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LAWS THAT AFFECT THE CLERK*

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* G.S. = North Carolina General Statutes**.** Laws, procedures, and other materials for city and county governing boards may be found in other sections of this notebook.

I. 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 making particular documents confidential and 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

Publications

A. Fleming Bell, II, **A MODEL CODE OF ETHICS FOR NORTH CAROLINA LOCAL ELECTED OFFICIALS WITH GUIDELINES AND APPENDIXES.** (Chapel Hill: School of Government, 2010). Available in paper and PDF versions.

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, at http://www.sog.unc.edu/pubs/electronicversions/pdfs/clerks.pdf..

A. Fleming Bell, II, **ETHICS, CONFLICTS, AND OFFICES: A GUIDE FOR LOCAL OFFICIALS**, 2d ed. (Chapel Hill: School of Government, 2010).

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.
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, 2012).

Frayda S. Bluestein, ed., **COUNTY AND MUNICIPAL GOVERNMENT IN NORTH CAROLINA** (Chapel Hill: School of Government, various dates). A complete overview of North Carolina local government. Includes chapters on the history and structure of local government, the governing board, the clerk and the attorney, the manager, open meetings and public records, the police power, citizen involvement, and many other subjects.

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, **HANDBOOK FOR NORTH CAROLINA MAYORS AND COUNCIL MEMBERS** (Chapel Hill: School of Government, 2013).

David M. Lawrence, **OPEN MEETINGS AND LOCAL GOVERNMENTS IN NORTH CAROLINA—SOME QUESTIONS AND ANSWERS**, 7th ed. (Chapel Hill: School of Government, 2008).

David M. Lawrence, **PUBLIC RECORDS LAW FOR NORTH CAROLINA LOCAL GOVERNMENTS,** 2d ed. (Chapel Hill: School of Government, 2009).

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/ .

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 "Document Library" on the Association's website at http://www.ncamc.com/ .

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 Section, **INFORMATION FOR LOCAL AND STATE GOVERNMENT [includes information for cities, counties, and regional councils]** (Raleigh: The Department). Records retention and disposition schedules, as well as information about imaging services, records analysts, electronic records, forms, workshops, and other topics are available for free from the department's website at http://www.ah.dcr.state.nc.us/records/local.htm.

Various authors, **COATES' CANONS,** www.sog.unc.edu. Blog posts by School of Government faculty members on a wide variety of subjects of interest to clerks and other local government officials. New posts added weekly. Edited by Kara Millonzi.

Vaughn Mamlin Upshaw, ed. **LOCAL GOVERNMENT BOARD BUILDERS' SERIES.** (Chapel Hill: School of Government, various dates). A series of publications offering local elected leaders practical advice on how to effectively lead and govern. Clerks will also find many of the booklets to be very useful. Each publication provides a topic overview, specific tips on effective practice, and worksheets and reflection questions to help local elected leaders improve their work. The series focuses on common activities for local governing boards, such as selecting and appointing committees and advisory boards, planning for the future, making better decisions, improving board accountability, and effectively engaging stakeholders in public decisions.

B. 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."

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.[1]

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:

[1] Some of the oaths in G.S. 11-11 are for offices that are not part of city or county government. Those oaths have been omitted here.

Attorney General, State District Attorneys and County Attorneys

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of Attorney General (district attorney for the State or attorney for the State in the county of _____); I will, in the execution of my office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God.

Auditor

I, A. B., do solemnly swear (or affirm) that I will well and truly execute the trust reposed in me as auditor, without favor or partiality, according to law, to the best of my knowledge and ability; so help me, God.

Register of Deeds

I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of ____, in all things according to law; so help me, God.

Sheriff

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of __ county to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God.

Law Enforcement Officer

I, A. B., do solemnly swear (or affirm) that I will be alert and vigilant to enforce the criminal laws of this State; that I will not be influenced in any matter on account of personal bias or prejudice; that I will faithfully and impartially execute the duties of my office as a law enforcement officer according to the best of my skill, abilities, and judgment; so help me, God.

Surveyor for a County

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of surveyor for the county of ____, according to law; so help me, God.

Treasurer for a County

I, A. B., do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of treasurer for the county of ____, in all things according to law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof, to any other use than by law directed; so help me, God.

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.

* * *

§ 105-295. Oath of office for assessor.

The assessor, as the holder of an appointed office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as assessor to be influenced by personal or political friendships or obligations,". The oath must be filed with the clerk of the board of county commissioners.

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§ 105-349. Appointment, term, qualifications, and bond of tax collectors and deputies.

(g) Oath. - Every tax collector and deputy tax collector, as the holder of an office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as tax collector to be influenced by personal or political friendships or obligations,". The oath must be filed with the clerk of the governing body of the taxing unit.

* * *

§ 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 to the board of commissioners.

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 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.

* * *

§ 128-5. Oath required before acting; penalty.
Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the State, shall take all said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars ($500.00) to the use of the poor of the county in or for which the office is to be used, and of being ejected from his office or place by proper proceedings for that purpose.

