

ADMINISTRATIVE MEMORANDUM

SUBJECT Implementation of Open Meetings Act

NUMBER 351

DATE Nov. 8, 1994


The Open Meetings Act (North Carolina General Statutes, Chapter 143, Article 33C) was amended extensively by the 1993 Session of the General Assembly, effective October 1, 1994. All affected University agencies and instrumentalities (e.g., the Board of Governors and the boards of trustees) need to be aware of the many new requirements of the law. To that end, I attach a copy of an analysis prepared by the legal staff of the Office of General Administration. The attached policy statement replaces the policy previously found in Chapter XII of *The Administrative Manual of The University of North Carolina*.

The text of the amended law (a copy of which is attached to the analysis) does not provide clear answers to a number of questions that likely will be raised in connection with efforts to implement faithfully the legislative intent. It is possible that court rulings ultimately will be necessary to resolve such questions. The attached analysis reflects the best current judgment of our attorneys as to how the statute should be interpreted and implemented.

The law provides various remedies for violations of the Open Meetings Act, including a provision that the public body (as well as the individual members of the public body) may be liable for payment of the attorney fees of any plaintiff who successfully prosecutes a lawsuit alleging that the public body acted in violation of the Open Meetings Act. However, individual members of a public body may avoid such a penalty if the action found to be in violation of the law was undertaken in reliance on "the advice of an attorney." Thus, in any instance in which there is a question about (1) whether a particular body is a "public body" within the meaning of and subject to the requirements of the Open Meetings Act or (2) whether the public body is authorized to transact specified business in closed

session, the chairman of the public body or a staff representative of the public body should seek the advice of an attorney authorized to provide legal advice to the public body; attorneys authorized to render relevant protective opinions include the University attorneys employed by the Office of General Administration and by the constituent institutions; any request for opinion or advice to be submitted to the Attorney General will be transmitted through this office, addressed to the attention of Mr. Richard H. Robinson, Jr. In addition, an individual member of a public body personally may seek the protective advice of his or her attorney concerning the legitimacy, under the Open Meetings Act, of conduct in which he or she proposes to engage as a member of the public body.

Questions concerning the attached staff analysis may be addressed to Mr. Lee Culpepper of this office.



C. D. Spangler, Jr.

THE OPEN MEETINGS ACT

The Open Meetings Act is in North Carolina General Statutes Chapter 143 (§§143-318.9 – 143-318.18). Appendix A is a copy of the Act.

A. The Policy (G.S. §143-318.9).

It is the policy of this state that "official meetings" of "public bodies" must be conducted in public, with anyone entitled to attend.

If any business at an "official meeting" of a "public body" within The University of North Carolina is not a matter specifically permitted to be conducted in a closed session (formerly "executive session") and if the public body undertaking that business is not specifically exempted from the Open Meetings Act, that business must be conducted in public session.

B. A Public Body (G.S. §143-318.10(b)).

A public body is (1) any authority, board, commission, committee, council or other body, (2) composed of two or more elected or appointed members, (3) that is established by the state, one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina or other political subdivisions or public corporations of the state, and (4) that exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, public body includes the governing board of a "public hospital" as defined in G.S. §159-39 and the governing board of any nonprofit corporation (or its parent or subsidiary corporation) to which a hospital has been sold or conveyed pursuant to G.S. §131E-8.

A public body does not include (1) a meeting solely among the professional staff of a public body, or (2) the medical staff of a public hospital. G.S. §143-318(c).

Within the university the following statutorily created entities clearly are public bodies:

- (1) the Board of Governors.
- (2) the boards of trustees of the constituent institutions.
- (3) the Board of Directors of The University of North Carolina at Chapel Hill Hospitals.
- (4) the Board of Trustees of The University of North Carolina Center for Public Television.
- (5) the Board of Directors of the North Carolina Arboretum.
- (6) the Board of Directors of the North Carolina Center for Nursing.
- (7) the Board of Trustees for the North Carolina Center for the Advancement of Teaching.
- (8) the Board of Trustees of the North Carolina School of Science and Mathematics.
- (9) the North Carolina School of Science and Mathematics Education Advisory Council.

