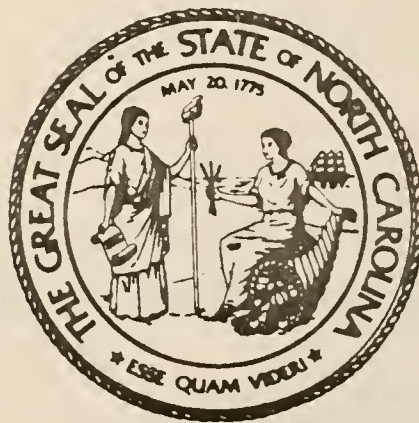


MAR 22 1979

REPORT
OF THE

LEGISLATIVE STUDY COMMISSION
FOR STATE POLICIES ON THE
MEETINGS OF GOVERNMENTAL BODIES



JANUARY 10, 1979

RALEIGH, NORTH CAROLINA

A LIMITED NUMBER OF COPIES OF THIS REPORT ARE AVAILABLE
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY:

ROOM 2126, 2226
STATE LEGISLATIVE BLDG.
RALEIGH, N. C. 27611
PHONE: (919) 733-7778



North Carolina General Assembly

State Legislative Building

Raleigh 27611

January 10, 1979

TO THE MEMBERS OF THE 1979 GENERAL ASSEMBLY:


The Legislative Study Commission for State Policies on the Meetings of Governmental Bodies herewith reports to the 1979 General Assembly of North Carolina on the matter of open meetings. The report is made pursuant to Chapters 959 and 1191 of the 1977 Session Laws.

The Commission reported to the 1978 Session of the 1977 General Assembly in accordance with Chapter 959. During that session the General Assembly considered and enacted legislation recommended by the Commission, which is contained in Chapter 1191. The Commission also recommended that its study be continued in order to further refine the Open Meetings Law, and that recommendation was also approved (1977 Session Laws, 2nd Session 1978, Chapter 1191, Sec. 8). The Commission has been meeting since the 1978 Session and has reviewed the entire Open Meetings Law (General Statutes Chapter 143, Article 33B). The recommendations herein were unanimously adopted by the Commission.

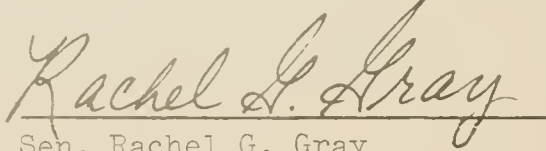
The Commission discussed openly and freely all aspects of the law. Members listened to representatives of various State agencies and private associations including, but not limited to, the North Carolina Hospital Association, Department of Corrections, Utilities Commission, Industrial Commission, League of Women Voters, University System, Community College System, the Association of County Commissioners, League of Municipalities, the School Board Association, Press Association, Broadcasters' Association, and others who requested to be heard during Commission hearings. Notices of each meeting were mailed to everyone who requested such notices.

The Commission urges the adoption of the recommendations contained in this report.

Respectfully submitted,



Rep. Robert A. Jones
Chairman



Sen. Rachel G. Gray
Vice Chairman

INTRODUCTION

The Legislative Study Commission for State Policies on the Meetings of Governmental Bodies was created pursuant to Chapter 959 of the 1977 Session Laws. That original legislation directed the commission to review and evaluate the existing open meetings law and report back to the 1978 session of the General Assembly. Because of the pressures of time, the commission was able to address only two issues in the spring of 1978: the coverage of the statute and public notice of meetings. Therefore it requested that its existence be extended so that it could continue its review. That request was granted, and the commission has spent the late summer and fall of 1978 completing its work.

The commission has reviewed the entire open meetings statute and, as a result of that review, proposes the revision of the statute set out at the end of this report. The basic scheme of the statute, as originally enacted in 1971 and amended in 1978, continues unchanged in the Commission's proposal. The major subjects of proposed change are executive sessions, indirect denials of access, and remedies. The remainder of this report describes, section by section, the commission's proposed legislation.

Section 1: Statement of public policy. The statement of public policy has been brought forward unchanged from the present law.

Section 2: The basic requirement of openness. This section sets out the basic directive of the statute: unless there is express provision otherwise, all official meetings of all public bodies must be open to the public. Only two clarifying changes were made to this fundamental section. First,

it is stated that meetings among the medical staff of a public hospital are not meetings of public bodies and thus not subject to the statute. Second, it is stated that a meeting by means of conference telephone call or other electronic means is as much a meeting as if the members of the public body were in the same room.

