

Article 11.

Government in Business.

§ 66-58. Sale of merchandise or services by governmental units.

(a) Except as may be provided in this section, it shall be unlawful for any unit, department or agency of the State government, or any division or subdivision of the unit, department or agency, or any individual employee or employees of the unit, department or agency in his, or her, or their capacity as employee or employees thereof, to engage directly or indirectly in the sale of goods, wares or merchandise in competition with citizens of the State, or to engage in the operation of restaurants, cafeterias or other eating places in any building owned by or leased in the name of the State, or to maintain service establishments for the rendering of services to the public ordinarily and customarily rendered by private enterprises, or to provide transportation services, or to contract with any person, firm or corporation for the operation or rendering of the businesses or services on behalf of the unit, department or agency, or to purchase for or sell to any person, firm or corporation any article of merchandise in competition with private enterprise. The leasing or subleasing of space in any building owned, leased or operated by any unit, department or agency or division or subdivision thereof of the State for the purpose of operating or rendering of any of the businesses or services herein referred to is hereby prohibited.

(b) The provisions of subsection (a) of this section shall not apply to:

- (1) Counties and municipalities.
- (2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.
- (3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.
- (4) The State hospitals for the mentally ill.
- (5) The Department of Health and Human Services.
- (6) The North Carolina School for the Blind at Raleigh.
- (6a) The Department of Juvenile Justice and Delinquency Prevention.
- (7) The North Carolina Schools for the Deaf.
- (8) The University of North Carolina with regard to:
 - a. The University's utilities and other services operated by it prior to January 1, 2005.
 - b. The sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students.
 - c. The sale of meals or merchandise to persons attending meetings or conventions as invited guests.
 - d. The operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn.

- e. The hospital and Medical School of the University of North Carolina.
 - f. The Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State.
 - g. The Centennial Campus of North Carolina State University at Raleigh.
 - h. The Horace Williams Campus of the University of North Carolina at Chapel Hill.
 - i. A Millennial Campus of a constituent institution of The University of North Carolina.
 - j. The comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.
 - k. Agreements by the North Carolina School of the Arts to the use of that school's facilities, equipment, and services of students, faculty, and staff for the creation of commercial materials and productions that may be unrelated to educational purposes, so long as the proceeds from those agreements are used for the benefit of the educational mission of the North Carolina School of the Arts.
 - l. Activities that further the mission of the University as stated in G.S. 116-1.
 - m. Activities that serve students or employees of the University or members of the immediate families or guests of students or employees.
 - n. Activities that provide University-related services or market University-related merchandise to alumni of the University and members of their immediate families.
 - o. Activities that enable the community in which the constituent institution or other University entity is located, or the people of the State to utilize the University's facilities, equipment, or expertise. If the University proposes to engage in a new type of activity under this subdivision, then the University shall provide electronic notice of the proposal to the persons who have requested to be included in the registry created pursuant to subdivision (j)(2) of this section prior to engaging in the new type of activity.
- (8a) The University of North Carolina with regard to the operation of gift shops, snack bars, and food service facilities physically connected to any of The University of North Carolina's public exhibition spaces, including the North Carolina Arboretum, provided that the resulting profits are used to support the operation of the public exhibition space.
- (9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.

- (10) Child-caring institutions or orphanages receiving State aid.
- (11) Highlands School in Macon County.
- (12) The North Carolina State Fair.
- (13) Rural electric memberships corporations.
- (13a) State Farm Operations Commission.
- (13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.
- (13c) The Western North Carolina Agricultural Center.
- (13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.
- (14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.
- (15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