Standing and *ad hoc* committees of these bodies (whether elected or appointed) are also public bodies subject to the Act.

A public body can establish other entities that satisfy the basic statutory definition of "public bodies" and thus become subject to the Act. For example, *The Code of the University of North Carolina* calls for the creation by the president, with Board of Governors approval, of an "advisory committee composed of representative presidents of the private colleges and universities of the State."

By way of further examples, *The Code* also requires (1) that each constituent institution establish a "faculty council or senate" which may "advise the Chancellor;" (2) that each institution establish an "elected standing committee of the institution's faculty" to conduct due process hearings related to the imposition of serious sanctions against a faculty member; (3) that each institution establish a "faculty grievance committee" that is authorized "to hear, mediate and advise" on faculty grievances; and (4) that each institution establish a "patent committee" which is to "review and recommend to the Chancellor" policies concerning patents and copyrights. Similarly, the board of trustees of each constituent institution has adopted faculty personnel policies that require the establishment of faculty committees to perform designated functions. While these councils and committees arguably otherwise meet the statutory definition of "public bodies," they are exempted from the requirements of the Act under G.S. § 143-318.10(c)(1) because they are composed solely of the "professional staff" of the institution.

Agencies, councils, committees or other instrumentalities established by the president, chancellors, or other staff officers are not public bodies unless their creation is prescribed or required by the respective university governing boards; further, such instrumentalities as may be established by the governing boards but that consist exclusively of university employees are not public bodies because of their "professional staff" composition.

C. An Official Meeting (G.S. §143-318.10(d)).

An official meeting is a meeting, assembly, or gathering at any time or place in person or by simultaneous communications by electronic means of a **majority of a public body** for the **purpose** of deliberating, voting, conducting hearings or otherwise transacting business within the jurisdiction (real or apparent) of the body. 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.

D. Minutes of Meetings (G.S. §143-318.10(e)).

Every public body must keep full and accurate records of official meetings including any closed sessions. At the option of the public body, the minutes may be kept as a writing, audio recording, or video and audio recording. Minutes are public records within the meaning of the Public Records Law (G.S. §132-1 *et seq.*) However, minutes of a closed session conducted according to the Act may be withheld from public inspection so long as public inspection would frustrate the purposes of a closed session.

E. Closed Sessions of Public Bodies (G.S. §143-318.11).

Unless a specific category of business to be transacted by the public body is identified, by the Act, as being the permissible subject of a closed session (closed to the public), the business must be conducted in an open session. The only bases for holding closed sessions may be summarized as follows:

(1) Information Privileged or Confidential Pursuant to State or Federal Law (G.S. §143-318.11(a)(1)).

The public body may convene in closed session to consider information whose confidentiality is required by state or federal law. The following are examples of state and federal laws requiring confidentiality:

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 specified purposes) the

individual's social security account number. This law now has enforcement provisions, including criminal penalties. (See policy XIII-E of *The Administrative Manual of The University of North Carolina* on use of social security numbers.)

b. **"The Privacy of State Employees' Personnel Records" Act** (G.S. §§126-22 -126-29). This law protects from 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 applies to both EPA and SPA personnel.

c. **The federal "Family Educational Rights and Privacy Act of 1974"** (Public Law 93-380, amended by Public Law 93-568, the "Buckley Amendment"). This law protects a student's "education records" by excluding them from public view except in prescribed contexts. It assures a student's access to most of his or her own records, in part to allow the student to ascertain that the contents are appropriately part of the records. The Act permits the cutoff of federal education funds to an educational institution "which has a policy of" improperly giving public access or denying student access.

(2) Honorary Degrees, Scholarships, or Prizes (G.S. §143-318.11(a)(2)).

The public body may convene in closed 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 a closed session to select recipients of awards, for example, for teaching excellence, distinguished alumni, and student achievement in academic and nonacademic matters.

