

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 120

Short Title: Open Meetings Law Changes.

(Public)

Sponsors: Representatives G. Miller; Jack Hunt, Gottovi, Hensley, Redwine, Moore, Richardson, Jeffus, DeVane, Bowman, and Kuczmarski.

Referred to: Judiciary I.

February 10, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OPEN MEETINGS LAW.

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. 143-318.14A, 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 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

(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~~

1 office or department, as defined in G.S. 143A-11 and G.S. 143B-6, or
2 of a division thereof.

3 members and (ii) exercises or is authorized to exercise a legislative, policy-making,
4 quasi-judicial, administrative, or advisory function. In addition, 'public body' means (1)
5 the governing board of a 'public hospital' as defined in G.S. 159-39 and (2) ~~each~~
6 ~~committee of a public body, except a committee of the governing board of a public hospital if~~
7 ~~the committee is not a policy-making body.~~ In addition, for the purposes of this Article "public
8 body" ~~means any nonprofit corporation to which a hospital facility has been sold or~~
9 ~~conveyed pursuant to G.S. 131E-8, any subsidiary of that such nonprofit corporation,~~
10 ~~and any nonprofit corporation owning the corporation to which the hospital facility has~~
11 ~~been sold or conveyed.~~

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

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

26 (e) Every public body shall keep full and accurate minutes of all official
27 meetings, ~~excluding any executive sessions including any closed meetings~~ held pursuant to
28 G.S. 143-318.11. Such minutes may be in written form or, at the option of the public
29 body, may be in the form of sound or video and sound recordings. Such minutes shall
30 be public records within the meaning of G.S. 132-6, ~~the Public Records Law, G.S. 132-1~~
31 ~~et seq.; provided, however, that minutes of a closed meeting conducted in compliance~~
32 ~~with G.S. 143-318.11 may be withheld from public inspection so long as public~~
33 ~~inspection would frustrate the purpose of a closed meeting."~~

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

35 "**§ 143-318.11. ~~Executive sessions. Closed meetings.~~**

36 (a) Permitted Purposes. – A public body may hold ~~an executive session a closed~~
37 ~~meeting~~ and exclude the ~~public; public only:~~

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

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

1 executive session, it shall, before making that appointment,
2 present at an open meeting a written list of the persons then
3 being considered for the appointment, and that list shall on the
4 same day be made available for public inspection in the office
5 of the clerk or secretary to the public body. The public body
6 may not make the appointment before the seventh day after the
7 day on which the list was presented.

- 8 (9) To consider the employment, performance, or discharge of an
9 independent contractor. Any action employing or authorizing the
10 employment or discharging or directing the discharge of an
11 independent contractor shall be taken at an open meeting.
- 12 (10) To hear, consider, and decide (i) disciplinary cases involving students
13 or pupils and (ii) questions of reassignment of pupils under G.S. 115-
14 178.
- 15 (11) To identify candidates for, assess the candidates' worthiness for, and
16 choose the recipients of honors, awards, honorary degrees, or citations
17 bestowed by the public body.
- 18 (12) To consider information, when State or federal law (i) directs that the
19 information be kept confidential or (ii) makes the confidentiality of the
20 information a condition of State or federal aid.
- 21 (13) To consider and adopt contingency plans for dealing with, and
22 consider and take action relating to, strikes, slowdowns, and other
23 collective employment interruptions.
- 24 (14) To consider and take action necessary to deal with a riot or civil
25 disorder or with conditions that indicate that a riot or civil disorder is
26 imminent.
- 27 (15) To plan, conduct, or hear reports concerning investigations of alleged
28 criminal misconduct.
- 29 (16) To consider and decide matters concerning specific inmates of the
30 correction system or security problems of the correction system.
- 31 (17) To hear, consider, and decide matters involving admission, discipline,
32 or termination of members of the medical staff of a public hospital.
33 Final action on an admission or termination shall be reported at an
34 open meeting.
- 35 (18) To consider and give instructions relating to the setting or negotiation
36 of airport landing fees or the negotiation of contracts, including leases,
37 concerning the use of airport facilities. Final action approving landing
38 fees or such a contract shall be taken in an open meeting.
- 39 (19) To plan investigations and receive investigative reports requested by a
40 board of elections concerning election frauds, irregularities, election
41 contests, or violations of the election laws. Following a public hearing
42 during which it is alleged or apparent that any election official may
43 have committed an act of misconduct, a board of elections may meet in
44 executive session to deliberate, adjudicate, and reach its decision on

