

ADMINISTRATIVE MEMORANDUM

SUBJECT Open Meetings Law as amended by the
1979 Session of the General Assembly

NUMBER 122

DATE August 31, 1979

This Administrative Memorandum transmits a copy of the text of the Open Meetings Act as amended by the 1979 Session of the General Assembly and provides interpretive comment on the Act as it relates to The University.

The Open Meetings Act, as revised by Chapter 655, 1979 Session Laws, will be effective October 1, 1979, and on that date the statutory location of the Open Meetings Act will in effect move from Article 33B to Article 33C of G.S. Chapter 143. Also as of October 1, 1979, this Administrative Memorandum will supersede Administrative Memorandum Number 108 (dated September 1, 1978).

A. Defined coverage of the new Act (G.S. 143-318.11 and 143-318.12).

Restating verbatim the prior legislative policy, the new Act provides under G.S. 143-318.11 that, generally, "official meetings" of "public bodies" of this State must be conducted openly.

"Public body" under G.S. 143-318.12(b) continues to be defined by reference to the modes of creation of the body, the geographical jurisdiction of the body, and the nature of the body's authority.

Within The University the following bodies clearly are subject to the Open Meetings Act:

- (1) the Board of Governors;
- (2) the Boards of Trustees of the constituent institutions;
- (3) the endowment fund boards of trustees (but not the private, separately incorporated foundations that support institutional development);
- (4) the Board of Directors of North Carolina Memorial Hospital;
- (5) the Board of Governors of The University of North Carolina Press.

As before, committees of the foregoing public bodies are themselves public bodies. However, the term "public body" does not include agencies, committees, or other bodies established by the President, the Chancellors, or other staff officers; nor does the term include professional staffs within The University, unless members of such staffs are convening as committees or other bodies formally created

by modes specified in G.S. 143-318.12(b)(2) (such as by action of an institutional Board of Trustees, directing that members of professional staffs conduct specified public business as such a committee or other body).

Public bodies continue obligated to meet in open session only when convening in an "official meeting." "Official meetings," under G.S. 143-318.12(d), are gatherings "at any time or place . . . of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body"; but a social or informal gathering of members of a public body is not an official meeting "unless called or held to evade the spirit and purpose" of the Act. However, the new Act defines as an "official meeting" the "simultaneous communication by conference telephone or other electronic means" of a majority of the body's members to conduct business.

B. Executive sessions of public bodies (G.S. 143-318.12).

Unless a particular category of business to be transacted by the public body expressly is identified, by the Act, as being the permissible subject of an executive session (closed to the public), the business must be transacted in an open session. The number of contexts in which an executive session may be held has been increased by the new Act, but some contexts carried forward from the old Act have been altered significantly. The bases authorized by the new Act for holding executive sessions, and which are relevant for University purposes, may be summarized as follows:

(1) Property transactions. There is no general exemption of property transactions from the open meetings requirement. However, certain specified types or aspects of property transactions may be the subject of executive sessions.

a. Real property [G.S. 143-318.13(a)(1)]. The public body may not take final action on the acquisition of any interest in real property (including a leasehold) in executive session. However, the public body may use an executive session to consider (as distinguished from taking final action on) proposed or pending real property acquisitions. Under this provision, an executive session may be used to discuss the terms and conditions of proposed acquisitions, authorize property negotiations, and provide instructions to its agents and officers concerning such negotiations or transactions. A perhaps permissible interpretation also would allow the public body to effect options on real property, authorized or executed in executive session, to facilitate the ultimate acquisition or disposition of real property. However, the final execution, approval, or ratification of an acquisition of real property must occur in a public session. Accordingly,

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contrary to past accustomed practice under the old Act, the Board of Governors or a Board of Trustees may only consider the proposed acquisition of real property in an executive session and must thereafter convene in open session to consummate the acquisition.

b. Personal property [G.S. 143-318.13(a)(2)]. The public body in executive session may consider and authorize "the acquisition by gift or bequest of personal property offered to the public body or the government of which it is a part." (emphasis added)

The public body may not consider, effect, or authorize the acquisition of personal property, by any means other than gift or bequest (e.g., by purchase), except in a public session.

No disposition of personal property (however previously acquired) may be considered, authorized, or accomplished except in a public session.

[Note. The foregoing restrictions on property transactions do not pertain to endowment funds authorized by G.S. 116-36, which enjoy a complete exemption from the new Act at G.S. 143-318.20(8).]

c. Gifts, bequests, and devises to collections [G.S. 318.13(a)(3)]. The public body in executive session may consider and authorize the acquisition, by any means, of any types of property "that are or will be part of the collections of a museum, library, or archive." However, the disposition of any such property may be considered, authorized, or accomplished only in public session.

(2) Adversarial matters [G.S. 143.318.13(a)(4)]. The public body may convene in executive session "to consider the validity, settlement, or other disposition" of a claim by or against the public body, its officers, or its employees, or any claim "in which the public body finds that it has a substantial interest"; or to consider the "commencement, prosecution, defense, settlement, or litigation" of a pending or potential judicial or administrative proceeding to which the public body, its officers, or its employees are parties or in which the public body finds that it has a substantial interest. This consideration may include giving "instructions to an attorney or other agent" concerning the matter; however, "if a public body has considered a settlement in executive session, the terms of that settlement shall be reported to the public body and entered into the minutes within a reasonable time after the settlement is concluded." [In determining what is a "reasonable" time, the public body should consider the exemption from the Public Records Act for minutes of executive sessions as conditioned at G.S. 143-318.13(d).]