- (16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the

- Department of Correction, be processed by a dry-cleaning method.
- (17) The North Carolina Global TransPark Authority or a lessee of the Authority.
 - (18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70.
 - (19) The North Carolina Justice Academy.
 - (20) The Department of Transportation, or any nonprofit lessee of the Department, for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department.
 - (21) The North Carolina Rural Redevelopment Authority or a lessee of the Authority.
 - (22) The North Carolina State Highway Patrol.
 - (23) The North Carolina State Lottery Commission.
- (c) The provisions of subsection (a) shall not prohibit:
- (1) The sale of products of experiment stations or test farms.
 - (1a) The sale of products raised or produced incident to the operation of a community college viticulture/enology program as authorized by G.S. 18B-1114.4.
 - (1b) The sale by North Carolina State University at University-owned facilities of dairy products, including ice cream, cheeses, milk-based beverages, and the by-products of heavy cream, produced by the Dairy and Process Applications Laboratory, so long as any profits are used to support the Department of Food Science and College of Agriculture and Life Sciences at North Carolina State University.
 - (2) The sale of learned journals, works of art, books or publications of the Department of Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.
 - (3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase "operation of endowment funds" shall include the operation by public postsecondary educational institutions of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of the stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students of the campus at which a campus store is located and their immediate families, to duly enrolled students of other campuses of the University of North Carolina other than the campus at which the campus store is located, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons

enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina.

- (3a) The use of community college personnel or facilities, with the consent of the trustees of that college, in support of or by a private business enterprise located on a community college campus or in the service area of a community college for one or more of the following specific services in support of economic development:
 - a. Small business incubators. – As used in this sub-subdivision, the term "small business incubators" means sites for new business ventures in the service area of the community college that are in need of the support and assistance provided by the college; and, without which, the likelihood of success of the business would be greatly diminished. The services of the small business incubator shall not extend to any such new business venture for a period of more than 24 months.
 - b. Product testing services.
 - c. Videoconferencing services provided to the public for occasional use.
- (3b) The operation of a military business center by a community college. For the purposes of this subdivision, the term "military business center" means a facility that serves to coordinate and facilitate interactions between the United States Armed Forces; military personnel, veterans, and their families; and private businesses.
- (3c) The use of the personnel and facilities of Western Piedmont Community College, with the consent of the trustees of the college, in support of economic development through the operation of the East Campus and its companion facilities as an event venue.
- (3d) The use of community college facilities by a private business enterprise that has loaned or donated instructional equipment to the college to demonstrate that equipment to customers. This use of college facilities shall be in accordance with policies adopted by the board of trustees of the college.
- (4) The operation of lunch counters by the Department of Health and Human Services as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.
- (5) The operation of a snack bar and cafeteria in the State Legislative Building, and a snack bar in the Legislative Office Building.
- (6) The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.
- (7) The operation by penal, correctional or facilities operated by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, or by the Department of Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff

while on duty and for the accommodation of persons visiting the inmates or clients, and other bona fide visitors.

- (8) The sale by the Department of Agriculture and Consumer Services of livestock, poultry and publications in keeping with its present livestock and farm program.
- (9) The operation by the public schools of school cafeterias.
- (9a) The use of a public school bus or public school activity bus for a purpose allowed under G.S. 115C-242 or the use of a public school activity bus for a purpose authorized by G.S. 115C-247.
- (9b) The use of a public school activity bus by a nonprofit corporation or a unit of local government to provide transportation services for school-aged and preschool-aged children, their caretakers, and their instructors to or from activities being held on the property of a nonprofit corporation or a unit of local government. The local board of education that owns the bus shall ensure that the person driving the bus is licensed to operate the bus and that the lessee has adequate liability insurance to cover the use and operation of the leased bus.
- (10) Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.
- (11) The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.
- (12) The sale of North Carolina flags by or through the auspices of the Department of Administration, to the citizens of North Carolina.
- (13) The operation by the Department of Correction of forestry management programs on State-owned lands, including the sale on the open market of timber cut as a part of the management program.
- (14) The operation by the Department of Correction of facilities to manufacture and produce traffic and street name signs for use on the public streets and highways of the State.
- (15) The operation by the Department of Correction of facilities to manufacture and produce paint for use on the public streets and highways of the State.
- (16) The performance by the Department of Transportation of dredging services for a unit of local government.
- (17) The sale by the State Board of Elections to political committees and candidate committees of computer software designed by or for the State Board of Elections to provide a uniform system of electronic filing of the campaign finance reports required by Article 22A of Chapter 163 of the General Statutes and to facilitate the State Board's monitoring of compliance with that Article. This computer software for electronic filing of campaign finance reports shall not exceed a cost of one hundred dollars (\$100.00) to any political committee or candidate committee without the State Board of Elections first notifying in writing the Joint Legislative Commission on

Governmental Operations.