For more information about office-holding, please see "What's a 'Public Office'?" http://canons.sog.unc.edu/?p=1872, and "Wearing Several Hats: Multiple and Ex Officio Office-Holding," http://canons.sog.unc.edu/?p=2273, both by Fleming Bell. See also "Oaths of Office: How Many and By Whom?", http://canons.sog.unc.edu/?p=1155, and "Filing Oaths of Office," http://canons.sog.unc.edu/?p=772, by David Lawrence.

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.

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§ 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.

C. OPEN MEETINGS LAW

1. A Brief Outline of the Open Meetings Law

The Open Meetings Law: A Brief Outline

by David M. Lawrence, School 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 was invited to appoint four persons to the commission, and the county and its 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 public body with a regular meeting schedule has a Web site, it must also post the schedule to the Web site.

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 the meeting's time, place, and purpose must be (1) posted on the public body's principal bulletin board and (2) mailed, e-mailed, or delivered to each media representative and other person who has filed a written request for notice with the clerk or other designated person, at least 48 hours before the meeting.

If a public body has a Web site that one or more of its employees maintains, the public body must post notice of the special meeting on that site before the scheduled time of the meeting.

The notice required to be posted on the principal bulletin board or at the door of the usual meeting room must be posted on the door of the building or on the building in an area accessible to the public, if the building containing the bulletin board or meeting room is closed to the public continuously for 48 hours before the time of the meeting.

The public body may require media outlet submitting a written request for notice to renew the request annually, and it may require other persons to renew their requests quarterly. The public body must charge a fee of $10 per year to persons other than the media who request notice of special meetings. No fee may be charged for notices sent by e-mail.

Emergency Meetings

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 such a meeting.

Notice need be given only to local news media that have filed a written request, including a telephone number, for emergency meeting notice. Notice is to be given either by e-mail, by telephone, or by the same

method used to identify the members of the public body. It is to be given immediately after notifying the members, and it is to be given at the expense of the party notified.

If a public body has a Web site that one or more of its employees maintains, the public body must post notice of the emergency meeting on that site before the scheduled time of the meeting.

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 as long as public inspection would frustrate the purpose of a closed session."

Some Authorized Purposes (a brief, partial 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?

2. The Open Meetings Law—G.S. Ch. 143, Art. 33C

§ 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, 143-318.14A, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political 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 or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E-8.

(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 or to formulate and adopt the school safety components of school improvement plans by a local board of education or a school improvement team.

(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

§ 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, e-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. The public body shall also cause notice to be mailed, e-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, e-mailed, or delivered at least 48 hours before the time of the meeting. The notice required to be posted on the principal bulletin board or at the door of its usual meeting room shall be posted on the door of the building or on the building in an area accessible to the public if the building containing the principal bulletin board or usual meeting room is closed to the public continuously for 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. No fee shall be charged for notices sent by e-mail.

(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 e-mail, 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. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) Repealed by S.L. 1991-694, § 6.

(d) If a public body has a Web site and has established a schedule of regular meetings, the public body shall post the schedule of regular meetings to the Web site.

(e) If a public body has a Web site that one or more of its employees maintains, the public body shall post notice of any meeting held under subdivisions (b)(1) and (b)(2) of this section prior to the scheduled time of that meeting.

(f) For purposes of this section, an “emergency meeting” is one called because of generally unexpected circumstances that require immediate consideration by the public body.

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

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§ 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).

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§ 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) Repealed by 2011-291, s. 2.50, s. 4, effective June 24, 2011.
(5) The Joint Legislative Commission on Governmental Operations;
(6) The Joint Legislative Commission on Local Government;
(7) Repealed by Session Laws 1997, c. 443, s. 12.30, effective August 28, 1997.
(8) Repealed by 2011-291, s. 2.50, s. 4, effective June 24, 2011.
(9) The Environmental Review Commission;
(10) The Joint Legislative Transportation Oversight Committee;
(11) The Joint Legislative Education Oversight Committee;
(12) Repealed by 2011-266, s. 1.28(b), and 2011-291, s. 2.50, both effective June 24, 2011.
(13) The Commission on Children with Special Needs;
(14) Repealed by 2011-291, s. 2.50, s. 4, effective June 24, 2011.
(15) The Agriculture and Forestry Awareness Study Commission; and
(16) Repealed by 2011-291, s. 2.50, s. 4, effective June 24, 2011.
(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.

§ 143-318.16. 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 by Laws 1991, c. 694, § 9.

(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 by Laws 1991, c. 694, § 9.

(10) The Board of Awards.

(11) The General Court of Justice.

D. PUBLIC RECORDS LAW

1. A Brief Outline of the 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 (Some Examples)

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, S.L. 2015-225

C. Certain tax office records. G.S. 105-259, -289(e); G.S. 153A-148.1; G.S. 160A-208.1.

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, 1.8, 1.11, 1.11A, 1.12, 1.13, 1.23.

2. The Main Public Records Act—G.S. 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; Address Confidentiality Program 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 5E 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 5E 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.

(5) Reveals the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes that has been submitted for project approval to (i) a municipality under Part 5 of Article 19 of Chapter 160A of the General Statutes or (ii) to a county under Part 4 of Article 18 of Chapter 153A of the General Statutes. Notwithstanding this exemption, a municipality or county that receives a request for a document submitted for project approval that contains the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes and that is otherwise a public record by G.S. 132-1 shall allow a copy of the document without the seal of the licensed design professional to be examined and copied, consistent with any rules adopted by the licensing board under Chapter 83A or Chapter 89C of the General Statutes regarding an unsealed 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); 2009-346, s. 1.)