(3) Lawyer communications [G.S. 143-318.13(a)(5)]. The public body may convene in executive session "to consult with an attorney, to the extent that confidentiality is required in order for the

attorney to exercise his ethical duties as a lawyer." This privilege replaces the "lawyer-client" privilege of the old Act, but there are significant differences in the new provision. Under the new Act the need for confidentiality is referenced to a professional duty that arises from the Canons of Ethics of the State Bar of North Carolina; whereas the old Act merely referenced the common law privilege of confidentiality between attorney and client. Also by contrast, the new Act suggests that the attorney must judge when confidentiality is required, whereas the common law privilege of the old Act endowed the client with the authority to waive or not waive confidentiality. (The old Act had recognized a list of other confidential relationships by reciting the "physician-patient" privilege and "any other privileged relationship," for instance, the clergyman-penitent relationship and the psychologist-client relationship; under the new Act only the lawyer-client relationship is expressly identified, and confidentiality under many of the other relationships is protected in effect by other parts of the new Act, as will be indicated hereinafter.)

(4) Matters about patients [G.S. 143-318.13(a)(7)]. The public body may convene in executive session to consider any matters dealing with specific patients. This privilege protects any communications that would have fallen within the physician-patient privilege of the old Act and, in addition, protects all records about the patient whether medical in nature or not and whether involving the physician or not. Neither the wording of the new Act nor its legislative history prevents the "patient" contemplated in this context from being a dental patient, a patient undergoing psychiatric treatment, a patient of a nurse practitioner, or some other individual who in common speech is referred to as a "patient."

(5) Personnel matters [G.S. 143-318.13(a)(8)]. There is no general exemption of personnel matters from the open meetings requirements. However, certain specified types or aspects of personnel matters may be the subject of executive sessions. In several contexts, the Act distinguishes between "consideration" or "discussion" (permitted in executive session) and final "action" (required to be taken in public session).

a. A public body in executive session may consider "the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial appointment" of either an incumbent public officer or employee or a prospective public officer or employee.

b. A public body having "final authority" to appoint, discharge, or remove a public officer or employee may not exercise that authority except in open session. Thus, contrary to past accustomed practice of the Board of Governors and of the Boards of Trustees, a clear distinction is to be made between consideration and exercise of such final authority, with the latter to be accomplished

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only in public session. [The phrase "final authority" includes in the University context the power of "approval" as used in the Delegations of Duty and Authority to Boards of Trustees of July 7, 1972; the phrase does not include the exercise of appellate review of personnel decisions reached by a lesser body.]

c. A public body in executive session may "hear or investigate a complaint, charge or grievance by or against a public officer or employee." [The statutory language, by virtue of the absence of any reference to "disposition" of such complaints, charges, or grievances, following the process of "hearing" or "investigating," arguably is unclear on the question of whether such consequent "dispositions" may be made in executive session; however, if the matter involves the exercise of "final authority" by the public body to appoint, discharge, or remove the officer or employee, such action must be taken in public session. If the matter involves an "adversarial matter" within the meaning of G.S. 143-318.13(a)(4) or a "quasi-judicial proceeding" within the meaning of G.S. 143-318.20(7), then different rules may obtain in determining what may be considered in executive session, as discussed elsewhere herein.]

d. A public body may not "consider or fill a vacancy among its own membership except in an open meeting."

e. A public body in executive session may "consider the appointment or removal of a member of another body . . ." (emphasis added) [The phrase "another body" is not defined by the Act; presumably, therefore, in view of the liberal construction given such statutory requirements by the courts, the phrase embraces both "public bodies" and other "bodies" with respect to which the authority to appoint or remove members exists (e.g., an appointment of a member of a foundation or institute board by a Board of Trustees of a constituent institution of The University)]. If the public body does consider in executive session the appointment of a person to another body, no final action on the appointment may be taken until the name (or names) of the person (or persons) being considered for the appointment have (1) been presented in open session by means of a written list and (2) been made available on the same day for public inspection in the office of the clerk or secretary of the public body; thereafter, appointive action may not be taken until at least seven days have elapsed since presentation of the list in public session. If, however, the consideration of prospective appointees occurs in a public session, the public-listing and seven-day waiting period prerequisites to actual appointment are not applicable, and the public body may both consider and act upon the appointment at the same public session. Appointments of members of committees or other subgroups of the parent public body are not subject to the seven-day waiting requirement that otherwise obtains when there is executive-session consideration of possible appointees. The actual appointment or removal (as distinguished from consideration of appointment or removal) of a member of "another body" must be accomplished in public session.

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(6) Independent contractors [G.S. 143-318.13(a)(9)]. The public body may convene in executive session to consider "the employment, performance, or discharge of an independent contractor"; but not, in executive session, employ, authorize the employment of, discharge, or direct the discharge of an independent contractor. This is a new section.

(7) Student matters [G.S. 143-318.13(a)(10)]. The public body may convene in executive session "to hear, consider, and decide . . . disciplinary cases involving students or pupils," apparently including students at all levels of education; and "hear, consider, and decide . . . questions of reassignment of pupils under G.S. 115-178" (by public school boards of education). This is carried forward from the old Act.

