

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 410
Judiciary Committee Substitute Adopted 4/20/21
House Committee Substitute Favorable 6/28/22
House Committee Substitute #2 Favorable 6/29/22

Short Title: Open Meetings/Various Bd. Adj/Public Records.

(Public)

Sponsors:

Referred to:

March 31, 2021

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE OPEN MEETINGS LAW AND THE PUBLIC RECORDS LAW APPLY TO THE OPERATIONS OF THE COUNCIL OF STATE, TO PROVIDE THAT NON-DISCLOSURE AGREEMENTS ARE SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS LAWS, TO AMEND THE COMPOSITION OF VARIOUS BOARDS TO REFLECT THE INCREASE IN APPORTIONMENT OF THE STATE'S CONGRESSIONAL DELEGATION, AND TO REQUIRE A REMINDER OF CLOSED SESSIONS TO MEMBERS OF A PUBLIC BODY.

The General Assembly of North Carolina enacts:

PART I. OPEN MEETINGS OF THE COUNCIL OF STATE AND PUBLIC RECORDS

SECTION 1. G.S. 143-318.10(b) reads as rewritten:

"(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~~ State, whether established by the State Constitution or otherwise, that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" means the governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed."

SECTION 2. G.S. 132-1 reads as rewritten:

"§ 132-1. "Public records" defined.

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public body subject to Article 33C of Chapter 143 of the General Statutes and every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council,



department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

(c) No agency of North Carolina government or its subdivisions may enter into a non-disclosure agreement in order to restrict access to public records subject to disclosure under this Chapter. The contract by which an agency of North Carolina government or its subdivisions agree not to disclose information deemed confidential under the statutes shall be a public record, unless the existence of such contract is also deemed confidential under the statutes. If a non-disclosure agreement is associated with one or more closed session meetings under Article 33C of Chapter 143 of the General Statutes, the non-disclosure agreement shall be included in the minutes of each closed session meeting.

SECTION 3.(a) G.S. 147-13 reads as rewritten:

"§ 147-13. May convene Council of State; quorum; journal.

(a) The Governor may convene the Council of State for consultation whenever ~~he may deem the Governor deems~~ it proper. The Governor shall convene the Council of State whenever the statutes call for the concurrence, advice, discretion, opinion, or consent of the Council of State. In all meetings of the Council of State, five members exclusive of the Governor shall constitute a quorum.

(b) ~~The advice and~~ proceedings of the Council of State shall be entered in a journal, to be kept for this purpose exclusively and signed by all members present. Any member of the Council of State may have entered in the journal ~~his~~ the member's dissent to any part of the journal. The journal shall be maintained by the Governor and shall be placed before the General Assembly when called for by either house.

(c) The convening of the Council of State shall be subject to Article 33C of Chapter 143 of the General Statutes, and the minutes required under that Article shall include the journal kept in accordance with this section.

SECTION 3.(b) This section becomes effective January 1, 2023.

SECTION 4.(a) On or before October 1, 2022, the Council of State shall adopt rules establishing a comprehensive system of parliamentary procedure, including the method of introducing and considering resolutions presented by members of the Council of State and the posting of the journal and minutes online. If the Council of State fails to adopt rules as required by this section, Mason's Manual of Legislative Procedure shall apply to all meetings of the Council of State held after October 1, 2022, and the Governor shall provide for the posting of all minutes and the journal online within 10 business days of each meeting of the Council of State.

SECTION 4.(b) On or before October 1, 2022, the Council of State shall review its department rules, as recorded in Chapter 1 of Title 06 of the North Carolina Administrative Code for compliance and conformity with the General Statutes and this act, and initiate any amendments to those rules by that date.

SECTION 5. Except as otherwise provided, this Part is effective when it becomes law and clarifies and restates the intent of existing law that meetings, deliberations, and actions of the Council of State, like all public bodies, be conducted openly.

PART II. CONGRESSIONAL APPORTIONMENT CONFORMING CHANGES

SECTION 6. G.S. 7A-761 reads as rewritten:

"§ 7A-761. North Carolina Human Relations Commission.

...

(b) The Human Relations Commission of the Civil Rights Division of the Office of Administrative Hearings shall consist of 22 members. The Governor shall appoint 18 members to the Commission, with one member appointed from each of the 13 congressional districts, plus five members districts apportioned to the State by federal law with the remaining members appointed at large, including the chairperson. The Speaker of the North Carolina House of Representatives shall appoint two members to the Commission. The President Pro Tempore of the Senate shall appoint two members to the Commission.

(b1) The initial terms of four of the members appointed by the Governor shall expire June 30, 1988. The initial terms of four of the members appointed by the Governor shall expire June 30, 1987. The initial terms of four of the members appointed by the Governor shall expire June 30, 1986. The initial terms of four of the members appointed by the Governor shall expire June 30, 1985. The initial terms of the members appointed by the Speaker of the North Carolina House of Representatives shall expire June 30, 1986. The initial terms of the members appointed by the Lieutenant Governor shall expire June 30, 1986. The initial term of office of the person appointed to represent the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996. At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors shall be for terms of four years.

(b2) No member of the ~~commission~~ Commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of ~~his~~ the member's second term.

(b3) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be filled in the manner of the original appointment for the unexpired term.

...."