Section 3: Executive sessions. This is a crucial section in the statute, and the commission spent several meetings on its provisions. The proposal would allow executive sessions in sixteen sets of circumstances. That compares with eight under the present law, but the comparison is misleading. For example, one of the present authorizations for executive sessions, that dealing with property transactions, has been narrowed and then divided into three separate authorizations. Several of the authorizations are new only in their placement in this section; these had been part of another section that excluded certain agencies from the law entirely. Only two authorizations can be said to be completely new: that for discussions about industrial prospects and that for discussions about candidates for awards, honorary degrees and the like.

Executive sessions are permitted, under the present law and under the commission's proposal, in three general sorts of circumstances. First, they are permitted when the public body is in an adversary relationship with another party, and to require openness might give that other party an unfair advantage. Thus, executive sessions are permitted when acquiring real property or when involved in litigation. Second, they are permitted to protect the privacy rights of persons with whom the public body deals. Thus, executive sessions are permitted when discussing public officers and employees and patients in a public hospital. Third, they are permitted when to have an open session might cause the public body to lose a benefit or advantage it would otherwise

receive. Thus, executive sessions are permitted when discussing the proposed relocation of an industrial plant into the area served by a public body.

The specific occasions for which the proposal permits executive sessions are as follows:

Property Transactions. The present law permits executive sessions to consider the "acquisition, lease, or alienation of property." The proposal replaces this broad authorization with three narrower ones. First, a public body may discuss site selection or the acquisition of real property in executive session. The Commission thought that only with acquisition and site selection were adversary concerns great enough to justify closed meetings. Second, a public body may discuss and authorize receiving a gift or bequest of personal property in executive session. Many times donors do not want their identity revealed or even the fact that they have property they wish to give to a public body. Third, a public body may discuss and authorize the acquisition of works of art, manuscripts, and the like, for the use of museums, libraries, or archives, in executive session. This permission will be of most use to the Art Commission and recognizes the realities of acquisition practices in the museum world.

Litigation. The present authorization to hold executive sessions regarding litigation and comparable adversary proceedings has been clarified and continued.

Attorney Conferences. The present law permits executive sessions to consider matters coming within any privileged relationship. The proposal changes the focus of this authorization, first, by permitting an executive session with the public body's attorney when one is necessary for the attorney to carry out his duties to his client and, second, by deleting all reference to other privileged relationships.

Industrial Prospects. When an industry is considering relocating to a new area, it is common that it demand confidentiality in its contacts with public groups in the new area. The proposal would permit executive sessions in order to respect any resultant promise of confidentiality.

Medical Patients. The present law contains a very broad authorization for executive sessions concerning medical matters. The proposal limits that authorization to matters concerning specific patients.

Personnel Matters. The present law permits executive sessions for certain personnel-related matters, but the extent of the authorization has been most unclear. The proposal attempts to remedy those problems. It permits executive sessions for personnel-related discussions about any public officer or employee, except that no executive session may be held to consider or fill a vacancy on the public body itself. The proposal makes clear that one public body may hold an executive session to discuss appointments to another public body, and that a public body may discuss employment of an independent contractor, such as an architect, in executive session. If a public body does discuss appointments to another board in executive session, the proposal would require the body to make public the names of those being considered, at least seven days before the appointment is made, to permit a chance for public comment on the candidates.

Pupil Matters. The present statute authorizes executive sessions for pupil disciplinary matters and pupil reassignment questions, and that authorization is brought forward unchanged.

Awards. A few public bodies, principally in the University system, award various honors, such as honorary degrees or the O. Max Gardner Award. For a number of such honors, the merits of various candidates--all worthy--must be discussed before the award is made. The proposal would permit such a discussion to take place in executive session.

Confidential Information. Other statutes or regulations, state or federal, sometimes require that certain information kept by governments be kept confidential. A number of social services records are examples of such information. When another law specifically requires confidentiality, that other law probably prevails over the open meetings law; the proposal would make that clear, permitting an executive session whenever another law requires that the information to be discussed be kept confidential or requires confidentiality as a condition of state or federal aid.

Strike Contingency Plans. The present law permits a public body to consider collective bargaining matters in executive session. This has not been of much use, as collective bargaining agreements are not permitted to public bodies under North Carolina law. However, public employees do sometimes strike, or conduct work slowdowns, or otherwise collectively interrupt work. The commission's proposal would permit a public body to adopt plans to deal with such collective employment interruptions in executive session.

