

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 204

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Short Title: Access to Government Act.

(Public)

Sponsors:

Referred to:

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 written minutes or may, in the alternative and in its sole discretion, cause sound or video recordings, to be made of all official meetings, excluding any executive sessions held pursuant to G.S. 143-318.11. Notwithstanding the provisions of G.S. 132-6, minutes, and sound and video recordings of an executive session may be withheld from public inspection so long as public inspection would frustrate the purpose of the executive session."

Sec. 1.1. G.S. 143-318.10(b) reads as rewritten:

"(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

1 political subdivision or public corporation, (iv) an ordinance,  
2 resolution, or other action of the governing board of one or more  
3 counties, cities, school administrative units, or other political  
4 subdivisions or public corporations, or (v) an executive order of the  
5 Governor or comparable formal action of the head of a principal State  
6 office or department, as defined in G.S. 143A-11 and G.S. 143B-6, or  
7 of a division thereof.

8 In addition, 'public body' means (1) the governing board of a 'public hospital' as defined  
9 in G.S. 159-39 and (2) each committee of a public body, except a committee of the  
10 governing board of a public hospital if the committee is not a policy-making body. In  
11 addition, for the purposes of this Article 'public body' means any nonprofit corporation  
12 to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any  
13 subsidiary of that nonprofit corporation, and any nonprofit corporation owning the  
14 corporation to which the hospital facility has been sold or conveyed. In addition,  
15 'public body' means the Governor's Cabinet. The 'Governor's Cabinet' consists of the  
16 heads of the departments named in G.S. 143B-2. In addition, any meeting between the  
17 Governor and any officer or employee of the Office of State Budget and Management  
18 for the purpose of formulating or preparing the State budget is an official meeting of a  
19 public body."

20 Sec. 1.2. G.S. 143-318.10(d) reads as rewritten:

21 "(d) 'Official meeting' means a meeting, assembly, or gathering together at any  
22 time or place or the simultaneous communication by conference telephone or other  
23 electronic means of a majority of the members of a public body for the purpose of  
24 conducting hearings, participating in deliberations, or voting upon or otherwise  
25 transacting the public business within the jurisdiction, real or apparent, of the public  
26 body, provided, however, that the requirement that the matters be within the  
27 jurisdiction, real or apparent, of the public body, does not apply to the Governor's  
28 Cabinet. However, a social meeting or other informal assembly or gathering together of  
29 the members of a public body does not constitute an official meeting unless called or  
30 held to evade the spirit and purposes of this Article."

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

32 "**§ 143-318.11. Executive sessions.**

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

- 35 (1) To consider the selection of a site or the acquisition by any means or  
36 lease as lessee of interests in real property. At the conclusion of all  
37 negotiations with regard to the acquisition or lease of real property, if  
38 final authorization to acquire or lease is to be given, it shall be given at  
39 an open meeting.
- 40 (2) To consider and authorize the acquisition by gift or bequest of personal  
41 property offered to the public body or the government of which it is a  
42 part.
- 43 (3) To consider and authorize the acquisition by any means of paintings,  
44 sculptures, objects of virtu, artifacts, manuscripts, books and papers,

1 and similar articles and objects that are or will be part of the  
2 collections of a museum, library, or archive.

3 (4) To consider the validity, settlement, or other disposition of a claim  
4 against or on behalf of the public body or an officer or employee of the  
5 public body or in which the public body finds that it has a substantial  
6 interest; or the commencement, prosecution, defense, settlement, or  
7 litigation of a potential or pending judicial action or administrative  
8 proceeding in which the public body or an officer or employee of the  
9 public body is a party or in which the public body finds that it has a  
10 substantial interest. During such an executive session, the public body  
11 may give instructions to an attorney or other agent concerning the  
12 handling or settlement of a claim, judicial action, or administrative  
13 proceeding. If a public body has considered a settlement in executive  
14 session, the terms of that settlement shall be reported to the public  
15 body and entered into its minutes within a reasonable time after the  
16 settlement is concluded.

17 (5) To consult with an attorney employed or retained by the public body,  
18 to the extent that confidentiality is required in order ~~for the attorney to~~  
19 ~~exercise his ethical duties as a lawyer~~ to preserve the attorney-client  
20 privilege between the attorney and the public body.

21 (6) To discuss matters relating to the location or expansion of industries or  
22 other businesses in the area served by the public body.

23 (7) To consider matters dealing with specific patients (including but not  
24 limited to all aspects of admission, treatment, and discharge; all  
25 medical records, reports, and summaries; and all charges, accounts,  
26 and credit information pertaining to such a patient).

27 (8) To consider the qualifications, competence, performance, character,  
28 fitness, conditions of appointment, or conditions of initial employment  
29 of a public officer or employee or prospective public officer or  
30 employee; or to hear or investigate a complaint, charge or grievance by  
31 or against a public officer or employee. A public body may consider  
32 the appointment or removal of a member of another body in executive  
33 session but may not consider or fill a vacancy among its own  
34 membership except in an open meeting.

