

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1128

Short Title: Access to Government Act.

(Public)

Sponsors: Representative Miller.

Referred to: Judiciary II.

April 24, 1991

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 reads as rewritten:

"§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, G.S. 143-318.15, and G.S. 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

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

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

1 of a division thereof; or (vi) the President of The University of North
2 Carolina, or the Chancellor of any constituent institution thereof.

3 In addition, 'public body' means (1) the governing board of a 'public hospital' as defined
4 in G.S. 159-39 and (2) each committee of a public body, except a committee of the
5 governing board of a public hospital if the committee is not a policy-making body. In
6 addition, for the purposes of this Article 'public body' means any nonprofit corporation
7 to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any
8 subsidiary of that nonprofit corporation, and any nonprofit corporation owning the
9 corporation to which the hospital facility has been sold or conveyed.

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

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

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

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

30 "**§ 143-318.11. Executive sessions.**

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

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

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

41 (3) To consider and authorize the acquisition by any means of paintings,
42 sculptures, objects of virtu, artifacts, manuscripts, books and papers,
43 and similar articles and objects that are or will be part of the
44 collections of a museum, library, or archive.

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

- 1 (9) To consider the employment, performance, or discharge of an
2 independent contractor. Any action employing or authorizing the
3 employment or discharging or directing the discharge of an
4 independent contractor shall be taken at an open meeting.
- 5 (10) To hear, consider, and decide (i) disciplinary cases involving students
6 or pupils and (ii) questions of reassignment of pupils under G.S. 115-
7 178.
- 8 (11) To identify candidates for, assess the candidates' worthiness for, and
9 choose the recipients of honors, awards, honorary degrees, or citations
10 bestowed by the public body.
- 11 (12) To consider information, when State or federal law (i) directs that the
12 information be kept confidential or (ii) makes the confidentiality of the
13 information a condition of State or federal aid.
- 14 (13) To consider and adopt contingency plans for dealing with, and
15 consider and take action relating to, strikes, slowdowns, and other
16 collective employment interruptions.
- 17 (14) To consider and take action necessary to deal with a riot or civil
18 disorder or with conditions that indicate that a riot or civil disorder is
19 imminent.
- 20 (15) To plan, conduct, or hear reports concerning investigations of alleged
21 criminal misconduct.
- 22 (16) To consider and decide matters concerning specific inmates of the
23 correction system or security problems of the correction system.
- 24 (17) To hear, consider, and decide matters involving admission, discipline,
25 or termination of members of the medical staff of a public hospital.
26 Final action on an admission or termination shall be reported at an
27 open meeting.
- 28 (18) To consider and give instructions relating to the setting or negotiation
29 of airport landing fees or the negotiation of contracts, including leases,
30 concerning the use of airport facilities. Final action approving landing
31 fees or such a contract shall be taken in an open meeting.
- 32 (19) To plan investigations and receive investigative reports requested by a
33 board of elections concerning election frauds, irregularities, election
34 contests, or violations of the election laws. Following a public hearing
35 during which it is alleged or apparent that any election official may
36 have committed an act of misconduct, a board of elections may meet in
37 executive session to deliberate, adjudicate, and reach its decision on
38 whether further action shall be ordered or whether no further action
39 shall be ordered against any election official. Each member's vote on
40 the decision shall be a matter of public record.
- 41 (20) To consider and authorize acquisitions, mergers, joint ventures, or
42 other competitive business activities by or on behalf of: (i) a hospital
43 facility and a nonprofit corporation to which it has been sold or
44 conveyed pursuant to G.S. 131E-8; (ii) any nonprofit corporation

1 owning the corporation to which the hospital facility has been sold or
2 conveyed; or (iii) any subsidiary of either nonprofit corporation.

3 (b) ~~General Assembly Committees and Subcommittees. —Except as provided~~
4 ~~in G.S. 143-318.17, a committee or subcommittee of the General Assembly has the~~
5 ~~inherent right to hold an executive session when it determines that it is absolutely~~
6 ~~necessary to have such a session in order to prevent personal embarrassment or when it~~
7 ~~is in the best interest of the State. —Notwithstanding the provisions of G.S. 143-~~
8 ~~318.11(a), all meetings of all duly-appointed commissions, committees and~~
9 ~~subcommittees of the General Assembly (including, without limitation, joint~~
10 ~~committees, joint subcommittees, House-Senate conference committees, and study~~
11 ~~committees), shall be held in open session pursuant to reasonable public notice. A~~
12 ~~commission, committee or subcommittee of the General Assembly may meet in~~
13 ~~executive session only if it first makes and records in its minutes specific written~~
14 ~~findings that an executive session is necessary to prevent the public disclosure of~~
15 ~~information which concerns:~~

- 16 (1) A person by or about whom the information is being presented to the
17 committee or subcommittee, and is confidential pursuant to State or
18 federal statute, or pursuant to the attorney-client privilege, the
19 physician-patient privilege, or some other privilege cognizable under
20 North Carolina law;
21 (2) Pending or threatened litigation against the State or an officer of the
22 State in that officer's official capacity; or
23 (3) The acquisition by any means of an interest in real property by the
24 State.