(8) Honorary awards [G.S. 143-318.13(a)(11)]. The public body may convene in executive session "to identify candidates for, assess the candidates' worthiness for, and choose the recipients of honors, awards, honorary degrees, or citations bestowed by the public body." This authorizes for the first time executive session to select recipients of awards for such as teaching excellence, distinguished alumni, and student achievement in academic and nonacademic matters.

(9) Confidential information [G.S. 143-318.13(a)(12)]. The public body may convene in executive session to consider information whose confidentiality is required by State or federal law or whose confidentiality is a condition for receipt of State or federal aid.

a. The federal "Privacy Act of 1974" (Public Law 93-579, amended by Public Law 94-455). This law protects from involuntary disclosure (except for purposes of payroll accounting, federal and State tax withholding, State motor vehicles registration, State driver's license registration, and public welfare administration) the individual's Social Security account number. This law now has enforcement provisions, including criminal penalties. (See President Friday's Memorandum to the Chancellors dated September 8, 1975; that memorandum will be updated this fall.)

b. "The Privacy of State Employees' Personnel Records" Act (G.S. Chapter 126, Article 7). This State law protects from general public inspection all but statutorily identified elements of a State employee's "personnel file" and prescribes the conditions under which protected elements of the file may be disclosed to one or another statutorily identified party. This part of the State Personnel Act pertains also to EPA personnel. (See President Friday's Memorandum to the Chancellors dated August 28, 1975, and Legislative Memorandum Number 5 dated September 5, 1975. These memoranda will be updated this fall by embodying in a new memorandum interpretive comment from this office given to certain constituent institutions upon their inquiry.)

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c. The federal "Family Educational Rights and Privacy Act of 1974" (Public Law 93-380, amended by Public Law 93-568; "Buckley Amendment"). This law protects a student's "education records" by excluding them from public view except in prescribed contexts and assuring access to most of them by the subject student, in part to allow the student to ascertain that the contents are appropriate for including as part of the records. The Act allows cut-off of federal funds administered by the U.S. Commissioner of Education that would otherwise go to an educational institution "which has a policy of" giving public access or denying student access contrary to the statute. (See Memoranda from David N. Edwards, Jr., to the Chancellors dated November 18, 1974, November 19, 1974, and December 4, 1974.)

It should be seen from the description of the foregoing three laws that the statutes described not only give substantive meaning to the "confidential information" privilege for executive session but also extend other specific privileges for executive session. For instance, G.S. Chapter 126, Article 7, creates a category of confidential information (the "personnel file" elements excluded from public access) and also may, in effect, supplement the "personnel matters" privileged to executive session under (5)a, above.

(10) Labor disruptions [G.S. 143-318.13(a)(13)]. The public body may convene in executive session "to consider and adopt contingency plans" for dealing with "collective employment disruptions" and to "consider and take action relating to" collective employment disruptions. This provision greatly broadened the privilege under the old Act, which spoke only of closed "negotiations." The emphasis of the new Act, however, is on dramatic consequences of labor disputes, not collective negotiations, which State employees are prohibited by G.S. 95-98 from undertaking through a "labor organization."

(11) Riots and civil disorders [G.S. 143-318.13(a)(14)]. The public body may convene in executive session to "consider and take action necessary to deal with a riot or civil disorder or with conditions that indicate that a riot or civil disorder is imminent." This provision expands to all public bodies a privilege extended under the old Act only to county boards of commissioners, boards of education, and governing boards of municipal corporations.

(12) Alleged criminal misconduct [G.S. 143-318.13(a)(15)]. The public body may convene in executive session to plan, conduct, or hear reports concerning "investigations of alleged criminal misconduct." This provision of the new Act gives to all public bodies the authority to meet in executive session that it appears the old Act gave only to "law-enforcement agencies." For example, the board of trustees of a constituent institution, independent of its Security Office (a law enforcement agency under the General Statutes), could undertake its own investigation of alleged systematic auto theft on campus by employees

of the institution, doing so in executive session whether or not the inquiry fits a category of personnel matter identified in (5), above, and whether or not the investigation called into use the contents of personnel files rendered confidential by law discussed in (9)b, above.

(13) Public hospital medical staff [G.S. 143-318.13(a)(17)]. The public body may convene in executive session to "hear, consider, and decide matters involving admission, discipline, or termination of members of the medical staff of a public hospital." This new privilege to executive session provides, however, that "final action on admission [to medical staff] or termination [from medical staff status] shall be reported in an open meeting." Although North Carolina Memorial Hospital is not a "public hospital" as defined by the new Act through reference to G.S. 159-39, approximately the same privilege would obtain for NCMH under (5), above (considering personnel qualifications, etc.). The sole difference would be that a public hospital may act in executive session on admission and termination, only reporting the fact of final action in open session, while the NCMH Board of Governors (or the medical staff under delegated authority) must actually take the final action in open session.

(14) Airport landing fees and other contracts for use of airport facilities [G.S. 143-318.31(a)(18)]. The public body may convene in executive session to "consider and give instructions relating to the setting or negotiation of airport landing fees or the negotiation of contracts, including leases, concerning the use of airport facilities." However, final action on any such fees or contracts is required to be taken in open session. To the extent that public bodies of The University are involved in setting or negotiating these fees and contracts for Horace Williams Airport or any other airport, this new privilege to executive session may be invoked.

