

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 204

Short Title: Access to Government Act.

(Public)

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Sponsors: Representatives Miller; Jack Hunt and Wood.

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Referred to: Rules.

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February 13, 1989

A BILL TO BE ENTITLED

AN ACT TO ENHANCE AND PROMOTE ACCESS TO GOVERNMENT  
PROCEEDINGS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-318.10 is amended by adding a new subsection to read:

"(e) Every public body shall cause accurate, comprehensive written minutes to be made of all official meetings, including any executive sessions held pursuant to G.S. 143-318.11. Such minutes shall be public records; provided, however, that notwithstanding the provisions of G.S. 132-6, minutes of an executive session may be withheld from public inspection so long as public inspection would frustrate the purpose of the executive session."

Sec. 2. G.S. 143-318.11 reads as rewritten:

**"§ 143-318.11. Executive sessions.**

(a) Permitted Purposes. – A public body may hold an executive session and exclude the public:

(1) To consider the selection of a site or the acquisition by any means or lease as lessee of interests in real property. At the conclusion of all negotiations with regard to the acquisition or lease of real property, if final authorization to acquire or lease is to be given, it shall be given at an open meeting.

(2) To consider and authorize the acquisition by gift or bequest of personal property offered to the public body or the government of which it is a part.

- 1 (3) To consider and authorize the acquisition by any means of paintings,  
2 sculptures, objects of virtu, artifacts, manuscripts, books and papers,  
3 and similar articles and objects that are or will be part of the  
4 collections of a museum, library, or archive.
- 5 (4) To consider the validity, settlement, or other disposition of a claim  
6 against or on behalf of the public body or an officer or employee of the  
7 public body or in which the public body finds that it has a substantial  
8 interest; or the commencement, prosecution, defense, settlement, or  
9 litigation of a potential or pending judicial action or administrative  
10 proceeding in which the public body or an officer or employee of the  
11 public body is a party or in which the public body finds that it has a  
12 substantial interest. During such an executive session, the public body  
13 may ~~give instructions to conduct discussions with an attorney or other~~  
14 ~~agent concerning the handling or settlement of a claim, judicial action,~~  
15 ~~or administrative proceeding; such discussions shall be protected by~~  
16 ~~the attorney-client privilege.~~ If a public body has considered a  
17 settlement in executive session, the terms of that settlement shall be  
18 reported to the public body and entered into its minutes within a  
19 reasonable time after the settlement is concluded.
- 20 ~~(5) To consult with an attorney, to the extent that confidentiality is~~  
21 ~~required in order for the attorney to exercise his ethical duties as a~~  
22 ~~lawyer.~~
- 23 (6) To discuss matters relating to the location or expansion of industries or  
24 other businesses in the area served by the public body.
- 25 (7) To consider matters dealing with specific patients (including but not  
26 limited to all aspects of admission, treatment, and discharge; all  
27 medical records, reports, and summaries; and all charges, accounts,  
28 and credit information pertaining to such a patient).
- 29 (8) To consider the qualifications, competence, performance, character,  
30 fitness, conditions of appointment, or conditions of initial employment  
31 of a public officer or employee or prospective public officer or  
32 employee; or to hear or investigate a complaint, charge or grievance by  
33 or against a public officer or employee. A public body may consider  
34 the appointment or removal of a member of another body in executive  
35 session but may not consider or fill a vacancy among its own  
36 membership except in an open meeting.
- 37 Final action making an appointment or discharge or removal by a  
38 public body having final authority for the appointment or discharge or  
39 removal shall be taken in an open meeting. If a public body considers  
40 an appointment to another body, except a committee composed of  
41 members of the public body, in executive session, it shall, before  
42 making that appointment, present at an open meeting a written list of  
43 the persons then being considered for the appointment, and that list  
44 shall on the same day be made available for public inspection in the

