

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

2

HOUSE BILL 14
Committee Substitute Favorable 5/14/91

Short Title: Open Meetings.

(Public)

Sponsors:

Referred to:

February 4, 1991

A BILL TO BE ENTITLED

AN ACT TO REVISE THE OPEN MEETINGS LAW AND THE EXECUTIVE BUDGET ACT IN ORDER TO ENHANCE OPEN GOVERNMENT.

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 keep full and accurate minutes to be kept of all official meetings, including any executive sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video recordings. Such minutes shall be public records within the meaning of G.S. 132-6; provided, however, that minutes of an executive session may be withheld from public inspection so long as public inspection would frustrate the purpose for which the executive session was called."

Sec. 2. G.S. 143-318.11(a)(5) reads as rewritten:

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

Sec. 3. G.S. 143-318.11(b) reads as rewritten:

"(b) General Assembly Committees and Subcommittees. —Except as provided in G.S. 143-318.17, a committee or subcommittee of the General Assembly has the inherent right to hold an executive session when it determines that it is absolutely necessary to have such a session in order to prevent personal embarrassment or when it is in the best interest of the State. —Notwithstanding the provisions of G.S.

1 143-318.11(a), all meetings of all duly appointed commissions, committees and
2 subcommittees of the General Assembly (including, without limitation, joint
3 committees, joint subcommittees, House-Senate conference committees, and study
4 committees), shall be held in open session pursuant to reasonable public notice. Notice
5 given openly at a session of the Senate or of the House is deemed to be reasonable
6 public notice. A commission, committee or subcommittee of the General Assembly may
7 meet in executive session only if it first makes and records in its minutes specific
8 written findings that an executive session is necessary to prevent the public disclosure
9 of information which concerns:

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

19 A commission, committee or subcommittee may take final action only in an open
20 meeting. For the purposes of this subsection, a meeting of the House appointees to a
21 House-Senate conference committee shall not constitute a meeting of a committee or
22 subcommittee if no Senate appointee to the conference committee is present, and may
23 be held in executive session. For the purposes of this subsection, a meeting of the
24 Senate appointees to a House-Senate conference committee shall not constitute a
25 meeting of a committee or subcommittee if no House appointee to the conference
26 committee is present, and may be held in executive session."

27 Sec. 4. G.S. 143-318.11(c) reads as rewritten:

28 "(c) Calling an Executive Session. – A public body may hold an executive session
29 only upon a motion made and adopted at an open meeting. The motion shall state the
30 ~~general~~-purpose of the executive session ~~and~~ with sufficient specificity as to permit
31 persons hearing or reading the motion to understand the nature of the matters and things
32 to be discussed in the executive session. The motion must be approved by the vote of a
33 majority of those present and voting."

34 Sec. 5. G.S. 143-318.11(d) is repealed.

35 Sec. 6. G.S. 143-318.11 is amended by adding the following new subsections
36 to read:

37 "(e) Coverage of specific legislative entities as public bodies. – For the purpose of
38 this Article, the following bodies shall not be considered to be 'commissions,
39 committees, or subcommittees of the General Assembly', but shall be considered to be
40 'public bodies' as defined in G.S. 143-318.10:

- 41 (1) The Legislative Research Commission;
42 (2) The Legislative Services Commission; and
43 (3) The Advisory Budget Commission.

1 (f) Coverage of specific legislative entities as instrumentalities of the General
 2 Assembly. – For the purpose of this Article, the following shall be considered to be
 3 'commissions, committees, or subcommittees of the General Assembly':

- 4 (1) The Joint Legislative Utility Review Committee;
 5 (2) The Joint Legislative Commission on Governmental Operations;
 6 (3) The Joint Legislative Commission on Municipal Incorporations;
 7 (4) The Commission on the Family;
 8 (5) The Joint Select Committee on Low-Level Radioactive Waste;
 9 (6) The Environmental Review Commission;
 10 (7) The Joint Legislative Highway Oversight Committee;
 11 (8) The Joint Legislative Education Oversight Committee;
 12 (9) The Joint Legislative Commission on Future Strategies for North
 13 Carolina;
 14 (10) The Commission on Children with Special Needs;
 15 (11) The Legislative Committee on New Licensing Boards;
 16 (12) The Commission on Agriculture, Forestry, and Seafood Awareness;
 17 (13) The North Carolina Study Commission on Aging;
 18 (14) The standing Committees on Pensions and Retirement; and
 19 (15) The Legislative Ethics Committee; provided, however, that
 20 proceedings of the Legislative Ethics Committee conducted pursuant
 21 to G.S. 120-103 shall be open or closed at the option of the individual
 22 whose conduct is under inquiry, as prescribed therein.