(3) Consult with an Attorney and to Preserve the Attorney-Client Privilege (G.S. §143-318.11(a)(3)).

The public body may convene in closed session "to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body . . ." The public body may consider [the legal opinion of the attorney] and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. This exception is limited by the scope of the attorney-client privilege as defined by common law. Thus, there must be an attorney-client relationship between the public body and the attorney; the communications that are the subject of the closed session must concern legal advice in the course of the professional employment; the communications must be confidential; and the public body must not have waived the privilege. General policy matters that would otherwise be subject to discussion in open session may not be discussed in closed session merely because an attorney employed or retained by the public body is a participant in the discussion. If the public body has considered a settlement, other than a malpractice settlement for a hospital, in closed session, the terms of that settlement must be reported to the public body and entered into its minutes as soon as reasonably possible after the settlement has been concluded.

(4) Location or Expansion of Industries or Businesses (G.S. §143-318.11(a)(4)).

A public body may convene in closed session to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

(5) Real Property Acquisition and Employment Contracts (G.S. §143-318.11(a)(5)).

A public body may convene in closed session to establish, or instruct the public body's staff or agent concerning negotiations of (a) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (b) the amount of compensation and other material terms of an employment contract or proposed employment contract. Any action by a board of trustees or the Board of Governors considering an acquisition of real property by purchase, option, exchange, or lease is either (1) a recommendation to the Department of Administration or the Council of State (as appropriate) that the state acquire the property on the terms as recommended by the board or (2) instructions to the board's staff or agent to negotiate further the material terms of the acquisition. Thus, every material term of the contract, including its location (i.e., the description of the proposed acquisition and identity of the proposed seller), are still negotiable when presented to the board. Action by the board to consider such acquisition can be taken in closed session.

The acquisition of real property by gift or bequest and the acquisition of personal property by any means must be conducted in open session. The disposition of real and personal property by any means must be conducted in open session.

[Note: The restrictions on property transactions do not apply to endowment funds authorized by G.S. §116-36 and §116-238 which are exempt from the Act under G.S. §143-318.18(8).]

(6) Personnel Matters (G.S. §143-318.11(a)(6)).

There is no general exemption of personnel matters from the open-meetings requirements. However, certain specified aspects of personnel matters may be the subject of closed sessions. In several contexts, the Act distinguishes between "consideration" or "discussion" (permitted in closed session) and final "action" (required to be taken in public session).

a. A public body in closed session may consider "the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment" of either an incumbent public officer or employee or a prospective public officer or employee. Thus, decisions affecting salary, rank, and tenure status may be made in closed session; but while prospective appointments to positions or offices may be discussed in closed session, final appointment must be made in open session. General personnel policy issues may not be considered in a closed session.

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, a clear distinction is to be made between consideration and exercise of such final authority, with the latter to be accomplished only in public session. The Board of Governors is the final authority for the appointment of all faculty positions with permanent tenure and all senior administrative positions. Under *The Delegation of Duty and Authority to Boards of Trustees* in the Appendix

to *The Code*, the boards of trustees are the final authority for the appointment of all other faculty and administrative positions. The chancellor is the final authority concerning the decision to discharge a faculty member under Section 603 of *The Code*.

c. A public body in closed session may "hear or investigate a complaint, charge, or grievance by or against a public officer or employee." The review, successively by the board of trustees and the Board of Governors of the chancellor's decision to discharge a faculty member under Section 603 of *The Code* is a review of a complaint or grievance against the chancellor and may be taken in closed session. The disposition of a nonreappointment appeal under Section 604 of *The Code* is a grievance and would not be subject to report in open session because it is not a discharge or removal of an employee. All grievance appeals under Section 607 of *The Code* may be considered in closed session.

d. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. The phrase "another body" is not defined by the Act: presumably, therefore, the phrase embraces both "public bodies" and other "bodies" with respect to which the authority to appoint or remove members exist (e.g., an appointment of a foundation board member by a board of trustees).

