

## **LAWS THAT AFFECT THE CLERK**

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**A. SELECTED STATUTES AND PUBLICATIONS RELEVANT  
TO CITY AND COUNTY CLERKS' DUTIES**

**Statutes**

1. **Appointment**—G.S.\* §§ 153A-111, 160A-171, 160A-172
2. **Administering Oaths of Office**—N.C. Constitution, Article VI, Sections 7 and 10; G.S. §§ 11-7, 11-7.1, 11-8, 11-9, 11-11, 153A-26, 160A-61
3. **Giving Notice of Governing Board Meetings**—G.S. §§ 143-318.12, 153A-40, 153A-443, 160A-71
4. **Governing Board Procedures**—G.S. §§ 143-318.9 to 143-318.18 (the Open Meetings Law); 153A-25 to 153A-52.1 (counties); 160A-59 to 160A-82.1(cities)  
  
—*Agendas and Parliamentary Procedure*—G.S. §§ 153A-41, 160A-71(c)  
  
—*Closed Sessions*—G.S. § 143-318.11  
  
—*Minutes*—G.S. §§ 153A-42, 160A-72  
  
—*Public Hearings and Public Comment Periods*—G.S. §§ 153A-52, 153A-52.1, 160A-81, 160A-81.1
5. **Ordinances**—G.S. §§ 153A-45 to 153A-50(counties); 160A-75 to 160A-79(cities)
6. **Publication of Notices**—G.S. §§ 1-595 to 1-601
7. **Public Records Law**—G.S. Chapter 132; see also statutes requiring particular documents to be filed in the clerk's office
8. **Administration of Closing-Out Sales**—G.S. §§ 66-76 to 66-83
9. **Local Government Finance** —G.S. §§ 159-7 to 159-42 (the Local Government Budget and Fiscal Control Act)
10. **Privilege License Taxation**—G.S. Chapter 105, Article 2
11. **Multiple Office-Holding Rules**—N.C. Constitution, Article VI, Section 9; G.S. §§ 128-1, 128-1.1, 128-1.2, 128-2
12. **Reports on gender-proportionate appointments to statutorily created decision-making regulatory bodies**—G.S. § 143-157.1

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\* G.S. = North Carolina General Statutes

## **Publications**

- A. Fleming Bell, II, "City and County Clerks: What They Do and How They Do It," Popular Government, vol. 61, no. 4 (Summer 1996), pp. 21-30. Available as a free download from the "Publications" area of the School of Government's website, [www.sog.unc.edu](http://www.sog.unc.edu), at <http://www.sog.unc.edu/pubs/electronicversions/pdfs/clerks.pdf>.
- A. Fleming Bell, II, Ethics, Conflicts, and Offices: A Guide for Local Officials, (Chapel Hill: School of Government, 1997; new edition forthcoming).
- A. Fleming Bell, II, "Public Comment at Meetings of Local Government Boards, Parts 1 and 2," (with John B. Stephens and Christopher M. Bass), Popular Government, vol. 62, no. 4 (Summer 1997) and vol. 63, no. 1 (Fall 1997). Available as free downloads from the "Publications" area of the School of Government's website, [www.sog.unc.edu](http://www.sog.unc.edu). Part 1: <http://www.sog.unc.edu/pubs/electronicversions/pdfs/publiccommentp1.pdf>  
Part 2: <http://www.sog.unc.edu/pubs/electronicversions/pdfs/publiccommentp2.pdf>
- A. Fleming Bell, II, Suggested Rules of Procedure For a City Council, 3d ed. (Chapel Hill: School of Government, 2000).
- A. Fleming Bell, II, Suggested Rules of Procedure for Small Local Government Boards, 2d ed. (Chapel Hill: School of Government, 1998).
- William A. Campbell, North Carolina City and County Privilege License Taxes, 5th ed. (Chapel Hill: School of Government, 2000).
- Civic Education Consortium, Local Government Works (Chapel Hill: School of Government, 2006). A poster providing an overview of local government in North Carolina, focusing on municipal and county as well as independent state board duties.
- Joseph S. Ferrell, Suggested Rules of Procedure for the Board of County Commissioners, 3d ed. (Chapel Hill: School of Government, 2002).
- Joseph S. Ferrell, Handbook for North Carolina County Commissioners, 3d ed. (Chapel Hill: School of Government, 2006).
- David M. Lawrence, ed., County and Municipal Government in North Carolina (Chapel Hill: School of Government, 2007). (On-line and print editions available.)
- David M. Lawrence, North Carolina City Council Procedures (Chapel Hill: School of Government, 2d ed., 1997).
- David M. Lawrence, Open Meetings and Local Governments in North Carolina—Some Questions and Answers, 6th ed. (Chapel Hill: School of Government, 2002).

David M. Lawrence, Public Records Law for North Carolina Local Governments (Chapel Hill: School of Government, 1997), and Public Records Law for North Carolina Local Governments: 1997-2003 Supplement (Chapel Hill, School of Government, 2003).

Carolyn Lloyd, "The Hub of the Wheel: Clerks Keep Government Running Smoothly," Popular Government, vol. 55, no. 4 (Spring 1990), pp 36–43.

North Carolina Association of County Clerks, Clerk to the Board of County Commissioners for the State of North Carolina Job Description and Deputy Clerk to the Board of County Commissioners Job Description. Available for free download from the Association's website at <http://www.nccountyclerks.org/jobdesc.htm>.

North Carolina Association of County Clerks, Reference Guide (Raleigh: N.C. Association of County Commissioners).

North Carolina Association of Municipal Clerks, M.O.R.E. (Minutes, Ordinances, Resolutions, Etc.—A Common Sense Guide). Available for free from the Association's website at <http://www.sog.unc.edu/organizations/clerks/ncamc/more.html>.

North Carolina Association of Municipal Clerks, Reference Guide for North Carolina Municipal Clerks (Raleigh: N.C. League of Municipalities).

North Carolina Department of Cultural Resources, Government Records Branch, Retention and Disposition Schedules for Local Records [Counties, Municipalities, and Councils of Governments] (Raleigh: The Department). Available for free from the department's website at <http://www.ah.dcr.state.nc.us/records/local.htm>.

**B. CITY COUNCIL MEETING PROCEDURES  
AND  
APPOINTMENT OF CITY CLERK**

I. Appointment of City Clerk

**§ 160A-171. City clerk; duties\***

There shall be a city clerk who shall give notice of meetings of the council, keep a journal of the proceedings of the council, be the custodian of all city records, and shall perform any other duties that may be required by law or the council.

**§ 160A-172. Deputy clerk**

The council may provide for a deputy city clerk who shall have full authority to exercise and perform any of the powers and duties of the city clerk that may be specified by the council.

II. General Procedures for City Council Meetings

A. Types of Meetings

1. Organizational

**§ 160A-68. Organizational meeting of council**

(a) The council may fix the date and time of its organizational meeting. The organizational meeting may be held at any time after the results of the municipal election have been officially determined and published pursuant to Subchapter IX of Chapter 163 of the General Statutes but not later than the date and time of the first regular meeting of the council in December after the results of the municipal election have been certified pursuant to that Subchapter. If the council fails to fix the date and time of its organizational meeting, then the meeting shall be held on the date and at the time of the first regular meeting in December after the results of the municipal election have been certified pursuant to Subchapter IX of Chapter 163 of the General Statutes.

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\*All statutory materials are from the North Carolina General Statutes, unless otherwise indicated.

(b) At the organizational meeting, the newly elected mayor and councilmen shall qualify by taking the oath of office prescribed in Article VI, Section 7 of the Constitution. The organization of the council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present.

(c) All local acts or provisions of city charters which prescribe a particular meeting day or date for the organizational meeting of a council are hereby repealed.

### **§ 160A-70. Mayor pro tempore; disability of mayor**

At the organizational meeting, the council shall elect from among its members a mayor pro tempore to serve at the pleasure of the council. A councilman serving as mayor pro tempore shall be entitled to vote on all matters and shall be considered a councilman for all purposes, including the determination of whether a quorum is present. During the absence of the mayor, the council may confer upon the mayor pro tempore any of the powers and duties of the mayor. If the mayor should become physically or mentally incapable of performing the duties of his office, the council may by unanimous vote declare that he is incapacitated and confer any of his powers and duties on the mayor pro tempore. Upon the mayor's declaration that he is no longer incapacitated, and with the concurrence of a majority of the council, the mayor shall resume the exercise of his powers and duties. In the event both the mayor and the mayor pro tempore are absent from a meeting, the council may elect from its members a temporary chairman to preside in such absence.

See also Part D. Oaths of Office, below, in this publication.

## 2. Regular

## 3. Special

## 4. Emergency

### B. General Notice Requirements

#### **§ 160A-71. Regular and special meetings; recessed and adjourned meetings; procedure**

(a) The council shall fix the time and place for its regular meetings. If no action has been taken fixing the time and place for regular meetings, a regular meeting shall be held at least once a month at 10:00 A.M. on the first Monday of the month.

(b) (1) The mayor, the mayor pro tempore, or any two members of the council may at any time call a special council meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the mayor and each councilman or left at his usual dwelling place at least six hours before the meeting. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or have signed a written waiver of notice. In addition to the procedures set out in this subsection or any city charter, a person or persons calling a special meeting of a city council shall comply with the notice requirements of Article 33C of General Statutes Chapter 143.

(2) Special meetings may be held at any time when the mayor and all members of the council are present and consent thereto, or when those not present have signed a written waiver of notice.

(3) During any regular meeting, or any duly called special meeting, the council may call or schedule a special meeting, provided that the motion or resolution calling or scheduling any such special meeting shall specify the time, place and purpose or purposes of such meeting and shall be adopted during an open session.

(b1) Any regular or duly called special meeting may be recessed to reconvene at a time and place certain, or may be adjourned to reconvene at a time and place certain, by the council.

### C. Agendas and Parliamentary Procedure

#### **§ 160A-71.**

(c) The council may adopt its own rules of procedure, not inconsistent with the city charter, general law, or generally accepted principles of parliamentary procedure.

### D. Quorum

## 1. Statutory Requirements

### § 160A-74. Quorum

A majority of the actual membership of the council plus the mayor, excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

## 2. Determining Quorums for City Councils

How many seats are there on your council, not counting the mayor?	_____
Add the mayor	+ 1
How many seats (council or mayor) are currently vacant (no officeholder)? Subtract the number of vacancies	- _____
<hr/>	
TOTAL	_____

IF THE TOTAL IS:

YOUR COUNCIL'S QUORUM CURRENTLY IS:

2	2
3	2
4	3
5	3
6	4
7	4
8	5
9	5
10	6
11	6
12	7
13	7

## E. Voting

### 1. Statutory Requirements

#### **§ 160A-75. Voting**

No member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue (including the mayor's vote in case of an equal division) shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats (not including the mayor unless he has the right to vote on all questions before the council). For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council.

2. Calculating Extraordinary Votes for City Councils

***a. Number of votes needed to finally adopt an ordinance or an action having the effect of an ordinance on the date on which it is introduced.***

1. What is the actual membership of your council? \_\_\_\_\_  
Do not include the mayor, unless he or she has the right to vote on all questions before the council. If the mayor does vote on all questions, then include him or her.
2. How many of the seats you listed in question 1 are currently vacant (no officeholder)? Subtract the number of vacancies. - \_\_\_\_\_
- 
- TOTAL \_\_\_\_\_

IF THE TOTAL IS:

THE NUMBER OF "YES" VOTES  
YOU CURRENTLY NEED IS:

2	2
3	2
4	3
5	4
6	4
7	5
8	6
9	6
10	7
11	8
12	9
13	9

***b. Number of votes needed to adopt an ordinance, take any action having the effect of an ordinance, or make, ratify, or authorize any contract on behalf of the city.***

**Note:** When voting on the budget ordinance or on budget amendments, follow the specific rules found in G.S. 159–17, rather than these rules, despite any language in G.S. 160A–75 that would seem to indicate otherwise.

1. How many members are there on your council? \_\_\_\_\_  
 Do not include the mayor, unless he or she is counted as a council member for all purposes (including voting). If the mayor is so counted, then include him or her.
2. How many members of the council have been excused from voting on the question in issue? Subtract the number excused. - \_\_\_\_\_
- 
- TOTAL \_\_\_\_\_

IF THE TOTAL IS:

THE NUMBER OF "YES" VOTES YOU NEED  
ON THIS QUESTION IS:\*

2	2
3	2
4	3
5	3
6	4
7	4
8	5
9	5
10	6
11	6
12	7
13	7

\*If there is a tie vote and the mayor breaks the tie by voting in favor of the proposal, include the mayor's vote in your total number of "yes" votes.

**§ 160A-69. Mayor to preside over council**

The mayor shall preside at all council meetings, but shall have the right to vote only when there are equal numbers of votes in the affirmative and in the negative. In a city where the mayor is elected by the council from among its membership, and the city charter makes no provision as to the right of the mayor to vote, he shall have the right to vote as a council member on all matters before the council, but shall have no right to break a tie vote in which he participated.

F. Minutes

**§ 160A-72. Minutes to be kept; ayes and noes**

Full and accurate minutes of the council proceedings shall be kept, and shall be open to the inspection of the public. The results of each vote shall be recorded in the minutes, and upon the request of any member of the council, the ayes and noes upon any question shall be taken.

III. Ordinances

A. Adoption Generally

See North Carolina General Statutes § 160A-75, reprinted on page 9.

B. Special Rule for Budget Ordinance

**§ 159-17. Ordinance procedures not applicable to budget or project ordinance adoption**

Notwithstanding the provisions of any city charter, general law, or local act:

(1) Any action with respect to the adoption or amendment of the budget ordinance or any project ordinance may be taken at any regular or special meeting of the governing board by a simple majority of those present and voting, a quorum being present;

(2) No action taken with respect to the adoption or amendment of the budget ordinance or any project ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article;

(3) The adoption and amendment of the budget ordinance or any project ordinance and the levy of taxes in the budget ordinance are not subject to the

provisions of any city charter or local act concerning initiative or referendum.