1 ~~whether further action shall be ordered or whether no further action~~
 2 ~~shall be ordered against any election official. Each member's vote on~~
 3 ~~the decision shall be a matter of public record.~~

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

10 (1) When a closed meeting is required to prevent the disclosure of
 11 information that is privileged or confidential pursuant to a statute of
 12 this State or of the United States;

13 (2) When a closed meeting is required to prevent the premature disclosure
 14 of an honorary degree, scholarship, prize or similar award; or

15 (3) When a closed meeting is required to permit a public body to receive
 16 advice from an attorney employed or retained by the public body with
 17 respect to a judicial proceeding in which the public body has a direct
 18 interest. As used herein, 'judicial proceeding' shall mean a pending or
 19 imminent lawsuit, appeal, arbitration, or administrative proceeding
 20 before a state or federal court or other judicial or quasi-judicial
 21 tribunal. The public body shall be deemed to have a 'direct interest' in
 22 a judicial proceeding if it is a party or if it is the governing or
 23 representative body of a party. A judicial proceeding shall be deemed
 24 to be 'imminent' if it has been publicly threatened or if the public body
 25 has been notified in writing of its probable occurrence.

26 (b) ~~Repealed by Session Laws 1991, c. 694, s. 4.~~

27 (c) ~~Calling an Executive Session a Closed Meeting.~~ – A public body may hold an
 28 ~~executive session a closed meeting only upon a motion duly made and adopted at an open~~
 29 ~~meeting. The motion shall state the general purpose of the executive session and must be~~
 30 ~~approved by the vote of a majority of those present and voting. Every motion to close a~~
 31 ~~meeting shall cite one or more of the permissible purposes listed in subsection (a) of this~~
 32 ~~section. A motion based on subdivision (a)(1) of this section shall also state the name~~
 33 ~~or citation of the statute that renders the information to be discussed privileged or~~
 34 ~~confidential. A motion based on subdivision (a)(3) of this section shall identify the~~
 35 ~~parties or potential parties in each judicial proceeding concerning which the public body~~
 36 ~~expects to receive advice during the closed meeting.~~

37 (d) ~~Minutes of Executive Session.~~—Notwithstanding the provisions of G.S. 132-
 38 ~~6, minutes and other records made of an executive session may be withheld from public~~
 39 ~~inspection so long as public inspection would frustrate the purpose of the executive~~
 40 ~~session."~~

41 Sec. 3. G.S. 143-318.16B reads as rewritten:

42 "**§ 143-318.16B. Attorney's fees awarded to prevailing party. Assessments and awards**
 43 **of attorneys' fees.**

1 (a) ~~In any~~ When an action is brought pursuant to G.S. 143-318.16 or G.S. 143-
2 318.16A, ~~and the court shall make written findings specifying the prevailing party or~~
3 ~~parties, and shall award the prevailing party or parties a reasonable attorney's fee, to be~~
4 ~~taxed against the losing party or parties as part of the costs.~~ determines that a public
5 body acted in violation of this Article, the court shall assess a reasonable attorney's fee
6 against the public body and award it to the person or persons instituting the action as
7 part of the costs. The court may order that all or any portion of any fee so assessed be
8 paid personally by any individual member or members of the public body found by the
9 court to have knowingly or intentionally committed, caused, permitted, suborned or
10 participated in the violation; provided, that no such order shall issue in any case where
11 the public body seeks the advice of an attorney employed or retained by the public
12 body, and such advice is followed.

13 (b) When an action is brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A,
14 and the court determines that the action was filed in bad faith or was frivolous, the court
15 may assess a reasonable attorney's fee against the person or persons instituting the
16 action and award it to the defendants as part of the costs."

17 Sec. 4. Article 33C of Chapter 143 of the General Statutes is amended by
18 adding two new sections to read:

19 **"§ 143-318.16C. Accelerated hearing; priority.**

20 Actions brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A shall be set down
21 for immediate hearing, and subsequent proceedings in such actions shall be accorded
22 priority by the trial and appellate courts.