(7) Alleged criminal misconduct (G.S. §143-318.11(a)(7)).

The public body may convene in closed session to plan, conduct, or hear reports concerning "investigations of alleged criminal misconduct." The board of trustees of a constituent institution could, for example, independent of its police department or security office, undertake its own investigation of alleged auto theft on campus by institution employees, doing so in closed session whether or not the inquiry fits a category of personnel matter identified in E(6), above, and whether or not the investigation called into use the contents of personnel files rendered confidential by law discussed in E(1)(b), above.

F. Procedures for Going into a Closed Session (G.S. §143-318.11(c)).

A public body may go into closed session only upon a motion made and adopted at an open meeting. Every motion to close a meeting must cite, specifically, one or more of the permissible purposes listed in paragraph E above. Furthermore, a motion based on subdivision E(1) above must also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision E(3) above must identify (if applicable) the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session. A sample motion for going into closed session is attached as Appendix B.

G. Public bodies exempt from the Act (G.S. §143-318.18).

The Act provides that some public bodies are entirely exempt from the Act, not just privileged to convene in closed session on occasion. The statutorily identified exemptions are:

(1) Grand and petit juries.

- (2) Public bodies specifically authorized by law to meet in closed session but only to the extent of the authorization.
- (3) The Judicial Standards Commission.
- (4) The Legislative Ethics Commission.
- (5) A conference committee of the General Assembly.
- (6) A caucus by members of the General Assembly unless the caucus is called to evade or subvert this Act.
- (7) Law enforcement agencies. These include campus security forces in whatever business they may address.
- (8) Licensing and disciplinary bodies of professions and occupations in statutorily identified functions, e.g., the testing and grading of applicants for the State Bar by the Board of Law Examiners.
- (9) 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 having the statutory authority to hear or collect evidence or information, evaluate and draw conclusions therefrom, and, in consequence, render a decision on issues that the proceeding was commenced to answer.
- (10) The boards of trustees of endowment funds authorized by G.S. §116-36 or G.S. §116-238. This exemption applies to all matters, such as property transfers, investment strategy, or the appointment of a fiscal agent.
- (11) The Board of Awards.
- (12) The courts of the State of North Carolina.

H. Public Notice of Official Meetings (G.S. §143-318.12).

Public bodies must give notice of their meetings. Notice is required even if the public body is meeting solely to review matters authorized for consideration in a closed session. The notice requirements depend on the type of meeting, as follows:

- (1) **Regular meetings.** With respect to the public bodies within the university, a schedule of regular meeting of each public body should be filed, pursuant to G.S. §143-318.12(a)(4), with the clerk or secretary of the public body. If the schedule is subsequently revised, it must be filed with the clerk or secretary "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, but it should be assumed that the original schedule should be filed at least seven calendar days before the first meeting held pursuant to that schedule.
- (2) **Special meetings.** Special meetings are official meetings held other than according to the filed schedule of regular meetings. They include (a) adjourned or recessed meetings, (b) unscheduled meetings, and (c) emergency meetings.
 - a. **Adjourned or recessed sessions of any official meeting.** Where notice of the original meeting was properly given and the time and place of the adjourned or recessed meeting is announced in open session, no further notice is required. If an official meeting is adjourned or recessed without establishing the time and place of the next session, the notice required is as set forth below for unscheduled meetings.

- b. **Unscheduled meetings (other than emergency meetings).** An unscheduled meeting is any meeting of a non-emergency nature that is not on the public body's schedule of regular meetings (as it may be revised from time-to-time). Written notice of an unscheduled meeting must be posted at the statutorily appropriate place¹ and must be mailed (or delivered) at least 48 hours before the time of the meeting to any news media² and any person (including a corporation) that had filed written request for such public notices pursuant to G.S. §143-318.12(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 (other than the media) \$10.00 per calendar year for this service and may require that the notice request be renewed quarterly.

- c. **Emergency meetings.** An "emergency meeting" is a meeting "called because of generally unexpected circumstances that require immediate consideration by the public body." Local news media that in their written requests for notice of meetings had included their telephone numbers 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."