During the period beginning with the submission of the budget to the governing board and ending with the adoption of the budget ordinance, the governing board may hold any special meetings that may be necessary to complete its work on the budget ordinance. Except for the notice requirements of G.S. 143-318.12, 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. This section does not allow the holding of closed meetings or executive sessions by any governing board otherwise prohibited by law from holding such a meeting or session, and may not be construed to do so.

No general law, city charter, or local act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this section unless it expressly so provides by specific reference to this section.

### C. Special Rules for Franchises and Technical Ordinances

#### § 160A-76. Franchises; technical ordinances

(a) No ordinance making a grant, renewal, extension, or amendment of any franchise shall be finally adopted until it has been passed at two regular meetings of the council, and no such grant, renewal, extension, or amendment shall be made otherwise than by ordinance.

(b) Any published technical code or any standards or regulations promulgated by any public agency may be adopted in an ordinance by reference subject to G.S. 143-138(e). A technical code or set of standards or regulations adopted by reference in a city ordinance shall have the force of law within the city. Official copies of all technical codes, standards, and regulations adopted by reference shall be maintained for public inspection in the office of the city clerk.

### D. Ordinance Book

#### § 160A-78. Ordinance book

Effective January 1, 1972, each city shall file a true copy of each ordinance adopted on or after January 1, 1972, in an ordinance book separate and apart from the council's minute book. The ordinance book shall be appropriately indexed and maintained for public inspection in the office of the city clerk. Effective July 1, 1973, true copies of all ordinances that were adopted before January 1, 1972, and are still in effect shall be filed and indexed in the ordinance book. If the city has adopted and issued a code of ordinances in compliance with G.S. 160A-77, its ordinances shall be filed and indexed in the ordinance book until they are codified.

### E. Code of Ordinances

#### § 160A-77. Code of ordinances

(a) Not later than July 1, 1974, each city having a population of 5,000 or more shall adopt and issue a code of its ordinances. The code may be reproduced by any method that gives legible and permanent copies, and may be issued as a securely bound book or books with periodic separately bound supplements, or as a loose-leaf book maintained by replacement pages. Supplements or replacement pages should be adopted and issued annually at least, unless no additions to or modifications of the code have been adopted by the council during the year. The code may consist of two separate parts, the "General Ordinances" and the "Technical Ordinances." The technical ordinances may be published as separate books or pamphlets, and may include ordinances regarding the construction of buildings, the installation of plumbing and electric wiring, the installation of cooling and heating equipment, the use of public utilities, buildings, or facilities operated by the city, the zoning ordinance, the subdivision control ordinance, the privilege license tax ordinance, and other similar technical ordinances designated as such by the council. The council may omit from the code

designated classes of ordinances of limited interest or transitory nature, but the code should clearly describe the classes of ordinances omitted therefrom.

(b) The council may provide that one or more of the following classes of ordinances shall be codified by appropriate entries upon official map books to be retained permanently in the office of the city clerk or some other city office generally accessible to the public:

- (1) Establishing or amending the boundaries of zoning districts;
- (2) Designating the location of traffic control devices;
- (3) Designating areas or zones where regulations are applied to parking, loading, bus stops, or taxicab stands;
- (4) Establishing speed limits;
- (4a) Restricting or regulating traffic at certain times on certain streets, or to certain types, weights or sizes of vehicles;
- (5) Designating the location of through streets, stop intersections, yield-right-of-way intersections, waiting lanes, one-way streets, or truck traffic routes; and
- (6) Establishing regulations upon vehicle turns at designated locations.

(b1) The council may provide that the classes of ordinances described in paragraphs (2) through (6) of subsection (b) above, and ordinances establishing rates for utility or other public enterprise services, or ordinances establishing fees of any nature, shall be codified by entry upon official lists or schedules of the regulations established by such ordinances, or schedules of such rates or fees, to be maintained in the office of the city clerk.

(c) It is the intent of this section to make uniform the law concerning the adoption of city codes. To this end, all charter provisions in conflict with this section in effect as of January 1, 1972, are expressly repealed, except to the extent that the charter makes adoption of a code mandatory, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend

this section in whole or in part unless it shall expressly so provide by specific reference.

## F. Pleading and Proving Ordinances

### § 160A-79. Pleading and proving city ordinances

(a) In all civil and criminal cases a city ordinance that has been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by both section number and caption. In all civil and criminal cases a city ordinance that has not been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by its caption. In both instances, it is not necessary to plead or allege the substance or effect of the ordinance unless the ordinance has no caption and has not been codified.

(b) Any of the following shall be admitted in evidence in all actions or proceedings before courts or administrative bodies and shall have the same force and effect as would an original ordinance:

(1) A city code adopted and issued in compliance with G.S. 160A-77, containing a statement that the code is published by order of the council.

(2) Copies of any part of an official map book maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

(3) A copy of an ordinance as set out in the minutes, code, or ordinance book of the council, certified under seal by the city clerk as a true copy (the clerk's certificate need not be authenticated).

(4) Copies of any official lists or schedules maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

(c) The burden of pleading and proving the existence of any modification or repeal of an ordinance, map, or code, a copy of which has been duly pleaded or admitted in evidence in accordance with this section, shall be upon the party asserting such modification or repeal. It shall be presumed that any portion of a city code that is admitted in evidence in accordance with this section has been codified in compliance with G.S. 160A-77, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(d) From and after the respective effective dates of G.S. 160A-77 and 160A-78, no city ordinance shall be enforced or admitted into evidence in any court unless it has been codified or filed and indexed in accordance with G.S. 160A-77 or 160A-78. It shall be presumed that an ordinance which has been properly pleaded and proved in accordance with this section has been codified or filed and indexed in accordance with G.S. 160A-77 or 160A-78, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(e) It is the intent of this section to make uniform the law concerning the pleading and proving of city ordinances. To this end, all charter provisions in conflict with this section in effect as of January 1, 1972, are expressly repealed, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend this section in whole or in part unless it shall expressly so provide by specific reference.

#### IV. Public Hearings and Public Comment Periods

##### **§ 160A-81. Conduct of public hearings**

Public hearings may be held at any place within the city or within the county in which the city is located. The council may adopt reasonable rules governing the conduct of public hearings, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.

The council may continue any public hearing without further advertisement. If a public hearing is set for a given date and a quorum of the council is not then present, the hearing shall be continued until the next regular council meeting without further advertisement.

##### **§ 160A-81.1. Public comment period during regular meetings.**

The council shall provide at least one period for public comment per month at a regular meeting of the council. The council may adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing. The council is not required to provide a public comment period under this section if no regular meeting is held during the month.

## **C. SELECTED NORTH CAROLINA GENERAL STATUTES OF INTEREST TO COUNTY CLERKS**

### **§ 153A-39. Selection of chairman and vice-chairman; powers and duties**

On:

(1) The first Monday in December of each even-numbered year; and  
(2) Its first regular meeting in December of each odd-numbered year,  
the board of commissioners shall choose one of its members as chairman for the ensuing year, unless the chairman is elected as such by the people or otherwise designated by law. The board shall also at that time choose a vice-chairman to act in the absence or disability of the chairman. If the chairman and the vice-chairman are both absent from a meeting of the board, the members present may choose a temporary chairman.

The chairman is the presiding officer of the board of commissioners. Unless excused by rule of the board, the presiding officer has the duty to vote on any question before the board, but he has no right to break a tie vote in which he participated.

See also Part D. Oaths of Office, below, in this publication.

### **§ 153A-40. Regular and special meetings**

(a) The board of commissioners shall hold a regular meeting at least once a month, and may hold more frequent regular meetings. The board may by resolution fix the time and place of its regular meetings. If such a resolution is adopted, at least 10 days before the first meeting to which the resolution is to apply, the board shall cause a copy of it to be posted on the courthouse bulletin board and a summary of it to be published. If no such resolution is adopted, the board shall meet at the courthouse on the first Monday of each month, or on the next succeeding business day if the first Monday is a holiday.

If use of the courthouse or other designated regular meeting place is made temporarily impossible, inconvenient, or unwise, the board may change the time or place or both of a regular meeting or of all regular meetings within a specified period of time. The board shall cause notice of the temporary change to be posted at or near the regular meeting place and shall take any other action it considers helpful in informing the public of the temporary change.

The board may adjourn a regular meeting from day to day or to a day certain until the business before the board is completed.

(b) The chairman or a majority of the members of the board may at any time call a special meeting of the board of commissioners by signing a written notice stating the time and place of the meeting and the subjects to be considered. The person or persons calling the meeting shall cause the notice to be delivered to the chairman and each other member of the board or left at the usual dwelling place of each at least 48 hours before the meeting and shall cause a copy of the notice to be posted on the courthouse bulletin board at least 48 hours before the meeting. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or those not present have signed a written waiver.

If a special meeting is called to deal with an emergency, the notice

requirements of this subsection do not apply. However, the person or persons calling such a special meeting shall take reasonable action to inform the other members and the public of the meeting. Only business connected with the emergency may be discussed at a meeting called pursuant to this paragraph.

In addition to the procedures set out in this subsection, a person or persons calling a special or emergency meeting of the board of commissioners shall comply with the notice requirements of Article 33B of General Statutes Chapter 143.

(c) The board of commissioners shall hold all its meetings within the county except:

(1) In connection with a joint meeting of two or more public bodies; provided, however, that such a meeting shall be held within the boundaries of the political subdivision represented by the members of one of the public bodies participating;

(2) In connection with a retreat, forum, or similar gathering held solely for the purpose of providing members of the board with general information relating to the performance of their public duties; provided, however, that members of the board of commissioners shall not vote upon or otherwise transact public business while in attendance at such a gathering;

(3) In connection with a meeting between the board of commissioners and its local legislative delegation during a session of the General Assembly; provided, however, that at any such meeting the members of the board of commissioners may not vote upon or otherwise transact public business except with regard to matters directly relating to legislation proposed to or pending before the General Assembly;

(4) While in attendance at a convention, association meeting or similar gathering; provided, however, that any such meeting may be held solely to discuss or deliberate the board's position concerning convention resolutions, elections of association officers and similar issues that are not legally binding upon the board of commissioners or its constituents.

All meetings held outside the county shall be deemed "official meetings" within the meaning of G.S. 143-318.10(d).

#### **§ 153A-41. Procedures**

The board of commissioners may adopt its own rules of procedure, in keeping with the size and nature of the board and in the spirit of generally accepted principles of parliamentary procedure.

#### **§ 153A-42. Minutes to be kept; ayes and noes**

The clerk shall keep full and accurate minutes of the proceedings of the board of commissioners, which shall be available for public inspection. The clerk shall record the results of each vote in the minutes; and upon the request of any member of the board, the ayes and noes upon any question shall be taken and recorded.

#### **§ 153A-43. Quorum**

A majority of the membership of the board of commissioners constitutes a quorum. The number required for a quorum is not affected by vacancies. If a member has withdrawn from a meeting without being excused by majority vote of the remaining members present, he shall be counted as present for the purposes of determining whether a quorum is present. The board may compel the attendance of an absent member by ordering the sheriff to take the member into custody.

**§ 153A-44. Members excused from voting**

The board may excuse a member from voting, but only upon questions involving his own financial interest or his official conduct. (For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct.)

**§ 153A-45. Adoption of ordinances**

To be adopted at the meeting at which it is first introduced, an ordinance or any action having the effect of an ordinance (except the budget ordinance, any bond order, or any other ordinance on which a public hearing must be held before the ordinance may be adopted) must receive the approval of all the members of the board of commissioners. If the ordinance is approved by a majority of those voting but not by all the members of the board, or if the ordinance is not voted on at that meeting, it shall be considered at the next regular meeting of the board. If it then or at any time thereafter within 100 days of its introduction receives a majority of the votes cast, a quorum being present, the ordinance is adopted.

**§ 153A-46. Franchises**

No ordinance making a grant, renewal, extension, or amendment of any franchise may be finally adopted until it has been passed at two regular meetings of the board of commissioners. No such grant, renewal, extension, or amendment may be made except by ordinance.

**§ 153A-47. Technical ordinances**

Subject to G.S. 143-138(e), a county may in an ordinance adopt by reference a published technical code or a standard or regulation promulgated by a public agency. A technical code or standard or regulation so adopted has the force of law in any area of the county in which the ordinance is applicable. An official copy of a technical code or standard or regulation adopted by reference shall be available for public inspection in the office of the clerk and need not be filed in the ordinance book.

**§ 153A-48. Ordinance book**

The clerk shall maintain an ordinance book, separate from the minute book of the board of commissioners. The ordinance book shall be indexed and shall be available for public inspection in the office of the clerk. Except as provided in this section and in G.S. 153A-47, each county ordinance shall be filed and indexed in the ordinance book.

The budget ordinance and any amendments thereto, any bond order, and any other ordinance of limited interest or transitory nature may be omitted from the ordinance book. However, the ordinance book shall contain a section showing the caption of each omitted ordinance and the page in the commissioners' minute book

at which the ordinance may be found.

If a county adopts and issues a code of its ordinances, county ordinances need be recorded and indexed in the ordinance book only until they are placed in the codification.

**§ 153A-49. Code of ordinances**

A county may adopt and issue a code of its ordinances. The code may be reproduced by any method that gives legible and permanent copies, and may be issued as a securely bound book or books with periodic separately bound supplements, or as a loose-leaf book maintained by replacement pages. Supplements or replacement pages should be adopted and issued at least annually, unless there have been no additions to or modifications of the code during the year.