Caveat. Under G.S. 143-318.13(c) a public body may convene in executive session, for whatever statutorily permitted purpose, only upon motion (a) stating the general purpose of the executive session, (b) made and adopted in open session, and (c) adopted by a majority of those present and voting.

C. Public bodies exempt from the Act (G.S. 143-318.20).

As with the old Act, the new Act provides that some public bodies are entirely exempt from the Act, not just privileged to convene in executive session on occasion. However, as described below, three of the eleven exemptions are statutorily qualified, making them more liberal privileges for executive session than categorical exemptions from the Act. The statutorily identified exemptions are:

- (1) Grand and petit juries.

(2) Public bodies specifically authorized by law to meet in executive session but only to the extent of the authorization.

(3) The Judicial Standards Commission.

(4) The Legislative Services Commission.

(5) Law enforcement agencies. These include campus security forces in whatever business they may address.

(6) Licensing and disciplinary bodies of professions and occupations in statutorily identified functions, e.g., the testing and grading of applicants for the State Bar of North Carolina by the State Board of Law Examiners.

(7) Public bodies subject to the Executive Budget Act that exercise a quasi-judicial function when convening "solely for the purpose of making a decision in an adjudicatory action or proceeding." The quasi-judicial function is exercised by any public body using the authority to hear or collect evidence or information, evaluate and draw conclusions therefrom, and, in consequence, render a decision on issues which the proceeding was commenced to answer. Such public bodies would include personnel committees of institutional Boards of Trustees and the Boards themselves when hearing personnel grievances; such public bodies would include the State Residence Committee when determining the validity of institutional residential classifications for tuition purposes. Although the new (and the old) Act purports to convey a complete exemption from the Act, public bodies bestowed the exemption must still follow the requirements of the new Act, including the procedure for convening in executive session, up to the point of actually going into executive session. This is because the exemption pertains only when the quasi-judicial body is meeting solely to exercise the quasi-judicial function.

(8) The "boards of trustees of endowment funds authorized by G.S. 116-36." This is a new provision totally exempting these statutory endowment funds from the Open Meetings Act. This exemption pertains to all matters, such as property transfers, investment strategy, or the appointment of a fiscal agent. This exemption does not pertain to endowment funds established pursuant to Section 2 of the "Policy on Endowments" adopted by resolution of the Board of Governors on April 11, 1974. This exemption does pertain to the endowment fund each institution is required by G.S. 116-36(a) to establish and that each institution was requested to establish "not later than March 17, 1978." (See Administrative Memorandum Number 93, dated October 28, 1977.) As the old Open Meetings Act, effective until October 1, 1979, allows in executive session any "acquisition, lease, or alienation of property" (real or personal), a constituent institution has only until October 1, 1979, the opportunity to transfer real property from any source (including a "Section 2" endowment fund) to a "statutory"

endowment fund by action in executive session. This is because real property must be transferred from the institution proper (or its "Section 2" endowment fund) to its "statutory" endowment fund by deed from the State of North Carolina" to "the Board of Trustees of the Endowment Fund of [the constituent institution]."

(9) The Council of State.

(10) The Board of Awards.

(11) The courts of the State of North Carolina.

Caveat. If any business at an official meeting of a public body within The University of North Carolina is not a matter privileged specifically or categorically to executive session and if the public body undertaking that business is not specifically or categorically exempted from the Open Meetings Act, that business must be taken up in public session.

D. Public notice of official meetings (G.S. 143-318.14).

Except for a change in requirements for charging notice costs to individual notice recipients and not charging the news media, the new Act retains verbatim the notice provisions of the old Act for official meetings. Public bodies must give notice of their meetings as prescribed in the Act. Notice is required even if the public body is meeting solely to review matters authorized for consideration in nonpublic session (unless, as observed previously, the public body has a quasi-judicial function and is convening solely in its adjudicatory role, in which case the body is exempt from the Act entirely with respect to the adjudicatory session). The appropriate notice for the various, recognized types of meetings follows this outline:

(1) Regular meetings. With respect to the public bodies within The University, it is understood that the meeting schedules of each public body should be filed, pursuant to G.S. 143-318.14(4), with the clerk or secretary of the public body; if revised, the schedule as revised must be filed "at least seven calendar days before the first meeting held pursuant to the revised schedule." The Act does not establish a deadline for filing the original schedule; it may reasonably be assumed, however, that requirements for filing an original schedule are no less than those for filing a revised schedule.

(2) Official meetings held other than according to the filed schedule.

a. Adjourned or recessed sessions of any official meeting, regular or otherwise. Where notice of the original meeting had been duly given and the time and place of the adjourned or recessed session was set at the original meeting, no further notice is required. If an

official meeting were adjourned or recessed to a date later to be set, the adjourned or recessed session when set would be subject to statutory notice requirements for unscheduled meetings.

b. Unscheduled meetings (other than emergency meetings). Written notice must be posted at the statutorily appropriate place and must be mailed (or delivered) at least 48 hours before the time of the meeting to any news media and any person (including a corporation) that had filed written request for such public notices pursuant to G.S. 143-318.14(b)(2). The public body may require the news media annually to renew their requests for written notice but may not charge any fee for this notice service. The public body must charge any person for this notice service \$10.00 per calendar year and may require that the notice request be renewed quarterly. (It is understood that quarterly renewal may be required with respect to the year for which the \$10.00 had been paid but that the \$10.00, once paid, is not subject to refund.) When the date, time, or place for a nonemergency official meeting of a public body is changed on an ad hoc basis (rather than by revising the body's regular meeting schedule), the meeting so changed becomes an unscheduled meeting, subject to these notice requirements of G.S. 143-318.14(b)(2).