§ 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 natural voice, name, address, telephone number, or other information that may identify the caller, victim, or witness. In order to protect the identity of the complaining witness, the contents of "911" and other emergency telephone calls may be released pursuant to this section in the form of a written transcript or altered voice reproduction; provided that the original shall be provided under process to be used as evidence in any relevant civil or criminal proceeding.

(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); 2006-184, s. 7; 2010-171, s. 5; 2011-321, s. 1.)

§ 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(a).)

§ 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. [NOTE: See Section 3 of S.L. 2015-225 on page 44 for additional restrictions related to law enforcement personnel, firefighters, and emergency responders but not yet reflected in statute.]

(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.)

* * *

SESSION LAW 2015-189
HOUSE BILL 797

SECTION 1. Chapter 132 of the General Statutes is amended by adding a new section to read as follows:

"**§ 132-1.7A. Alarm registration information.**

A public record, as defined by G.S. 132-1, does not include any registration or sensitive security information received or compiled by a city pursuant to an alarm registration ordinance. For purposes of this section, the term "alarm registration ordinance" means an ordinance adopted by a city that requires owners of security, burglar, fire, or similar alarm systems to register with the city. Information that is deemed confidential under this section and is not open to public inspection, examination, or copying includes registration information, including the name, home and business telephone number, and any other personal identifying information provided by an applicant pursuant to an alarm registration ordinance, and any sensitive security information pertaining to an applicant's alarm system, including residential or office blueprints, alarm system schematics, and similar drawings or diagrams."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2015.

* * *

§ 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; 2005-414, s. 4.)

§ 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) **(For applicability date – See Editor's note)** 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 a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by 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 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 register of deeds, the clerk of court, their staff, or upon order of the court. 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.

(f1) Without a request made pursuant to subsection (f) of this section, a register of deeds or clerk of court may remove from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public, or placed on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, a person's social security or drivers license number contained in that official record. Registers of deeds and clerks of court may apply optical character recognition technology or other reasonably available technology to official records placed on Internet Web sites available to the general public in order to, in good faith, identify and redact social security and drivers license numbers.

(g) 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 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 a register of deeds or clerk of court to remove, from an image or copy of an official record placed on 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 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 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 a register of deeds or clerk of court or to his or her agent 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 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 a register of deeds or clerk of court. (2005-414, s. 4; 2006-173, ss. 1-7; 2009-355, s. 3.)

§ 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.)

§ 132-1.11A. Limited access to identifying information of minors participating in local government programs and programs funded by the North Carolina Partnership for Children, Inc., or a local partnership in certain localities.

(a) A public record, as defined by G.S. 132-1, does not include, as to any minor participating in a program sponsored by a local government or combination of local governments, a program funded by the North Carolina Partnership for Children, Inc., under G.S. 143B-168.12, or a program funded by a local partnership under G.S. 143B-168.14, any of the following information as to that minor participant: (i) name, (ii) address, (iii) age, (iv) date of birth, (v) telephone number, (vi) the name or address of that minor participant's parent or legal guardian, (vii) e-mail address, or (viii) any other identifying information on an application to participate in such program or other records related to that program. Notwithstanding this subsection, the name of a minor who has received a scholarship or other local government-funded award of a financial nature from a local government is a public record.

(b) The county, municipality, and zip code of residence of each participating minor covered by subsection (a) of this section is a public record, with the information listed in subsection (a) of this section redacted.

(c) Nothing in this section makes the information listed in subsection (a) of this section confidential information.

(d) This section applies to the County of Chatham, the Towns of Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon, and the City of Raleigh only. (2008-126, s. 1; 2012-67, s. 1; 2012-139, s. 1(a), (b); 2012-194, s. 70.5(a), (c).)

§ 132-1.12. Limited access to identifying information of minors participating in local government parks and recreation programs and programs funded by the North Carolina Partnership for Children, Inc., or a local partnership in other localities.

(a) A public record, as defined by G.S. 132-1, does not include, as to any minor participating in a park or recreation program sponsored by a local government or combination of local governments, a program funded by the North Carolina Partnership for Children, Inc., under G.S. 143B-168.12, or a program funded by a local partnership under G.S. 143B-168.14, any of the following information as to that minor participant: (i) name, (ii) address, (iii) age, (iv) date of birth, (v) telephone number, (vi) the name or address of that minor participant's parent or legal guardian, or (vii) any other identifying information on an application to participate in such program or other records related to that program.

(b) The county, municipality, and zip code of residence of each participating minor covered by subsection (a) of this section is a public record, with the information listed in subsection (a) of this section redacted.

(c) Nothing in this section makes the information listed in subsection (a) of this section confidential information. (2008-126, s. 1; 2012-67, s. 1.)

§ 132-1.13. Electronic lists of subscribers open for inspection but not available for copying.

(a) Notwithstanding this chapter, when a unit of local government maintains an electronic mail list of individual subscribers, this chapter does not require that unit of local government to provide a copy of the list. The list shall be available for public inspection in either printed or electronic format or both as the unit of local government elects.