A code may consist of two parts, the "General Ordinances" and the "Technical Ordinances." The technical ordinances may be published as separate books or pamphlets, and may include ordinances regarding the construction of buildings, the installation of plumbing and electric wiring, and the installation of cooling and heating equipment; ordinances regarding the use of public utilities, buildings, or facilities operated by the county; the zoning ordinance; the subdivision control ordinance; the privilege license tax ordinance; and other similar ordinances designated as technical ordinances by the board of commissioners. The board may omit from the code the budget ordinance, any bond orders, and other designated classes of ordinances of limited interest or transitory nature, but the code shall clearly describe the classes of ordinances omitted from it.

The board of commissioners may provide that ordinances (i) establishing or amending the boundaries of county zoning areas or (ii) establishing or amending the boundaries of zoning districts shall be codified by appropriate entries upon official map books to be retained permanently in the office of the clerk or some other county office generally accessible to the public.

**§ 153A-50. Pleading and proving county ordinances**

County ordinances shall be pleaded and proved under the rules and procedures of G.S. 160A-79. References to G.S. 160A-77 and G.S. 160A-78 appearing in G.S. 160A-79 are deemed, for purposes of this section, to refer to G.S. 153A-49 and G.S. 153A-48, respectively.

\* \* \*

**§ 153A-52. Conduct of public hearing**

The board of commissioners may hold public hearings at any place within the county. The board may adopt reasonable rules governing the conduct of public hearings, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same position, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.

The board may continue a public hearing without further advertisement. If a public hearing is set for a given date and a quorum of the board is not then present, the board shall continue the hearing without further advertisement until its next regular meeting.

**§ 153A-52.1. Public comment period during regular meetings.**

The board of commissioners shall provide at least one period for public comment per month at a regular meeting of the board. The board may adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing. The board is not required to provide a public comment period under this section if no regular meeting is held during the month.

\* \* \*

**§ 153A-111. Appointment; powers and duties**

The board of commissioners shall appoint or designate a clerk to the board. The board may designate the register of deeds or any other county officer or employee as clerk. The clerk shall perform any duties that may be required by law or the board of commissioners. The clerk shall serve as such at the pleasure of the board.

\* \* \*

**§ 153A-443. Redesignation of site of "courthouse door," etc.**

If a county determines that the traditional location of the "courthouse," the "courthouse door," the "courthouse bulletin board" or the "courthouse steps" has become inappropriate or inconvenient for the doing of any act or the posting of any notice required by law to be done or posted at such a site, the county may by ordinance designate some appropriate or more convenient location for the site. The board of commissioners shall cause such an ordinance to be published at least once within 30 days after the day it is adopted and shall cause a copy of it to be posed for 60 days at the traditional location.

## **D. OATHS OF OFFICE AND OFFICE-HOLDING IN NORTH CAROLINA**

### **1. Oaths of Office**

#### **a. North Carolina Constitution, Article VI, Section 7**

##### **Sec. 7. Oath**

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I, ....., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as ....., so help me God."

HISTORY. --The provisions of this section are similar to those of Art. VI, § 7, Const. 1868, as that article was rewritten in 1900.

#### **b. North Carolina Constitution, Article VI, Section 10**

##### **Sec. 10. Continuation in office.**

In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

#### **c. Selected Statutes**

##### **§ 11-1. Oaths and affirmations to be administered with solemnity**

Whereas, lawful oaths for discovery of truth and establishing right are necessary and highly conducive to the important end of good government; and being most solemn appeals to Almighty God, as the omniscient witness of truth and the just and omnipotent avenger of falsehood, and whereas, lawful affirmations for the discovery of truth and establishing right are necessary and highly conducive to the important end of good government, therefore, such oaths and affirmations ought to be taken and administered with the utmost solemnity.

##### **§ 11-2. Administration of oaths**

Judges and other persons who may be empowered to administer oaths, shall (except in the cases in this Chapter excepted) require the party to be sworn to lay his hand upon the Holy Scriptures, in token of his engagement to speak the truth and in further token that, if he should swerve from the truth, he may be justly deprived of all the blessings of that holy book and made liable to that vengeance which he has imprecated on his own head.

##### **§ 11-3. Administration of oath with uplifted hand**

When the person to be sworn shall be conscientiously scrupulous of taking a book oath in manner aforesaid, he shall be excused from laying hands upon, or touching the Holy Gospel; and the oath required shall be administered in the following manner, namely: He shall stand with his right hand lifted up towards heaven, in token of his solemn appeal to the Supreme God, and also in token that if he should swerve from the truth he would draw down the vengeance of heaven upon his head, and shall introduce the intended oath with these words, namely:

I, A.B., do appeal to God, as a witness of the truth and the avenger of falsehood, as I shall answer the same at the great day of judgment, when the secrets of all hearts shall be known (etc., as the words of the oath may be).

**§ 11-4. Affirmation in lieu of oath**

When a person to be sworn shall have conscientious scruples against taking an oath in the manner prescribed by G.S. 11-2, 11-3, or 11-7, he shall be permitted to be affirmed. In all cases the words of the affirmation shall be the same as the words of the prescribed oath, except that the word "affirm" shall be substituted for the word "swear" and the words "so help me God" shall be deleted.

\* \* \*

**§ 11-7. Oath or affirmation to support Constitutions; all officers to take**

Every member of the General Assembly and every person elected or appointed to hold any office of trust or profit in the State shall, before taking office or entering upon the execution of the office, take and subscribe to the following oath:

"I, . . . . ., do solemnly and sincerely swear that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God."

**§ 11-7.1. Who may administer oaths of office**

(a) Except as otherwise specifically required by statute, an oath of office may be administered by:

- (1) A justice, judge, magistrate, clerk, assistant clerk, or deputy clerk of the General Court of Justice, a retired justice or judge of the General Court of Justice, or any member of the federal judiciary;
- (2) The Secretary of State;
- (3) A notary public;
- (4) A register of deeds;
- (5) A mayor of any city, town, or incorporated village;
- (5a) A chairman of the board of commissioners of any county;
- (6) A member of the House of Representatives or Senate of the General Assembly;
- (7) The clerk of any county, city, town or incorporated village.

(b) The administration of an oath by any judge of the Court of Appeals prior to March 7, 1969, is hereby validated.

**§ 11-8. When deputies may administer**

In all cases where any civil officer, in the discharge of his duties, is permitted by the law to administer an oath, the deputy of such officer, when discharging such duties, shall have authority to administer it, provided he is a sworn officer; and the oath thus administered by the deputy shall be as obligatory as if administered by the principal officer, and shall be attended with the same penalties in case of false swearing.

**§ 11-9. Administration by certain officers**

The chairman of the board of county commissioners and the chairman of the board of education of the several counties may administer oaths in any matter or hearing before their respective boards.

\* \* \*

**§ 11-11. Oaths of sundry persons; forms.**

The oaths of office to be taken by the several persons hereafter named shall be in the words following the names of said persons respectively, after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina:

\* \* \*

**General Oath**

Any officer of the State or of any county or township, the term of whose oath is not given above, shall take an oath in the following form:

I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of \_\_\_\_\_ according to the best of my skill and ability, according to law; so help me, God.

**§ 153A-26. Oath of office**

Each person elected by the people or appointed to a county office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, Sec. 7 of the Constitution. The oath of office shall be administered by some person authorized by law to administer oaths and shall be filed with the clerk.

On the first Monday in December following each general election at which county officers are elected, the persons who have been elected to county office in that election shall assemble at the regular meeting place of the board of commissioners. At that time each such officer shall take and subscribe the oath of office. An officer not present at this time may take and subscribe the oath at a later time.

**§ 160A-61. Oath of office**

Every person elected by the people or appointed to any city office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the city clerk.

**§ 160A-62. Officers to hold over until successors qualified**

All city officers, whether elected or appointed, shall continue to hold office until their successors are chosen and qualified. This section shall not apply when an office or position has been abolished, when an appointed officer or employee has been discharged, or when an elected officer has been removed from office.

**2. Multiple Office-Holding**

a. North Carolina Constitution, Article VI, Section 9

**Sec. 9. Dual office holding**

(1) Prohibitions. It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) Exceptions. The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

b. Selected Statutes

**§ 128-1. No person shall hold more than one office; exception**

No person who shall hold any office or place of trust or profit under the United States, or any department thereof or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly except as provided in G.S. 128-1.1, or by other General Statute.

**§ 128-1.1. Dual-office holding allowed**

(a) Any person who holds an appointive office, place of trust or profit in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution, to hold concurrently one other appointive office, place of trust or profit, or an elective office in either State or local government.

(b) Any person who holds an elective office in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the

North Carolina Constitution to hold concurrently one other appointive office, place of trust or profit, in either State or local government.

(c) Any person who holds an office or position in the federal postal system or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs is hereby authorized to hold concurrently therewith one position in State or local government.

(c1) Where authorized by federal law, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency required to perform the described functions.

(d) The term "elective office," as used herein, shall mean any office filled by election by the people when the election is conducted by a county or municipal board of elections under the supervision of the State Board of Elections.

### **§ 128-1.2. Ex officio service by county and city representatives and officials**

Except when the resolution of appointment provides otherwise, whenever the governing body of a county or city appoints one of its own members or officials to another board or commission, the individual so appointed is considered to be serving on the other board or commission as a part of the individual's duties of office and shall not be considered to be serving in a separate office.

As used in this section, the term "official" means (i) in the case of a county, the county manager, acting county manager, interim county manager, county attorney, finance officer, or clerk to the board and (ii) in the case of a city, the city manager, acting city manager, interim city manager, city attorney, finance officer, city clerk, or deputy clerk. As used in this section, the term "city" has the meaning provided in G.S. 160A-1.

### **§ 128-2. Holding office contrary to the Constitution; penalty**

If any person presumes to hold any office, or place of trust or profit, or is elected to a seat in either house of the General Assembly, contrary to Article VI, Sec. 9 of the North Carolina Constitution, he shall forfeit all rights and emoluments incident thereto.

## **3. Eligibility to Assume Elective Office**

### **a. N.C. Constitution, Article VI, Section 8**

#### **Sec. 8. Disqualifications for office.**

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any

office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

b. Selected Statute [See also G.S. 163-11(e), concerning members of the General Assembly.]

**§ 128-7.2. Qualifications for appointment to fill vacancy in elective office.**

No person is eligible for appointment to fill a vacancy in any elective office, whether State or local, unless that person would have been qualified to vote as an elector for that office if an election were to be held on the date of appointment. This section is intended to implement the provisions of Section 8 of Article VI of the Constitution.

**4. Leaves of Absence for Military Service for Public Officials**

[Note: G.S. §§ 128-39 and -39A, which deal with state officials, are not reprinted here.]

**§ 128-40. Leaves of absence for county officials for protracted illness or other reason.**

Any elective or appointive county official may obtain leave of absence from the official's duties for protracted illness or other reason satisfactory to the board of county commissioners of his county, for such period as the board of county commissioners may designate. The leave shall be obtained only upon application by the official and with the consent of the board of county commissioners. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not deprive the official of the benefits of any sick leave to which the official may be entitled by law. The period of leave may be extended upon application to and with the approval of the board of county commissioners if the reason for the original leave still exists, and it may be shortened if the reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he the official was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the board of county commissioners deems it necessary, the board may appoint any qualified citizen of the county as a temporary replacement for the period of the official's leave of absence. This appointee shall have all the authority, duties, perquisites, and emoluments of the official temporarily replaced. The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed."

**§ 128-41. Leaves of absence for municipal officials for protracted illness or other reason.**

Any elective or appointive municipal official may obtain leave of absence from the official's duties for protracted illness or other reason satisfactory to the governing body of the municipality, for such period as the governing body may designate. The leave shall be obtained only upon application by the official and with the consent of the governing body. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not deprive the official of the benefits of any sick leave to which the official may be entitled by law. The period of leave may be extended upon application to and with the approval of the governing body of the municipality if the reason for the original leave still exists, and it may be shortened if the ~~said~~ reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which the official was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the governing body deems it necessary, it may appoint any qualified citizen of the municipality as a temporary replacement for the period of the official's leave of absence. This appointee shall have all the authority, duties, perquisites, and emoluments of the official temporarily replaced. The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed.

**§ 128-42. Leaves of absence for county or municipal officials for military or naval service.**

(a) Any elective or appointive county or municipal official may obtain leave of absence from the official's duties when the official enters active duty in the armed forces of the United States or the North Carolina National Guard as a result of being voluntarily or involuntarily activated, drafted, or otherwise called to duty. The official

shall receive no salary during the period of leave. No vacancy is created by a county or municipal official obtaining a leave of absence under this section.

(b) If the official will be on active duty for a period of at least 30 days, a leave of absence may be obtained, and a temporary replacement for the official may be appointed in the following manner:

- (1) Leave of absence shall be obtained by placing a copy of the official's active duty orders with the clerk.
- (2) G.S. 128-41 shall govern the procedure for selecting a temporary replacement official if the official being temporarily replaced is a municipal official; otherwise, G.S. 128-40 shall govern.

(c) If the official will be on active duty for a period of less than 30 days, a temporary replacement official shall not be appointed, even if a leave of absence is obtained.

(d) The appropriate authority under G.S. 128-40 or G.S. 128-41 shall appoint the temporary replacement to begin service on the date specified in writing by the official being temporarily replaced as the date the official will enter active military service, or as soon as practicable thereafter. A temporary replacement official shall have all the authority, duties, perquisites, and emoluments of the official temporarily replaced. The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed.

(e) The term of the temporary replacement official appointed under this section shall terminate as soon as any of the following occurs:

- (1) On the third day after the last day of active duty status of the official who is temporarily replaced.
- (2) The clerk receives written notice from the official who is temporarily replaced that the official is ready and able to resume the duties of his or her office.
- (3) The term of office of the official who is temporarily replaced expires.

(f) As used in this section, the term 'clerk' means the city clerk as defined in G.S. 160A-171 if the official being temporarily replaced is a municipal official and means the clerk to the board of county commissioners as defined in G.S. 153A-1(2) if the official being temporarily replaced is a county official.