Riots. The present law authorizes executive sessions to react to actual or imminent riots and civil disorders, and the proposal continues that authorization.

Criminal Investigations. The present law excepts entirely all "study, research, and investigative" bodies. The commission thought this too broad and replaced it with an authorization to plan, conduct, or hear reports in executive session of investigations into alleged criminal misconduct.

Corrections Matters. All public bodies in the Department of Correction are now excluded entirely from the open meetings law. Although the Commission recognized the delicacy of some corrections matters, it thought exclusion of the entire Department to be too broad and replaced the exclusion with an authorization to hold executive sessions to consider matters involving specific inmates or security problems in the corrections system.

General Assembly committees and subcommittees. The present law permits any committee or subcommittee of the General Assembly (except appropriations committees or subcommittees) to hold executive sessions, and that authorization is continued.

Calling an Executive Session. The proposal sets out a procedure that must be followed when an executive session will be held and extends that procedure to each sort of executive session. (The comparable procedure in the present law does not apply to all of the executive session authorizations.)

Minutes of Executive Sessions. The proposal expressly permits a few actions to be taken in executive session; for example, it permits a public body to adopt contingency plans for dealing with threatened collective employment interruptions. Normally any action taken by a public body is recorded in its minutes. If minutes showing an action taken in executive session were immediately to become public record, the entire point of the executive session might be lost. Therefore the proposal expressly permits minutes of executive sessions to be withheld from public inspection so long as public inspection would frustrate the purpose of the executive session. It would be up to the public body to decide how long that was.

Section 4. Notice of Official meetings. In 1978 this commission recommended and the General Assembly adopted provisions requiring public notice of all official meetings. The only change proposed is the deletion of the authority to charge a reasonable fee, up to \$10, for notice of special meetings.

Section 5. Indirect denials of access. It is possible for a public body to indirectly deny access to a meeting that is formally open. The commission's proposal addresses three possible indirect denials of access: meetings through telephone or electronic means; secret ballots; and voting by reference.

The proposal recognizes that some public bodies might find it efficient and necessary to meet through a conference telephone call or some other electronic means. The proposal does not prohibit such a meeting but rather requires that the public body provide a location and mechanism through which the public might listen to the meeting. Thus the public body might provide a room into which a conference telephone call is broadcast.

The North Carolina Court of Appeals, in a 1975 decision, held that secret ballots were impliedly prohibited by the present open meetings law. The Court, did, however, permit the use of written ballots if the ballots were signed and made available for public inspection. The commission's proposal adopts the essence of that decision.

Finally, the commission heard some evidence that a few boards might, in a public meeting, transact business by reference to agenda numbers or other codes in such a way that the public attending the meeting would be unable to determine what was going on. Therefore, the proposal prohibits taking action by reference to a number, letter, or other sign, with the intention thereby of making impossible public understanding of the public body's business.

Section 6. Broadcasting, Taping, and Filming meetings. An open meeting is open to those who happen to attend it. Most people, however, depend upon the news media for finding out what happens at meetings of public bodies. The commission recognized this fact and sought to facilitate news coverage of open meetings by including in its proposal a section permitting radio and television stations to broadcast meetings and permitting any person to film, photograph, or tape-record meetings. Public bodies are authorized, by the proposal, to regulate these activities so that they do not interfere with the

meeting itself, but the regulations must not be so stringent as to amount to prohibition.

Section 7. The state budgetary process. The present law makes special provision for two aspects of the state budgetary process. First, it permits those meetings of the Advisory Budget Commission at which the state's proposed budget is put together to be held in executive session. Second, it requires all meetings of the appropriations committees and subcommittees to take place in open session. The latter requirement operates as an exception to the general authorization to committees and subcommittees of the legislature to meet in executive session when they find such a meeting in the public interest. The commission's proposal would retain the special provisions for the appropriations committees but would delete the authorization to the Advisory Budget Commission to hold executive sessions. There is no comparable provision for the local government budget process, and the commission could see no strong justification for this one.

Section 8. Injunctive relief against violations. The only present remedy for correcting violations of the statute is the possibility of injunctive relief. The Supreme Court has said that the absence of any specific provision permitting the voiding of action taken at an illegal meeting means that such relief is not available. The commission considered whether to recommend that a voidability provision be added to the statute but decided that the disadvantages of such a remedy--particularly the temporary cloud it would put on any action taken by a public body--did not justify the difficult task of seeking its inclusion in the statute. Instead the commission decided to seek to strengthen the injunctive remedy now in the statute.