(b) If a unit of local government maintains an electronic mail list of individual subscribers, the unit of local government and its employees and officers may use that list only: (i) for the purpose for which it was subscribed to; (ii) to notify subscribers of an emergency to the public health or public safety; or (iii) in case of deletion of that list, to notify subscribers of the existence of any similar lists to subscribe to.

(c) Repealed by Session Laws 2011-54, s. 1, effective April 28, 2011. (2010-83, ss. 1-3; 2011-54, s. 1.)

§ 132-1.14: Reserved for future codification purposes.

§ 132-1.15: Reserved for future codification purposes.

§ 132-1.16: Reserved for future codification purposes.

§ 132-1.17: Reserved for future codification purposes.

§ 132-1.18: Reserved for future codification purposes.

§ 132-1.19: Reserved for future codification purposes.

§ 132-1.20: Reserved for future codification purposes.

§ 132-1.21: Reserved for future codification purposes.

§ 132-1.22: Reserved for future codification purposes.

§ 132-1.23. Eugenics program records.

(a) Records in the custody of the State, including the North Carolina Justice for Sterilization Foundation, concerning the North Carolina Eugenics Board program are not public records to the extent they concern: (i) persons impacted by the program, (ii) persons or their guardians or authorized agents inquiring about the impact of the program on them, (iii) persons or their guardians or authorized agents inquiring about the potential impact of the program on others.

(b) Notwithstanding subsection (a) of this section, a person impacted by the program may obtain that person's individual records under the program, and a guardian or authorized agent of that person may also obtain them. (2011-188, s. 1.)

§ 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 Records. – Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Division of Employment Security has been copied in any manner, the original record may be destroyed upon the order of the Division. If a record of that Division 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 Assistant Secretary of Commerce. (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; 2011-401, s. 3.16.)

§ 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 if the person has complied with G.S. 7A-38.3E. 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 shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees if attributed to those public records. The court may not assess attorneys' fees against the governmental body or governmental unit if the court finds that the governmental body or governmental unit acted in reasonable reliance on any of the following:

(1) A judgment or an order of a court applicable to the governmental unit or governmental body.
(2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice.
(3) A written opinion, decision, or letter of the Attorney General.

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 shall 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.

(e) Notwithstanding subsection (c) of this section, the court may not assess attorneys' fees against a public hospital created under Article 2 of Chapter 131E of the General Statutes if the court finds that the action was brought by or on behalf of a competing health care provider for obtaining information to be used to gain a competitive advantage. (1935, c. 265, s. 9; 1975, c. 787, s. 3; 1987, c. 835, s. 2; 1995, c. 388, s. 4; 2005-332, s. 2; 2010-169, s. 21(c).)

§ 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.)

3. Some Statutes Dealing with Mediation of Public Records Disputes and Disclosure of Personnel and Tax Records

§ 7A-38.3E. Mediation of public records disputes

(a) Voluntary Mediation.--The parties to a public records dispute under Chapter 132 of the General Statutes may agree at any time prior to filing a civil action under Chapter 132 of the General Statutes to mediation of the dispute under the provisions of this section. Mediation of a public records dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought.

(b) Mandatory Mediation.--Subsequent to filing a civil action under Chapter 132 of the General Statutes, a person shall initiate mediation pursuant to this section. Such mediation shall be initiated no later than 30 days from the filing of responsive pleadings with the clerk in the county where the action is filed.

(c) Initiation of Mediation.--The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(d) Mediation Procedure.--Except as otherwise expressly provided in this section, mediation under this

section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(e) Waiver of Mediation.--The parties to the dispute may waive the mediation required by this section by informing the mediator of the parties' waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(f) Certification That Mediation Concluded.--Immediately upon a waiver of mediation under subsection (e) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party.

(g) Time Periods Tolled.--Time periods relating to the filing of a claim or the taking of other action with respect to a public records dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (f) of this section.

(h) Nothing in this section shall prevent a party seeking production of public records from seeking injunctive or other relief, including production of public records prior to any scheduled mediation. (S.L. 2010-169, s. 21(a).)

§ 153A-98. Privacy of employee personnel records [NOTE: See Sections 1 and 2 of S.L. 2015-225 on page 44 for additional restrictions related to law enforcement personnel but not yet reflected in statute.]

(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:

(1) Name.
(2) Age.
(3) Date of original employment or appointment to the county service.
(4) 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.
(5) Current position.
(6) Title.
(7) Current salary.
(8) Date and amount of each increase or decrease in salary with that county.
(9) Date and type of each promotion, demotion, transfer, suspension, separation or other change in position classification with that county.
(10) Date and general description of the reasons for each promotion with that county.
(11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the county. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the county setting forth the specific acts or omissions that are the basis of the dismissal.
(12) The office to which the employee is currently assigned.

(b1) 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.

(b2) 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 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 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.

(c3) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former local governmental employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees.

(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 to 8; Laws 1993, c. 539, ss. 1059, 1060; Laws 1994 (1st Ex. Sess.), c. 24, s 14(c)); S.L. 2007-508, s. 6; S.L. 2008-194, § 11(d); S.L. 2010-169, s. 18(e), eff. Oct. 1, 2010.)