## **E. OPEN MEETINGS LAW AND OUTLINE**

### **1. The Open Meetings Law**

#### **§ 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.

#### **§ 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, 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 subdivisions 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, any 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. When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account 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 purpose 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, mediation, arbitration, 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, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.
- (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.
- (8) To formulate plans by a local board of education relating to emergency response to incidents of school violence.
- (9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.

(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.

(d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 570, s. 2.

#### **§ 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.

**§ 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. 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.

**§ 143-318.14. 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 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.

**§ 143-318.14A. 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) [Repealed]
- (4) The Joint Legislative Utility Review Committee;
- (5) The Joint Legislative Commission on Governmental Operations;
- (6) The Joint Legislative Commission on Municipal Incorporations;
- (7) Repealed by Session Laws 1997, c. 443, s. 12.30, effective August 28, 1997.
- (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 mailed or sent by electronic mail to those who have requested notice, and to the Legislative Services Office, which shall post the notice on the General Assembly web site.

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.

**§ 143-318.15. [Repealed]**

**§ 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 (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.

**§ 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 persons 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.

**§ 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 any 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. 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 Class 2 misdemeanor.

**§ 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.
- (3a) The North Carolina Innocence Inquiry Commission.
- (4) [Repealed.]
- (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 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 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 State Budget Act, Chapter 143C of the General Statutes 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.]
- (10) The Board of Awards.
- (11) The General Court of Justice.

## 2. A Brief Outline of the Open Meetings Law

### **The Open Meetings Law: A Brief Outline**

by David M. Lawrence, Institute of Government  
(modified by A. Fleming Bell, II)

#### **I. Public Bodies**

A "Public Body" is any elected or appointed authority, board, commission, committee, etc., of the State or of one or more local governments, etc.,

1. With two or more members, and
2. Exercising or authorized to exercise any of the following powers:
  - Legislative
  - Policy-making
  - Quasi-Judicial
  - Administrative
  - Advisory

The statute also says that public body does not include a meeting solely among the professional staff of a public body.

#### **Exercise No. 1**

For each entity described below, determine if it is a public body under the definition set out above:

1. A three-member committee of a seven-member city council or board of county commissioners, established to recommend procedures for selecting an architect for a new office building.
2. The board of directors of a volunteer fire department that provides service under a contract with a county or town. It is organized as a nonprofit corporation and almost all of its funding comes from the local government. The fire house is owned by the local government and used by the department under a long-term lease. The department owns its own equipment and controls who may become a member of the department.
3. A community drug commission sponsored by the United Way. Each of nine entities were invited to appoint four persons to the commission, and the county and its two cities were three of the nine entities. The other six are private.
4. The November election results in the election of an entirely new board. The successful candidates get together later in November and discuss what they will do once they take office.

5. A task force of eight department heads, four from the county and four from the county's only city, assigned the responsibility of proposing new cost-sharing arrangements on 12 functions provided by either or both of the two governments. The task force was established by concurrent resolutions of the two governments.

## II. Official Meetings

An "Official Meeting" is

1. A meeting, assembly, or gathering together,  
or  
the simultaneous communication by conference telephone call or other means
2. Of a majority of the members of the public body,
3. For the purpose of
  - conducting hearings, or
  - participating in deliberations, or
  - voting on or otherwise transacting public business

An "Official Meeting" does not include a social occasion, unless it is called or held to evade the law.

### Exercise No. 2

Are the following official meetings, under the open meetings law:

1. The county or city governing board is hiring a new manager. It schedules dinners with each of the three final candidates, in order to get to know them better.
2. The chair of the local planning board hosts an annual holiday party for the board members and their spouses.
3. A board of county commissioners meets, as a group, with the county's legislative delegation and a few community leaders. At the meeting board members lobby for additional state funds.
4. One member of a six-member city council has been excused from voting on a matter, because of a conflict. Three of the remaining members meet and talk about that matter. (The mayor of the city does not vote unless there is a tie.)

5. Three members of a seven-member local governing board have been designated as an ad hoc committee to investigate an issue and report to the full board. One of the three calls a second on the phone, to discuss the issue.

### III. Public Notice of Official Meetings

#### Regular Meetings

A current copy of the regular meeting schedule must be filed in a central location. For the governing body and other public bodies that are part of a municipal government, that location is with the municipal clerk. For such bodies that are part of a county government, that location is with the clerk to the board of county commissioners.

If a regular meeting schedule is changed, the revised schedule must be filed with the clerk to the board of commissioners at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

#### Special Meetings

A "Special Meeting" is one held at some time or place different from the schedule of regular meetings.

Written notice of time, place, and purpose (1) posted on the public body's principal bulletin board and (2) mailed or delivered to each person who has requested it, at least 48 hours before the meeting.

#### Emergency Meetings

An "Emergency Meeting" is one called "because of generally unexpected circumstances that require immediate consideration by the public body."

Notice to local news media only, in same manner as public body itself is notified.

#### Adjourned or Recessed Meetings

No additional notice required, if proper notice was given of original meeting and time and place at which meeting is to be continued is announced in open session.

#### **Exercise No. 3**

Is the notice given in each case described below adequate?

1. On Friday the mayor calls a special meeting for Monday morning, at 10:00 a.m. The city clerk posts the notice on the bulletin board, inside the town hall, at 1:30 p.m. Friday. She also mails the notice at this time. The building closes for the weekend at 5:00 Friday and reopens at 8:00 a.m. Monday.

2. At 11:00 at night, after all the public has left, the board of county commissioners recesses its meeting until 7:30 the next evening.

### IV. Minutes of Official Meetings

- All public bodies must keep "full and accurate minutes" of all official meetings, including all closed sessions. Public bodies must also keep "general accounts" of closed sessions "so that a person not in attendance would have a reasonable understanding of what transpired."
- Minutes are public records, but closed session minutes and general accounts may be sealed, under the conditions discussed in the next section.
- Minutes may be in written form or in the form of sound or video and sound recordings.

## V. Closed Sessions

### Procedures

- Meeting notice still required.
- There must be "a motion duly made and adopted at an open meeting," giving the purpose(s) of the closed session and in some cases other information.
- Members of the public body are entitled to attend; others may be admitted if their presence is relevant.
- Minutes and general accounts of a properly held closed session "may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

### Some Authorized Purposes (a brief summary)

- To consider confidential records.
  - To consult with an attorney on matters within the attorney-client privilege.
  - To consider claims and litigation, including mediations and arbitrations (and give instructions to lawyers). Attorneys must be present.
  - To consider industrial and business location, including approving tentative incentives to offer to businesses. Final action approving incentives must come in open session.
  - To establish a negotiating position in the acquisition of real property or concerning the material terms of an employment contract.
  - To consider the qualifications, performance, etc., of individual officers and employees. Final appointment, discharge, or removal action by public body with final authority for that action must be taken in an open meeting.
    - Note:* Closed session **may not** be used to consider general personnel policy issues or the qualifications, performance, appointment, removal, etc., of a member of the public body or another body, nor to consider or fill a vacancy on the public body.
  - To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.
- To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings concerning actions taken or to be taken to respond to such activity.

## **V. Miscellaneous**

1. Secret ballots are prohibited; written ballots, however, are permitted, if each person signs his or her ballot.
2. Any person may tape or film an open meeting; the media are entitled to broadcast any open meeting.

## **VI. Remedies**

- Injunction against future violations.
- Invalidation of tainted actions.
- Award of attorney's fee. To avoid potential personal liability, members of the public body should follow attorney's advice.

### **Exercise No. 4**

1. What should be included in the motion to go into a closed session?
2. What sort of record must be kept of the discussion that occurs during closed sessions?
3. Does the revised law recognize an attorney-client privilege between public bodies and their attorneys?
4. May a public body choose the site for a new landfill in a closed session?
5. May a public body consider an appointment to another body in a closed session?
6. May a public body evaluate an independent contractor's performance in a closed session?
7. How can members of a public body avoid potential personal liability for attorney's fees in open meetings lawsuits?

## F. PUBLIC RECORDS LAWS AND OUTLINE

### 1. The Main Public Records Law

#### Chapter 132.

#### Public Records.

##### § 132-1. "Public records" defined.

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information. (1935, c. 265, s. 1; 1975, c. 787, s. 1; 1995, c. 388, s. 1.)

##### § 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information.

(a) Confidential Communications. – Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. – Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

(c) Public Enterprise Billing Information. – Billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise, excluding airports, is not a public record as defined in G.S. 132-1. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

- (1) That the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;
- (2) That is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or
- (3) That is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

As used herein, "billing information" means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A-311, excluding subdivision (9), and G.S. 153A-274, excluding subdivision (4), or other public entity providing utility services, excluding airports, relating to services it provides or will provide to the customer.

(d) Address Confidentiality Program Information. – The actual address and telephone number of a program participant in the Address Confidentiality Program established under Chapter 15C of the General Statutes is not a

public record within the meaning of Chapter 132. The actual address and telephone number of a program participant may not be disclosed except as provided in Chapter 15C of the General Statutes.

(e) **Controlled Substances Reporting System Information.** – Information compiled or maintained in the Controlled Substances Reporting System established under Article 5D of Chapter 90 of the General Statutes is not a public record as defined in G.S. 132-1 and may be released only as provided under Article 5D of Chapter 90 of the General Statutes.

(f) **Personally Identifiable Admissions Information.** – Records maintained by The University of North Carolina or any constituent institution, or by the Community Colleges System Office or any community college, which contain personally identifiable information from or about an applicant for admission to one or more constituent institutions or to one or more community colleges shall be confidential and shall not be subject to public disclosure pursuant to G.S. 132-6(a). Notwithstanding the preceding sentence, any letter of recommendation or record containing a communication from an elected official to The University of North Carolina, any of its constituent institutions, or to a community college, concerning an applicant for admission who has not enrolled as a student shall be considered a public record subject to disclosure pursuant to G.S. 132-6(a). Nothing in this subsection is intended to limit the disclosure of public records that do not contain personally identifiable information, including aggregated data, guidelines, instructions, summaries, or reports that do not contain personally identifiable information or from which it is feasible to redact any personally identifiable information that the record contains. As used in this subsection, the term "community college" is as defined in G.S. 115D-2(2), the term "constituent institution" is as defined in G.S. 116-2(4), and the term "Community Colleges System Office" is as defined in G.S. 115D-3. (1975, c. 662; 1993, c. 485, s. 38; 1995 (Reg. Sess., 1996), c. 646, s. 21; 2001-473, s. 1; 2002-171, s. 7; 2003-287, s. 1.; 2005-276, s. 10.36(b); 2007-372, s.2.)

#### **§ 132-1.2. Confidential information.**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

- (1) Meets all of the following conditions:
  - a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
  - b. Is the property of a private "person" as defined in G.S. 66-152(2).
  - c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
  - d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.
- (2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.
- (3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.
- (4) Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document. (1989, c. 269; 1991, c. 745, s. 3; 1999-434, s. 7; 2001-455, s. 2; 2001-513, s. 30(b); 2003-226, s. 5; 2004-127, s. 17(b).)

#### **§ 132-1.3. Settlements made by or on behalf of public agencies, public officials, or public employees; public records.**

(a) Public records, as defined in G.S. 132-1, shall include all settlement documents in any suit, administrative proceeding or arbitration instituted against any agency of North Carolina government or its subdivisions, as defined in G.S. 132-1, in connection with or arising out of such agency's official actions, duties or responsibilities, except in an action for medical malpractice against a hospital facility. No agency of North Carolina government or its subdivisions, nor any counsel, insurance company or other representative acting on behalf of such agency, shall approve, accept or enter into any settlement of any such suit, arbitration or proceeding if the settlement provides that its terms and conditions shall be confidential, except in an action for medical malpractice against a hospital facility. No settlement document sealed under subsection (b) of this section shall be open for public inspection.

(b) No judge, administrative judge or administrative hearing officer of this State, nor any board or commission, nor any arbitrator appointed pursuant to the laws of North Carolina, shall order or permit the sealing of

any settlement document in any proceeding described herein except on the basis of a written order concluding that (1) the presumption of openness is overcome by an overriding interest and (2) that such overriding interest cannot be protected by any measure short of sealing the settlement. Such order shall articulate the overriding interest and shall include findings of fact that are sufficiently specific to permit a reviewing court to determine whether the order was proper.

(c) Except for confidential communications as provided in G.S. 132-1.1, the term "settlement documents," as used herein, shall include all documents which reflect, or which are made or utilized in connection with, the terms and conditions upon which any proceedings described in this section are compromised, settled, terminated or dismissed, including but not limited to correspondence, settlement agreements, consent orders, checks, and bank drafts. (1989, c. 326.)

**§ 132-1.4. Criminal investigations; intelligence information records; Innocence Inquiry Commission records.**

(a) Records of criminal investigations conducted by public law enforcement agencies, records of criminal intelligence information compiled by public law enforcement agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

(b) As used in this section:

- (1) "Records of criminal investigations" means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements.
- (2) "Records of criminal intelligence information" means records or information that pertain to a person or group of persons that is compiled by a public law enforcement agency in an effort to anticipate, prevent, or monitor possible violations of the law.
- (3) "Public law enforcement agency" means a municipal police department, a county police department, a sheriff's department, a company police agency commissioned by the Attorney General pursuant to G.S. 74E-1, et seq., and any State or local agency, force, department, or unit responsible for investigating, preventing, or solving violations of the law.
- (4) "Violations of the law" means crimes and offenses that are prosecutable in the criminal courts in this State or the United States and infractions as defined in G.S. 14-3.1.
- (5) "Complaining witness" means an alleged victim or other person who reports a violation or apparent violation of the law to a public law enforcement agency.

(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by law, the following information shall be public records within the meaning of G.S. 132-1.

