

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 932  
HOUSE BILL 170

AN ACT TO PROVIDE ADDITIONAL REMEDIES FOR VIOLATIONS OF THE  
OPEN MEETINGS LAW.

The General Assembly of North Carolina enacts:

Section 1. Article 33C of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 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."

Sec. 2. Article 33C of Chapter 143 of the General Statutes is further amended by adding a new section to read:

"§ **143-318.16B. Attorney's fees awarded to prevailing party.** – In any action brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court shall make written findings specifying the prevailing party or parties, and shall 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."

Sec. 3. G.S. 143-318.16(c) is repealed.

Sec. 4. G.S. 143-318.10(b) is amended by adding the following at the end: "In addition, for the purposes of this Article 'public body' means any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of that nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed."

Sec. 5. G.S. 143-318.11 is amended by adding a new subdivision to read: "(20) To consider and authorize acquisitions, mergers, joint ventures, or other competitive business activities by or on behalf of: (1) a hospital facility and a nonprofit corporation to which it has been sold or conveyed pursuant to G. S. 131E-8; (2) any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed; or (3) any subsidiary of either nonprofit corporation."

Sec. 6. This act shall become effective October 1, 1986.

In the General Assembly read three times and ratified, this the 8th day of July, 1986.