



# SENATE BILL 410: Open Meetings/Various Board Adj.

2021-2022 General Assembly

<b>Committee:</b>	House Judiciary 4. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	June 28, 2022
<b>Introduced by:</b>	Sens. Galey, Perry, Lazzara	<b>Prepared by:</b>	Jessica Sammons
<b>Analysis of:</b>	PCS to Second Edition S410-CSST-55		Staff Attorney

**OVERVIEW:** *The Proposed Committee Substitute (PCS) for Senate Bill 410 would do all of the following:*

- *Clarify that the meetings of the Council of State are official meetings open to the public, and that the minutes and journal from Council of State meetings are public records.*
- *Require the Governor to convene the Council of State when the statutes call for the concurrence, advice, discretion, opinion, or consent of the Council of State.*
- *Require the Council of State to adopt rules for a system of parliamentary procedure, including a method of introducing and considering resolutions presented by its members and the posting of the journal and minutes online, no later than October 1, 2022.*
- *Make conforming changes to the membership of various boards and commissions to account for the additional congressional seat gained by reapportionment following the 2020 Census.*

## **Part I – Council of State**

**CURRENT LAW:** Article 33C of Chapter 143 of the General Statutes governs meetings of public bodies in North Carolina. The Article states that each official meeting of a public body, unless expressly exempted, shall be open to the public, and any person is entitled to attend that meeting. A "public body" is defined to be 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 meets both of the following criteria:

- (i) Is composed of two or more members.
- (ii) Exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function.

Official meetings are meetings, assemblies, or gatherings at any time or place, or the simultaneous communication by conference telephone or other electronic means, of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction of the public body.

With respect to records 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, those documents are

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-733-2578

# Senate 410 PCS

Page 2

a public record and available for inspection by any member of the public. G.S. 132-1, G.S. 132-6. There are some exceptions to this general standard, such as criminal investigations (G.S. 132-1.4), trade secrets (G.S. 132-1.2), electronically captured signatures and other personal identifying information (G.S. 132-1.2), tax information (G.S. 105-259), lists of individuals receiving public assistance (G.S. 108A-80), patient medical information (G.S. 130A-12) and others.

Every public body must keep full and accurate minutes of all official meetings, whether in written form or, at the option of the public body, may be in the form of audio or video recording. These minutes are public records.

The Council of State consists of the elected officers whose offices are established by Article III of the North Carolina Constitution. The Council of State includes the Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. The Council of State meets periodically, and the Governor may convene the Council of State for consultation when the Governor deems it proper. Five members, not including the Governor, constitute a quorum for Council of State meetings. The advice and proceedings of the Council of State are to be entered in a journal and signed by all members present. The journal is maintained by the Governor and is to be placed before the General Assembly when called for by either house.

In 1979 when the current open meeting statutes were enacted, the Council of State was exempted from its application. (S.L. 1979-655) That exemption was repealed in 1991. (S.L. 1991-694)

**BILL ANALYSIS:** Part I of the PCS would do the following:

- Clarify that any body of the State, whether established by the State Constitution or otherwise, that is composed of two or more members and that exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function is a "public body".
- Clarify that the meetings of the Council of State are subject to the open meetings laws requiring each official meeting to be open to the public. All proceedings of the Council of State are to be entered into the journal, which is to be part of the minutes, and thus, a public record.
- Require the Governor to convene the Council of State whenever the statute call for the concurrence, advice, discretion, opinion, or consent of the Council of State.
- Require the Council of State to adopt rules establishing a comprehensive system of parliamentary procedure, including the method of introducing and considering resolutions presented by members and the posting of the journal and minutes online. If the Council of State does not adopt rules by October 1, 2022, *Mason's Manual of Legislative Procedure* will apply to all meetings after that date, and the Governor must provide for the posting of all minutes and the journal online within 10 business days of each meeting of the Council of State.

## **Part II – Congressional Apportionment Conforming Changes**

**CURRENT LAW:** G.S. 143B-13 governs appointments, qualifications, terms, vacancies, etc. of boards and commissions of the State. Generally, appointees must be a resident of the State, unless otherwise specified. When a statute requires appointment from each congressional district, G.S. 143B-13 provides

# Senate 410 PCS

Page 3

guidance on those memberships post reapportionment and redistricting following the return of the federal decennial census as follows:

- If the State is granted additional seats in the U.S. House of Representatives due to reapportionment and the statutes do not provide for a procedure to fill the extra position due to the addition of the additional congressional district, the Governor is to appoint a person for a term commencing on January 3rd of the year in which the additional congressional district becomes effective. G.S. 143B-13(f2). In addition to G.S. 143B-13, G.S. 147-12(3b) provides authority to the Governor that "whenever a statute calls for the Governor to appoint one person from each congressional district to a board or commission, and at the time of enactment of that statute, the gubernatorial appointments do not cover all of the congressional districts, then the Governor, in filling vacancies on that board or commission as they occur, shall make appointments to satisfy that requirement, but shall not be required to remove any person from office to satisfy the requirement."
- If two or more appointees reside in the same congressional district, then those members continue to serve out their unexpired term and the vacancy at the end of that term is filled accordingly without a 'double bunk.' G.S. 143B-13(f)
- If following congressional redistricting, an appointee no longer resides in the congressional district that appointee was appointed to represent, that appointee continues to serve as a member of the board or commission for the remainder of the unexpired term if otherwise qualified. G.S. 143B-13(f1)

For the reapportionment following the 2020 Census, North Carolina was allocated an additional member of the U.S. House of Representatives, with that additional 14th member of the delegation to be elected in the 2022 election.

**BILL ANALYSIS:** The PCS would adjust the appointments for various boards and commissions to account for the additional congressional district, as follows:

- *The Human Relations Commission of the Civil Rights Division of the Office of Administrative Hearings* – require the Governor to appoint one member from each of the 14 congressional districts, plus four additional at-large members, rather than one member from each of the 13 congressional districts and five additional at-large members.
- *The Board of Trustees of the North Carolina Museum of Art* – increase the membership of the Board to 26 members, with the Governor appointing 14 members, one from each congressional district.
- *The Board of Trustees of the North Carolina School of Science and Mathematics* – increase the membership on the Board to 31 members, with the Board of Governors of the University of North Carolina appointing 14 members, one from each congressional district.
- *Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Service* – correct a citation.

**EFFECTIVE DATE:** Effective when it becomes law.