I. Conduct of official meetings.

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

- (1) **Electronic meetings (G.S. §143-318.13(a)).** A public body may hold an official meeting by conference telephone or other electronic means including closed circuit television. If it does so, it must give the public access by providing and announcing a place for listening to and/or seeing the meeting. Notice of such arrangements must be given through the notice otherwise required for the public meeting under G.S. §143-318.12. If a public meeting not initially planned for electronic convening is later set as an electronic meeting, that meeting becomes a "special" meeting with the attendant special notice and fee requirements. Each listener may be charged up to \$25.00 "to partially defray the cost of providing the necessary location and equipment."

- (2) **Written ballots (G.S. §143-318.13(b)).** Public bodies may act or vote by written ballot only if (a) the ballots are signed by the individual voter, (b) the minutes of the meeting 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

¹ The Act requires that a written notice, stating the purpose of the meeting, should be posted on the principal bulletin board of the public body or, if there is no such bulletin board, at the door of the public body's usual meeting place.

² News media includes newspapers, wire services, radio stations, and television stations.

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. §143.318.13(c)).** A public body may not act, deliberate, or vote by reference merely to a letter, number, or other designation or secret device 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. §143-318.14).** "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 the meeting. However, a public body, to prevent interference with the meeting, may reasonably regulate placement and use of equipment as long as the equipment is placed within the meeting room in such a way as to allow its intended use. The ordinary use of such equipment cannot be declared to constitute undue interference. If the public body should (in good faith) decide that, due to the size of the meeting, all of the broadcasting, filming, and tape-recording equipment and personnel cannot be accommodated in the meeting room without unduly interfering with the meeting, and if an adequate alternate meeting room is not readily available, then the public body may require the pooling of such equipment and the personnel operating it. If the news media, to facilitate news coverage, requests an alternate site for the meeting, and that request is granted, then "the news media making such request shall pay any costs incurred by the public body in securing an alternative meeting site."

Caveat. The recording and broadcast privileges extended by G.S. §143-318.14(a) exceed rights conferred by the federal Copyright Act of 1976. The public bodies of the university should avoid this problem by not scheduling the presentation of copyrighted works at open meetings being broadcast or recorded for broadcast, absent an executed release.

- (5) **Disruption of official meetings (G.S. §143-318.17).** If a person "willfully interrupts, disturbs, or disrupts" an official meeting and, after being directed to leave the meeting by the presiding officer, willfully refuses to leave, that person has committed a misdemeanor.

J. Remedies for violation of the Open Meetings Act.

- a. **Injunctive relief (G.S. 143-318.16).** Any person may bring a court action to enjoin threatened violations, the recurrence of past violations, or continuing violations of the Act. The injunction must describe the acts enjoined with reference to proven violations of the statute. The plaintiff does not have to show any special damages other than those damages suffered by the public at large and the injunction may be sought even if the suing party could have gotten relief by other legal means. This section may be used by the university to enjoin disruption of official meetings under G.S. §143-318.17 and to enforce non-interference by news media or persons under G.S. §143-318.14.
- b. **Declaratory judgments (G.S. 143-318.16A).** Any person may bring a court action to get a judgment declaring that an action of a public body was "taken, considered, discussed, or deliberated in violation of this" Act. If such a judgment is entered, the court may declare any

such action by the public body void. The plaintiff does not have to show any special damages other than those suffered by the public at large. Suit must be brought within 45 days following the initial disclosure of the action that the suit seeks to have declared void. The "initial disclosure" date is the date the minutes of the public body are first available for public inspection if the challenged action is recorded in the minutes or, if there are no minutes or disclosure in the minutes, the date of initial disclosure is the date when the plaintiff knew or should have known of the challenged action. After an action has been determined to have violated the Act six factors are listed that are to be considered by the court in determining whether to declare the challenged action void.