* * *

SESSION LAW 2015-225
SENATE BILL 699

SECTION 1. G.S. 153A-98 is amended by adding a new subsection to read:

"(c4) Even if considered part of an employee's personnel file, the following information regarding any sworn law enforcement officer shall not be disclosed to an employee or any other person, unless disclosed in accordance with G.S. 132-1.4, or in accordance with G.S. 132-1.10, or for the personal safety of that sworn law enforcement officer or any other person residing in the same residence:

(1) Information that might identify the residence of a sworn law enforcement officer.
(2) Emergency contact information.
(3) Any identifying information as defined in G.S. 14-113.20."

SECTION 2. G.S. 160A-168 is amended by adding a new subsection to read:

"(c4) Even if considered part of an employee's personnel file, the following information regarding any sworn law enforcement officer shall not be disclosed to an employee or any other person, unless disclosed in accordance with G.S. 132-1.4, or in accordance with G.S. 132-1.10, or for the personal safety of that sworn law enforcement officer or any other person residing in the same residence:

(1) Information that might identify the residence of a sworn law enforcement officer.
(2) Emergency contact information.
(3) Any identifying information as defined in G.S. 14-113.20."

SECTION 3. G.S. 132-1.7 is amended by adding a new subsection to read:

"(b1) Public records shall not include mobile telephone numbers issued by a local, county, or State government to any of the following:

(1) A sworn law enforcement officer or nonsworn employee of a public law enforcement agency.
(2) An employee of a fire department.
(3) Any employee whose duties include responding to an emergency."

SECTION 4. This act becomes effective October 1, 2015.

* * *

§ 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.

(6) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2008.)** To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker.

(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; 2008-35, s. 1.4.)

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§ 160A-168. Privacy of employee personnel records [NOTE: See Sections 1 and 2 of S.L. 2015-225 on page 44 for additional restrictions related to law enforcement personnel but not yet reflected in statute.]

(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:

(1) Name.

(2) Age.

(3) Date of original employment or appointment to the service.

(4) 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.

(5) Current position.

(6) Title.

(7) Current salary.

(8) Date and amount of each increase or decrease in salary with that municipality.

(9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that municipality.

(10) Date and general description of the reasons for each promotion with that municipality.

(11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the municipality. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the municipality setting forth the specific acts or omissions that are the basis of the dismissal.

(12) The office to which the employee is currently assigned.

(b1) 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.

(b2) 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.

(c3) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former local governmental employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees.

(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). (Laws 1975, c. 701, s. 2; Laws 1981, c. 926, s. 1; Laws 1981, c. 926, ss. 2 to 4; Laws 1993, c. 539, ss. 1084, 1085; Laws 1994 (1st Ex. Sess.), c. 24, s. 14(c); S.L. 2007-508, s. 7; S.L. 2008-194, s. 11(e); S.L. 2010-169, s. 18(f).)

* * *

§ 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.

(4) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2008.)** To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker.

(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; 2008-35, s. 1.5.)

E. SELECTED PUBLIC NOTICE STATUTES

1. Publication of Legal Notices: Some Thoughts and Guidelines

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 should be consulted.

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. (For a discussion of the notice requirements applicable to rezonings and other land use actions, see

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 <u>after</u> 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.

To further complicate matters, in many cases no publication or posting of notice is required at all! Once again, <u>it is critical to examine the specific laws that apply to the proposed governmental action and to consult the local government's attorney</u> in order to determine what is needed in each case. Mistakes in publication of notice can be both time-consuming and costly.

2. 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.

[G.S.] 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.

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G.S. CHAPTER 1

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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.

3. Public Notice Requirements for Some Contracts

§ 143-129. Procedure for letting of public contracts.

(a) Bidding Required. - No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than five hundred thousand dollars ($500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars ($90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with; provided that The University of North Carolina and its constituent institutions may award contracts for construction or repair work that requires an estimated expenditure of less than five hundred thousand dollars ($500,000) without complying with the provisions of this section.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement and Letting of Contracts. - Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the

State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

The advertisements for bidders required by this section shall appear at a time where at least seven full days shall lapse between the date on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Proposals may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof may assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and the board or governing body shall award the contract to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

4. Public Notice for Annual Budget

§ 159-12. Filing and publication of the budget; budget hearings.

(a) On the same day that he submits the budget to the governing board, the budget officer shall file a copy of it in the office of the clerk to the board where it shall remain available for public inspection until the budget ordinance is adopted. The clerk shall make a copy of the budget available to all news media in the county. He shall also publish a statement that the budget has been submitted to the governing board, and is available for public inspection in the office of the clerk to the board. The statement shall also give notice of the time and place of the budget hearing required by subsection (b) of this section.

(b) Before adopting the budget ordinance, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear. (1927, c. 146, s. 7; 1955, cc. 698, 724; 1971, c. 780, s. 1.)

5. Public Notice for Private Sale of Local Government Personal Property

§ 153A-176. Disposition of property.