c. Emergency meetings. An "emergency meeting" is a meeting "called because of generally unexpected circumstances that require immediate consideration by the public body." News media that in their written requests for notice of meetings had included their telephone numbers so as to receive notice of emergency meetings must be notified of emergency meetings "either by telephone or by the same method used to notify the members of the public body." This notice must be given "immediately after the notice has been given to those members" but is to be given "at the expense of the party notified." (Persons other than news media have no right under the Act to notice of emergency meetings.) The agenda of a meeting noticed under this procedure is restricted to "business connected with the emergency."

E. Conduct of official meetings.

The new Act adds several significant provisions concerning the conduct of official meetings of public bodies.

(1) Electronic meetings [G.S. 143-318.15(a)]. A public body may now expressly by statute hold an official meeting by conference telephone or other electronic means. If it does so, however, it must provide public access by providing and announcing a place for listening to the meeting. Notice of such a listening arrangement must be given through the notice otherwise required for the public meeting under G.S. 143-318.14. (If a public meeting not initially planned for electronic convening is later set as an electronic meeting, that meeting in effect

becomes a "special" meeting with the attendant special notice and fee requirements; this is true even if the meeting in all other respects is a "regular" meeting.) Each listener may be charged up to \$25.00 "to defray in part the cost of providing the necessary location and equipment." This implies that the charge, if made, should bear some relationship to the costs actually incurred by the public body.

(2) Written ballots [G.S. 143-318.15(b)]. Public bodies other than the General Assembly and its public bodies may act or vote by secret or written ballot only if (a) the ballots are signed by the individual voter, (b) the minutes of the vote record the individually cast votes, and (c) the ballots "are available for public inspection in the office of the clerk or secretary to the public body immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed."

(3) Acting by reference [G.S. 143-318.15(c)]. A public body may not act, deliberate, or vote by reference merely to a letter, number, or other designation or by use of other secret device or method in order to prevent public understanding of the business being conducted; but a public body may act by reference to an agenda if copies of the agenda are available at the meeting for public inspection and if the agenda is "sufficiently worded to enable the public to understand what is being deliberated, voted, or acted upon."

(4) Broadcasting or recording meetings (G.S. 143-318.16). "Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open," and any radio or television station may "broadcast all or any part of a meeting required to be open." However, a public body, to prevent interference with the meeting, may regulate placement and use of equipment, even requiring the pooling of equipment and its associated personnel when no alternative meeting room is "readily available," so long as attempted prevention of undue interference with the meeting does not effectively prevent use of the equipment. If placement and/or pooling of equipment do not solve the space-and-location conflict between equipment use and conduct of the meeting (as determined in good faith by the public body convening) and if the news media request an alternative meeting site to accommodate news coverage, the public body may grant a change of site, in which case "the news media making such request shall pay any costs incurred by the public body in securing an alternative meeting site." (emphasis added)

Caveat. The recording and broadcast privileges extended by G.S. 143-318.16(a) exceed and are in direct conflict with limitations on certain rights conferred by the federal Copyright Act of 1976; the public bodies within The University are urged to avoid this problem by not scheduling the presentation of copyrighted works or material at meetings required to be open, until the General Assembly or the Attorney General speaks to this problem or unless a release is executed.

(5) Disruption of official meetings (G.S. 143-318.19). If a person willfully "interrupts, disturbs, or disrupts" an official meeting and, after being asked to leave the meeting by the presiding officer, willfully refuses to leave, that person has committed a misdemeanor. Upon conviction thereof, this misdemeanor "is punishable by imprisonment for not more than six months, by fine of not more than two hundred fifty dollars (\$250.00), or both." (The old Act had provided that the misdemeanor "shall be punished"; the new Act renders punishment to be in the discretion of the court.)

(6) Minutes of executive sessions [G.S. 143-318.13(d)]. So long as public inspection of minutes and other records of an executive session would frustrate the purpose of the executive session, the minutes and other records are not subject to the public inspection provision of the Public Records Act (G.S. 132-6) and may be withheld from public view.

F. Remedies for violation of the Open Meetings Act (G.S. 143-318.18).

The new Act expands the available remedies for statutory violations and the parties who may use them; the new Act adds provisions for the awarding of attorneys fees to prevailing parties in certain instances. The remedies may be to cause (enjoin) something to be done or not to be done. The remedies may be sought against past violations, continuing violations, or threatened violations; but the injunction must describe the acts with reference to proven violations of the statute. Any person may seek injunction for violations of the Act without needing to prove that the suing person has suffered from the alleged violations in a manner different from the public at large. Injunction may be sought under this section even if the suing person could have gotten relief by some other legal means. If the plaintiff wins and the court finds the violation to have been "willful," the court may tax the defendant "reasonable" attorney's fees as part of the court costs. If the defendant wins and the court finds the lawsuit was "frivolous," the court may tax the plaintiff "reasonable" attorneys fees as part of court costs. (The provisions of G.S. 143-318.18 would pertain in toto to an action to enjoin disruption by persons at official meetings under G.S. 143-318.19 and to enforce non-interference by news media or persons under G.S. 143-318.16.)