- 1 office of the clerk or secretary to the public body. The public body  
2 may not make the appointment before the seventh day after the day on  
3 which the list was presented.
- 4 (9) To consider the employment, performance, or discharge of an  
5 independent contractor. Any action employing or authorizing the  
6 employment or discharging or directing the discharge of an  
7 independent contractor shall be taken at an open meeting.
- 8 (10) To hear, consider, and decide (i) disciplinary cases involving students  
9 or pupils and (ii) questions of reassignment of pupils under G.S. 115-  
10 178.
- 11 (11) To identify candidates for, assess the candidates' worthiness for, and  
12 choose the recipients of honors, awards, honorary degrees, or citations  
13 bestowed by the public body.
- 14 (12) To consider information, when State or federal law (i) directs that the  
15 information be kept confidential or (ii) makes the confidentiality of the  
16 information a condition of State or federal aid.
- 17 (13) To consider and adopt contingency plans for dealing with, and  
18 consider and take action relating to, strikes, slowdowns, and other  
19 collective employment interruptions.
- 20 (14) To consider and take action necessary to deal with a riot or civil  
21 disorder or with conditions that indicate that a riot or civil disorder is  
22 imminent.
- 23 (15) To plan, conduct, or hear reports concerning investigations of alleged  
24 criminal misconduct.
- 25 (16) To consider and decide matters concerning specific inmates of the  
26 correction system or security problems of the correction system.
- 27 (17) To hear, consider, and decide matters involving admission, discipline,  
28 or termination of members of the medical staff of a public hospital.  
29 Final action on an admission or termination shall be reported at an  
30 open meeting.
- 31 (18) To consider and give instructions relating to the setting or negotiation  
32 of airport landing fees or the negotiation of contracts, including leases,  
33 concerning the use of airport facilities. Final action approving landing  
34 fees or such a contract shall be taken in an open meeting.
- 35 (19) To plan investigations and receive investigative reports requested by a  
36 board of elections concerning election frauds, irregularities, election  
37 contests, or violations of the election laws. Following a public hearing  
38 during which it is alleged or apparent that any election official may  
39 have committed an act of misconduct, a board of elections may meet in  
40 executive session to deliberate, adjudicate, and reach its decision on  
41 whether further action shall be ordered or whether no further action  
42 shall be ordered against any election official. Each member's vote on  
43 the decision shall be a matter of public record.

1 (20) To consider and authorize acquisitions, mergers, joint ventures, or  
2 other competitive business activities by or on behalf of: (i) a hospital  
3 facility and a nonprofit corporation to which it has been sold or  
4 conveyed pursuant to G.S. 131E-8; (ii) any nonprofit corporation  
5 owning the corporation to which the hospital facility has been sold or  
6 conveyed; or (iii) any subsidiary of either nonprofit corporation.

7 (b) ~~General Assembly Committees and Subcommittees. —Except as provided~~  
8 ~~in G.S. 143-318.17, a committee or subcommittee of the General Assembly has the~~  
9 ~~inherent right to hold an executive session when it determines that it is absolutely~~  
10 ~~necessary to have such a session in order to prevent personal embarrassment or when it~~  
11 ~~is in the best interest of the State. Notwithstanding the provisions of G.S. 143-318.11(a),~~  
12 all meetings of all committees and subcommittees of the General Assembly (including  
13 joint committees, joint subcommittees, House-Senate conference committees, and study  
14 committees, shall be held in open session pursuant to reasonable public notice. The  
15 House and Senate shall adopt rules prescribing the timing and manner of distribution of  
16 such public notices. A committee or subcommittee of the General Assembly may meet  
17 in executive session only if it first makes and records in its minutes specific written  
18 findings that an executive session is necessary to prevent the public disclosure of  
19 privileged information concerning a person by or about whom such information is being  
20 presented to the committee or subcommittee. For the purposes of this subsection, a  
21 caucus of the House or Senate appointees to a House-Senate conference committee shall  
22 not constitute a meeting of a committee or subcommittee, and may be held in executive  
23 session. For the purpose of this subsection, the following bodies shall not be considered  
24 to be 'committees or subcommittees of the General Assembly', but shall be considered  
25 to be 'public bodies' as defined in G.S. 143-318.10:

- 26 (1) The Legislative Research Commission;  
27 (2) The Legislative Services Commission;  
28 (3) The Joint Legislative Utility Review Committee;  
29 (4) The Joint Legislative Commission on Governmental Operations; and  
30 (5) The Joint Legislative Commission on Municipal Incorporations.