- (1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.
- (2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.
- (3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.
- (4) The contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness.
- (5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.
- (6) The name, sex, age, and address of a complaining witness.

(d) A public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for release to the public in accordance with G.S. 132-6 as soon as the circumstances that justify withholding it cease to exist. Any person denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information. In such action, the court shall balance the interests

of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(e) If a public law enforcement agency believes that release of information that is a public record under subdivisions (c)(1) through (c)(5) of this section will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such action the law enforcement agency shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Nothing in this section shall be construed as authorizing any public law enforcement agency to prohibit or prevent another public agency having custody of a public record from permitting the inspection, examination, or copying of such public record in compliance with G.S. 132-6. The use of a public record in connection with a criminal investigation or the gathering of criminal intelligence shall not affect its status as a public record.

(g) Disclosure of records of criminal investigations and criminal intelligence information that have been transmitted to a district attorney or other attorney authorized to prosecute a violation of law shall be governed by this section and Chapter 15A of the General Statutes.

(h) Nothing in this section shall be construed as requiring law enforcement agencies to disclose the following:

(1) Information that would not be required to be disclosed under Chapter 15A of the General Statutes; or

(2) Information that is reasonably likely to identify a confidential informant.

(i) Law enforcement agencies shall not be required to maintain any tape recordings of "911" or other communications for more than 30 days from the time of the call, unless a court of competent jurisdiction orders a portion sealed.

(j) When information that is not a public record under the provisions of this section is deleted from a document, tape recording, or other record, the law enforcement agency shall make clear that a deletion has been made. Nothing in this subsection shall authorize the destruction of the original record.

(k) The following court records are public records and may be withheld only when sealed by court order: arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders.

(l) Records of investigations of alleged child abuse shall be governed by Article 29 of Chapter 7B of the General Statutes. (1993, c. 461, s. 1; 1998-202, s. 13(jj).)

#### **§ 132-1.5. 911 database.**

Automatic number identification and automatic location identification information that consists of the name, address, and telephone numbers of telephone subscribers, or the e-mail addresses of subscribers to an electronic emergency notification or reverse 911 system, that is contained in a county or municipal 911 database, or in a county or municipal telephonic or electronic emergency notification or reverse 911 system, is confidential and is not a public record as defined by Chapter 132 of the General Statutes if that information is required to be confidential by the agreement with the telephone company by which the information was obtained. Dissemination of the information contained in the 911, electronic emergency notification or reverse 911 system, or automatic number and automatic location database is prohibited except on a call-by-call basis only for the purpose of handling emergency calls or for training, and any permanent record of the information shall be secured by the public safety answering points and disposed of in a manner which will retain that security except as otherwise required by applicable law. (1997-287, s. 1; 2007-107, s. 3.2.)

#### **§ 132-1.6. Emergency response plans.**

Emergency response plans adopted by a constituent institution of The University of North Carolina, a community college, or a public hospital as defined in G.S. 159-39 and the records related to the planning and development of these emergency response plans are not public records as defined by G.S. 132-1 and shall not be subject to inspection and examination under G.S. 132-6. (2001-500, s. 3.1.)

**§ 132-1.7. Sensitive public security information.**

(a) Public records, as defined in G.S. 132-1, shall not include information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities.

(b) Public records as defined in G.S. 132-1 do not include plans to prevent or respond to terrorist activity, to the extent such records set forth vulnerability and risk assessments, potential targets, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public or the security of any governmental facility, building, structure, or information storage system.

(c) Information relating to the general adoption of public security plans and arrangements, and budgetary information concerning the authorization or expenditure of public funds to implement public security plans and arrangements, or for the construction, renovation, or repair of public buildings and infrastructure facilities shall be public records. (2001-516, s. 3; 2003-180, s. 1.)

**132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.**

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report, including any findings and interpretations prepared in accordance with G.S. 130A-389(a), is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a). (2005-393, s. 1.)

**§ 132-1.9. Trial preparation materials.**

(a) Scope. – A request to inspect, examine, or copy a public record that is also trial preparation material is governed by this section, and, to the extent this section conflicts with any other provision of law, this section applies.

(b) Right to Deny Access. – Except as otherwise provided in this section, a custodian may deny access to a public record that is also trial preparation material. If the denial is based on an assertion that the public record is trial preparation material that was prepared in anticipation of a legal proceeding that has not commenced, the custodian shall, upon request, provide a written justification for the assertion that the public record was prepared in anticipation of a legal proceeding.

(c) Trial Preparation Material Prepared in Anticipation of a Legal Proceeding. – Any person who is denied access to a public record that is also claimed to be trial preparation material that was prepared in anticipation of a legal proceeding that has not yet been commenced may petition the court pursuant to G.S. 132-9 for determination as to whether the public record is trial preparation material that was prepared in anticipation of a legal proceeding.

(d) During a Legal Proceeding. –

(1) When a legal proceeding is subject to G.S. 1A-1, Rule 26(b)(3), or subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending proceeding may seek access to such record only by motion made in the pending legal proceeding and pursuant to the procedural and substantive standards that apply to that proceeding. A party to the pending legal proceeding may not directly or indirectly commence a separate proceeding for release of such record pursuant to G.S. 132-9 in any other court or tribunal.

(2) When a legal proceeding is not subject to G.S. 1A-1, Rule 26(b)(3), and not subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending legal proceeding may petition the court pursuant to G.S. 132-9 for access to such record. In determining whether to require the custodian to provide access to all or any portion of the record, the court or other tribunal shall apply the provisions of G.S. 1A-1, Rule 26(b)(3).

(3) Any person who is denied access to a public record that is also claimed to be trial preparation material and who is not a party to the pending legal proceeding to which such record pertains, and who is not acting in concert with or as an agent for any party to the pending legal proceeding, may petition the court pursuant to G.S. 132-9 for a determination as to whether the public record is trial preparation material.

(e) Following a Legal Proceeding. – Upon the conclusion of a legal proceeding, including the completion of all appeals and postjudgment proceedings, or, in the case where no legal proceeding has been commenced, upon the expiration of all applicable statutes of limitations and periods of repose, the custodian of a public record that is also claimed to be trial preparation material shall permit the inspection, examination, or copying of such record if any law that is applicable so provides.

(f) Effect of Disclosure. – Disclosure pursuant to this section of all or any portion of a public record that is also trial preparation material, whether voluntary or pursuant to an order issued by a court, or issued by an officer in an administrative or quasi-judicial legal proceeding, shall not constitute a waiver of the right to claim that any other document or record constitutes trial preparation material.

(g) Trial Preparation Materials That Are Not Public Records. – This section does not require disclosure, or authorize a court to require disclosure, of trial preparation material that is not also a public record or that is under other provisions of this Chapter exempted or protected from disclosure by law or by an order issued by a court, or by an officer in an administrative or quasi-judicial legal proceeding.

(h) Definitions. – As used in this section, the following definitions apply:

- (1) Legal proceeding. – Civil proceedings in any federal or State court. Legal proceeding also includes any federal, State, or local government administrative or quasi-judicial proceeding that is not expressly subject to the provisions of Chapter 1A of the General Statutes or the Federal Rules of Civil Procedure.
- (2) Trial preparation material. – Any record, wherever located and in whatever form, that is trial preparation material within the meaning of G.S. 1A-1, Rule 26(b)(3), any comparable material prepared for any other legal proceeding, and any comparable material exchanged pursuant to a joint defense, joint prosecution, or joint interest agreement in connection with any pending or anticipated legal proceeding. (2005-332, s.1.)

#### **§ 132-1.10. Social security numbers and other personal identifying information.**

(a) The General Assembly finds the following:

- (1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.
- (2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.
- (3) When State and local government agencies possess social security numbers or other personal identifying information, the governments should minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsections (c) and (d) of this section, no agency of the State or its political subdivisions, or any agent or employee of a government agency, shall do any of the following:

- (1) Collect a social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented.
- (2) Fail, when collecting a social security number from an individual, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a valid public records request.
- (3) Fail, when collecting a social security number from an individual, to provide, at the time of or prior to the actual collection of the social security number by that agency, that individual, upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.
- (4) Use the social security number for any purpose other than the purpose stated.

- (5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. "Identifying information", as used in this subdivision, shall have the same meaning as in G.S. 14-113.20(b), except it shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or drivers license numbers appearing on law enforcement records. Identifying information shall be confidential and not be a public record under this Chapter. A record, with identifying information removed or redacted, is a public record if it would otherwise be a public record under this Chapter but for the identifying information. The presence of identifying information in a public record does not change the nature of the public record. If all other public records requirements are met under this Chapter, the agency of the State or its political subdivisions shall respond to a public records request, even if the records contain identifying information, as promptly as possible, by providing the public record with the identifying information removed or redacted.
  - (6) Intentionally print or imbed an individual's social security number on any card required for the individual to access government services.
  - (7) Require an individual to transmit the individual's social security number over the Internet, unless the connection is secure or the social security number is encrypted.
  - (8) Require an individual to use the individual's social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.
  - (9) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law required that the social security number be on the document to be mailed. A social security number that is permitted to be mailed under this subdivision may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.
- (c) Subsection (b) of this section does not apply in the following circumstances:
- (1) To social security numbers or other identifying information disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.
  - (2) To social security numbers or other identifying information disclosed pursuant to a court order, warrant, or subpoena.
  - (3) To social security numbers or other identifying information disclosed for public health purposes pursuant to and in compliance with Chapter 130A of the General Statutes.
  - (4) To social security numbers or other identifying information that have been redacted.
  - (5) To certified copies of vital records issued by the State Registrar and other authorized officials pursuant to G.S. 130A-93(c). The State Registrar may disclose any identifying information other than social security numbers on any uncertified vital record.
  - (6) To any recorded document in the official records of the register of deeds of the county.
  - (7) To any document filed in the official records of the courts.
- (c1) If an agency of the State or its political subdivisions, or any agent or employee of a government agency, experiences a security breach, as defined in Article 2A of Chapter 75 of the General Statutes, the agency shall comply with the requirements of G.S. 75-65.
- (d) No person preparing or filing a document to be recorded or filed in the official records of the register of deeds, the Department of the Secretary of State, or of the courts may include any person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation.

(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of deeds or the Department of the Secretary of State. The register of deeds or the Department of the Secretary of State may not reject an instrument presented for recording because the instrument contains an individual's personal information.

(f) Any person has the right to request that the Department of the Secretary of State, a register of deeds or clerk of court remove, from an image or copy of an official record placed on the Department of the Secretary of State's a register of deeds' or court's Internet Web site available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or court to display public records by the Department of the Secretary of State, the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the Department of the Secretary of State, the register of deeds, the clerk of court, their staff, or upon order of the court. The Department of the Secretary of State, the register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation.

(g) The Department of the Secretary of State, a register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

- (1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.
- (2) Any person has a right to request the Department of the Secretary of State, a register of deeds or clerk of court to remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court to display public records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation.

(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to the Department of the Secretary of State, a register of deeds or clerk of court or to their agents for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court. (2005-414, s. 4.)

**§ 132-1.11. Economic development incentives.**

(a) Assumptions and Methodologies. – Subject to the provisions of this Chapter regarding confidential information and the withholding of public records relating to the proposed expansion or location of specific business or industrial projects when the release of those records would frustrate the purpose for which they were created, whenever a public agency or its subdivision performs a cost-benefit analysis or similar assessment with respect to economic development incentives offered to a specific business or industrial project, the agency or its subdivision must describe in detail the assumptions and methodologies used in completing the analysis or assessment. This description is a public record and is subject to all provisions of this Chapter and other law regarding public records.

(b) Disclosure of Public Records Requirements. – Whenever an agency or its subdivision first proposes, negotiates, or accepts an application for economic development incentives with respect to a specific industrial or business project, the agency or subdivision must disclose that any information obtained by the agency or subdivision is subject to laws regarding disclosure of public records. In addition, the agency or subdivision must fully and accurately describe the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed. (2005-429, s. 1.2.)

**§ 132-2. Custodian designated.**

The public official in charge of an office having public records shall be the custodian thereof. (1935, c. 265, s. 2.)

**§ 132-3. Destruction of records regulated.**

(a) Prohibition. – No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5 and G.S. 130A-99, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).

(b) Revenue Records. – Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Department of Revenue has been copied in any manner, the original record may be destroyed upon the order of the Secretary of Revenue. If a record of the Department of Revenue has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Secretary of Revenue.

(c) Employment Security Commission Records. – Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Employment Security Commission has been copied in any manner, the original record may be destroyed upon the order of the Chairman of the Employment Security Commission. If a record of the Commission has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Chairman of the Employment Security Commission. (1935, c. 265, s. 3; 1943, c. 237; 1953, c. 675, s. 17; 1957, c. 330, s. 2; 1973, c. 476, s. 48; 1993, c. 485, s. 39; c. 539, s. 966; 1994, Ex. Sess., c. 24, s. 14(c); 1997-309, s. 12; 2001-115, s. 2.)

**§ 132-4. Disposition of records at end of official's term.**

Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the Department of Cultural Resources, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or

neglect for the space of 10 days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a Class 1 misdemeanor. (1935, c. 265, s. 4; 1943, c. 237; 1973, c. 476, s. 48; 1975, c. 696, s. 1; 1993, c. 539, s. 967; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 132-5. Demanding custody.**

Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for 10 days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a Class 1 misdemeanor. (1935, c. 265, s. 5; 1975, c. 696, s. 2; 1993, c. 539, s. 968; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 132-5.1. Regaining custody; civil remedies.**

(a) The Secretary of the Department of Cultural Resources or his designated representative or any public official who is the custodian of public records which are in the possession of a person or agency not authorized by the custodian or by law to possess such public records may petition the superior court in the county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such public records. The court may order such public records to be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the petitioner may request that the court enforce such order through its contempt power and procedures.