First, the present law can be read to permit injunctive relief only against violations that have already occurred. Therefore, the commission's proposal would clearly permit seeking injunctive relief to stop threatened as well as past violations of the statute.

Second, the proposal seeks to ease the demands of standing to secure injunctive relief. Any person is entitled to bring an action seeking injunctive relief, and the plaintiff need not allege or prove any damage to himself arising from the alleged violation of the law different from that suffered by the public at large. It is the public's interest that is harmed when this statute is violated, and any member of the public ought to be able to protect that interest.

Third, the public interest character of a suit seeking to enforce the open meetings statute is recognized by inclusion in the proposal of a provision that would permit a court to award reasonable attorneys fees to a successful plaintiff. On the other side, if the plaintiff's case is frivolous, the court may award attorneys fees to the defendant public body.

A final provision seeks to protect public bodies from overbroad injunctions. Some trial courts have issued injunctions simply ordering a defendant public body to cease violating the open meetings law. Thereafter any violation of the law, even one of a completely different character than the one that led to the injunction, would expose the members of the public body to a contempt citation. The danger of such a "broadside" injunction is that the seriousness of a contempt citation may keep a public body from utilizing the full extent of an authorization for an executive session because of some uncertainty about that extent, even if there are strong reasons of public policy for the executive session. For these reasons, the commission's proposal directs that any injunction describe the acts enjoined with reference to the violations proved in the action. This requirement of specificity simply repeats the comparable require-

ment of Rule 65 of the Rules of Civil Procedure but emphasizes it in the open meetings context.

Section 9. Disruptions of official meetings. The commission's proposal continues the provision of the present law with only minor changes.

Section 10. Excepted public bodies. The present law excepts entirely from the open meetings law eleven different public bodies or classes of public bodies. The commission's proposal retains six of these exceptions without change, narrows one, transfers two to the list of permitted executive sessions, and deletes the remaining two.

Retained Exceptions. The exceptions retained without substantive change are: (1) grand and petit juries, (2) public bodies directed or authorized by other statutes to meet in executive session, (3) the Judicial Standards Commission, (4) the Legislative Services Commission, (5) law enforcement agencies, and (6) state-level quasi-judicial agencies, while deliberating upon contested cases. The only one of these to cause extended discussion within the commission was the last, as the commission sought to decide whether the exception should be extended to local-level quasi-judicial agencies. In the end the commission decided against such an extension, largely because the local agencies now operate without such an exception and without any apparent harmful result.

Modified Exception. The present law excepts entirely all professional and occupational licensing boards. The commission recognized justifications for a partial exception of these boards but did not find the total exclusion justified. Therefore, this exception is modified in the proposal to except these bodies in two circumstances only: (1) when dealing with examinations,

and (2) when meeting with respect to individual applicants for or holders of licenses.

Transferred Exceptions. Two of the present law's exceptions--that for the Department of Correction and that for study, research, and investigative groups--were the source of new authorizations for executive sessions. These new authorizations, discussed above in the section on executive sessions, in effect narrow the exceptions they replace.

Deleted Exceptions. Finally the commission's proposal would remove the present exceptions for the Council of State and the state board of awards. The commission felt that any need for secrecy in the deliberations of these two bodies could be satisfied by the authorizations for executive sessions.

APPENDIX A

Legislative Study Commission for State Policies
on the Meetings of Governmental Bodies

1977-1979

Chairman:

Representative Robert A. Jones
Forest City

Vice Chairman:

Senator Rachel G. Gray
High Point

Members:

Senator Dallas L. Alford, Jr.
Rocky Mount

Mr. Jack Aulis
Raleigh

Representative Louise S. Brennan
Charlotte

Ms. Janice H. Faulkner
Greenville

Representative Daniel A. C. Hall, Jr.
Burlington

Representative Bertha M. Holt
Burlington

Senator Donald P. Kincaid
Lenoir

Representative George W. Miller, Jr.
Durham

Senator R. C. Soles, Jr.
Tabor City

Ms. Ailey M. Young
Wake Forest

ARTICLE 33B.

Meetings of Governmental Bodies.