- (18) The leasing of no more than 50 acres within the North Carolina Zoological Park by the Department of Environment and Natural Resources to the North Carolina Zoological Society for the maintenance or operation, pursuant to a contract or otherwise, of an exhibition center, theater, conference center, and associated restaurants and lodging facilities.
- (19) The use of the North Carolina Museum of Art's conservation lab by the Regional Conservation Services Program of the North Carolina Museum of Art Foundation for the provision of conservation treatment services on privately owned works of art. However, when providing this service, the Regional Conservation Services Program shall give priority to publicly owned works of art.
- (d) A department, agency or educational unit named in subsection (b) shall not perform any of the prohibited acts for or on behalf of any other department, agency or educational unit.
- (e) Any person, whether employee of the State of North Carolina or not, who shall violate, or participate in the violation of this section, shall be guilty of a Class 1 misdemeanor.
- (f) Notwithstanding the provisions of G.S. 66-58(a), the operation by the Department of Correction of facilities for the manufacture of any product or the providing of any service pursuant to G.S. 148-70 not regulated by the provisions of subsection (c) hereof, shall be subject to the prior approval of the Governor, with biennial review by the General Assembly, at the beginning of each fiscal year commencing after October 1, 1975. The Department of Correction shall file with the Director of the Budget quarterly reports detailing prison enterprise operations in such a format as shall be required by the Director of the Budget.
- (g) The North Carolina School of Science and Mathematics may engage in any of the activities permitted by G.S. 66-58(b)(8) and (c)(3).
- (h) Notwithstanding the provisions of G.S. 66-58(b)(8), The University of North Carolina, its constituent institutions, the Centennial Campus of North Carolina State University, the Horace Williams Campus of the University of North Carolina at Chapel Hill, a Millennial Campus of a constituent institution of The University of North Carolina, or any corporation or other legal entity created or directly controlled by and using land owned by The University of North Carolina shall consult with and provide the following information to the Joint Legislative Commission on Governmental Operations before issuing debt or executing a contract for a golf course or for any transient accommodations facility, including a hotel or motel:
 - (1) Architectural concepts.
 - (2) Financial and debt service projections.
 - (3) Business plans.
 - (4) Operating plans.
 - (5) Feasibility studies and consultant reports.
- (i) The Board of Governors of The University of North Carolina shall establish a panel to determine whether The University of North Carolina is authorized pursuant to sub-subdivisions m., n., and o. of subdivision (8) of subsection (b) of this section to undertake an activity in competition with an existing or proposed nongovernmental entity. Pursuant to G.S. 138-5, panel members shall receive the same per diem and reimbursement for travel

expenses as members of State boards and commissions. The University of North Carolina shall be responsible for staffing and paying the expenses of the panel. The panel shall consist of nine members as follows:

- (1) Two members who are familiar with the interests of the business community of the State appointed by the Governor.
- (2) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121.
- (3) Two members who are familiar with the interests of the business community of the State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121.
- (4) Three members who are not employees of The University of North Carolina appointed by the Board of Governors.

The panel may make the determination whether a proposed or ongoing activity undertaken under sub-subdivisions m. or n. of subdivision (8) of subsection (b) of this section is unauthorized competition. The panel may also make a determination whether a proposed or ongoing activity undertaken under sub-subdivision o. of subdivision (8) of subsection (b) of this section is either unauthorized or unfair competition. The University will be bound by a decision of the panel that a proposed or ongoing activity is not justified by the exceptions set out in sub-subdivisions m., n., or o. of subdivision (8) of subsection (b) of this section.

The panel established by this subsection shall report to the Joint Legislative Economic Development Oversight Committee. The panel shall report to the Committee by May 1 of each year on the number and types of determinations made during the preceding year.

