

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 204

Committee Substitute Favorable 5/10/89

Rules and Operation of the Senate Committee Substitute Adopted 7/20/89

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. 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.

- 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 by the public body,  
23 to the extent that confidentiality is required in order for the attorney to  
24 exercise his ethical duties as a lawyer to preserve the attorney-client  
25 privilege between the attorney and the 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 a  
41 public body having final authority for the appointment or discharge or  
42 removal shall be taken in an open meeting. If a public body considers  
43 an appointment to another body, except a committee composed of  
44 members of the public body, in executive session, it shall, before

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

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

1 shall be ordered against any election official. Each member's vote on  
2 the decision shall be a matter of public record.

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

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

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

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

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

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

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

- 3 (1) The Joint Legislative Utility Review Committee;
- 4 (2) The Joint Legislative Commission on Governmental Operations;
- 5 (3) The Joint Legislative Commission on Municipal Incorporations;
- 6 (4) The Commission on Children and Youth;
- 7 (5) The Joint Select Committee on Low-Level Radioactive Waste;
- 8 (6) The Environmental Review Commission; and
- 9 (7) The standing Committees on Pensions and Retirement.

10 (e) Violations of this Article by members of the General Assembly shall be  
11 punishable as prescribed by the rules of the House or the Senate.

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

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

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

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

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

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

31 **"§ 143-318.18. Exceptions.**

32 This Article does not apply to:

- 33 (1) Grand and petit juries.
- 34 (2) ~~Any public body that is specifically authorized or directed by law to~~  
35 ~~meet in executive or confidential session, to the extent of the~~  
36 ~~authorization or direction~~ Caucuses of members of the General  
37 Assembly.
- 38 (3) The Judicial Standards Commission.
- 39 (4) ~~The Legislative Services Commission.~~
- 40 (5) Law enforcement agencies.
- 41 (6) A public body authorized to investigate, examine, or determine the  
42 character and other qualifications of applicants for professional or  
43 occupational licenses or certificates or to take disciplinary actions  
44 against persons holding such licenses or certificates, (i) while

1 preparing, approving, administering, or grading examinations or (ii)  
2 while meeting with respect to an individual applicant for or holder of  
3 such a license or certificate. This exception does not amend, repeal, or  
4 ~~supercede~~ supersede any other statute that requires a public hearing or  
5 other practice and procedure in a proceeding before such a public  
6 body.

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

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

13 (9) ~~The Council of State.~~ The Legislative Ethics Committee, created by  
14 G.S. 120-99.

15 (10) The Board of Awards.

16 (11) The General Court of Justice."

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

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

20 Sec. 6. This act shall become effective September 1, 1989, except that as to  
21 its application to commissions, committees, or subcommittees of the General Assembly  
22 and the Legislative Services Commission, it is effective upon ratification.