G. Conflict of laws (Chapter 655, Section 3, 1979 Session Laws).

To the extent that "provisions of general laws, city charters, and local acts in effect as of October 1, 1979," are in conflict with the new Act, they are repealed. "No general law, city charter, or local act enacted or taking effect after October 1, 1979, may be construed to modify, amend, or repeal [the new Act] unless it expressly so provides by specific reference to the appropriate section number of [the new Act.]" (emphasis added).

H. Compliance.

The foregoing analysis is intended to apprise you of requirements of the Open Meetings Act, especially those pertinent to The University. To insure compliance with certain of those requirements, I am establishing the following administrative policies:

(1) With respect to meetings of the Board of Governors, of its committees, and of other public bodies of the Board of Governors, expressly created by statute or by action of the Board of Governors, except the Boards of Trustees and their public bodies, the Secretary of The University of North Carolina shall be responsible for satisfying the following statutory requirements:

a. The notice requirements for meetings, pursuant to G. S. 143-318.14, -318.15(a) and -318.16(b). For such public bodies the Secretary shall maintain in a public and readily accessible place in the General Administration Building an official bulletin board on which shall be posted all meeting schedules, changes in meeting schedules, and notices of meetings required to be filed or noticed, as the case may be, by G.S.143-318.14, -318.15(a), and -318.16(b). The Secretary shall also respond promptly to all reasonable inquiries with respect to the public bodies required by this paragraph to be posted by him.

b. The collection of \$10.00 notice fees from persons other than representatives of the news media, pursuant to G.S. 143-318.14(b)(2). The Secretary, in his discretion, shall determine, consistent with the law, if and when renewal of requests for meeting notices shall be required of persons and the news media.

c. The arranging of electronic meetings and for public listening thereto, pursuant to G.S. 143-318.15(a). The Secretary, in his discretion, shall determine consistent with the law, what fee, if any, shall be charged each listener to the electronic meeting.

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d. The placement of recording and broadcast equipment, and associated personnel, pursuant to G.S. 143-318.16.

e. The selection of alternative meeting sites to accommodate news coverage of official meetings of the public bodies, pursuant to G.S. 143-318.16(b). The Secretary shall determine the cost of such arrangement and shall collect that cost from any news media requesting a meeting site change pursuant to G.S. 143-318.16(b).

f. The provision to the public who attend official meetings at which action is to be taken by "shorthand" or symbolic reference, a written agenda sufficiently detailed to satisfy the requirements of G. S. 143-318.15(c).

g. The provision for public inspection of written ballots, pursuant to G.S. 143-318.15(b).

h. The provision for public inspection of minutes and other records of executive sessions, pursuant to G.S. 143-318.13(d), at such time as the relevant public body determines that public inspection would not frustrate the purpose of the executive session generating such minutes and records.

i. The posting of lists of candidates for appointment to "another body," pursuant to G. S. 143-318.13(8).

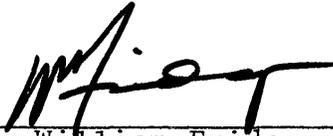
(2) With respect to meetings of the Boards of Trustees, of their committees, and of other public bodies of the constituent institutions expressly created by statute or by action of the Boards of Trustees, the respective Chancellors, or the delegates they may choose, shall be responsible for satisfying the statutory requirements set forth in (1), above. In so doing, each Chancellor, or his delegate, shall maintain in a public and readily accessible place in the principal administration building of his institution a bulletin board on which shall be posted all meeting schedules, changes in meeting schedules, and notices of meetings required to be filed or noticed, as the case may be, by G.S. 143-318.14, -318.15(a), and -318.16(b). Each Chancellor, or his delegate, shall also respond promptly to all reasonable inquiries with respect to meetings of public bodies required by this paragraph to be posted by him.

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(3) Any schedule of meetings of a public body within The University of North Carolina set or revised prior to October 1, 1979, shall be posted as set or revised, as the case may be, in accordance with this Administrative Memorandum on or before October 1, 1979.

(4) The term "emergency meeting" and its definition, contained in G.S. 143-318.14(b)(3), shall be interpreted so that emergency meetings of public bodies within The University of North Carolina shall be called only in response to extreme urgency and, thus, infrequently.

Please address any questions concerning the Open Meetings Act to Mr. David Edwards of this office.



William Friday

Attachment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1979
RATIFIED BILL

CHAPTER 655

HOUSE BILL 183

AN ACT TO REVISE THE OPEN MEETINGS LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. Chapter 143, Article 33B is repealed, and a new Article 33C is enacted, to read as follows:

"ARTICLE 33C.

"Meetings of Public Bodies.

"§ 143-318.11. Public policy.--Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.

"§ 143-318.12. All official meetings of public bodies open to the public.--(a) Except as provided in G.S. 143-318.13, G.S. 143-318.17, and G.S. 143-318.20, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, 'public body' means any authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, or other political subdivisions or public

corporations in the State that is composed of two or more members; and

- (1) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function; and
- (2) is established by (i) the State Constitution, (ii) an act or resolution of the General Assembly, (iii) a resolution or order of a State agency, pursuant to a statutory procedure under which the agency establishes a political subdivision or public corporation, (iv) an ordinance, resolution, or other action of the governing board of one or more counties, cities, school administrative units, or other political subdivisions or public corporations, or (v) an executive order of the Governor or comparable formal action of the head of a principal State office or department, as defined in G.S. 143A-11 and G.S. 143B-6, or of a division thereof.