(j) The Board of Governors shall establish and publish procedures to be used by the panel created under subsection (i) of this section in making determinations. The procedures shall:

- (1) Include that a determination may be initiated based on a request from any nongovernmental entity in the State that is in or proposes to be in the same or a similar or competing business or based on a request from the constituent institution or other university system entity engaging in or proposing to engage in the activity.
- (2) Require the panel to maintain a registry of all parties that request to receive notification of the panel's proceedings. The notification may be electronic and shall be given to all parties that have requested to be notified at least seven days prior to the panel's meeting. The notice shall include the name of the constituent institution or other university system entity engaging in or proposing to engage in the activity and the nature of the activity. The panel shall provide the documents relating to any agenda item to anyone requesting them in advance of the panel's proceedings.
- (3) Provide that the agendas for the panel's meetings, the minutes of the meetings, and the determinations of the panel shall be posted on The University of North Carolina Web site.

(k) The University of North Carolina and its employees may rely on a determination made by the panel created under subsection (i) of this section as to whether an activity violates

this section, and a determination that an activity is authorized shall be an absolute defense in any prosecution for any activity undertaken before a contrary determination is made by a court or by an opinion of the Attorney General. The panel shall not have the power to overrule a prior determination of the Attorney General.

(l) The proceeds of any activity undertaken under sub-subdivisions m., n., or o. of subdivision (8) of subsection (b) of this section shall be placed in an institutional trust fund pursuant to G.S. 116-36.1 and shall be used to continue to conduct the activity that generated the proceeds or to further the mission of the constituent institution or other University entity engaging in the activity. (1929, c. 221, s. 1; 1933, c. 172, s. 18; 1939, c. 122; 1941, c. 36; 1951, c. 1090, s. 1; 1957, c. 349, ss. 6, 10; 1967, c. 996, s. 13; 1973, c. 476, ss. 48, 128, 143; c. 671, s. 1; c. 965; c. 1262, s. 86; c. 1294; c. 1457, s. 7; 1975, c. 730, ss. 2-5; c. 840; c. 879, s. 46; 1977, cc. 355, 715; c. 771, s. 4; 1979, c. 830, s. 4; 1981, c. 635, s. 3; 1983, c. 8; c. 476; c. 717, s. 13; c. 761, s. 168; 1985, c. 589, s. 28; c. 757, s. 206(d); 1989, c. 727, s. 218(9); 1989 (Reg. Sess., 1990), c. 1004, s. 1; 1991, c. 749, s. 7; 1991 (Reg. Sess., 1992), c. 902, s. 3; 1993, c. 539, s. 513; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 769, s. 17.15; c. 777, s. 4(e); 1995, c. 247, s. 2; c. 507, s. 13.1(a); 1997-258, s. 1; 1997-261, ss. 4-6; 1997-315, s. 1; 1997-443, s. 11A.21; 1997-456, s. 55.2A; 1997-527, s. 1; 1998-202, s. 4(d), (e); 1998-212, ss. 9.9, 13.3; 1999-234, s. 9; 1999-237, ss. 19.7, 27.23A; 2000-137, ss. 4(f), 4(g); 2000-148, s. 6; 2000-177, s. 10; 2001-41, s. 2; 2001-127, s. 1; 2001-368, s. 1; 2002-102, s. 3; 2002-109, s. 1; 2002-126, ss. 9.15(a), 18.5; 2004-124, ss. 8.17(b), 9.13; 2005-20, s. 1; 2005-63, s. 1; 2005-247, s. 1; 2005-344, s. 5; 2005-397, ss. 1, 2, 4.)

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The UNC Policy Manual: 100.4

Policy 100.4
Adopted 5/12/06

REVIEW OF UMSTEAD ACT EXCEPTIONS

Introduction: The Umstead Act contains numerous exceptions for UNC to the Act's general prohibition of State agencies' selling goods or providing services to the public that are ordinarily and customarily provided by private enterprises. G.S. §66-58(a). Three of those exceptions, contained in G.S. §66-58(b)(8)m., n., and o., require that the Board of Governors establish a panel to determine whether the University is authorized to undertake questioned activities in competition with an existing or proposed nongovernmental entity. The purpose of this policy is to establish this panel and to establish procedures for it to use in making its determinations, as required by G.S. §66-58(i) and (j).