- c. **Attorneys' fees (G.S. 143-318.16B).** The court may make written findings specifying the prevailing party and may award the prevailing party a reasonable attorney's fee, to be taxed against the losing party. The court may order that all or part of the fee be paid personally by any individual member of the public body found to have knowingly violated the Act. However, no order of assessment against any individual member will issue where the public body or the individual member seeks the advice of an attorney, and such advice is followed.

K. Compliance.

To insure compliance with the requirements of the Act, the following administrative policies are established:

- (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 board action [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. §§143-318.12 and 143-318.13(a). 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. The secretary shall also respond promptly to all reasonable inquiries concerning meeting of the public bodies.
 - b. The collection of \$10.00 non-refundable notice fees from persons other than representatives of the news media, pursuant to G.S. §143-318.12(b)(2). The secretary, in the secretary's discretion, shall decide, consistent with the law, 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. §143-318.13(a). The secretary, in the secretary's discretion, shall determine consistent with the law, what fee, if any, shall be charged each listener to the electronic meeting.
 - d. The placement of recording and broadcast equipment, and associated personnel, pursuant to G.S. §143-318.14.

- e. The selection of alternate meeting sites to accommodate news coverage of official meetings of the public bodies, pursuant to G.S. §143-318.14(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. §143-318.14(b).
 - f. The provision for written agenda sufficiently detailed to satisfy the requirements of G.S. §143-318.13(c) for official meetings at which action may be taken by "shorthand" or symbolic reference.
 - g. The provision for public inspection of written ballots, pursuant to G.S. §143-318.13(b).
 - h. The provision for public inspection of minutes and of sessions closed pursuant to G.S. §143- 318.11, when the relevant public body decides that public inspection would not frustrate the purpose of the closed session.
- (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 the boards, the chancellors, or the delegates the chancellors may choose, shall be responsible for satisfying the requirements of the Act. In so doing, each chancellor, or delegate, shall maintain a bulletin board in a public place in the principal administration building of the institution. 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. §§143-318.12 and 143-318.13(a) shall be posted on that bulletin board. Each chancellor, or chancellor's delegate, shall also respond promptly to all reasonable inquiries with respect to meetings of public bodies.
- (3) The term "emergency meeting" defined in G.S. §143-318.12(b)(3), shall be interpreted so that emergency meetings of public bodies of The University of North Carolina shall be called only in response to extreme urgency and, thus, infrequently.

Appendix A
THE OPEN MEETINGS LAW
As Amended by the 1993 Session
of the General Assembly

ARTICLE 33C.

Meetings of Public Bodies

§ 143-318.9. 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. (1979, c. 655, s. 1.)

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, G.S. 143-318.14A, G.S. 143-318.15, and G.S. 143-318.18, 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 elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivision or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" means the governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, and subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) "Public body" does not include (1) a meeting solely among the professional staff of a public body, or (2) 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.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. Such minutes shall be public records within the meaning of the Public Records Law, G.S. 132-1 *et seq.*; provided, however, that minutes of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purposes of a closed session.

§ 143-318.11. Closed sessions.

(a) **Permitted Purposes.** — It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes;
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award;
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded;
- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body;
- (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
- (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and 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.
- (7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(b) Repealed by Session Laws 1991, c. 694, s.4.

(c) **Calling a Closed Session.** — A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or

confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

§143-318.12. 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 public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.
- (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) Repealed by Session Laws 1991, c. 694, s. 6, effective September 1, 1991. (1979, c. 655, s. 1; 1991, c. 694, ss. 5, 6.)

§143-318.13. 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 and equipment.

(b) **Written Ballots.**— Except as provided in this subsection or by joint resolution of the General Assembly, a 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. (1979, c. 655, s. 1.)

§143-318.14. 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 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. (1979, c. 655, s. 1.)

§143-318.14A. Legislative commissions, committees, and standing subcommittees.