(b) At any time after the filing of the petition set out in subsection (a) or contemporaneous with such filing, the public official seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to grant one of the following provisional remedies:

- (1) An order directed at the sheriff commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth; or
- (2) A preliminary injunction preventing the sale, removal, disposal or destruction of or damage to such public records pending a final judgment by the court.

(c) The judge or court aforesaid shall issue an order of seizure or grant a preliminary injunction upon receipt of an affidavit from the petitioner which alleges that the materials at issue are public records and that unless one of said provisional remedies is granted, there is a danger that such materials shall be sold, secreted, removed out of the State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if not seized or if injunctive relief is not granted.

(d) The aforementioned order of seizure or preliminary injunction shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner. (1975, c. 787, s. 2.)

#### **§ 132-6. Inspection and examination of records.**

(a) Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law. As used herein, "custodian" does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

(b) No person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request.

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation on the following schedule:

State agencies after June 30, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project. Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, "local government records" include records maintained by the State that relate to a local government's efforts to attract the project.

(e) The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act.

(f) Notwithstanding the provisions of subsection (a) of this section, the inspection or copying of any public record which, because of its age or condition could be damaged during inspection or copying, may be made subject to reasonable restrictions intended to preserve the particular record. (1935, c. 265, s. 6; 1987, c. 835, s. 1; 1995, c. 388, s. 2; 2005-429, s. 1.1.)

#### **§ 132-6.1. Electronic data-processing records.**

(a) After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software.

(b) Every public agency shall create an index of computer databases compiled or created by a public agency on the following schedule:

State agencies by July 1, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. Electronic databases compiled or created prior to the date by which the index must be created in accordance with this subsection may be indexed at the public agency's option. The form, content, language, and guidelines for the index and the databases to be indexed shall be developed by the Office of Archives and History in consultation with officials at other public agencies.

(c) Nothing in this section shall require a public agency to create a computer database that the public agency has not otherwise created or is not otherwise required to be created. Nothing in this section requires a public agency to disclose security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes.

- (d) The following definitions apply in this section:
- (1) Computer database. – A structured collection of data or documents residing in a database management program or spreadsheet software.
  - (2) Computer hardware. – Any tangible machine or device utilized for the electronic storage, manipulation, or retrieval of data.
  - (3) Computer program. – A series of instructions or statements that permit the storage, manipulation, and retrieval of data within an electronic data-processing system, together with any associated documentation. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.
  - (4) Computer software. – Any set or combination of computer programs. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.
  - (5) Electronic data-processing system. – Computer hardware, computer software, or computer programs or any combination thereof, regardless of kind or origin. (1995, c. 388, s. 3; 2000-71, s. 1; 2002-159, s. 35(i).)

**§ 132-6.2. Provisions for copies of public records; fees.**

(a) Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The public agency may assess different fees for different media as prescribed by law.

(b) Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law. Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy. For purposes of this subsection, "actual cost" is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made. Notwithstanding the provisions of this subsection, if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency. If anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the State Chief Information Officer or his designee to mediate the dispute.

(c) Persons requesting copies of computer databases may be required to make or submit such requests in writing. Custodians of public records shall respond to all such requests as promptly as possible. If the request is granted, the copies shall be provided as soon as reasonably possible. If the request is denied, the denial shall be accompanied by an explanation of the basis for the denial. If asked to do so, the person denying the request shall, as promptly as possible, reduce the explanation for the denial to writing.

(d) Nothing in this section shall be construed to require a public agency to respond to requests for copies of public records outside of its usual business hours.

(e) Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record that does not exist. If a public agency, as a service to the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester. Nothing in this section shall be construed to require a public agency to put into electronic medium a record that is not kept in electronic medium. (1995, c. 388, s. 3; 2004-129, s. 38.)

**§ 132-7. Keeping records in safe places; copying or repairing; certified copies.**

Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal

records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original. (1935, c. 265, s. 7; 1951, c. 294.)

**§ 132-8. Assistance by and to Department of Cultural Resources.**

The Department of Cultural Resources shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, filing and making available the public records in their custody. When requested by the Department of Cultural Resources, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Secretary of Cultural Resources, establishing a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the Department of Cultural Resources shall (subject to the availability of necessary space, staff, and other facilities for such purposes) make available space in its Records Center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled. (1935, c. 265, s. 8; 1943, c. 237; 1959, c. 68, s. 2; 1973, c. 476, s. 48.)

**§ 132-8.1. Records management program administered by Department of Cultural Resources; establishment of standards, procedures, etc.; surveys.**

A records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of official records shall be administered by the Department of Cultural Resources. It shall be the duty of that Department, in cooperation with and with the approval of the Department of Administration, to establish standards, procedures, and techniques for effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records. It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government to cooperate with the Department of Cultural Resources in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government. (1961, c. 1041; 1973, c. 476, s. 48.)

**§ 132-8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof.**

In cooperation with the head of each State agency and the governing body of each county, municipality, and other subdivision of government, the Department of Cultural Resources shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and to the protection of the rights and interests of persons, and, within the limitations of funds available for the purpose, shall make or cause to be made preservation duplicates or designate as preservation duplicates existing copies of such essential public records. Preservation duplicates shall be durable, accurate, complete and clear, and such duplicates made by a photographic, photostatic, microfilm, micro card, miniature photographic, or other process which accurately reproduces and forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record. Such preservation duplicates shall be preserved in the place and manner of safekeeping prescribed by the Department of Cultural Resources. (1961, c. 1041; 1973, c. 476, s. 48.)

**§ 132-9. Access to records.**

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court may, in its discretion, allow the prevailing party to recover reasonable attorneys' fees if:

- (1) The court finds that the agency acted without substantial justification in denying access to the public records; and
- (2) The court finds that there are no special circumstances that would make the award of attorneys' fees unjust.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court may, in its discretion, assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs. (1935, c. 265, s. 9; 1975, c. 787, s. 3; 1987, c. 835, s. 2; 1995, c. 388, s. 4.)

#### **§ 132-10. Qualified exception for geographical information systems.**

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose. For purposes of this section, resale at cost by a real estate trade association or Multiple Listing Services operated by a real estate trade association shall not constitute a resale or use of the data for trade or commercial purposes. (1995, c. 388, s. 5; 1997-193, s. 1.)

## **2. Some Statutes Dealing with Disclosure of Personnel and Tax Records**

#### **§ 153A-98. Privacy of employee personnel records.**

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a county are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the county with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the county.

(b) The following information with respect to each county employee is a matter of public record: name; age; date of original employment or appointment to the county service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of

compensation paid by the employing entity. The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

(c) All information contained in a county employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

- (1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.
- (2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (3) A county employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.
- (5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- (6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- (7) The county manager, with concurrence of the board of county commissioners, or, in counties not having a manager, the board of county commissioners may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a county employee and the reasons for that personnel action. Before releasing the information, the manager or board shall determine in writing that the release is essential to maintaining public confidence in the administration of county services or to maintaining the level and quality of county services. This written determination shall be retained in the office of the manager or the county clerk, is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

- (1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the county's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.
- (2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.
- (3) Information that might identify an undercover law enforcement officer or a law enforcement informer.
- (4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The board of county commissioners may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the

information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the county as long as each personnel file so examined is retained.

(d) The board of commissioners of a county that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars (\$500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00). (1975, c. 701, s. 1; 1981, c. 926, ss. 1, 5-8; 1993, c. 539, ss. 1059, 1060; 1994, Ex. Sess., c. 24, s. 14(c); 2007-508, s. 6.)

#### **§ 153A-148.1. Disclosure of certain information prohibited.**

(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a county who in the course of service to or employment by the county has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- (1) To comply with a court order or a law.
- (2) Review by the Attorney General or a representative of the Attorney General.
- (3) To sort, process, or deliver tax information on behalf of the county, as necessary to administer a tax.
- (4) To exchange information with a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes, when the information is needed to fulfill a duty imposed on the authority or on the county.
- (5) To exchange information with the Department of Revenue, when the information is needed to fulfill a duty imposed on the Department or on the county.

(b) Punishment. – A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1993, c. 485, s. 33; 1994, Ex. Sess., c. 14, s. 66; 1998-139, s. 2.)

#### **§ 160A-168. Privacy of employee personnel records.**

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a city are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the city with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the city.

(b) The following information with respect to each city employee is a matter of public record: name; age; date of original employment or appointment to the service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity. The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information

may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

- (1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.
- (2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (3) A city employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.
- (5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- (6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- (7) The city manager, with concurrence of the council, or, in cities not having a manager, the council may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a city employee and the reasons for that personnel action. Before releasing the information, the manager or council shall determine in writing that the release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk, and is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

- (1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the city's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.
- (2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.
- (3) Information that might identify an undercover law enforcement officer or a law enforcement informer.
- (4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The city council may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the city as long as each personnel file examined is retained.

(d) The city council of a city that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects

to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars (\$500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00). (1975, c. 701, s. 2; 1981, c. 926, ss. 1-4; 1993, c. 539, ss. 1084, 1085; 1994, Ex. Sess., c. 24, s. 14(c); 2007-508, s.7.)

**§ 160A-208.1. Disclosure of certain information prohibited.**

(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a city who in the course of service to or employment by the city has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- (1) To comply with a court order or a law.
- (2) Review by the Attorney General or a representative of the Attorney General.
- (3) To sort, process, or deliver tax information on behalf of the city, as necessary to administer a tax.

(b) Punishment. – A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1993, c. 485, s. 34; 1994, Ex. Sess., c. 14, s. 67.)

### 3. A Brief Outline of the Public Records Law

#### **PUBLIC RECORDS LAW**

- I. Definition of Public Records.** G.S. 132-1(a).
  
- II. General Right of Access to Public Records.** G.S. 132-1(b), -6, -6.1, -6.2, -9, -10.
  
- III. Custody, Retention, and Safekeeping of Public Records.** G.S. 132-2 to -7, -9.
  
- IV. Confidentiality**
  - A. Communications within attorney/client privilege, G.S. 132-1.1(a), and trial preparation records, G.S. 132-1.9.**
  
  - B. Most personnel records.** G.S. 153A-98, 160A-168.
  
  - C. Certain tax office records.** G.S. 105-259, -289(e).
  
  - D. Certain business and industrial recruitment records.** G.S. 132-6, -9.
  
  - E. Certain public assistance records.** G.S. 108A-73, -80.
  
  - F. Social security numbers and other personal identifying information.** G.S. 132-1.10.
  
  - F. Other special exceptions and provisions.** *E.g.*, G.S. 132-1.1(b) to -1.1(f), -1.2, -1.3, -1.4, -1.5, -1.6, -1.7.

## G. "CLOSING-OUT SALES" OUTLINE, FORMS, AND STATUTES

### 1. Outline and Problems by DeWitt F. McCarley, Charlotte City Attorney

#### CLOSING-OUT SALES

##### I. DEFINITIONS

- (a) **"Closing-Out Sale"**—Includes all sales advertised, represented or held forth under the designation of "going out of business," "discontinuance of business," "selling out," "liquidation," "lost our lease," "must vacate," "forced out," "removal," or any other designation of like meaning. G.S. 66–76.
- (b) **"Distress Sale"**—Includes all sales in which it is represented or implied that going out of business is possible or anticipated, in which closing out is referred to in any way, or in which it is implied that business conditions are so difficult that the seller is forced to conduct the sale. G.S. 66–76.
- (c) **"Person"**—Includes individuals, partnerships, voluntary associations and corporations.

##### II. LICENSE REQUIREMENT

- (a) Must have license to advertise, hold, conduct or carry on sale: G.S. 66–77 (a) and G.S. 66–81.
- (b) Coverage of statute
  - 1) Does not apply to Sheriff's or court ordered sale: G.S. 66.82.
  - 2) Since 1981, applies in all counties.
- (c) Application: G.S. 66–77
  - 1) From Clerk
  - 2) In writing and under oath
  - 3) Seven days prior to sale
  - 4) Must show:
    - reasons for sale,
    - opening and closing dates of sale,
    - complete inventory (except for "distress sale"), and
    - identification and location of goods
  - 5) Opening and closing dates of previous distress or closing-out sale within the past 12 months
  - 6) Names of all individuals who are principals in the business
  - 7) Application fee of \$50 if merchant has not been in same location for one year
  - 8) Five hundred dollar bond if merchant has not been in same location for one year
- (d) Procedure for issuance
  - 1) Issued by Clerk
  - 2) Valid for 30 days: G.S. 66–77(b)
  - 3) Unlawful to continue past last authorized day: G.S. 66–80

- 4) May be extended twice if Clerk is satisfied as to nature of sale. However, if applicant conducted a distress sale immediately preceding this sale, the previous sale and the current sale cannot exceed 120 days.
- (e) Clerk must prepare abstract of facts: G.S. 66-77(c).

### III. REGULATIONS

- (a) No additions to stock or inventory within 60 days prior to sale: G.S. 66-78 (does not apply to "distress sale").
- (b) No replenishment of stock during sale: G.S. 66-79 (does not apply to "distress sale").
- (c) Unlawful to continue a business after last day of sale, if continuation is contrary to what was represented in sale: G.S. 66-80.
- (d) Law enforcement officer may request in writing that ad agency or medium furnish name of person placing ad: G.S. 66-82.
- (e) Upon conducting a closing-out sale, merchant cannot continue same business in town or county for 12 months. Cannot "reformulate" business ownership to avoid this prohibition: G.S. 66-80 (1987 amendment).

### IV. ENFORCEMENT

- (a) Violation of any provision of the Article is a misdemeanor: G.S. 66-81.
- (b) Superior Court may enjoin: G.S. 66-83.
- (c) "Practical Tips"
  - (1) Discovering "no license" violations in newspaper, radio, and TV ads
  - (2) Contact violator; inform and counsel
  - (3) Notify your manager (or elected board, if no manager)
  - (4) Swear out warrant at Magistrate's office
  - (5) Notify District Attorney
  - (6) Injunction? (See your attorney . . .)
  - (7) Handling the press . . .

