



SENATE BILL 410: Open Meetings/Various Bd. Adj/Public Records.

2021-2022 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 28, 2022
Introduced by:	Sens. Galey, Perry, Lazzara	Prepared by:	Erika Churchill
Analysis of:	PCS to Third Edition S410-CSST-57		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.*
- *Specify that non-disclosure agreements are subject to disclosure under the public records law, unless the existence of such contract is also deemed confidential under the statutes.*
- *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.*
- *Require the presiding chair of an open meeting, prior to entering into closed session, to remind members of the public body that discussion in the closed session is limited to the reason the public body is entering closed session and require that presiding chair certify the discussion was limited to that reason.*

Part I – Open Meetings of the Council of State and Public Records

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.

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

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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 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 meetings 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 statutes 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.
- Specify that non-disclosure agreements may not be used to restrict access to public records, and the non-disclosure agreement itself is a public record, unless the existence is also deemed confidential under the statutes. For any non-disclosure agreement associated with a closed session, the non-disclosure agreement is to be included in the minutes of that closed session, which are

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public records that may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

Part II – Congressional Apportionment Conforming Changes

CURRENT LAW: G.S. 143B-13 governs appointments, qualifications, terms, vacancies, etc. of certain boards and commissions of the State. Generally, appointees must be residents of the State, unless otherwise specified. When a statute requires appointment from each congressional district, G.S. 143B-13 provides guidance on those memberships after 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 "[w]henver 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.
- *Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Service* – corrects a citation.

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- *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.

PART III. CLOSED SESSIONS

CURRENT LAW: As mentioned above, Article 33C of Chapter 143 of the General Statutes governs meetings of public bodies in North Carolina. That Article provides reasons that a public body may meet in 'closed session.' Some of the reasons for a public body to enter closed session include:

- To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record.
- To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body.
- To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.
- To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.
- To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.

A public body may enter closed session only upon a motion duly made and adopted at an open meeting that cites one or more of the permissible purposes listed G.S. 143-318.11. When a public body meets in closed session, a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired must be kept. Such accounts may be a written narrative, or video or audio recordings. The minutes and accounts are a public record; provided, the minutes or an account of a closed session be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

BILL ANALYSIS: The PCS would require the presiding chair to remind the public body, while in open session prior to entering into closed session, that discussion during the closed session is limited to the reason under the statutes that the public body is entering closed session. The PCS would also require the presiding chair to certify, upon re-entering open session after the closed session, that the discussion during the closed session was limited to that permissible purpose.

EFFECTIVE DATE: Effective when it becomes law.