§ 143-318.1. **Public policy.** — Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of this State and its political subdivisions exist solely to conduct the people's business, it is the public policy of this State that the hearings, deliberations, and actions of these bodies be conducted openly. (1971, c. 638, s. 1; 1977, 2nd Sess., c. 1191, s. 1.)

§ 143-318.2. **All official meetings open to the public.** — (a) Except as provided in G.S. 143-318.3, G.S. 143-318.4, and G.S. 143-318.5, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, or other political subdivisions or public corporations in the State that is composed of two or more members and

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

In addition, "public body" means a committee of a public body and the governing board of a "public hospital," as defined in G.S. 159-39. This provision shall not apply to committees which are not policy-making bodies of public hospitals.

(c) "Public body" does not include and shall not be construed to include meetings among the professional staff of a public body, unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in subdivision (b)(2) of this section.

(d) "Official meeting" means any meeting, assembly, or gathering together at any time and place of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body; provided, 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. (1971, c. 638, s. 1; 1977, 2nd Sess., c. 1191, s. 2.)

§ 143-318.3. **Executive, closed and private sessions.** — (a) A public body, by the votes of a majority of its members present, may, during any regular or special meeting when a quorum is present, hold an executive session and exclude the public while considering:

- (1) Acquisition, lease, or alienation of property;
- (2) Negotiations between public employers and their employees or representatives thereof as to employment;
- (3) Matters dealing with patients, employees or members of the medical staff of a hospital or medical clinic (including but not limited to all aspects of admission, treatment, and discharge, all medical records, reports and summaries, and all charges, accounts and credit information pertaining to said patients; all negotiations, contracts, conditions, assignments, regulations and disciplines relating to employees; and all aspects of hospital management, operation and discipline relating to members of the medical staff):

- (4) Any matter coming within the physician-patient, lawyer-client or any other privileged relationship;
- (5) Conferences with legal counsel and other deliberations concerning the prosecution, defense, settlement or litigation of any judicial action or proceeding in which the public body is a party or by which it is directly affected.

(b) This Article shall not be construed to prevent any public body from holding closed sessions to consider information regarding the appointment, employment, discipline, termination or dismissal of an employee or officer under the jurisdiction of such body and to hear and consider testimony on a complaint against such employee or officer; provided, however, that final action on the discharge of any employee for cause after hearing shall be taken in open session if such discharge is within the exclusive jurisdiction of the public body. Nor shall this Article be construed to prevent any board of education or governing body of any public educational institution, or any committee or officer thereof, from hearing, considering and deciding in closed session (i) disciplinary cases involving students and (ii) questions of reassignments of pupils under G.S. 115-178.

(c) When any county board of commissioners or the governing body of any municipal corporation or board of education is faced with the existence of a riot or with conditions indicating that a riot or public disorders are imminent, within the territorial jurisdiction of such board or governing body, the board of commissioners of such county or the governing body of such municipal corporation or board of education, as the case may be, may meet in private session with such law-enforcement officers and others invited to any such meeting, excluding other members of the public, for the purpose of considering and taking appropriate action deemed necessary to cope with the existing situation during any such emergency. (1971, c. 638, s. 1.)

§ 143-318.4. Exceptions. — The agencies or groups following are excluded from the provisions of G.S. 143-318.2:

- (1) The Council of State
- (2) The Board of Awards
- (3) The Department of Correction.
- (4) The Judicial Standards Commission.
- (5) All law-enforcement agencies
- (6) Grand and petit juries
- (7) All study, research and investigative commissions and committees including the Legislative Services Commission.
- (8) All State agencies, commissions or boards exercising quasi-judicial functions during any meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding
- (9) Every board, commission, council or other body, or any committee thereof, authorized by statute to investigate, examine and determine the character and other qualifications of applicants for license to practice any occupation or profession in this State, or authorized to suspend or revoke licenses of, or to reprimand or take disciplinary action concerning any person licensed to engage in the practice of any occupation or profession in this State; provided, however, that nothing in this Article shall be construed to amend, repeal or supersede any statute, now existing or hereafter enacted, which requires a public hearing or other practice and procedure in any proceeding before any such board, commission or other body, or any committee thereof.
- (10) Any committee or subcommittee of the General Assembly has the inherent right to hold an executive session when it determines that it is absolutely necessary to have such a session in order to prevent personal embarrassment or when it is in the best interest of the State; and in no event shall any final action be taken by any committee or subcommittee except in open session.
- (11) 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. (1971, c. 638, s. 1; 1973, c. 1262, s. 10; 1977, 2nd Sess., c. 1191, s. 4.)

