Although these funds were not approved in the "B" budget request authorization to use Capital Improvement funds for maintenance purposes was obtained from late legislation.

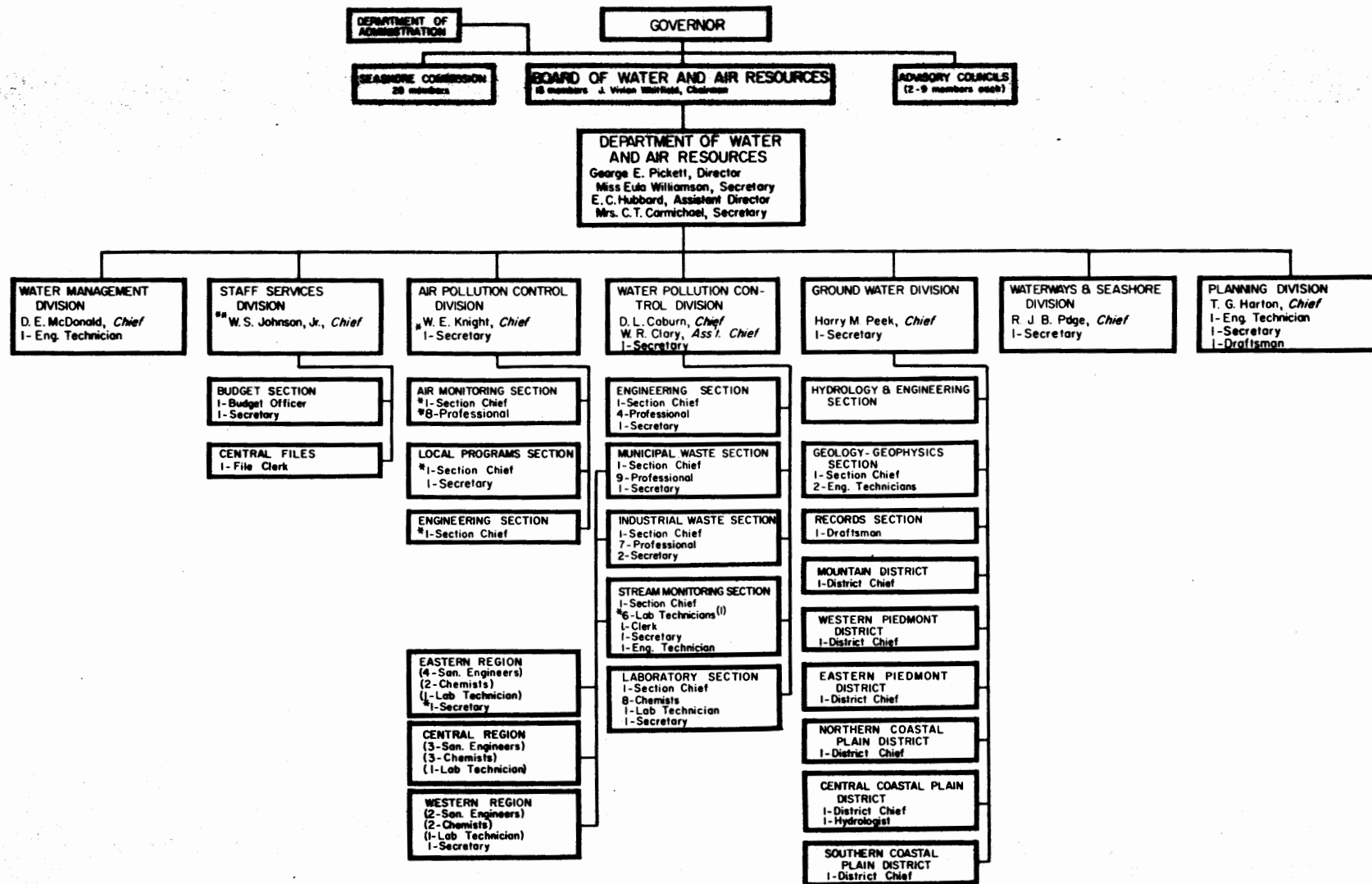
Personnel Requested - 29

- 1 Consulting Engineer IV
- 4 Hydrologist IV
- 1 Sanitary Engineer III
- 3 Engineering Technician III
- 5 Engineering Technician II
- 8 Engineering Technician I
- 4 Chemist II
- 3 Stenographer II

Personnel Received - 6

- 1 Consulting Engineer IV
- 2 Hydrologist III
- 1 Sanitary Engineer III
- 1 Engineering Technician III

- 1 Chemist II



NOTE: There will be other positions.

* Proposed new positions.

** Designated Executive Secretary to the N. C. Senate Commission.

#3 Part time

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APPENDIX H

STATEMENT

Concerning

WATER RESOURCES LAWS

Presented By

THE INDUSTRIAL DEVELOPMENT COUNCIL

Of

THE WASHINGTON CHAMBER OF COMMERCE

To

THE COMMITTEE TO STUDY CERTAIN WATER RESOURCES LAWS

Of

THE LEGISLATIVE RESEARCH COMMISSION

The public hearing of the Committee to study certain Water Resources Laws of the Legislative Commission scheduled to be held on Thursday, January 25, 1968, can have far reaching implications on the economic future of North Carolina as a whole and particularly on the tideland areas of the state.

For almost 40 years the deep eastern region of the State of North Carolina has sought the industrial answer to a diminishing economic stability. In the area of Beaufort County, the key to future economic development was dramatically uncovered with the discovery of ways and means to mine and process phosphatic minerals.

Any industrial possibilities of this magnitude will, of their very nature, bring change and new departures from the ordinary environmental status quo. One of the questions arising from the progress brought about by the start of phosphate mining was the matter of ground water supply. While this subject has been the matter of some discussion across the state and, particularly, in Beaufort County, the extent of any problem that will occur from phosphate mining has not yet been determined. To deal with a possible problem of the future, however, the North Carolina General Assembly adopted certain measures, by legislative act, in the 1967 session to deal with these possible problems.

Any changes in these newly established laws are, of course, a great concern to the Industrial Development Council of the Washington Chamber of Commerce, to the Chamber of Commerce as a whole, and to the entire area of Beaufort County and the Carolina Tideland.

While there appears to exist no apparent damage to the ground water supply in the area, the uncertainty surrounding the entire problem of ground water damage and legislation enacted, has created a problem of development for the Beaufort County area.

We await the earliest hour that these uncertainties can be cleared up for on their solution rests the economic future of the area and its people.

We seek a stable program of water resources control that will protect the State, the area, and the people of the state and area. But, at the same time, we seek a stability of program that

will allow existing industries and prospective industries the possibilities for approaching any future development based on a stable program of regulations that have been studied and developed realistically.

It is our opinion that the people of Beaufort County, while concerned about water, are also concerned about economic development, and the vast majority of them recognize the need for and the implications of a stable development of industrial potential related to minerals in the area.

The Industrial Development Council of the Washington Chamber of Commerce, therefore, humbly requests that the authority established by legislative act to oversee and develop water resources regulations concern itself with;

1. A stable and realistic set of regulations related to the use of water in the phosphate industry;
2. The development of ways and means to provide assistance to the phosphate industry as it evolved into an economic entity in Beaufort County, and;
3. A program that will guarantee the support of all the people of Beaufort County and the State of North Carolina.

Respectfully Submitted:

/s/ A. Graham Elliott

A. Graham Elliott, Chairman
Industrial Development Council
Washington Chamber of Commerce

