

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H

D

HOUSE BILL 445
Committee Substitute Favorable 4/4/23
PROPOSED COMMITTEE SUBSTITUTE H445-PCS10439-ST-18

Short Title: Open Meetings Changes.

(Public)

Sponsors:

Referred to:

March 23, 2023

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE PRESIDING CHAIR OF ALL OPEN MEETINGS TO REMIND THE PUBLIC BODY OF THE LIMITED NATURE OF DISCUSSION DURING A CLOSED SESSION AND TO AUTHORIZE REMOTE MEETINGS UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

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

"§ 143-318.11. Closed sessions.

...

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

(d) Repealed by Session Laws 1993 (Reg.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

(e) Return to Open Session. – Upon returning to open session of the open meeting, the presiding chair shall state during open session of the open meeting whether the closed session complied with this section. The statement shall be reduced to writing and signed by the presiding chair for inclusion in the open session minutes without revealing any details of the closed session."

SECTION 2.(a) G.S. 166A-19.24 is recodified as G.S. 143-318.13A.

SECTION 2.(b) G.S. 143-318.13A, as enacted by this act, reads as rewritten:

"§ 143-318.13A. Remote meetings during certain ~~declarations of emergency~~ circumstances.

(a) Remote Meetings. – ~~Notwithstanding any other provision of law, upon issuance of a declaration of emergency under G.S. 166A-19.20, any~~ Any public body within the emergency area may conduct remote meetings in accordance with this section and Article 33C of Chapter 143 of the General Statutes throughout the duration of that declaration of emergency. Article, only under one or more of the following circumstances:

(1) Throughout the duration of any declaration of emergency issued under G.S. 166A-19.20.



* H 4 4 5 - P C S 1 0 4 3 9 - S T - 1 8 *

- 1 (2) During the time period one or more of the members of the public body cannot
2 attend in person due to health issues that prevent attendance in person. Such
3 member or members shall not be required to reveal details of the health
4 condition.
- 5 (3) During the time period one or more of the members of the public body cannot
6 attend in person due to generally unexpected circumstances that prevent
7 attendance in person. Such member or members shall not be required to reveal
8 details of the generally unexpected circumstances.
- 9 (a1) Presumption. – Compliance with this statute establishes a presumption that a remote
10 meeting is open to the public.
- 11 (b) Requirements. – The public body shall comply with all of the following with respect
12 to remote meetings conducted under this section:
- 13 (1) The public body shall give proper notice under G.S. 143-318.12 and under
14 any other requirement for notice applicable to the public body. The notice
15 shall also cite the reason for the remote meeting under subsection (a) of this
16 section and specify the means by which the public can access the remote
17 meeting as that remote meeting occurs.
- 18 (2) Any member of the public body participating by a method of simultaneous
19 communication in which that member cannot be physically seen by the public
20 body must identify himself or herself in each of the following situations:
- 21 a. When the roll is taken or the remote meeting is commenced.
- 22 b. Prior to participating in the deliberations, including making motions,
23 proposing amendments, and raising points of order.
- 24 c. Prior to voting.
- 25 (3) All documents to be considered during the remote meeting shall be provided
26 to each member of the public body.
- 27 (4) The method of simultaneous communication shall allow for any member of
28 the public body to do all of the following:
- 29 a. Hear what is said by the other members of the public body.
- 30 b. Hear what is said by any individual addressing the public body.
- 31 c. To be heard by the other members of the public body when speaking
32 to the public body.
- 33 (5) All votes shall be roll call; no vote by secret or written ballots, whether by
34 paper or electronic means or in accordance with G.S. 143-318.13(b), may be
35 taken during the remote meeting.
- 36 (6) The public body shall comply with G.S. 143-318.13(c).
- 37 (7) The minutes of the remote meeting shall reflect that the meeting was
38 conducted by use of simultaneous communication, which members were
39 participating by simultaneous communication, and when such members
40 joined or left the remote meeting.
- 41 (8) All chats, instant messages, texts, or other written communications between
42 members of the public body regarding the transaction of the public business
43 during the remote meeting are deemed a public record.
- 44 (9) The remote meeting shall be simultaneously streamed live online so that
45 simultaneous live audio, and video, if any, of such meeting is available to the
46 public. If the remote meeting is conducted by conference call, the public body
47 may comply with this subdivision by providing the public with an opportunity
48 to dial in or stream the audio live and listen to the remote meeting.
- 49 (b1) If a public body has provided notice of an official meeting and one or more of the
50 members of the public body desire to participate remotely after the issuance of the notice, the
51 public body may amend the notice of the meeting to include the means whereby the public can

1 access the remote meeting as that remote meeting occurs. Such amended notice of remote
2 meeting shall comply with all of the following:

- 3 (1) Be issued no less than six hours prior to the official meeting.
- 4 (2) Be distributed in accordance with G.S. 143-318.12(b)(2) and (b)(3), as
5 applicable.
- 6 (3) Be posted in accordance with G.S. 143-318.12(e).

7 (c) Quorum. – A member of the public body participating by simultaneous
8 communication under this section shall be counted as present for quorum purposes only during
9 the period while simultaneous communication is maintained for that member. The provisions of
10 G.S. 153A-44 and G.S. 160A-75 shall apply to all votes of each member of a county or municipal
11 governing board taken during a remote meeting.

12 (d) Voting by Members of the Public Body. – Votes of each member of a public body
13 made during a remote meeting under this section shall be counted as if the member were
14 physically present only during the period while simultaneous communication is maintained for
15 that member.