In addition, 'public body' means (1) the governing board of a 'public hospital' as defined in G.S. 159-39 and (2) each committee of a public body, except a committee of the governing board of a public hospital if the committee is not a policy-making body.

(c) 'Public body' does not include and shall not be construed to include (1) meetings among the professional staff of a public body, unless the staff members have been appointed to and are

meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in subsection (b) (2) of this section, or (2) meetings among the medical staff of a public hospital.

(d) 'Official meeting' means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

"§ 143-318.13. Executive sessions.--(a) Permitted purposes. A public body may hold an executive session and exclude the public:

- (1) To consider the selection of a site or the acquisition by any means or lease as lessee of interests in real property. At the conclusion of all negotiations with regard to the acquisition or lease of real property, if final authorization to acquire or lease is to be given, it shall be given at an open meeting.
- (2) To consider and authorize the acquisition by gift or bequest of personal property offered to the

public body or the government of which it is a part.

- (3) To consider and authorize the acquisition by any means of paintings, sculptures, objects of virtu, artifacts, manuscripts, books and papers, and similar articles and objects that are or will be part of the collections of a museum, library, or archive.
- (4) To consider the validity, settlement, or other disposition of a claim against or on behalf of the public body or an officer or employee of the public body or in which the public body finds that it has a substantial interest; or the commencement, prosecution, defense, settlement, or litigation of a potential or pending judicial action or administrative proceeding in which the public body or an officer or employee of the public body is a party or in which the public body finds that it has a substantial interest. During such an executive session, the public body may give instructions to an attorney or other agent concerning the handling or settlement of a claim, judicial action, or administrative proceeding. If a public body has considered a settlement in executive session, the terms of that settlement shall be reported to the public body and entered into its minutes within a reasonable time after the settlement is concluded.

- (5) . To consult with an attorney, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.
- (6) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.
- (7) To consider matters dealing with specific patients (including but not limited to all aspects of admission, treatment, and discharge; all medical records, reports, and summaries; and all charges, accounts, and credit information pertaining to such a patient).
- (8) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of a public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against a public officer or employee. A public body may consider the appointment or removal of a member of another body in executive session but may not consider or fill a vacancy among its own membership except in an open meeting.

Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or

removal shall be taken in an open meeting. If a public body considers an appointment to another body, except a committee composed of members of the public body, in executive session, it shall, before making that appointment, present at an open meeting a written list of the persons then being considered for the appointment, and that list shall on the same day be made available for public inspection in the office of the clerk or secretary to the public body. The public body may not make the appointment before the seventh day after the day on which the list was presented.

- (9) To consider the employment, performance, or discharge of an independent contractor. Any action employing or authorizing the employment or discharging or directing the discharge of an independent contractor shall be taken at an open meeting.
- (10) To hear, consider, and decide (1) disciplinary cases involving students or pupils and (2) questions of reassignment of pupils under G.S. 115-178.
- (11) To identify candidates for, assess the candidates' worthiness for, and choose the recipients of honors, awards, honorary degrees, or citations bestowed by the public body.
- (12) To consider information, when State or federal law

- (1) directs that the information be kept confidential or (2) makes the confidentiality of the information a condition of State or federal aid.
- (13) To consider and adopt contingency plans for dealing with, and consider and take action relating to, strikes, slowdowns, and other collective employment interruptions.
- (14) To consider and take action necessary to deal with a riot or civil disorder or with conditions that indicate that a riot or civil disorder is imminent.
- (15) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.
- (16) To consider and decide matters concerning specific inmates of the correction system or security problems of the correction system.
- (17) To hear, consider, and decide matters involving admission, discipline, or termination of members of the medical staff of a public hospital. Final action on an admission or termination shall be reported at an open meeting.
- (18) To consider and give instructions relating to the setting or negotiation of airport landing fees or the negotiation of contracts, including leases, concerning the use of airport facilities. Final action approving landing fees or such a contract shall be taken in an open meeting.

(b) General Assembly committees and subcommittees. Except as provided in G.S. 143-318.17, a committee or subcommittee of the General Assembly has the inherent right to hold an executive session when it determines that it is absolutely necessary to have such a session in order to prevent personal embarrassment or when it is in the best interest of the State. A committee or subcommittee may take final action only in an open meeting.

(c) Calling an executive session. A public body may hold an executive session only upon a motion made and adopted at an open meeting. The motion shall state the general purpose of the executive session and must be approved by the vote of a majority of those present and voting.

(d) Minutes of executive sessions. Notwithstanding the provisions of G.S. 132-6, minutes and other records made of an executive session may be withheld from public inspection so long as public inspection would frustrate the purpose of the executive session.

"9 143-318.14. Public notice of official meetings.--(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

- (1) for public bodies that are part of State government, with the Secretary of State;
- (2) for the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;

(3) for the governing board and each other public body that is part of a city government, with the city clerk;

(4) for each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

(1) If a meeting is an adjourned or recessed session of a regular meeting or of some other meeting, notice of which has been given pursuant to this subsection, and the time and place of the adjourned or recessed session has been set during the regular or other meeting, no further notice is necessary.