### V. SPECIAL PROBLEMS

- (a) You open your newspaper one morning to find a full page ad that indicates a local clothing store is "GOING OUT FOR BUSINESS." Other statements in bold red letters in the ad proclaim that this is a "stock reduction-everything will be sold" and that "no reasonable offer will be refused" and that the merchant will be "selling to the bare walls." Is this a regulated sale under Chapter 66?

- (b) A prominent businessman in the community (a former mayor) is planning to retire and will be closing a small retail business he has operated as a sole proprietorship for twenty-seven years. He is infuriated by all of the "red tape" that goes with a closing-out sale and angrily walks out of your office without filling out the application. Two days later the local newspaper carries a news article reporting his retirement and the closing of his business, and carries a separate ad claiming that all merchandise will be half price or below. Nothing in the ad indicates that the business is closing out. Is this sale regulated under Chapter 66?
- (c) The manager of a local discount store comes to your office and explains that his store will be closing very soon. He freely admits that he and the home office have agreed that he will replenish stock through the "closing-out" sale and that they do not have a good inventory listing for this particular store, although they could give a general computer printout for the region, which includes six other stores. After much discussion it is apparent that it will be impossible for the store to meet the inventory rule of G.S. 66-77, they have been adding to stock and inventory constantly (probable violation of G.S. 66-78) and do not want to meet the "no replenishment" rule of G.S. 66-79. Is it legal for the clerk to negotiate the wording of advertisements so that the sale will not be covered under Chapter 66? If it is legal, is it appropriate?
- (d) "Reasonable" Reece of Reasonable Reece's Discount Furniture Store comes to your office for a license to conduct a going-out-of-business sale. During the conversation Reasonable Reece tells you that he will be closing out the discount furniture line because he has purchased a Heilig Meyers franchise and will be getting into a higher class of merchandise. Do his plans violate the 12-month rule of G.S. 66-80?
- (e) Bob Smart, the local owner of Smart Deal Furniture, obtained a license for a going-out-of-business sale from you last month. He comes into your office looking very worried and tells you that the furniture liquidator company he hired to conduct his closing-out sale is not keeping an accurate inventory, is "dumping" shoddy but grossly overpriced furniture into the sale and running misleading advertisements about discounts offered during the sale. Mr. Smart swears to you that he did not know they were going to do this, and begs you not to destroy his reputation or financially ruin him by stepping in to stop the sale. What should you do?

**Attachments:**

- 2. Application Form and Abstract of the City of Greenville [from 1990]
- 3. Article 17, Closing-Out Sales, of Chapter 66 of the North Carolina General Statutes

Prepared By: DeWitt F. McCarley  
City Attorney, Charlotte, North Carolina  
(Formerly City Attorney, Greenville, North Carolina)

September, 1990

2. Application Form and Abstract of the City of Greenville [from 1990]

APPLICATION FOR LICENSE TO CONDUCT  
CLOSING OUT SALE, FIRE OR OTHER DISTRESS SALE  
PURSUANT TO G.S. 66-77 IN THE CITY OF GREENVILLE, N.C.

\_\_\_\_\_, hereinafter  
(Name of Applicant)

referred to as applicant, being first duly sworn, deposes and says:

That the applicant is the \_\_\_\_\_ of  
(Title)  
\_\_\_\_\_ which on the \_\_\_\_\_ day  
(Company)  
of \_\_\_\_\_, 19\_\_\_\_ (at least seven (7) days after the  
filing

of this application) intends to conduct a:

\_\_\_\_ Closing out sale

\_\_\_\_ Damaged goods or merchandise sale, or fire sale of goods or merchandise  
damaged by fire, water or otherwise

\_\_\_\_ Distress sale

That the reason for such sale is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

That the following is a complete list of the opening and terminating dates of any previous  
distress sale or closing out sale held by the applicant within the county during the preceding 12  
months:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

That the following is a complete list of the names of all individuals who are principals in the business venture, corporation or partnership:

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That the sale shall begin on the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_; and terminate on the \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

That a complete inventory of the goods, wares or merchandise actually on hand in the place where such sale is to be conducted is hereto attached and marked "Exhibit A". (Not required for distress sales).

That said "Exhibit A" contains all details necessary to locate exactly and identify fully the goods, wares or merchandise to be sold at said sale.

That applicant in contemplation of conducting a closing out sale under the provisions of G.S. 66-78 has not ordered any goods, wares or merchandise for the purpose of selling or disposing of the same at the proposed sale within sixty (60) days prior to the filing of the application for the license herein requested.

That the applicant makes this statement under oath being aware that any false statement set forth in this application shall render applicant, upon conviction, deemed guilty of perjury as provided in G.S. 66-77(d).

This \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .

\_\_\_\_\_  
Applicant

Sworn to and subscribed before me

this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires:

CITY CLERK'S AUTHORIZATION AND APPROVAL

I hereby find this application to be made for a bona fide closing-out sale and hereby authorize the Collector of Revenue to collect a license fee of \$\_\_\_\_\_, and a bond, payable to the City of Greenville in the penal sum of \$500.00, as a pre-requisite to the issuance of a license to advertise and conduct the sale.

This \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

---

City Clerk

SUMMARY OF APPLICATION  
SUBMITTED FOR CLOSING-OUT OR DAMAGED GOODS SALES  
IN THE CITY OF GREENVILLE, N.C.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_,  
\_\_\_\_\_  
\_\_\_\_\_Applicant filed this attached application  
with me stating that the closing out sale would begin on \_\_\_\_\_  
and terminate on\_\_\_\_\_. The application (was) (was not) approved and  
authorization was given the Collector of Revenue to issue license. Request for renewals  
must be submitted by the applicant in writing to the City Clerk before the expiration date of  
the original application. Only two renewals shall be granted.

\_\_\_\_\_  
City Clerk

### 3. Closing-Out Sales Law (G.S. Chapter 66, Article 17)

#### **§ 66-76. Definitions**

For the purposes of this Article, "closing-out sale" shall mean and include all sales advertised, represented or held forth under the designation of "going out of business," "discontinuance of business," "selling out," "liquidation," "lost our lease," "must vacate," "forced out," "removal," or any other designation of like meaning; "distress sale" shall mean and include all sales in which it is represented or implied that going out of business is possible or anticipated, in which closing out is referred to in any way, or in which it is implied that business conditions are so difficult that the seller is forced to conduct the sale; and "person" shall mean and include individuals, partnerships, voluntary associations and corporations.

#### **§ 66-77. License required; contents of applications; inventory required; fees; bond; extension of licenses; records; false statements**

(a) No person shall advertise or offer for sale a stock of goods, wares or merchandise under the description of closing-out sale, or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, or a distress sale unless he shall have obtained a license to conduct such sale from the clerk of the city or town in which he proposes to conduct such a sale or from the officer designated by the Board of County Commissioners if the sale is conducted in an unincorporated area. The applicant for such a license shall make to such clerk an application therefor, in writing and under oath at least seven days prior to the opening date of sale, showing all the facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, the opening and terminating dates of any previous distress sale or closing-out sale held by the applicant within that county during the preceding 12 months, a complete inventory of the goods, wares or merchandise actually on hand in the place whereat such sale is to be conducted, and all details necessary to locate exactly and identify fully the goods, wares or merchandise to be sold. Provided, the seller in a distress sale need not file an inventory.

(b) If such clerk shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the clerk shall issue a license, upon the payment of a fee of fifty dollars (\$50.00) therefor, together with a bond, payable to the city or town or county in the penal sum of five hundred dollars (\$500.00), conditioned upon compliance with this Article, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application. The license fee provided for herein shall be good for a period of 30 days from its date, and if the applicant shall not complete said sale within said 30-day period then the applicant shall make application to such clerk for a license for a new permit, which shall be good for an additional period of 30 days, and shall pay therefor the sum of fifty dollars (\$50.00), and a second extension period of 30 days may be similarly applied for and granted by the clerk upon payment of an additional fee of fifty dollars (\$50.00) and upon the clerk being satisfied that the applicant is holding a bona fide sale of the kind contemplated by this Article and is acting in a bona fide manner; provided, however, that the clerk may not grant an extension period as provided in this subsection if (i) the applicant conducted a distress sale immediately preceding the current sale for which the

extension is applied for and (ii) the period of the extension applied for, when added to the period of the preceding sale and the period of the current sale, will exceed 120 days. No additional bond shall be required in the event of one or more extensions as herein provided for. Any merchant who shall have been conducting a business in the same location where the sale is to be held for a period of not less than one year, prior to the date of holding such sale, or any merchant who shall have been conducting a business in one location for such period but who shall, by reason of the building being untenable or by reason of the fact that said merchant shall have no existing lease or ownership of the building and shall be forced to hold such sale at another location, shall be exempted from the payment of the fees and the filing of the bond herein provided for.

(c) Every city or town or county to whom application is made shall endorse upon such application the date of its filing, and shall preserve the same as a record of his office, and shall make an abstract of the facts set forth in such application, and shall indicate whether the license was granted or refused.

(d) Any person making a false statement in the application provided for in this section shall, upon conviction, be deemed guilty of perjury.

#### **§ 66-78. Additions to stock in contemplation of sale prohibited**

No person in contemplation of a closing-out sale shall order any goods, wares or merchandise for the purpose of selling and disposing of the same at such sale, and any unusual purchase and additions to the stock of such goods, wares or merchandise within 60 days prior to the filing of application for a license to conduct such sale shall be presumptive evidence that such purchases and additions to stock were made in contemplation of such sale.

#### **§ 66-79. Replenishment of stock prohibited**

No person carrying on or conducting a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, shall, during the continuance of such sale, add any goods, wares or merchandise to the damaged stock inventoried in his original application for such license, and no goods, wares or merchandise shall be sold as damaged merchandise at or during such sale, excepting the goods, wares or merchandise described and inventoried in such original application.

#### **§ 66-80. Continuation of sale or business beyond termination date**

No person shall conduct a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise or a distress sale beyond the termination date specified for such sale, except as otherwise provided for in subsection (b) of G.S. 66-77; nor shall any person, upon conclusion of such sale, continue that business which had been represented as closing out or going out of business under the same name, or under a different name, at the same location, or elsewhere in the same city or town where the inventory for such sale was filed for a period of 12 months; nor shall any person, upon conclusion of such sale, continue business contrary to the designation of such sale. As used in this section, the term "person" includes individuals, partnerships, corporations, and other business entities. If a business entity that is

prohibited from continuing a business under this section reformulates itself as a new entity or as an individual, whether by sale, merger, acquisition, bankruptcy, dissolution, or any other transaction, for the purpose of continuing the business, the successor entity or individual shall be considered the same person as the original entity for the purpose of this section. If an individual who is prohibited from continuing a business under this section forms a new business entity to continue the business, that entity shall be considered the same person as the individual for the purpose of this section.

**§ 66-81. Advertising or conducting sale contrary to Article; penalty**

Any person who shall advertise, hold, conduct or carry on any sale of goods, wares or merchandise under the description of closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise or a distress sale, contrary to the provisions of this Article, or who shall violate any of the provisions of this Article shall be deemed guilty of a Class 1 misdemeanor.

**§ 66-82. Sales excepted; liability for dissemination of false advertisement**

The provisions of this Article shall not apply to sheriffs, constables or other public or court officers, or to any other person or persons acting under the license, direction or authority of any court, State or federal, selling goods, wares or merchandise in the course of their official duties; provided, however, that no newspaper publisher, radio-broadcast licensee, television-broadcast licensee, or other agency or medium for the dissemination of advertising shall be liable under this Article by reason of the dissemination of any false advertisement prohibited by this Article, unless he has refused, on the written request of any law-enforcement officer or agency of this State, to furnish to such officer or agency the name and address of the person who caused the dissemination of such advertisement.

**§ 66-83. Restraining or enjoining illegal act**

Upon complaint of any person the superior court shall have jurisdiction to restrain and enjoin any act forbidden or declared illegal by any provisions of this Article.

## H. THE GENDER EQUITY REPORTING STATUTE (G.S. 143-157.1)

### 1. Explanation of the Law

G.S. 143-157.1 requires that appointments to statutorily created public bodies be made from among the most qualified persons, in such a manner that the appointments promote membership on each body that accurately reflects the proportion each gender represents in the population of the state as a whole for statewide bodies, or in the population of the area represented by the body, in the case of local bodies. Information about these appointments must be reported annually to the Secretary of State.

Until recently, the statute's coverage, especially with respect to local governments, had been unclear. In particular, what was a statutorily created public body, the appointing authority of which had to comply with the law?

Partly in response to the concerns of those who are involved in the local reporting process, in particular clerks of boards of county commissioners and municipal clerks, the Secretary of State's office prepared, and the 2007 General Assembly enacted, clarifying revisions to G.S. 143-157.1. S.L. 2007-167 (H 824) amends the law to list thirty-seven specific types of local public bodies that are covered and requires that the clerk of each appointing authority make an annual report on a form prescribed by the Secretary of State. The Secretary of State may accept reports by electronic means.

The reports are due by September 1 of each year. The Secretary of State uses them to generate an annual composite report to be published by December 1. Copies of this report are submitted to the Governor, the Speaker of the House, and the President Pro Tempore of the Senate.