23 (g) Caucuses. – A caucus by members of the General Assembly shall not
 24 constitute a meeting of either house or of a committee or subcommittee and may be held
 25 in private; however, no member of the General Assembly shall participate in a caucus
 26 which is called for the purpose of evading or subverting the provisions of this Article.
 27 Violations of this Article by members of the General Assembly shall be punishable as
 28 prescribed by the rules of the House or the Senate."

29 Sec. 7. G.S. 143-318.12(b)(1) reads as rewritten:

30 "~~(1) If a meeting is an adjourned or recessed session of a regular meeting or~~
 31 ~~of some other meeting, notice of which has been given pursuant to this~~
 32 ~~subsection, and public body recesses a regular, special, or emergency~~
 33 ~~meeting held pursuant to public notice given in compliance with this~~
 34 ~~subsection, and the time and place of the adjourned or recessed session~~
 35 ~~has been set during the regular or other meeting, at which the meeting~~
 36 ~~is to be continued is announced in open session, no further notice is~~
 37 ~~necessary, shall be required."~~

38 Sec. 8. G.S. 143-318.15 is repealed.

39 Sec. 9. G.S. 143-318.16A is amended by adding a subsection to read:

40 "(e) This section does not apply to bills and resolutions of a legislative nature
 41 which become laws."

42 Sec. 10. G.S. 143-318.16B reads as rewritten:

43 "**§ 143-318.16B. Attorney's fees awarded to prevailing party.**

1 In any action brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court
2 ~~shall~~may make written findings specifying the prevailing party or parties, and ~~shall~~may,
3 in its discretion, 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. If in any action brought
5 pursuant to G.S. 143-318.16 or G.S. 143-318.16A the court determines that a public
6 body, or any member or employee thereof, has willfully violated this Article, the court
7 shall make written findings with respect to such willful violation and shall award the
8 plaintiffs a reasonable attorney's fee. The attorney's fee may be taxed against the public
9 body or against the individuals responsible for the willful violation, or may be
10 apportioned among them."

11 Sec. 11. G.S. 143-318.18 reads as rewritten:

12 "**§ 143-318.18. Exceptions.**

13 This Article does not apply to:

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

40 Sec. 12. G.S. 143-10 reads as rewritten:

41 "**§ 143-10. Preparation and adjustment of budget~~the budget~~; and public hearing**
42 **hearings.**

43 ~~The members of the Commission shall, at the request of the Director, attend such~~
44 ~~public hearing and other meeting as may be held in the preparation of the budget. Said~~

1 Commission shall act ~~at all times~~ in an advisory capacity to the ~~Director on matters~~
2 ~~relating to the plan of proposed expenditures of the State government and the means of~~
3 ~~financing the same.~~ Governor with respect to all matters relating to the plan of proposed
4 expenditures of State government and the means of financing the same. To this end, the
5 Commission shall meet with the Governor in connection with the preparation of the
6 budget at such times as the Governor may request.

7 The Governor shall establish a schedule of public hearings at which the Governor,
8 the Commission, and the Office of State Budget and Management shall (i) receive all
9 information and recommendations from agencies of the State pursuant to G.S. 143-6,
10 and (ii) provide information to and receive recommendations from the public with
11 respect to the revenues and expenditures to be included within the budget. Such public
12 hearings shall be held at such times and places, and in such number, as the Governor
13 shall determine to be necessary for the Governor and the Commission to adequately
14 inform the public and to receive recommendations from the public. The Governor may
15 consult with the Commission in establishing the schedule of such hearings. ~~The Director~~
16 ~~shall provide for public hearings on any and all estimates to be included in the budget, which~~
17 ~~shall be held during the months of October and/or November and/or such other times as the~~
18 ~~Director may fix in the even-numbered years, and~~ The Governor may require the attendance
19 at these hearings of the heads or responsible representatives of all State departments,
20 bureaus, divisions, officers, boards, commissions, institutions, or other State agencies or
21 undertakings, and such any other persons, corporations and associations, using or
22 receiving or asking for requesting any State funds. Prior to taking any action under this
23 subsection to provide for public hearings, the Governor may consult with the Advisory Budget
24 Commission.

25 If the Governor shall determine that the receipts received or anticipated by the State
26 during the fiscal period, when added to any surplus remaining in the State Treasury at
27 the beginning of the period, will not be sufficient to meet budgeted expenditures, and
28 that necessary economies or reductions in State expenditures are required, the Governor
29 may effectuate such economies or reductions by Executive Order. Except in the case of
30 an emergency the Governor shall, before issuing such an Executive Order, schedule
31 public hearings at which the Governor, the Commission, and the Office of State Budget
32 and Management shall (i) explain the extent of the proposed economies or reductions
33 and the proposed manner of their implementation, and (ii) receive information and
34 recommendations from agencies of the State and from the public."

35 Sec. 13. This act becomes effective September 1, 1991.