



HOUSE BILL 205: Transparent Governance & Integrity Act.

2023-2024 General Assembly

Committee:	House Local Government. If favorable, re- refer to Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	March 21, 2023
Introduced by:	Reps. Penny, Winslow, Balkcom	Prepared by:	Billy R. Godwin Alex Ramirez Staff Attorneys
Analysis of:	PCS to First Edition H205-CSBAf-9		

OVERVIEW: *The proposed committee substitute (PCS) to House Bill 205 would clarify applicability of the Open Meetings and Public Records laws, mandate financial management education for certain local government officials, make changes to various local government finance laws, authorize establishment of a fund balance reserve account, prohibit a county and city from pledging security for certain loans of another county or city, and require an additional public hearing prior to adoption of a local government budget ordinance.*

Sections 1 – 4: 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.

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, in the form of audio or video recording. These minutes are public records.

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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: Sections 1- 4 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 exercises 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 would 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, 2023, *Mason's Manual of Legislative Procedure* would 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 would 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 public records that may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

Effective Date: Section 2 would become effective October 1, 2023, and apply to any non-disclosure agreement entered into on or after that date. Section 3 would become effective October 1, 2023.

Sections 5 - 6: Financial Management Training for Local Officials

CURRENT LAW: The Local Government Budget and Fiscal Control Act (LGBFCA), Article 3 of Chapter 159 of the General Statutes, requires each governing board and public authority to operate under a balanced budget ordinance adopted and administered as provided by law. The governing boards of cities (G.S. 160A-86) and counties (G.S. 153A-53) are required to adopt a code of ethics to guide them in the performance of their duties.

BILL ANALYSIS: Sections 5 – 6 of the PCS would encourage the members of the governing board of cities and counties to complete a financial management education training program of no less than six hours covering laws and principles that govern local government fiscal and debt management, including

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Chapter 159 of the General Statutes. The training would be required of members of the governing boards of any city or county where the Local Government Commission (LGC) has assumed control of the financial affairs of that local government or where the local government is included on the most recently published Unit Assistance List issued by the Department of State Treasurer. This training would also be required of any town administrator to whom a city's governing board delegates its authority to administer the city in Mayor-Council cities under G.S. 160A-155. The bill would establish the entities authorized to administer the training.

Section 7: Protection of Personally Identifiable Information

CURRENT LAW: G.S. 147-64.6B authorizes the State Auditor to investigate reports of allegations of improper governmental activities of State agencies and State employees and to provide various means, including a telephone hotline, electronic mail, and Internet access to receive reports of allegations of improper governmental activities. The identity of persons reporting allegations of improper government activity to the Auditor are is protected and may be subject to disclosure as a public record.

BILL ANALYSIS: Section 7 of the PCS would prohibit the LGC from disclosing any personally identifiable information of any person reporting improper governmental activity, whether such is reported under G.S. 147 64.6B or directly to the Commission and would define "personally identifiable information" to mean the name, place of employment, physical address, email address, and telephone number of the person making a report alleging improper governmental activity.

Section 8 - Capital Reserve Accounts

CURRENT LAW: The LGBFCA authorizes local governments and public authorities to establish by either resolution or ordinance, a capital reserve fund for any purpose for which it may issue bonds. Withdrawals from those funds may also be authorized by resolution or ordinance.

BILL ANALYSIS: Section 8 of the PCS would designate capital reserve funds as capital reserve accounts and provide that those accounts may only be amended by resolution.

Effective Date: Section 8 would become effective July 1, 2023, and apply to capital reserve accounts established, modified, or otherwise amended on or after that date.

Section 9: Fund Balance Reserve Accounts

CURRENT LAW: The LGBFCA provides requires a balanced budget ordinance for each local government and public authority and provides that a budget ordinance is balanced when the sum of estimated net revenues and appropriated fund balances is equal to appropriations. Appropriated fund balance in any fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

BILL ANALYSIS: Section 9 of the PCS would provide that a local government or public authority by resolution, may establish by and maintain a fund balance reserve account in the general fund or in any public enterprise fund for the purpose of maintaining appropriate cash reserves and an adequate fund balance. The PCS would limit appropriations to the fund balance reserve account to no more than five percent (5%) of the total of all other appropriations for the same fund for which the fund balance reserve account has been established.

Section 10: Restrictions on the Use of Revenue for NCEMPA Jurisdictions

CURRENT LAW: G.S. 159B-39 requires a North Carolina Eastern Municipal Power Agency (NCEMPA) municipality to use revenue derived from rates for electric service to (i) pay the direct and indirect costs of operating the electric system and (ii) transfer to other funds of the municipality a sum that

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reflects a rate of return on the investment in the electric system to pay for costs paid from the municipality's general fund (or other fund) that are reasonably allocable to the electric system (limited to 3% of the gross capital assets of the electric system, and 5% of the gross annual revenues of the system, for the preceding fiscal year). Some NCEMPA municipalities operate under a policy and some operate under a statutory designation.

BILL ANALYSIS: Section 10 of the PCS would clarify that all NCEMPAs would operate as joint agency under the statute.

Section 11: Security Interests in U.S. Department of Agriculture Loans

CURRENT LAW: A county or municipality may pledge a security interest in an escrow account funded with loan proceeds, or a certificate of deposit, to secure repayment of the loan, only if the loan is an interest-free loan agreement entered into with the United States Department of Agriculture (USDA) or an authorized intermediary acting on behalf of the USDA. Those interest-free loans are subject to approval by the LGC unless exempted in G.S. 159-148(b).

BILL ANALYSIS: Section 11 of the PCS would limit the security pledged by a county or municipality for a USDA loan to only the collateral being financed by a loan to that specific county or municipality and would prohibit a county or municipality from pledging a security interest for repayment of, or be liable for, loans entered into by any other county or municipality.

Effective Date: Section 11 would become effective when it becomes law and apply to loans made on or after that date.

Section 12: Filing and Publication of the Budget

CURRENT LAW: The LGBFCA requires the budget officer, on the same day that the budget is submitted to the governing board, to file a copy of it in the office of the clerk to the board where it must remain available for public inspection until the budget ordinance is adopted. The clerk must make a copy of the budget available to all news media in the county and publish a statement that the budget has been submitted to the governing board, is available for public inspection in the office of the clerk to the board, and give notice of the time and place of the required budget hearing. Before adopting the budget ordinance, the governing board must hold a public hearing at which time any persons who wish to be heard on the budget may appear.

BILL ANALYSIS: Section 12 of the PCS would do all of the following:

- Require additional information to be included in the budget officer's budget message.
- Require the governing board of any unit of local government with a population of 2,000 or more according to the last federal decennial census to hold two public hearings on the budget. One of the two public hearings must provide the public with certain specific revenue information related to the local government's property tax and enterprise funds.
- Require the governing board, when the proposed budget ordinance raises the property tax rate from the previous fiscal year, to notify every property owner in the jurisdiction in writing by U.S. Mail at least 10 days prior to the date of the public hearing on the budget.
- Require the governing board, when the proposed budget ordinance raises the rate charged by a public enterprise fund or proposes a transfer of any amount from the general fund to the public enterprise fund, to notify every user of the public enterprise fund in writing by U.S. Mail at least 10 days prior to the date of the public hearing on the budget.

Effective Date: Section 12 would become effective July 1, 2024, and apply to budgets adopted on or after that date.

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EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.