25 A commission, committee or subcommittee may take final action only in an open
26 meeting. For the purposes of this subsection, a meeting of either the House or Senate
27 appointees to a House-Senate conference committee shall not constitute a meeting of a
28 committee or subcommittee, and may be held in executive session.

29 (c) For the purpose of this Article, the following bodies shall not be considered to
30 be 'commissions, committees or subcommittees of the General Assembly', but shall be
31 considered to be 'public bodies' as defined in G.S. 143-318.10:

- 32 (1) The Legislative Research Commission;
33 (2) The Legislative Services Commission; and
34 (3) The Advisory Budget Commission.

35 (d) For the purpose of this Article, the following shall be considered to be
36 'commissions, committees or subcommittees of the General Assembly':

- 37 (1) The Joint Legislative Utility Review Committee;
38 (2) The Joint Legislative Commission on Governmental Operations;
39 (3) The Joint Legislative Commission on Municipal Incorporations;
40 (4) The Commission on the Family;
41 (5) The Joint Select Committee on Low-Level Radioactive Waste;
42 (6) The Environmental Review Commission;
43 (7) The standing Committees on Pensions and Retirement; and

1 (8) The Legislative Ethics Committee; provided, however, that
2 proceedings of the Legislative Ethics Committee conducted pursuant
3 to G.S. 120-103 shall be open or closed at the option of the individual
4 whose conduct is under inquiry, as prescribed therein.

5 (e) A caucus by members of the General Assembly shall not constitute a meeting
6 of either house or of a committee or subcommittee and may be held in private; however,
7 no member of the General Assembly shall participate in a caucus which is called for the
8 purpose of evading or subverting the provisions of this Article. Violations of this
9 Article by members of the General Assembly shall be punishable as prescribed by the
10 rules of the House or the Senate.

11 (e) (f) Calling an Executive Session. – A public body may hold an executive
12 session only upon a motion made and adopted at an open meeting. The motion shall
13 state the general purpose of the executive session and must be approved by the vote of a
14 majority of those present and voting.

15 (d) Minutes of Executive Session. – Notwithstanding the provisions of G.S. 132-
16 6, minutes and other records made of an executive session may be withheld from public
17 inspection so long as public inspection would frustrate the purpose of the executive
18 session."

19 Sec. 2.1. G.S. 143-318.15 is repealed.

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

21 "(1) If a meeting is an adjourned or recessed session of a regular meeting or
22 of some other meeting, notice of which has been given pursuant to this
23 subsection, and public body recesses a regular, special or emergency
24 meeting held pursuant to public notice given in compliance with this
25 subsection, and the time and place of the adjourned or recessed session
26 has been set during the regular or other meeting at which the meeting is
27 to be continued is announced in open session, no further notice is
28 necessary shall be required."

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

30 "**§ 143-318.18. Exceptions.**

31 This Article does not apply to:

32 (1) Grand and petit juries.

33 (2) ~~Any public body that is specifically authorized or directed by law to~~
34 ~~meet in executive or confidential session, to the extent of the~~
35 ~~authorization or direction.~~

36 (3) The Judicial Standards Commission.

37 (4) ~~The Legislative Services Commission.~~

38 (5) Law enforcement agencies.

39 (6) A public body authorized to investigate, examine, or determine the
40 character and other qualifications of applicants for professional or
41 occupational licenses or certificates or to take disciplinary actions
42 against persons holding such licenses or certificates, (i) while
43 preparing, approving, administering, or grading examinations or (ii)
44 while meeting with respect to an individual applicant for or holder of

1 such a license or certificate. This exception does not amend, repeal, or
2 ~~supereede~~ supersede any other statute that requires a public hearing or
3 other practice and procedure in a proceeding before such a public
4 body.

5 (7) Any public body subject to the Executive Budget Act (G.S. 143-1 **et**
6 **seq.**) and exercising quasi-judicial functions, during a meeting or
7 session held solely for the purpose of making a decision in an
8 adjudicatory action or proceeding.

9 (8) The boards of trustees of endowment funds authorized by G.S. 116-36
10 or G.S. 116-238.

11 ~~(9) The Council of State.~~

12 (10) The Board of Awards.

13 (11) The General Court of Justice."

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

15 "(e) This section does not apply to the House of Representatives, the Senate, or
16 any commissions, committees, or subcommittees of the General Assembly."

17 Sec. 6. This act becomes effective September 1, 1991, except that as to its
18 application to commissions, committees, or subcommittees of the General Assembly
19 and the Legislative Services Commission, it is effective upon ratification.