16 (e) Public Hearings. – A public body may conduct any public hearing required or
17 authorized by law during a remote meeting, and take action thereon, provided the public body
18 allows for written comments on the subject of the public hearing to be submitted between
19 publication of any required notice and 24 hours prior to the scheduled time for the beginning of
20 the public hearing.

21 (f) Quasi-Judicial Hearings. – A public body may conduct a quasi-judicial proceeding as
22 a remote meeting only when all of the following apply:

- 23 (1) The right of an individual to a hearing and decision ~~occur during the~~
24 emergency occurs during the event for which the remote meeting is noticed.
- 25 (2) All persons subject to the quasi-judicial proceeding who have standing to
26 participate in the quasi-judicial hearing have been given notice of the
27 quasi-judicial hearing and consent to the remote meeting.
- 28 (3) All due process rights of the parties affected are protected.

29 (g) Closed Sessions. – The public body may conduct a closed session in a remote meeting
30 as authorized in G.S. 143-318.11. While in closed session, the public body is not required to
31 provide access to the remote meeting to the public.

32 (h) Not Exclusive. – This section ~~applies only during emergency declarations and does~~
33 ~~not supersede any authority for electronic meetings under Article 33C of Chapter 143 of the~~
34 General Statutes; this Article.

35 (i) Definitions. – For purposes of this section, the following definitions apply:

- 36 (1) ~~Official meeting. – As defined in G.S. 143-318.10(d).~~
- 37 (2) ~~Public body. – As defined in G.S. 143-318.10(b) and (c).~~
- 38 (3) Remote meeting. – An official meeting, or any part thereof, with between one
39 and all of the members of the public body participating by simultaneous
40 communication.
- 41 (4) Simultaneous communication. – Any communication by conference
42 telephone, conference video, or other electronic means."

43 **SECTION 3.** G.S. 143-318.10 reads as rewritten:

44 **"§ 143-318.10. All official meetings of public bodies open to the public.**

45 (a) Except as provided in G.S. 143-318.11, 143-318.14A, and 143-318.18, each official
46 meeting of a public body shall be open to the public, and any person is entitled to attend such a
47 meeting. Remote meetings conducted in accordance with ~~G.S. 166A-19.24~~ G.S. 143-318.13A
48 shall comply with this subsection even if all members of the public body are participating
49 remotely.

50 (b) As used in this Article, "public body" means any elected or appointed authority,
51 board, commission, committee, council, or other body of the State, or of one or more counties,

1 cities, school administrative units, constituent institutions of The University of North Carolina,
2 or other political subdivisions or public corporations in the State that (i) is composed of two or
3 more members and (ii) exercises or is authorized to exercise a legislative, policy-making,
4 quasi-judicial, administrative, or advisory function. In addition, "public body" means the
5 governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any
6 nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to
7 G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning
8 the corporation to which the hospital facility has been sold or conveyed.

9 (c) "Public body" does not include (i) a meeting solely among the professional staff of a
10 public body, or (ii) the medical staff of a public hospital or the medical staff of a hospital that has
11 been sold or conveyed pursuant to G.S. 131E-8.

12 (d) "Official meeting" means a meeting, assembly, or gathering together at any time or
13 place or the simultaneous communication by conference telephone or other electronic means of
14 a majority of the members of a public body for the purpose of conducting hearings, participating
15 in deliberations, or voting upon or otherwise transacting the public business within the
16 jurisdiction, real or apparent, of the public body. However, a social meeting or other informal
17 assembly or gathering together of the members of a public body does not constitute an official
18 meeting unless called or held to evade the spirit and purposes of this Article.

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

30 **SECTION 4.** G.S. 143-318.13(d) reads as rewritten:

31 "(d) Except as provided in ~~G.S. 166A-19.24(b)(6)~~, G.S. 143-318.13A(b)(6), this section
32 shall not apply to remote meetings conducted in accordance with this section even if all members
33 of the public body are participating remotely."

34 **SECTION 5.** G.S. 143-318.14A(e) reads as rewritten:

35 "(e) The following sections shall apply to meetings of commissions, committees, and
36 standing subcommittees of the General Assembly: G.S. 143-318.10(e) and G.S. 143-318.11,
37 G.S. 143-318.13 and G.S. 143-318.14, G.S. 143-318.16 through G.S. 143-318.17, and
38 ~~G.S. 166A-19.24~~ G.S. 143-318.13A."

39 **SECTION 6.** G.S. 153A-43(b) reads as rewritten:

40 "(b) Any member present by means of simultaneous communication in accordance with
41 ~~G.S. 166A-19.24~~ G.S. 143-318.13A shall be counted as present for the purposes of whether a
42 quorum is present only during the period while simultaneous communication is maintained for
43 that member."

44 **SECTION 7.** G.S. 160A-74(b) reads as rewritten:

45 "(b) Any member present by means of simultaneous communication in accordance with
46 ~~G.S. 166A-19.24~~ G.S. 143-318.13A shall be counted as present for the purposes of whether a
47 quorum is present only during the period while simultaneous communication is maintained for
48 that member."

49 **SECTION 8.** G.S. 160A-75(b) reads as rewritten:

50 "(b) Notwithstanding subsection (a) of this section, a vote or failure to vote by any member
51 present by means of simultaneous communication in accordance with ~~G.S. 166A-19.24~~

1 G.S. 143-318.13A shall be treated as if the member were physically present only during the
2 period while simultaneous communication is maintained for that member."

3 **SECTION 9.** This act becomes effective October 1, 2023, and applies to open
4 meetings held on or after that date.