(2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the

principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be mailed or delivered to each newspaper, wire service, radio station, and television station, which has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be mailed or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and mailed or delivered at least 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars (\$10.00) per calendar year, and may require them to renew their requests quarterly.

- (3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has

filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by telephone or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. An 'emergency meeting' is one called because of generally unexpected circumstances that require immediate consideration by the public body. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) This section does not apply to the General Assembly. Each house of the General Assembly shall provide by rule for notice of meetings of legislative committees and subcommittees.

"§ 143-318.15. Electronic meetings; written ballots; acting by reference.--(a) Electronic meetings. If a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by this Article shall specify that location. A fee of up to twenty-five dollars (\$25.00) may be charged each such listener to defray in part the cost of providing the

necessary location and equipment.

(b) Written ballots. Except as provided in this subsection or by joint resolution of the General Assembly, a public body may not vote by secret or written ballot. If a public body decides to vote by written ballot, each member of the body so voting shall sign his or her ballot; and the minutes of the public body shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the clerk or secretary to the public body immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

(c) Acting by reference. The members of a public body shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public body to understand what is being deliberated, voted, or acted upon. However, this subsection does not prohibit a public body from deliberating, voting, or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted, or acted upon, are available for public inspection at the meeting.

"§ 143-318.16. Broadcasting or recording meetings.--(a) Except as herein below provided, any radio or television station is entitled to broadcast all or any part of a meeting required to be open. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

(b) A public body may regulate the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting, so as to prevent undue interference with the meeting. However, the public body must allow such equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of such equipment shall not be declared to constitute undue interference; provided, however, that if the public body, in good faith, should determine that the size of the meeting room is such that all the members of the public body, members of the public present, and the equipment and personnel necessary for broadcasting, photographing, filming, and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public body, acting in good faith and consistent with the purposes of this Article, may require the pooling of such equipment and the personnel operating it; and provided further, if the news media, in order to facilitate news coverage, request an alternate site for the meeting, and the public body grants the request, then the news media making such request shall pay any costs incurred by the public body in securing an alternate meeting site.

"§ 143-318.17. Advisory Budget Commission and appropriation committees of General Assembly; application of Article.--(a) The provisions of this Article shall not apply to meetings of the Advisory Budget Commission held for the purpose of actually preparing the budget required by the provisions of the Executive

Budget Act (Article 1, Chapter 143, General Statutes of North Carolina), but nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-10 (or any similar statutes hereafter enacted) requiring public hearings to secure information on any and all estimates to be included in the budget and providing for other procedures and practices incident to the preparation and adoption of the budget required by the State Budget Act.

(b) This Article does not amend, repeal or supersede the provisions of G.S. 143-14, relating to the meetings of the appropriations committees and subcommittees of the General Assembly.

"§ 143-318.18. Injunctive relief against violations of Article.--(a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (1) threatened violations of this Article, (2) the recurrence of past violations of this Article, or (3) continuing violations of this Article. Any person may bring an action in the appropriate division of the General Court of Justice seeking such an injunction; and the plaintiff need not allege or prove special damage different from that suffered by the public at large. It is not a defense to such an action that there is an adequate remedy at law.

(b) Any injunction entered pursuant to this section shall describe the acts enjoined with reference to the violations of this Article that have been proved in the action.

(c) If the plaintiff prevails in an action brought pursuant to

this section, the court may allow a reasonable attorney's fee to be taxed against the defendant as a part of costs, if the court finds as a fact that the violation was wilful. If the defendant prevails and the court finds that the action was frivolous, the court may allow a reasonable attorney's fee to be taxed against the plaintiff as a part of costs.

"§ 143-318.19. Disruptions of official meetings.--A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a misdemeanor and upon conviction thereof is punishable by imprisonment for not more than six months, by fine of not more than two hundred fifty dollars (\$250.00), or both.

"§ 143-318.20. Exceptions.--This Article does not apply to:

- (1) Grand and petit juries.
- (2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.
- (3) The Judicial Standards Commission.
- (4) The Legislative Services Commission.
- (5) Law enforcement agencies.
- (6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an

individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supercede y other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.

(7) Any public body subject to the Executive Budget Act (G.S. 143-1 et seq.) and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.

(8) The boards of trustees of endowment funds authorized by G.S. 116-36.

(9) The Council of State.

(10) The Board of Awards.

(11) The General Court of Justice."

Sec. 2. G.S. 159-17, as it appears in the 1978 Replacement Volume 3D of the General Statutes, is amended by writing the third sentence to read as follows:

"Except for the notice requirements of G.S. 143-318.14, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as (i) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (ii) no business other than consideration of the budget is taken up."

Sec. 3. All provisions of general laws, city charters, and local acts in effect as of October 1, 1979, and in conflict with the provisions of G.S. Chapter 143, Article 33C, as enacted by Section 1 of this act, are repealed insofar as they conflict with the provisions of G.S. Chapter 143, Article 33C. No general

law, city charter, or local act enacted or taking effect after October 1, 1979, may be construed to modify, amend, or repeal any provision of Article 33C unless it expressly so provides by specific reference to the appropriate section number of that Article.

Sec. 4. This act shall become effective October 1, 1979.

In the General Assembly read three times and ratified, this the 28th day of May, 1979.

JAMES C. GREEN

James C. Green

President of the Senate

CARL J. STEWART, JR.

Carl J. Stewart, Jr.

Speaker of the House of Representatives