A county may dispose of any real or personal property belonging to it according to the procedures prescribed in Chapter 160A, Article 12. For purposes of this section references in Chapter 160A, Article 12, to the "city," the "council," or a specific city official are deemed to refer, respectively, to the county, the board of commissioners, and the county official who most nearly performs the same duties performed by the specified city official. For purposes of this section, references in G.S. 160A-266(c) to "one or more city officials" are deemed to refer to one or more county officials designated by the board of county commissioners. (1868, c. 20, ss. 3, 8; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1983, c. 130, s. 2.)

§ 160A-266. Methods of sale; limitation.

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

(1) Private negotiation and sale;
(2) Advertisement for sealed bids;
(3) Negotiated offer, advertisement, and upset bid;
(4) Public auction; or
(5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of similar items. Real property, of any value, and personal property valued at thirty thousand dollars ($30,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

Provided, however, a city may dispose of real property of any value and personal property valued at thirty thousand dollars ($30,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

(d) A city may discard any personal property that: (i) is determined to have no value; (ii) remains unsold or unclaimed after the city has exhausted efforts to sell the property using any applicable procedure under this Article; or (iii) poses a potential threat to the public health or safety. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1; 1983, c. 130, s. 1; c. 456; 1987, c. 692, s. 2; 1987 (Reg. Sess., 1988), c. 1108, s. 9; 1997-174, s. 6; 2001-328, s. 4; 2005-227, s. 3.)

§ 160A-267. Private sale.

When the council proposes to dispose of property by private sale, it shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property by private sale at a negotiated price. The resolution or order shall identify the property to be sold and may, but need not, specify a minimum price. A notice summarizing the contents of the resolution or order shall be published once after its adoption, and no sale

shall be consummated thereunder until 10 days after its publication. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 24.)

6. Public Notice for Land Use Regulation

§ 153A-323. Procedure for adopting, amending, or repealing ordinances under this Article and Chapter 160A, Article 19.

(a) Before adopting, amending, or repealing any ordinance authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance or amendment. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in any of the changes listed in this subsection and those changes would be located five miles or less from the perimeter boundary of a military base, the board of commissioners shall provide written notice of the proposed changes by certified mail, or by any other written means reasonably designed to provide actual notice, to the commander of the military base or the commander's designee not less than 10 days nor more than 25 days before the date fixed for the public hearing. Prior to the date of the public hearing, the military may provide comments or analysis to the board regarding the compatibility of the proposed changes with military operations at the base. If the board does not receive a response within 30 days of the notice, the military is deemed to waive the comment period. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the board of commissioners shall take the comments and analysis into consideration before making a final determination on the ordinance. The proposed changes requiring notice are:

(1) Changes to the zoning map.
(2) Changes that affect the permitted uses of land.
(3) Changes relating to telecommunications towers or windmills.
(4) Changes to proposed new major subdivision preliminary plats.
(5) An increase in the size of an approved subdivision by more than fifty percent (50%) of the subdivision's total land area including developed and undeveloped land. (1959, c. 1006, s. 1; c. 1007; 1973, c. 822, s. 1; 1981, c. 891, ss. 2, 9; 2004-75, s. 1; 2005-426, s. 1(b); 2013-59, s. 1.)

§ 160A-364. Procedure for adopting, amending, or repealing ordinances under Article.

(a) Before adopting, amending, or repealing any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in any of the changes listed in this subsection and those changes would be located five miles or less from the perimeter boundary of a military base, the governing body of the local government shall provide written notice of the proposed changes by certified mail, or by any other written means reasonably designed to provide actual notice, to the commander of the military base or the commander's designee not less than 10 days nor more than 25 days before the date fixed for the public hearing. Prior to the date of the public hearing, the military may provide comments or analysis to the board [governing body of the local government] regarding the compatibility of the proposed changes with military operations at the base. If the board [governing body of the local government] does not receive a response within 30 days of the notice, the military is deemed to waive the comment period. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance. The proposed changes requiring notice are:

(1) Changes to the zoning map.
(2) Changes that affect the permitted uses of land.
(3) Changes relating to telecommunications towers or windmills.
(4) Changes to proposed new major subdivision preliminary plats.
(5) An increase in the size of an approved subdivision by more than fifty percent (50%) of the subdivision's total land area including developed and undeveloped land. (1923, c. 250, s. 4;

C.S., s. 2776(u); 1927, c. 90; 1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 58; 1977, c. 912, s. 5; 1979, 2nd Sess., c. 1247, s. 36; 1981, c. 891, s. 1; 2004-75, s. 2; 2005-426, s. 1(a); 2013-59, s. 2.)

§ 153A-343. Method of procedure.

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. Except for a county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the board of commissioners that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the board of commissioners that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a county-initiated zoning map amendment.

(c) Repealed by Session Laws 2005-418, s. 4, effective January 1, 2006.

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons. (1973, c. 822, s. 1; 1985, c. 595, s. 1; 1987, c. 807, s. 2; 1989 (Reg. Sess., 1990), c. 980, s. 2; 1993, c. 469, s. 2; 1995, c. 261, s. 1; c. 546, s. 2; 1997-456, s. 25; 2005-418, s. 4(b); 2009-178, s. 1.)

§ 160A-384. Method of procedure.