SECTION 7.(a) G.S. 116-233(a) reads as rewritten:

"(a) Notwithstanding the provisions of G.S. 116-31(d), there shall be a Board of Trustees of the School, which shall consist of up to 30 members as follows: the following members:

- (1) ~~Thirteen members~~ A number of members equal to the membership of the House of Representatives of the Congress of the United States apportioned to the State by federal law, who shall be appointed by the Board of Governors of The University of North Carolina, one from each congressional district.
- (2) Four members without regard to residency who shall be appointed by the Board of Governors of The University of North Carolina.
- (3) Three members, ex officio, who shall be the chief academic officers, respectively, of constituent institutions or the members' designees. The Board of Governors shall in 1985 and quadrennially thereafter designate the three constituent institutions whose chief academic officers or officers' designees shall so serve, such designations to expire on June 30, 1989, and quadrennially thereafter.
- (4) The chief academic officer of a college or university in North Carolina other than a constituent institution, ex officio, or the chief academic officer's designee. The Board of Governors shall designate in 1985 and quadrennially thereafter which college or university whose chief academic officer or officer's designee shall so serve, such designation to expire on June 30, 1989, and quadrennially thereafter.
- (5) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (6) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

- (7) Repealed by Session Laws 2016-126, 4th Ex. Sess., s. 36, effective December 19, 2016. See editor's note for applicability.
- (8) The president of the student government, ex officio, who shall be a nonvoting member.
- (9) Up to two additional nonvoting members selected at the discretion of the chancellor and the Board of Trustees, with terms expiring June 30 of each year."

SECTION 7.(b) G.S. 116-233(d) reads as rewritten:

"(d) Members appointed under subdivisions (1) or (2) of subsection (a) of this section shall serve staggered four-year terms expiring June 30 of odd numbered years. The Board of Governors, in appointing a position created by Congressional reapportionment under subdivision (1) of subsection (a) of this section, may provide that appointment an initial term of two years if the Board determines the shorter term is necessary to maintain staggered terms for appointments under that subdivision."

SECTION 7.(c) This section becomes effective July 1, 2023. In accordance with G.S. 116-233(a), as amended by this section, the member appointed to the position created by this section shall be appointed to a term ending June 30, 2027. No appointee shall be added in accordance with G.S. 143B-13(f2) prior to July 1, 2023, due to reapportionment following the 2020 federal decennial census.

SECTION 8. G.S. 140-5.13 reads as rewritten:

"§ 140-5.13. Board of Trustees.

...

(b) The Board of Trustees of the North Carolina Museum of Art shall consist of ~~25 members;~~ members chosen as follows:

- (1) The Governor shall appoint ~~13 members, one from each congressional district in the State~~ a number of members equal to the membership of the House of Representatives of the Congress of the United States apportioned to the State by federal law, in accordance with ~~G.S. 147-12(3b);~~ G.S. 143B-13.
- (2) Repealed by Session Laws 2012-120, s. 1(e), effective October 1, 2012.
- (3) The North Carolina Museum of Art Foundation, Incorporated, shall elect four ~~members;~~ members.
- (4) The Board of Trustees of the North Carolina Museum of Art shall elect four ~~members;~~ members.
- (5) The General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate in accordance with ~~G.S. 120-121;~~ G.S. 120-121.
- (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

(b1) All regular appointments or elections except those by the General Assembly shall be for terms of six years, except that each member shall serve until the member's successor is chosen and qualifies. No person may be appointed or elected to more than two consecutive terms of six years. All appointments by the General Assembly shall be for terms of four years, with no person being appointed to more than three consecutive terms.

...."

SECTION 9. G.S. 143B-148(a)(2) reads as rewritten:

- "(2) Twenty-four shall be appointed by the Governor, one from each congressional district in the State in accordance with ~~G.S. 147-12(3)b;~~ G.S. 143B-13, and the remainder at-large members.

...."

PART III. CLOSED SESSIONS

1 **SECTION 10.** G.S. 143-318.11 reads as rewritten:

2 "**§ 143-318.11. Closed sessions.**

3 ...

4 (c) Calling a Closed Session. – A public body may hold a closed session only upon a
5 motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite
6 one or more of the permissible purposes listed in subsection (a) of this section. A motion based
7 on subdivision (a)(1) of this section shall also state the name or citation of the law that renders
8 the information to be discussed privileged or confidential. A motion based on subdivision (a)(3)
9 of this section shall identify the parties in each existing lawsuit concerning which the public body
10 expects to receive advice during the closed session. Upon adoption of the motion to enter into
11 closed session and while in the open session of the open meeting, the presiding chair shall inform
12 the public body that all discussion during the closed session shall be limited to the permissible
13 purpose or purposes cited in the motion duly made and adopted.

14 (d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 570, s. 2.

15 (e) Return to Open Session. – Upon returning to open session, the presiding chair shall
16 certify during open session that all discussion during the closed session was limited to the
17 permissible purpose or purposes cited in the motion duly made and adopted. Such certification
18 shall be reduced to writing and signed by the presiding chair for inclusion in the open session
19 minutes. The certification shall not reveal any details of the closed session."

20 **SECTION 11.** G.S. 143-318.10(e) reads as rewritten:

21 "(e) Every public body shall keep full and accurate minutes of all official meetings,
22 including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written
23 form or, at the option of the public body, may be in the form of sound or video and sound
24 recordings. When a public body meets in closed session, it shall keep a general account of the
25 closed session so that a person not in attendance would have a reasonable understanding of what
26 transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes
27 and ~~accounts~~—accounts, and the certification of the presiding chair required by
28 G.S. 143-318.11(e), shall be public records within the meaning of Chapter 132 of the General
29 Statutes, the Public Records Law, G.S. 132-1 et seq.; provided, however, Law, except that
30 minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may
31 be withheld from public inspection so long as public inspection would frustrate the purpose of a
32 closed session."

33 **SECTION 12.** This Part becomes effective October 1, 2022, and applies to open
34 meetings held on or after that date.

35
36 **PART IV. EFFECTIVE DATE**

37 **SECTION 13.** Except as otherwise provided, this act is effective when it becomes
38 law.