23 **"§ 143-318.16D. Local acts.**

24 Any reference in any city charter or local act to an 'executive session' is amended to
25 read 'closed meeting'."

26 Sec. 5. G.S. 143B-282.1(a)(3) reads as rewritten:

27 "(3) Deliberations of the Commission shall be conducted in its public
28 meeting unless the Commission determines that consultation with its
29 counsel should be held in ~~an executive session~~ a closed meeting
30 pursuant to G.S. 143-318.11."

31 Sec. 6. G.S. 90-16 reads as rewritten:

32 **"§ 90-16. Board to keep record; publication of names of licentiates; transcript as**
33 **evidence; receipt of evidence concerning treatment of patient who has**
34 **not consented to public disclosure.**

35 The Board of Examiners shall keep a regular record of its proceedings in a book kept
36 for that purpose, together with the names of the members of the Board present, the
37 names of the applicants for license, and other information as to its actions. The Board of
38 Examiners shall cause to be entered in a separate book the name of each applicant to
39 whom a license is issued to practice medicine or surgery, along with any information
40 pertinent to such issuance. The Board of Examiners shall publish the names of those
41 licensed in three daily newspapers published in the State of North Carolina, within 30
42 days after granting the same. A transcript of any such entry in the record books, or
43 certificate that there is not entered therein the name and proficiency or date of granting
44 such license of a person charged with the violation of the provisions of this Article,

1 certified under the hand of the secretary and the seals of the Board of Medical
2 Examiners of the State of North Carolina, shall be admitted as evidence in any court of
3 this State when it is otherwise competent.

4 The Board may in ~~an executive session~~ a closed meeting receive evidence involving
5 or concerning the treatment of a patient who has not expressly or impliedly consented to
6 the public disclosure of such treatment as may be necessary for the protection of the
7 rights of such patient or of the accused physician and the full presentation of relevant
8 evidence. All records, papers and other documents containing information collected and
9 compiled by the Board, or its members or employees as a result of investigations,
10 inquiries or interviews conducted in connection with a licensing or disciplinary matter
11 shall not be considered public records within the meaning of Chapter 132 of the General
12 Statutes; provided, however, that any notice or statement of charges against any
13 licensee, or any notice to any licensee of a hearing in any proceeding shall be a public
14 record within the meaning of Chapter 132 of the General Statutes, notwithstanding that
15 it may contain information collected and compiled as a result of any such investigation,
16 inquiry or interview; and provided, further, that if any such record, paper or other
17 document containing information theretofore collected and compiled by the Board, as
18 hereinbefore provided, is received and admitted in evidence in any hearing before the
19 Board, it shall thereupon be a public record within the meaning of Chapter 132 of the
20 General Statutes.

21 In any proceeding before the Board, in any record of any hearing before the Board,
22 and in the notice of the charges against any licensee (notwithstanding any provision
23 herein to the contrary) the Board may withhold from public disclosure the identity of a
24 patient who has not expressly or impliedly consented to the public disclosure of
25 treatment by the accused physician."

26 Sec. 7. G.S. 90-270.15(c) reads as rewritten:

27 "(c) Except as provided otherwise in this Article, the procedure for revocation,
28 suspension, denial, limitations of the license, or other disciplinary, remedial, or
29 rehabilitative actions, shall be in accordance with the provisions of Chapter 150B of the
30 General Statutes. The Board is required to provide the opportunity for a hearing under
31 Chapter 150B to any applicant whose license is denied or to whom licensure is offered
32 subject to any restrictions, probation, disciplinary action, remediation, or other
33 conditions or limitations, or to any licensee before revoking, suspending, or restricting a
34 license or imposing any other disciplinary action or remediation. If the applicant or
35 licensee waives the opportunity for a hearing, the Board's denial, revocation,
36 suspension, or other proposed action becomes final without a hearing having been
37 conducted. Notwithstanding the foregoing, no applicant or licensee is entitled to a
38 hearing for failure to pass an examination. In any proceeding before the Board, in any
39 record of any hearing before the Board, in any complaint or notice of charges against
40 any licensee or applicant for licensure, and in any decision rendered by the Board, the
41 Board may withhold from public disclosure the identity of any clients or patients who
42 have not consented to the public disclosure of treatment by the licensee or applicant.
43 The Board may close a hearing to the public and receive in ~~executive session~~ closed
44 meeting evidence involving or concerning the treatment or delivery of psychological