35 Final action making an appointment or discharge or removal by a  
36 public body having final authority for the appointment or discharge or  
37 removal shall be taken in an open meeting. If a public body considers  
38 an appointment to another body, except a committee composed of  
39 members of the public body, in executive session, it shall, before  
40 making that appointment, present at an open meeting a written list of  
41 the persons then being considered for the appointment, and that list  
42 shall on the same day be made available for public inspection in the  
43 office of the clerk or secretary to the public body. The public body

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

1 facility and a nonprofit corporation to which it has been sold or  
2 conveyed pursuant to G.S. 131E-8; (ii) any nonprofit corporation  
3 owning the corporation to which the hospital facility has been sold or  
4 conveyed; or (iii) any subsidiary of either nonprofit corporation.

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

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

28 A commission, committee or subcommittee may take final action only in an open  
29 meeting. For the purposes of this subsection, a meeting of either the House or Senate  
30 appointees to a House-Senate conference committee shall not constitute a meeting of a  
31 committee or subcommittee, and may be held in executive session. For the purposes of  
32 this subsection, a meeting among the chairman and subcommittee chairmen of a  
33 standing committee of either the House or Senate shall not constitute a meeting of a  
34 committee or subcommittee, and may be held in executive session.

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

- 38 (1) The Legislative Research Commission;
- 39 (2) The Legislative Services Commission;
- 40 (3) The Advisory Budget Commission;
- 41 (4) The Joint Legislative Utility Review Committee;
- 42 (5) The Joint Legislative Commission on Governmental Operations;
- 43 (6) The Joint Legislative Commission on Municipal Incorporations;
- 44 (7) The Commission on Children and Youth;

- 1           (8) The Joint Select Committee on Low-Level Radioactive Waste;  
 2           (9) The Environmental Review Commission; and  
 3           (10) The standing Committees on Pensions and Retirement.

4       (d) Violations of this Article by members of the General Assembly shall be  
 5 punishable as prescribed by the rules of the House or the Senate.

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

10       ~~(d) Minutes of Executive Session.—Notwithstanding the provisions of G.S. 132-~~  
 11 ~~6, minutes and other records made of an executive session may be withheld from public~~  
 12 ~~inspection so long as public inspection would frustrate the purpose of the executive~~  
 13 ~~session."~~

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

15       Sec. 3. G.S. 143-318.12(b)(1) reads as rewritten:

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

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

25       "**§ 143-318.18. Exceptions.**

26       This Article does not apply to:

- 27       (1) Grand and petit juries.  
 28       (2) ~~Any public body that is specifically authorized or directed by law to~~  
 29 ~~meet in executive or confidential session, to the extent of the~~  
 30 ~~authorization or direction.~~ Caucuses of members of the General  
 31 Assembly.  
 32       (3) The Judicial Standards Commission.  
 33       ~~(4) The Legislative Services Commission.~~  
 34       (5) Law enforcement agencies.  
 35       (6) A public body authorized to investigate, examine, or determine the  
 36 character and other qualifications of applicants for professional or  
 37 occupational licenses or certificates or to take disciplinary actions  
 38 against persons holding such licenses or certificates, (i) while  
 39 preparing, approving, administering, or grading examinations or (ii)  
 40 while meeting with respect to an individual applicant for or holder of  
 41 such a license or certificate. This exception does not amend, repeal, or  
 42 ~~supercede~~ ~~supersede~~ any other statute that requires a public hearing or  
 43 other practice and procedure in a proceeding before such a public  
 44 body.

- 1           (7) Any public body subject to the Executive Budget Act (G.S. 143-1 **et**  
2           **seq.**) and exercising quasi-judicial functions, during a meeting or  
3           session held solely for the purpose of making a decision in an  
4           adjudicatory action or proceeding.
- 5           (8) The boards of trustees of endowment funds authorized by G.S. 116-36  
6           or G.S. 116-238.
- 7           (9) ~~The Council of State.~~ The Legislative Ethics Committee, created by  
8           G.S. 120-99.
- 9           (10) The Board of Awards.
- 10          (11) The General Court of Justice."
- 11          Sec. 5. G.S. 143-318.16A is amended by adding a subsection to read:
- 12          "(e) This section does not apply to the House of Representatives; the Senate; any  
13          commissions, committees, or subcommittees of the General Assembly; or any of the  
14          commissions or committees enumerated in G.S. 143-318.11(c)."
- 15          Sec. 6. This act shall become effective September 1, 1989, except that as to  
16          its application to commissions, committees, or subcommittees of the General Assembly  
17          and the Legislative Services Commission, it is effective upon ratification.