Definitions: The following definitions apply to this policy:

1. "An affected party" is a nongovernmental person or entity in the State that is in or proposes to be in the same, a similar, or competing business.
2. "The Exceptions" are the exceptions to the Umstead Act created by G.S. §66-58(b)(8)m., n., and o.
3. "The Panel" is the UNC Umstead Review Panel.
4. "The Registry" is the registry required by G.S. §66-58(j)(2) and established by Part II of this Policy.
5. "The Umstead Act" is N.C.G.S. §66-58.
6. The "University" means The University of North Carolina.
7. "Institution" or "Entity" means a constituent institution or entity of the University of North Carolina, or any component thereof.
8. "Day" mean calendar day unless otherwise noted.

I. Establishment of Panel.

There is hereby created a panel, to be known as the UNC Umstead Review Panel consisting of members appointed in accordance with G.S. §66-58(i).

- A. **Terms of Appointment:** Appointments to the panel shall be for a term of four years, though the initial appointments to the panel may be for terms shorter than four years in order to stagger the terms of appointment. A person appointed to the Panel shall serve until his successor is appointed.
- B. **Officers.** The Panel shall, by a majority vote of those members present, elect a chair and a vice chair, each to serve a two year term.
- C. **Staff to Panel:** The Vice President and General Counsel of The University of North Carolina shall provide staff to the Panel.
- D. **Expense Reimbursement:** Members of the Panel shall receive per diem compensation and travel expense reimbursement consistent with G.S. §138-5.

II. Establishment of Registry

The President, or the President's designee, shall create and maintain a registry in accordance with G.S. §66-58(j)(2) through which any member of the public may register to receive electronic notices of the meetings and hearings, agendas, and determinations of the Panel. In addition, the Panel's meeting and hearing notices, agendas, minutes and determinations shall be posted on The University web site.

III. Notice of new activities

G.S. §66-58(b)(8)o provides an exception for activities that enable the community in which the institution or the entity is located, or the people of the State, to utilize the institution or entity's facilities, equipment,

or expertise. If a constituent institution or other University entity proposes to engage in a new type of activity that is justified by the exception to the Umstead Act that is contained in G.S. §66-58(b)(8)o., then the chancellor of the institution or director of the entity shall submit notice of the proposal to the Staff to the Panel so that electronic notice of the proposal may be given to the persons or entities who have been requested to be included in the Registry. The notice must include a description of the proposed activity, the proposed frequency of the activity, and the geographic area in which the activity is proposed to be available. Notice to the Registry must be given prior to the commencement of the activity.

IV. Quorum and Rules

A majority of the members of the Panel then in office shall constitute a quorum. The Panel shall use *Robert's Rules of Order* as its rules of parliamentary procedure unless law or policy require otherwise.

V. Jurisdiction of the Panel

- A. The Panel may make a determination under G.S. §66-58(b)(8)m. or n. as to whether a proposed or ongoing University activity is unauthorized competition.
- B. The Panel may make a determination under G.S. §66-58(b)(8)o. as to whether a proposed or ongoing University activity is unauthorized competition or is unfair competition.
- C. The Panel may not make determinations under any of the other exceptions to the Umstead Act. If the University claims that a proposed or ongoing activity is allowable under any other exception to the Umstead Act, the Panel is without jurisdiction to consider the activity.
- D. The Panel does not have the authority to overrule a prior determination of the Attorney General.