1 services to a client or a patient who has not consented to the public disclosure of such
2 treatment or services as may be necessary for the protection and rights of such patient or
3 client of the accused applicant or licensee and the full presentation of relevant evidence.
4 All records, papers and other documents containing information collected and compiled
5 by or on behalf of the Board, as a result of investigations, inquiries or interviews
6 conducted in connection with licensing or disciplinary matters will not be considered
7 public records within the meaning of Chapter 132 of the General Statutes; provided,
8 however, that any notice or statement of charges against any licensee or applicant, or
9 any notice to any licensee or applicant of a hearing in any proceeding, or any decision
10 rendered in connection with a hearing in any proceeding, shall be a public record within
11 the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain
12 information collected and compiled as a result of such investigation, inquiry, or hearing
13 except that identifying information concerning the treatment or delivery of services to a
14 patient or client who has not consented to the public disclosure of such treatment or
15 services may be deleted; and provided, further, that if any such record, paper or other
16 document containing information theretofore collected and compiled by or on behalf of
17 the Board, as hereinbefore provided, is received and admitted in evidence in any hearing
18 before the Board, it shall thereupon be a public record within the meaning of Chapter
19 132 of the General Statutes, subject to any deletions of identifying information
20 concerning the treatment or delivery of psychological services to a patient or client who
21 has not consented to the public disclosure of such treatment or services."

22 Sec. 8. G.S. 90-390(c) reads as rewritten:

23 "(c) Except as otherwise provided in this Article, the procedure for revocation,
24 suspension, refusal, or other limitations of the certificate shall be in accordance with the
25 provisions of Chapter 150B of the General Statutes. In any proceeding or record of any
26 hearing before the Board, and in any complaint or notice of charges against any certified
27 fee-based pastoral counselor or certified fee-based pastoral counseling associate and in
28 any decision rendered by the Board, the Board shall endeavor to withhold from public
29 disclosure the identity of any counselees or clients who have not consented to the public
30 disclosure of treatment by the certified fee-based pastoral counselor or certified fee-
31 based pastoral counseling associate. The Board may close a hearing to the public and
32 receive in ~~executive session~~ a closed meeting evidence concerning the treatment or
33 delivery of pastoral counseling services to a counselee or a client who has not consented
34 to public disclosure of treatment or services, as may be necessary for the protection of
35 the counselee's or client's rights and the full presentation of relevant evidence. All
36 records, papers, and documents containing information collected and compiled by or on
37 behalf of the Board as a result of investigations, inquiries, or interviews conducted in
38 connection with certification or disciplinary matters are not public records within the
39 meaning of Chapter 132 of the General Statutes. However, any notice or statement of
40 charges against any certified fee-based pastoral counselor or certified fee-based pastoral
41 counseling associate, any notice to any certified fee-based pastoral counselor or certified
42 fee-based pastoral counseling associate of a hearing in any proceeding, or any decision
43 rendered in connection with a hearing in any proceeding is a public record within the
44 meaning of Chapter 132 of the General Statutes, except that identifying information

1 concerning the treatment or delivery of services to a counselee or client who has not
2 consented to the public disclosure of such treatment or services may be deleted. Any
3 record, paper, or other document containing information collected and compiled by or
4 on behalf of the Board, as provided in this section, that is received and admitted in
5 evidence in any hearing before the Board shall be a public record within the meaning of
6 Chapter 132 of the General Statutes, subject to any deletions of identifying information
7 concerning the treatment or delivery of pastoral counseling services to a counselee or
8 client who has not consented to public disclosure of the treatment or services."

9 Sec. 9. G.S. 120-131(b)(4) reads as rewritten:

10 "(4) Bill, resolution, memorandum, written analysis, letter, or other
11 document resulting from a drafting or information request and it has
12 been distributed at a legislative commission or standing committee or
13 subcommittee meeting not held in executive session, closed meeting,
14 or on the floor of a house."

15 Sec. 10. This act is effective upon ratification.