### 2. Text of G.S. § 143-157.1 [emphases added]

#### **§ 143-157.1. Reports on gender-proportionate appointments to statutorily created decision-making regulatory bodies.**

(a) Appointments. – **In appointing members to public bodies set forth in subsections (c) and (d) of this section, the appointing authority should select, from among the most qualified persons, those persons whose appointment would promote membership on the body that accurately reflects the proportion that each gender represents in the population of the State as a whole or, in the case of a local body, in the population of the area represented by the body, as determined pursuant to the most recent federal decennial census, unless the law regulating such appointment requires otherwise. If there are multiple appointing authorities for the body, they may consult with each other to accomplish the purposes of this section.**

(b) Reports Generally. – **Each appointing authority described in subsection (a) shall submit a report to the Secretary of State annually which discloses the number of appointments made during the preceding year and the number of appointments of each gender made, expressed both in numerical terms and as a percentage of the total membership of the body. In addition, each appointing authority shall designate a person responsible for retaining all applications for appointment, who shall ensure that information describing each applicant's gender and qualifications is available for public inspection during reasonable hours. Nothing in this section requires disclosure of an applicant's identity or of any other information made confidential by law.-The Secretary of State shall prescribe the form used to report these appointments and may accept these reports by electronic means. Reports by appointing authorities shall be due in the Department of the Secretary of State on or before September 1.** From these reports, the Secretary of State shall

generate an annual composite report that shall be published by December 1. Copies of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

(c) State Reporting. – Each State appointing authority that makes appointments to a statutorily created public body, however denominated, except those having only advisory authority, shall file a report with the Secretary of State as prescribed in subsection (b) of this section. The Secretary shall submit to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore by July 1 of each year the names of all State bodies that an appointing authority must report on pursuant to this section.

(d) Reporting by Local Units of Government. – **In those cases where a county or a city is the appointing authority, the reporting required by subsection (b) of this section shall be submitted to the Secretary of State by the clerk of that appointing authority.** Appointments to the following local, municipal, or county public bodies, or to public bodies however denominated that have the functions of the following public bodies, must be reported:

- (1) City or county ABC board, or local board created pursuant to G.S. 18B-703.
- (2) Adult Care Home Community Advisory Committee.
- (3) Airport Authority.
- (4) Community Child Protection Team or a Child Fatality Prevention Team.
- (5) Civil Service Board or similarly named board established by local act.
- (6) Community Relations Committee.
- (7) Council of Governments.
- (8) Criminal Justice Partnership Task Force.
- (9) Emergency Planning Committee.
- (10) Board of Equalization and Review.
- (11) Local Board of Health.
- (12) Hospital Authority.
- (13) Housing Authority.
- (14) Human Relations Commission.
- (15) County Industrial Facilities and Pollution Control Financing Authority.
- (16) Juvenile Crime Prevention Council.
- (17) Library Board of Trustees.
- (18) Community College Board of Trustees.
- (19) Economic development commission.
- (20) Area mental health, developmental disabilities, and substance abuse board.
- (21) Adult care home community advisory committee.
- (22) Local partnership for children.
- (23) Planning Board.
- (24) Recreation Board.
- (25) County board of social services.
- (26) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes, a regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
- (27) Local tourism development authority.
- (28) Water and sewer authority.
- (29) Workforce Development Board.
- (30) Zoning Board of Adjustment.
- (31) Planning and Zoning Board.
- (32) Board of Adjustment.
- (33) Historic Preservation Commission.

- (34) Redevelopment Commission.**
- (35) City board of education (if appointive).**
- (36) Metropolitan Planning Organization.**
- (37) Rural Planning Organization.**

# I. PUBLICATION OF LEGAL NOTICES IN NORTH CAROLINA

## 1. Statutes and Rule on Publication of Notice

### N.C.GENERAL STATUTES CHAPTER 1

#### ARTICLE 49. Time.

##### **§1-593. How computed.**

The time within which an act is to be done, as provided by law, shall be computed in the manner prescribed by Rule 6(a) of the Rules of Civil Procedure.

##### **§1-594. Computation in publication.**

Except as otherwise expressly provided, the time for publication of legal notices shall be computed in the manner prescribed by Rule 6 of the North Carolina Rules of Civil Procedure.

### CHAPTER 1A. Rules of Civil Procedure.

#### §1A-1. Rules of Civil Procedure.

The Rules of Civil Procedure are as follows:

\* \* \*

##### **Rule 6. Time.**

(a) Computation. -- In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, including rules, orders or statutes respecting publication of notices, the day of the act, event, default or publication after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

\* \* \*

## CHAPTER 1

### ARTICLE 50.

#### General Provisions as to Legal Advertising.

##### **§1-595. Advertisement of public sales.**

When a statute or written instrument stipulates that an advertisement of a sale shall be made for any certain number of weeks, a publication once a week for the number of weeks so indicated is a sufficient compliance with the requirement, unless contrary provision is expressly made by the terms of the instrument.

##### **§ 1-596. Charges for legal advertising.**

The publication of all advertising required by law to be made in newspapers in this State shall be paid for at not to exceed the local commercial rate of the newspapers selected. Any public or municipal officer or board created by or existing under the laws of this State that is now or may hereafter be authorized by law to enter into contracts for the publication of legal advertisements is hereby authorized to pay therefor prices not exceeding said rates.

No newspaper in this State shall accept or print any legal advertising until said newspaper shall have first filed with the clerk of the superior court of the county in which it is published a sworn statement of its current commercial rate for the several classes of advertising regularly carried by said publication, and any owner or manager of a newspaper violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

##### **§ 1-597. Regulations for newspaper publication of legal notices, advertisements, etc.**

Whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper, such publication, advertisement or notice shall be of no force and effect unless it shall be published in a newspaper with a general circulation to actual paid subscribers which newspaper at the time of such publication, advertisement or notice, shall have been admitted to the United States mails in the Periodicals class in the county or political subdivision where such publication, advertisement or notice is required to be published, and which shall have been regularly and continuously issued in the county in which the publication, advertisement or notice is authorized or required to be published, at least one day in each calendar week for at least 25 of the 26 consecutive weeks immediately preceding the date of the first publication of such advertisement, publication or notice; provided that in the event that a newspaper otherwise meeting the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599,

should fail for a period not exceeding four weeks in any calendar year to publish one or more of its issues such newspaper shall nevertheless be deemed to have complied with the requirements of regularity and continuity of publication prescribed herein. Provided further, that where any city or town is located in two or more adjoining counties, any newspaper published in such city or town shall, for the purposes of G.S. 1-597 to 1-599, be deemed to be admitted to the mails, issued and published in all such counties in which such town or city of publication is located, and every publication, advertisement or notice required to be published in any such city or town or in any of the counties where such city or town is located shall be valid if published in a newspaper published, issued and admitted to the mails anywhere within any such city or town, regardless of whether the newspaper's plant or the post office where the newspaper is admitted to the mails is in such county or not, if the newspaper otherwise meets the qualifications and requirements of G.S. 1-597 to 1-599. This provision shall be retroactive to May 1, 1940, and all publications, advertisements and notices published in accordance with this provision since May 1, 1940, are hereby validated.

Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper qualified for legal advertising in a county and there is no newspaper qualified for legal advertising as defined in this section in such county, then it shall be deemed sufficient compliance with such laws, order or judgment by publication of such notice or any other such paper, document or legal advertisement of any kind or description in a newspaper published in an adjoining county or in a county within the same district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be; provided, if the clerk of the superior court finds as a fact that such newspaper otherwise meets the requirements of this section and has a general circulation in such county where no newspaper is published meeting the requirements of this section.

**§1-598. Sworn statement prima facie evidence of qualifications; affidavit of publication.**

Whenever any owner, partner, publisher, or other authorized officer or employee of any newspaper which has published a notice or any other paper, document or legal advertisement within the meaning of G.S. 1-597 has made a written statement under oath taken before any notary public or other officer or person authorized by law to administer oaths, stating that the newspaper in which such notice, paper, document, or legal advertisement was published, was, at the time of such publication, a newspaper meeting all of the requirements and qualifications prescribed by G.S. 1-597, such sworn written statement shall be received in all courts in this State as prima facie evidence that such newspaper

was at the time stated therein a newspaper meeting the requirements and qualifications of G.S. 1-597. When filed in the office of the clerk of the superior court of any county in which the publication of such notice, paper, document or legal advertisement was required or authorized, any such sworn statement shall be deemed to be a record of the court, and such record or a copy thereof duly certified by the clerk shall be prima facie evidence that the newspaper named was at the time stated therein a qualified newspaper within the meaning of G.S. 1-597. Nothing in this section shall preclude proof that a newspaper was or is a qualified newspaper within the meaning of G.S. 1-597 by any other competent evidence. Any such sworn written statement shall be prima facie evidence of the qualifications on any newspaper at the time of any publication of any notice, paper, document, or legal advertisement published in such newspaper at any time from and after the first day of May, 1940.

The owner, a partner, publisher or other authorized officer or employee of any newspaper in which such notice, paper, document or legal advertisement is published, when such newspaper is a qualified newspaper within the meaning of G.S. 1-597, shall include in the affidavit of publication of such notice, paper, document or legal advertisement a statement that at the time of such publication such newspaper was a qualified newspaper within the meaning of G.S. 1-597.

**§1-599. Application of two preceding sections.**

The provisions of G.S. 1-597 and G.S. 1-598 shall not apply in counties wherein only one newspaper is published, although it may not be a newspaper having the qualifications prescribed by G.S. 1-597; nor shall the provisions of G.S. 1-597 and G.S. 1-598 apply in any county wherein none of the newspapers published in such county has the qualifications and characteristics prescribed in G.S. 1-597.

**§1-600. Proof of publication of notice in newspaper; prima facie evidence.**

(a) Publication of any notice permitted or required by law to be published in a newspaper may be proved by a printed copy of the notice together with an affidavit made before some person authorized to administer oaths, of the publisher, proprietor, editor, managing editor, business or circulation manager, advertising, classified advertising or any other advertising manager or foreman of the newspaper, showing that the notice has been printed therein and the date or dates of publication. If the newspaper is published by a corporation, the affidavit may be made by one of the persons hereinbefore designated or by the president, vice president, secretary, assistant secretary, treasurer, or assistant treasurer of the corporation.

(b) Such affidavit and copy of the notice shall constitute prima facie evidence of the facts stated therein concerning publication of such notice.

(c) The method of proof of publication of a notice provided for in this section is not exclusive, and the facts concerning such publication may be proved by any competent evidence.

**§1-601. Certain legal advertisements validated.**

Legal advertisements published prior to June 1, 1983, by a newspaper that met every requirement for publication of legal notices and advertisements under G.S. 1-597 when the advertisement was published except that the newspaper had a second class United States mail permit in a county adjacent to the county in which the advertisement was published instead of the county in which it was published may not be held to be invalid because of the lack of a second class United States mail permit in the proper county.

## 2. Some Thoughts on Legal Notices

Publication in a newspaper of general circulation is the primary, but not the only, form of legal notification that may be required or permitted by the various notice statutes that apply to local governments in North Carolina. However, if a statute refers in any way to “publication” of notice, the clerk should assume that publication in a newspaper of general circulation is needed. This protects against the risk that the publication will be deemed insufficient and the notice void.

Courts are very unforgiving when notice rules are not followed “to the letter,” both with respect to where and when notices should be published and as to what they should contain. There are different statutes that require varying types of notice for particular local government actions. This means that the clerk must always be very careful to check the relevant law in advance. If she or he is not absolutely sure about what is required, the local government’s attorney must always be consulted before a fatal mistake is made.

Note that some statutes require another type of notification in addition to or instead of publication. For example, a law may require that notices be posted on property that is the subject of a potential legal action such as a rezoning, or on a local government’s bulletin board, or on the courthouse door. Statutes may also require that affected persons be notified by mail. In the case of rezonings, for example, published notice, posted notice, and mailed notice may all three be required in many instances.

Similarly, statutes vary as to when and how many times particular notices must be published before a board can take a specified action. And some statutes require publication of notice after the board has acted. In another variation, notification may be required by federal law in addition to or instead of a state statute or regulation.

Finally, to further complicate matters, in many cases no publication or posting of notice is required at all! Once again, it is critical to examine the specific laws that apply to the proposed governmental action to determine what is needed in each case.

## J. TRUE-FALSE QUIZ

TRUE      FALSE

- |       |       |   |
|-------|-------|---|
| _____ | _____ | 1. A city or county clerk seeking a complete description of his or her legal duties should examine not only the General Statutes, but also the local acts affecting the city or county and the rules and procedures of the governing board. |
| _____ | _____ | 2. The board's minutes must include a record of actions taken and the existence of conditions needed to take those actions, as well as a record of officials present and copies of motions, ordinances, and resolutions.                    |
| _____ | _____ | 3. City and county clerks can administer oaths of office.   |
| _____ | _____ | 4. The sections of the General Statutes dealing with publication of legal notices define in detail the types of newspapers qualified to publish such notices.   |
| _____ | _____ | 5. As a rule, the public is permitted to attend, record, and photograph governing board meetings. Closed sessions are permitted only for limited, specified purposes.   |
| _____ | _____ | 6. The law provides at least some guidelines for what must be included in the general account of a closed session.  |
| _____ | _____ | 7. Licenses are required for closing-out sales held in unincorporated areas as well as for those conducted within cities and towns.   |
| _____ | _____ | 8. An ordinance must be properly placed in the ordinance book or code of ordinances before it can be enforced or admitted into evidence in court.   |
| _____ | _____ | 9. It is up to the clerk to determine (a) who can have access to the public records in his or her custody, and (b) how long those records should be retained before they are destroyed.   |
| _____ | _____ | 10. At least 48 hours' notice must be given before a special meeting of the governing board can be held.  |
| _____ | _____ | 11. A governing board may use written ballots only if (a) the ballots are signed and made available for public inspection, and (b) the minutes show the vote of each member voting.   |
| _____ | _____ | 12. The General Statutes provide guidelines for conducting public hearings.   |
| _____ | _____ | 13. Governing board committees are subject to the open meetings law to the same extent as the board itself.   |
| _____ | _____ | 14. Draft copies of the minutes that have not yet been approved are public records that must be made available to anyone who requests them.   |
| _____ | _____ | 15. The services provided by competent city and county clerks are essential to the proper functioning of local government in North Carolina.  |