(a) Except as provided in subsection (e) below, all official meetings of commissions, committees, and standing subcommittees of the General Assembly (including, without limitation, joint committees and study committees), shall be held in open session. For the purpose of this section, the following also shall be considered to be "commissions, committees, and standing subcommittees of the General Assembly":

- (1) The Legislative Research Commission;
- (2) The Legislative Services Commission;
- (3) The Advisory Budget Commission;
- (4) The Joint Legislative Utility Review Committee;
- (5) The Joint Legislative Commission on Governmental Operations;
- (6) The Joint Legislative Commission on Municipal Incorporations;
- (7) The Commission on the Family;
- (8) The Joint Select Committee on Low-Level Radioactive Waste;
- (9) The Environmental Review Commission;
- (10) The Joint Legislative Transportation Oversight Committee;
- (11) The Joint Legislative Education Oversight Committee;
- (12) The Joint Legislative Commission on Future Strategies for North Carolina
- (13) The Commission on Children with Special Needs;
- (14) The Legislative Committee on New Licensing Boards;
- (15) The Agriculture and Forestry Awareness Study Commission;
- (16) The North Carolina Study Commission on Aging; and
- (17) The standing Committees on Pensions and Retirement.

(b) Reasonable public notice of all meetings of commissions, committees, and standing subcommittees of the General Assembly shall be given. For purposes of this subsection, "reasonable public notice" includes, but is not limited to:

- (1) Notice given openly at a session of the Senate or of the House; or
- (2) Notice posted on the press room door of the State Legislative Building in Raleigh and delivered to the Legislative Services Office.

G.S. 143-318.12 shall not apply to meetings of commissions, committees, and standing subcommittees of the General Assembly.

(c) A commission, committee, or standing subcommittee of the General Assembly may take final action only in an open meeting.

(d) A violation of this section by members of the General Assembly shall be punishable as prescribed by the rules of the House or the Senate.

(e) The following sections shall apply to meetings of commissions, committees and standing subcommittees of the General Assembly: G.S. 143-318.10(e) and G.S. 143-318.11, G.S. 143-318.13 and G.S. 143-318.14, G.S. 143-318.16 through G.S. 143-318.17. (1991, c. 694, s. 7; 1991 (Reg. Sess., 1992), c. 785, s. 4; c. 1030, s. 42; 1993, c. 321, s. 169.2(f).)

§143-318.15. 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. (1979, c. 655, s. 1.)

§143-318.16. Injunctive relief against violations of Article.

(a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (i) threatened violations of this Article, (ii) the recurrence of past violations of this Article, or (iii) 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) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 932, s. 3 effective October 1, 1986. (1979, c. 655, s. 1; a985 (Reg. Sess., 1986), c. 932, s. 3)

§143-318.16A. Additional remedies for violations of Article.

(a) Any person may institute a suit in the superior court requesting the entry of a judgment declaring that any action of a public body was taken, considered, discussed, or deliberated in violation of this Article. Upon such a finding, the court may declare any such action null and void. Any person may seek such a declaratory judgment, and the plaintiff need not allege or prove special damage different from that suffered by the public at large. The public body whose action the suit seeks to set aside shall be made a party. The court may order other person be made parties if they have or claim any right, title, or interest that would be directly affected by a declaratory judgment voiding the action that the suit seeks to set aside.

(b) A suit seeking declaratory relief under this section must be commenced within 45 days following the initial disclosure of the action that the suit seeks to have declared null and void; provided, however, that any suit for declaratory judgment brought pursuant to this section that seeks to set aside a bond order or bond referendum shall be commenced within the limitation periods prescribed by G.S. 159-59 and G.S. 159-62. If the challenged action is recorded in the minutes of the public body, its initial disclosure shall be deemed to have occurred on the date the minutes are first available for public inspection. If the challenged action is not recorded in the minutes of the public body, the date of its initial disclosure shall be determined by the court based on a finding as to when the plaintiff knew or should have known that the challenged action had been taken.