VI. Initiation of Proceedings

- A. Any person or nongovernmental entity in the State that is in or proposes to be in the same, a similar, or competing business is an affected party that may initiate a Panel proceeding by submitting a request to the Panel Staff that the Panel make a determination as to whether a specified activity of the University is justified by one of the Exceptions.
- B. A constituent institution or other University entity that proposes to engage in an activity may initiate a Panel proceeding by submitting a request to the Panel Staff that the Panel make a determination as to whether the activity is justified by one or more of the specified Exceptions.
- C. A request must include at least the following:
 - 1. The name, address, e-mail address (if any), and phone number of the affected party making the request.
 - 2. If an entity is making the request, the name, address, e-mail address (if any), and phone number of the contact person for the entity.
 - 3. A short and plain statement of the proposed or ongoing activity about which the affected party requests that the Panel make a determination and the name of the constituent institution or University entity engaged in or proposing to engage in the activity.
 - 4. If an affected party is making the request, a short and plain statement as to why the party claims the activity is not justified by one of the Exceptions and the nature and location of the same, similar or competing business in which the affected party engages or proposes to engage.
 - 5. If a University entity is making the request, a short and plain statement of why it claims that the activity is justified by a designated one or more of the Exceptions.
- D. A request is deemed filed with the Panel when it is received by the Panel Staff at the University Office of the President.
- E. Within seven days after receiving the request, the Panel Staff shall give electronic notice of all requests to initiate proceedings to the persons who have requested to be included on the Registry and to the chancellors of all the constituent institutions. In addition, the Panel Staff shall provide a copy of the request to the chancellor or director of the affected University entity within seven days of receiving the request.

VII. Attempt to Resolve

If a matter is initiated by an affected party, the chancellor, the chancellor's designee, the director of the affected University Entity, or the director's designee shall contact the party initiating the request within 15 days after the request is filed and shall confer in an attempt to reach a resolution by agreement. The chancellor or director shall notify the Panel Staff in writing, with a copy to the party that initiated the matter, that this conference has been held and shall indicate whether the matter has been resolved. If the matter was not resolved, the party making the request and the affected University entity may resume their

efforts to resolve the matter at any time and shall notify the Panel Staff if the matter is resolved.

VIII. The Panel's Proceedings

- A. If the matter has not been resolved within 15 days after the request is filed, the Panel shall schedule a hearing on the request. This hearing shall be held within 45 days after a request is filed at a time and place to be determined by the Chair of the Panel. This time may be extended by agreement of both the requesting party and the affected University Entity or by Order of the Chair for extenuating circumstances.
- B. If a request is made concerning a proposed activity, the affected University Entity shall not initiate the activity until the Panel makes its determination unless the request is withdrawn.
- C. The Panel Staff shall give electronic notice of the Panel's hearing to consider a request to the members of the public that have requested to be on the Registry, to the affected party making the request, and to the affected University Entity at least seven days prior to the Panel's hearing to consider the request. The notice must include the date, time and location of the Panel's hearing, and must specify the activity that is the subject matter of the hearing.
- D. At the hearing, the party making the request, the affected University Entity, and any other affected person or entity that has notified the Panel Staff in advance of the hearing may state its position and present documents and witnesses to support its position. The Chair of the Panel shall preside over and conduct the hearing and shall rule on all matters of procedure, including the admission of evidence. In the absence of the Chair the Vice Chair shall serve as Chair for the purposes of the Hearing. The Hearing will be conducted informally and without adherence to the rules of evidence required in judicial proceedings. The Chair may exclude irrelevant, immaterial or unduly repetitious or unreliable evidence.
- E. The Panel is not required to make a recording of the hearing but any party may do so at its own expense.
- F. Upon completion of the hearing, the members of the Panel who were present at the hearing will deliberate and will make a written determination as to whether the matter falls with the Panel's jurisdiction and, if so, whether the specified activity is justified by one of the Exceptions. These deliberations may be by teleconference or other means of simultaneous communication as long as the requirements of North Carolina's Open Meetings Law are observed. The determination will be made based on the evidence and arguments presented at the hearing and shall state the basis for the determination.
- G. The written determination of the Panel will be made within 15 days after the close of the hearing and will be transmitted to the persons and entities that participated in the hearing and, electronically, to the persons and entities who have requested to be included in the Registry.

IX. Effect of Determination

- A. The University will be bound by the Panel's determination that a proposed or ongoing activity is not justified by one of the Exceptions.
- B. Pursuant to G.S. §66-58(k), the University and its employees may rely on a determination made by the Panel that an activity is justified by one of the Exceptions.
- C. Once the Panel has determined a matter, neither the party requesting the initial determination, nor any party on the Registry at the time the Registry was notified of the proceeding, may request another Panel determination on the same matter unless the party shows that there has been a material change in circumstances.

URL: http://www.northcarolina.edu/content.php/legal/policymanual/uncpolicymanual_100_4.htm

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