§ 143-318.5. Advisory Budget Commission and appropriation committees of General Assembly; application of Article. — (a) The provisions of this Article shall not apply to meetings of the Advisory Budget Commission held for the purpose of actually preparing the budget required by the provisions of the Executive Budget Act (Article 1, Chapter 143, General Statutes of North Carolina), but nothing in this Article shall be construed to amend, repeal or supercede the provisions of G.S. 143-10 (or any similar statutes hereafter enacted) requiring public hearings to secure information on any and all estimates to be included in the budget and providing for other procedures and practices incident to the preparation and adoption of the budget required by the State Budget Act.

(b) Nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-14, relating to the meetings of the appropriations committees of the House of Representatives and the Senate of the General Assembly of North Carolina, and subcommittees thereof. (1971, c. 638, s. 1.)

§ 143-318.6. Mandamus and injunctive relief. — Any citizen denied access to a meeting required to be open by the provisions of this Article, in addition to other remedies, shall have a right to compel compliance with the provisions of this Article by application to a court of competent jurisdiction for restraining order, injunction or other appropriate relief. (1971, c. 638, s. 1.)

§ 143-318.7. Disruptions. — Any person who willfully interrupts, disturbs, or disrupts any official meeting required to be open to the public by this Article and who, upon being directed to leave such meeting by the presiding officer thereof, willfully refuses to leave such meeting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment for not in excess of six months, pay a fine of two hundred fifty dollars (\$250.00), or by both such fine and imprisonment. (1971, c. 638, s. 1.)

§ 143-318.8. Public notice of official meetings. — (a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

- (1) For public bodies that are part of State government, with the Secretary of State;
- (2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;
- (3) For the governing board and each other public body that is part of a city government, with the city clerk;
- (4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

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

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

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

- (2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting (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 that 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. 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 and may charge a reasonable fee, not to exceed ten dollars (\$10.00) annually, to cover the cost of mailed or delivered notice.
- (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 the 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 subdivision.
- (c) This section does not apply to the General Assembly. Each house of the General Assembly shall provide by rule for notice of meetings of legislative committees and subcommittees. (1977, 2nd Sess., c. 1191, s. 5.)

A BILL TO BE ENTITLED
AN ACT TO REVISE THE OPEN MEETINGS LAW.

The General Assembly of North Carolina enacts:

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

"ARTICLE 33C

"Meetings of Public Bodies

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

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

"(b) As used in this Article, 'public body' means any authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, or other political subdivisions or public corporations in the state that is composed of two or more members and

- (1) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function; and
- (2) is established by (i) the State Constitution, (ii) an act or resolution of the General Assembly, (iii) a resolution or order of a State agency, pursuant to a statutory procedure under which the agency

establishes a political subdivision or public corporation, (iv) an ordinance, resolution, or other action of the governing board of one or more counties, cities, school administrative units, or other political subdivisions or public corporations, or (v) an executive order of the Governor or formal action of the head of a principal State office or department, as defined in G.S. 143A-11 and G.S. 143B-6, or of a division thereof.

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

" (c) 'Public body' does not include and shall not be construed to include (1) meetings among the professional staff of a public body, unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in subsection (b) (2) of this section, or (2) meetings among the medical staff of a public hospital.

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

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

- (1) To consider the selection of a site or the acquisition by any means or lease as lessee of interests in real property. If the public body must give final authorization to the acquisition or lease of real property, it shall do so at an open meeting.
- (2) To consider and authorize the acquisition by gift or bequest of personal property offered to the public body or the government of which it is a part.
- (3) To consider and authorize the acquisition by any means of paintings, sculptures, objects of virtu, artifacts, manuscripts, books and papers, and similar articles and objects that are or will be part of the collections of a museum, library, or archive.
- (4) To consider the validity, settlement, or other disposition of a claim against or on behalf of the public body or an officer or employee of the public body or in which the public body finds that it has a substantial interest; or the commencement, prosecution, defense, settlement, or litigation of a potential or pending judicial action or administrative proceeding in which the public body or an officer or employee of the public body is a party or in which the public body finds that it has a substantial interest. During such an executive session, the public body may give instructions to an attorney or other agent concerning the handling or settlement of a claim, judicial action, or administrative proceeding. If a public body has considered a settlement in executive session, the terms of that settlement shall be reported to the public body and entered into its minutes within a reasonable time after the settlement is reached.