(c) In making the determination whether to declare the challenged action null and void, the court shall consider the following and any other relevant factors:

- (1) The extent to which the violation affected the substance of the challenged action;
- (2) The extent to which the violation thwarted or impaired access to meetings or proceedings that the public had a right to attend;
- (3) The extent to which the violation prevented or impaired public knowledge or understanding of the people's business;
- (4) Whether the violation was an isolated occurrence, or was a part of a continuing pattern of violations of this Article by the public body;
- (5) The extent to which persons relied upon the validity of the challenged action, and the effect on such persons of declaring the challenged action void;
- (6) Whether the violation was committed in bad faith for the purpose of evading or subverting the public policy embodied in this Article.

(d) A declaratory judgment pursuant to this section may be entered as an alternative to, or in combination with, an injunction entered pursuant to G.S. 143-318.16.

(e) The validity of any enacted law or joint resolution or passed simple resolution of either house of the General Assembly is not affected by this Article. (1985 (Reg. Sess., 1986), c. 932, s. 1; 1991, c. 694, s. 8.)

§143-318.16B. Assessments and awards of attorneys' fees.

When an action is brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court may make written findings specifying the prevailing party or parties, and may award the prevailing party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part of the costs. The court may order that all or any portion of the fee as assessed be paid personally by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation; provided, that no order against any individual member shall issue in any case where the public body or that individual member seeks the advice of an attorney, and such advice is followed.

§143-318.16C. Accelerated hearing; priority.

Actions brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

§143-318.16D. Local acts.

Any reference in any city charter or local act to an "executive session" is amended to read "closed session".

§143-318.17. (Effective until January 1, 1995) 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. (1979, c. 655, s. 1.)

§143-318.17. (Effective January 1, 1995) 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 Class 2 misdemeanor. (1979, c. 655, S. 1; 1993, c. 539, s. 1028.)

§143-318.18. 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) Repealed by Session Laws 1991, c. 694, s. 9, effective September 1, 1991.
- (4a) The Legislative Ethics Committee.
- (4b) A conference committee of the General Assembly.

- (4c) A caucus by members of the General Assembly; however, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article.
- (5) Law enforcement agencies.
- (6) A public body authorized to investigate, examine, or determine the character and other qualification 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 supersede any 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 or G.S. 116-238.
- (9) Repealed by Session Laws 1991, c. 694, s. 9, effective September 1, 1991.
- (10) The Board of Awards.
- (11) The General Court of Justice. (1979, c. 655, s. 1; 1985, c. 757, s. 206(e); 1991, c. 694, s. 9.)

**Appendix B
Motion to Go into Closed Session**

I move that we go into closed session to:

[Specify one or more of the following permitted reasons for closed sessions]

- prevent the disclosure of privileged information**
 - under _____ of the North Carolina General Statutes or regulations.**
 - under _____ of the regulations or laws of United States.**

[N.C.G.S. § 143-318.11(a)(1)]

- prevent the premature disclosure of an honorary award or scholarship. [N.C.G.S. § 143-318.11(a)(2)]**

- consult with our attorney**
 - to protect the attorney-client privilege.**
 - to consider and give instructions concerning a potential or actual claim, administrative procedure, or judicial action.**
 - to consider and give instructions concerning a judicial action titled _____ v. _____.**

[N.C.G.S. §143-318.11(a)(3)]

- discuss matters relating to the location or expansion of business in the area served by this body. [N.C.G.S. §143-318.11(a)(4)]**

- establish or instruct the staff or agent concerning the negotiation of the price and terms of a contract concerning the acquisition of real property. [N.C.G.S. §143-318.11(a)(5)]**

- establish or instruct the staff or agent concerning the negotiations of the amount of compensation or other terms of an employment contract. [N.C.G.S. §143-318.11(a)(5)]**

- consider the qualifications, competence, performance, condition of appointment of a public officer or employee or prospective public officer or employee. [N.C.G.S. §143-318.11(a)(6)]**

- hear or investigate a complaint, charge, or grievance by or against a public officer or employee. [N.C.G.S. §143-318.11(a)(6)]**

- plan, conduct, or hear reports concerning investigations of alleged criminal conduct. [N.C.G.S. §143-318.11(a)(7)]**