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. Except for a city-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a

copy of the notice of public hearing. The person or persons required to provide notice shall certify to the city council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a city-initiated zoning map amendment.

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1971, c. 698, s. 1; 1985, c. 595, s. 2; 1987, c. 807, s. 1; 1989 (Reg. Sess., 1990), c. 980, s. 1; 1993, c. 469, s. 1; 1995, c. 546, s. 1; 2005-418, s. 4(a); 2009-178, s. 2.)

§ 153A-345.1. Board of adjustment.

(a) The provisions of G.S. 160A-388 are applicable to counties.

(b) For the purposes of this section, as used in G.S. 160A-388, the term "city council" is deemed to refer to the board of county commissioners, and the terms "city" or "municipality" are deemed to refer to the county.

(c) If a board of county commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall, if practicable, have at least one resident as a member of the board of adjustment; otherwise, the provisions of G.S. 153A-25 regarding qualifications for appointive office shall apply to board of adjustment appointments. (2013-126, s. 3(b).)

§ 160A-388. Board of adjustment.

(a) Composition and Duties. - The zoning or unified development ordinance may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the city council may appoint certain members for less than three years so that the terms of all members shall not expire at the same time. The council may appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member. The ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties and may create and designate specialized boards to hear technical appeals.

(a1) Provisions of Ordinance. - The zoning or unified development ordinance may provide that the board of adjustment hear and decide special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

(a2) Notice of Hearing. - Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel

of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(b) Repealed by Session Laws 2013-126, s. 1, effective October 1, 2013, and applicable to actions taken on or after that date by any board of adjustment.

(b1) Appeals. - The board of adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

(1) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.

(2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.

(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(9) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

(10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(c) Special and Conditional Use Permits. - The ordinance may provide that the board of adjustment may hear and decide special and conditional use permits in accordance with standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits.

(d) Variances. - When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(e) Voting. -

(1) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(2) A member of any board exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e1) Recodified as subdivision (e)(2) by Session Laws 2013-126, s. 1, effective October 1, 2013, and applicable to actions taken on or after that date by any board of adjustment.

(e2) Quasi-Judicial Decisions and Judicial Review. -

(1) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(2) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(f) Oaths. - The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) Subpoenas. - The board of adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. (1923, c. 250, s. 7; C.S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; 1963, c. 1058, s. 3; 1965, c. 864, s. 2; 1967, c. 197, s. 1; 1971, c. 698, s. 1; 1977, c. 912, ss. 9-12; 1979, c. 50; 1979, 2nd Sess., c. 1247, s. 37; 1981, c. 891, s. 7; 1985, c. 397, s. 2; c. 689, s. 30; 1991, c. 512, s. 2; 1993, c. 539, s. 1088; 1994, Ex. Sess., c. 24, s. 14(c); 2005-418, s. 8(a); 2009-421, s. 5; 2013-126, ss. 1, 2(a), 2(b); 2013-410, s. 25(a).)

7. Public Notice for Charter Amendments

§ 160A-102. Amendment by ordinance.

By following the procedure set out in this section, the council may amend the city charter by ordinance to implement any of the optional forms set out in G.S. 160A-101. The council shall first adopt a resolution of intent to consider an ordinance amending the charter. The resolution of intent shall describe the proposed charter amendments briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. At the same time that a resolution of intent is adopted, the council shall also call a public hearing on the proposed charter amendments, the date of the hearing to be not more than 45 days after adoption of the resolution. A notice of the hearing shall be published at least once not less than 10 days prior to the date fixed for the public hearing, and shall contain a summary of the proposed amendments. Following the public hearing, but not earlier than the next regular meeting of the council and not later than 60 days from the date of the hearing, the council may adopt an ordinance amending the charter to implement the amendments proposed in the resolution of intent.

The council may, but shall not be required to unless a referendum petition is received pursuant to G.S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance to a vote. The date fixed for the special election shall be not more than 90 days after adoption of the ordinance.

Within 10 days after an ordinance is adopted under this section, the council shall publish a notice stating that an ordinance amending the charter has been adopted and summarizing its contents and effect. If the ordinance is made effective subject to a vote of the people, the council shall publish a notice of the election in accordance with G.S. 163-287, and need not publish a separate notice of adoption of the ordinance.

The council may not commence proceedings under this section between the time of the filing of a valid initiative petition pursuant to G.S. 160A-104 and the date of any election called pursuant to such petition. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 20; 1979, 2nd Sess., c. 1247, s. 11.)

F. ETHICS EDUCATION AND CODE ADOPTION REQUIREMENTS FOR NORTH CAROLINA LOCAL ELECTED OFFICIALS

***Adapted by Fleming Bell from materials published on the* School of Government's website at *http://www.sog.unc.edu/node/1111*.**

ETHICS EDUCATION REQUIREMENTS

North Carolina law (G.S. 160A-87) requires all members of governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to office and again within 12 months after each subsequent election or appointment to office.

The ethics training requirement is an ongoing obligation, triggered by each subsequent re-election or reappointment to office. It must cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level.

WHERE CAN ELECTED OFFICIALS GET THE ETHICS TRAINING?