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

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

- (9) To consider the employment, performance, or discharge of an independent contractor. Any action employing or authorizing the employment or discharging or directing the discharge of an independent contractor shall be taken at an open meeting.
- (10) To hear, consider, and decide (1) disciplinary cases involving students or pupils and (2) questions of reassignment of pupils under G.S. 115-178.
- (11) To identify candidates for, assess the candidate's worthiness for, and choose the recipients of honors, awards, honorary degrees, or citations bestowed by the public body.
- (12) To consider information, when state or federal law (1) directs that the information be kept confidential or (2) makes the confidentiality of the information a condition of state or federal aid.
- (13) To consider and adopt contingency plans for dealing with strikes, slowdowns, and other collective employment interruptions.
- (14) To consider and take action necessary to deal with a riot or civil disorder or with conditions that indicate that a riot or civil disorder is imminent.
- (15) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.
- (16) To consider and decide matters concerning specific inmates of the corrections system or security problems of the corrections system.

" (b) General Assembly committees and subcommittees. --Except as provided in G.S. 143-318.17, a committee or subcommittee of the General Assembly has the inherent right to hold an executive session when it determines that it is absolutely necessary to have such a session in order to prevent personal em-

barrassment or when it is in the best interest of the State. A committee or subcommittee may take final action only in an open meeting.

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

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

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

- (1) for public bodies that are part of State government, with the Secretary of State;
- (2) for the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;
- (3) for the governing board and each other public body that is part of a city government, with the city clerk;
- (4) for each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

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

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

- (1) If a meeting is an adjourned or recessed session of a regular meeting or of some other meeting, notice of which has been given pursuant to this subsection, and the time and place of the adjourned or recessed session has been set during the regular or other meeting, no further notice is necessary.
- (2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting (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 that 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. 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.
- (3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service,

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

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

§ 143-318.15. Electronic meetings; written ballots; acting by reference. --

(a) Electronic meetings. --If a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by this Article shall specify that location.

" (b) Written ballots. --Except as provided in this subsection, 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.

"§ 143-318.16. Broadcasting or recording meetings. --(a) 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.

"§ 143-318.17. State budgetary process. --This Article does not amend, repeal, or supercede the provisions of G.S. 143-14 relating to the meetings of the appropriations committees and subcommittees of the General Assembly.

"§ 143-318.18. Injunctive relief against violations of Article. --(a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (1) threatened violations of this Article, (2) the recurrence of past violations of this Article, or (3) continuing violations of this

Article. Any person may bring an action in the appropriate division of the General Court of Justice seeking such an injunction; and the plaintiff need not allege or prove special damage different from that suffered by the public at large. It is not a defense to such an action that there is an adequate remedy at law.

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

"(c) If the plaintiff prevails in an action brought pursuant to this section, the court may allow a reasonable attorneys fee to be taxed against the defendant as a part of costs. If the defendant prevails and the court finds that the action was clearly frivolous, the court may allow a reasonable attorneys fee to be taxed against the plaintiff as a part of costs.

"§ 143-318.19. Disruptions of official meetings.--A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a misdemeanor and upon conviction thereof is punishable by imprisonment for not more than six months, by fine of not more than \$250, or both.

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

- (1) Grand and petit juries.
- (2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.
- (3) The Judicial Standards Commission.

- (4) The Legislative Services Commission .
- (5) Law enforcement agencies .
- (6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates ,
 - (i) while preparing, approving, administering, or grading examinations or
 - (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supercede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body .
- (7) Any public body subject to the Executive Budget Act (G.S. 143-1 et seq.) and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding."

Sec. 2. G.S. 159-17, as it appears in the 1978 Replacement Volume 3D of the General Statutes, is amended by rewriting the third sentence to read as follows: "Except for the notice requirements of G.S. 143-318.14, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as (i) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (ii) no business other than consideration of the budget is taken up."

Sec. 3. All provisions of general laws, city charters, and local acts in effect as of October 1, 1979 and in conflict with the provisions of G.S.

Chapter 143, Article 33C, as enacted by section one of this act, are repealed. No general law, city charter, or local act enacted or taking effect after October 1, 1979 may be construed to modify, amend, or repeal any provision of Article 33C unless it expressly so provides by specific reference to the appropriate section number of that Article.

Sec. 4. This act becomes effective October 1, 1979.