31 For the purpose of this subsection, the standing Committees on Pensions and  
32 Retirement and the Legislative Ethics Committee shall be considered to be 'committees  
33 or subcommittees of the General Assembly'; provided, however, that proceedings of the  
34 Legislative Ethics Committee conducted pursuant to G.S. 120-103 shall be open or  
35 closed at the option of the individual whose conduct is under inquiry, as prescribed  
36 therein. A committee or subcommittee may take final action only in an open meeting.

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

41 ~~(d) Minutes of Executive Session. — Notwithstanding the provisions of G.S. 132-~~  
42 ~~6, minutes and other records made of an executive session may be withheld from public~~  
43 ~~inspection so long as public inspection would frustrate the purpose of the executive~~  
44 ~~session."~~

1           Sec. 2.1. G.S. 143-318.12(c) reads as rewritten:

2           "(c) This section does not apply to the General Assembly. Each house of the  
3 General Assembly shall provide by rule for notice of meetings of legislative committees and  
4 subcommittees. Notice of meetings of the General Assembly are as provided by G.S. 143-  
5 318.11(b)."

6           Sec. 3. G.S. 143-318.12(b) reads as rewritten:

7           "(1) If a meeting is an adjourned or recessed session of a regular meeting or of  
8 some other meeting, notice of which has been given pursuant to this subsection, and  
9 public body recesses a regular, special or emergency meeting held pursuant to public  
10 notice given in compliance with this subsection, and the time and place of the adjourned  
11 or recessed session has been set during the regular or other meeting at which the the  
12 meeting is to be continued is announced in open session, no further notice is necessary  
13 shall be required."

14           Sec. 4. G.S. 143-318.18 reads as rewritten:

15       **"§ 143-318.18. Exceptions.**

16       This Article does not apply to:

- 17           (1) Grand and petit juries.
- 18           (2) ~~Any public body that is specifically authorized or directed by law to~~  
19 ~~meet in executive or confidential session, to the extent of the~~  
20 ~~authorization or direction.~~
- 21           (3) The Judicial Standards Commission.
- 22           (4) ~~The Legislative Services Commission.~~
- 23           (5) Law enforcement agencies.
- 24           (6) A public body authorized to investigate, examine, or determine the  
25 character and other qualifications of applicants for professional or  
26 occupational licenses or certificates or to take disciplinary actions  
27 against persons holding such licenses or certificates, (i) while  
28 preparing, approving, administering, or grading examinations or (ii)  
29 while meeting with respect to an individual applicant for or holder of  
30 such a license or certificate. This exception does not amend, repeal, or  
31 supercede any other statute that requires a public hearing or other  
32 practice and procedure in a proceeding before such a public body.
- 33           (7) Any public body subject to the Executive Budget Act (G.S. 143-1 **et**  
34 **seq.**) and exercising quasi-judicial functions, during a meeting or  
35 session held solely for the purpose of making a decision in an  
36 adjudicatory action or proceeding.
- 37           (8) The boards of trustees of endowment funds authorized by G.S. 116-36  
38 or G.S. 116-238.
- 39           (9) ~~The Council of State.~~
- 40           (10) The Board of Awards.
- 41           (11) The General Court of Justice."

42           Sec. 5. G.S. 143-318.16A is amended by adding a subsection to read:

43           "(e) This section does not apply to the House of Representatives, the Senate, or to  
44 any committee or subcommittee of the House of Representatives or the Senate."

1           Sec. 6. This act shall become effective July 1, 1989, except that as to its  
2 application to the General Assembly, the Senate, the House of Representatives, the  
3 Legislative Services Commission, or any committee or subcommittee of any of them, it  
4 is effective upon ratification.