In collaboration with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities, the School of Government provides ethics training for city and county governing board members. School board members receive their training through the North Carolina School Boards Association. Sanitary District board members may participate in city and county programs conducted by the School of Government. The training may also be provided by other qualified sources of the board's choosing.

THE CLERK'S IMPORTANT ROLE IN THE ETHICS TRAINING PROCESS

The clerk to each governing board must maintain a record verifying receipt of the ethics education by each board member. The obligation to take the training and obtain verification of compliance with the law rests with the board member.

CURRENT AND FUTURE ETHICS TRAINING OPPORTUNITIES

Two hours of ethics training is offered during the parallel courses "Essentials of Municipal Government" and "Essentials of County Government," which are offered in alternating years at several locations around the State. The program includes content that is relevant both to incumbents and to newly elected officials. Registration for these programs is available on the School of Government's website.

Ethics training is also often offered during the Annual Conferences of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners. Registration for those programs takes place through the League and the Association.

In addition, the School of Government sometimes offers online ethics training. Information is posted on the School's website whenever an online program is developed.

Finally, as noted above, local governing boards are free to develop their own ethics training programs using qualified sources.

Questions for Discussion.

1. **A newly elected governing board member has just returned from the School of Government's "Essentials" program and mentions to you (the clerk) in passing that he really enjoyed Professors Frayda Bluestein's and Norma Houston's session on ethics. Has this official met the requirements of the local government ethics education law been met? Is there any action that you should take?**

2. **Because scheduling conflicts prevented two governing board members from participating in the School of Government's ethics education program, your presiding officer wants the local government's attorney to conduct the mandatory ethics education program for these board members. May the attorney conduct the program? If so, what, if any, action must be taken to authorize this?**

3. **Board member Feisty has refused to participate in the mandatory ethics education program. Does she face any consequences or penalties? Can the Board take any action?**

CODES OF ETHICS

North Carolina law (G.S. 160A-86) also requires all North Carolina cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties to adopt a resolution or policy containing a code of ethics to guide actions by the governing board members in the performance of their official duties as members of that governing board. All boards were required to adopt their original ethics policy on or before January 1, 2011. Boards are free to revise their policies whenever they wish.

Coverage of Codes

The ethics policy must address at least five key responsibilities of board members, responsibilities that reflect concern for ethical principles as well as for the effects of the board members' decisions on others.

The five areas to be addressed are:

1. **The need *to obey all applicable laws* regarding official actions taken as a board member.** For example, the member must honor his or her oath of office, in which the member swore to uphold the constitution and laws.

2. **The need *to uphold the integrity and independence* of the board member's office.** Among other things, this principle requires board members to make decisions that are based on the public good and not on their desires or considerations of special interest.

3. **The need *to avoid impropriety* in the exercise of the board member's official duties.** Recall that board members are to act as "especially responsible citizens," who are to honor the public trust" as they carry out their duties. Their official actions should be above reproach.

4. **The need to *faithfully perform* the duties of the office.** A public official who acts faithfully is one whom others can trust and respect.

5. **The need *to conduct the affairs of the governing board in an open and public manner*, including complying with all applicable laws governing open meetings and public records.** A public official who is honest, fair, and caring, and honors the public trust will honor the spirit as well as the letter of the law. He or she will see openness or transparency is an important part of that responsibility.

The statute leaves local boards a good deal of leeway in deciding what their codes will contain, as long as the code addresses the five topics listed above. Codes may be very detailed, or they may be very general. They may state aspirations towards which the board is striving, or they may purport to discourage certain board actions. Boards may look to model local government codes of ethics for guidance in developing or revising their resolutions or policies (please see the next paragraph).

Additional Information and Drafting Assistance

A committee convened by School of Government faculty member Fleming Bell drafted a model code of ethics. A PDF version and hard copy version are available for purchase from the links below.

A Model Code of Ethics for North Carolina Elected Officials with Guidelines and Appendixes (PDF Format)

A Model Code of Ethics for North Carolina Elected Officials with Guidelines and Appendixes (Hard Copy Format)

Please go to http://www.sog.unc.edu/node/1113 for more relevant statutes, FAQ's about coverage of the new law, and other useful information.

G. 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 relatively 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.

H. 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 and they must also take an oath.

_____ _____ 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.

_____ _____ 6. Closed sessions may be held whenever and for whatever purposes a public body desires.

_____ _____ 7. Licenses are required for closing-out sales held in unincorporated areas as well as for those conducted within cities and towns.

_____ _____ 8. Procedures for adopting and filing ordinances, for giving meeting notices, and for holding public hearings and public comment periods will not be covered in the sessions on "How Governing Boards Do Their Work," since they are primarily the concern of the board itself and not the clerk.

_____ _____ 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. While the clerk is legally required to keep an up-to-date record of which board members have received their mandatory ethics training, the clerk is not responsible for insuring that the board members fulfill the training requirement.

_____ _____ 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 clerk has almost no responsibility under the gender equity reporting law, so he or she should not spend much time learning about it.

_____ _____ 13. Governing board committees are subject to the open meetings law to the same extent as the board itself. This means that a three-person committee could be holding a meeting subject to the law if one member calls another on the telephone to discuss committee business.

_____ _____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 and regional agency secretaries are essential to the proper functioning of local government in North Carolina.