

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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HOUSE DRH50166-LBf-207A (03/02)

Short Title: Government Transparency Act of 2011.

(Public)

Sponsors: Representative Blust.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN CONFIDENCE IN GOVERNMENT BY INCREASING ACCESSIBILITY TO PUBLIC PERSONNEL HIRING, FIRING, AND PERFORMANCE RECORDS AND OTHER GOVERNMENTAL RECORDS AND MEETINGS, TO REQUIRE THE AUDIO OR VIDEO RECORDING OF CLOSED SESSIONS OF PUBLIC BODY MEETINGS, TO AMEND THE PUBLIC RECORDS LAWS TO PROVIDE THAT THE SUCCESSFUL PLAINTIFF IN A PUBLIC RECORDS DISPUTE IS ENTITLED TO REASONABLE ATTORNEYS' FEES, TO IMPOSE INDIVIDUAL LIABILITY FOR CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCESS TO A PUBLIC RECORD WITHOUT GOOD CAUSE, AND TO CREATE THE OPEN GOVERNMENT UNIT OF THE DEPARTMENT OF JUSTICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 126-23(a) reads as rewritten:

"(a) Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee:

- (1) Name.
- (2) Age.
- (3) Date of original employment or appointment to State service.
- (4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession.
- (5) Current position.
- (6) Title.
- (7) Current salary.
- (8) Date and amount of each increase or decrease in salary with that department, agency, institution, commission, or bureau.
- (9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that department, agency, institution, commission, or bureau.
- (10) Date and general description of the reasons for each promotion with that department, agency, institution, commission, or bureau. A general description of the reasons for each promotion, demotion, transfer, suspension, separation, or other change in position classification with that department, agency, institution, commission, or bureau.



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1 (11) ~~Date and type of each dismissal, suspension, or demotion for disciplinary~~
2 ~~reasons taken by the department, agency, institution, commission, or bureau.~~
3 If the disciplinary action was a dismissal, a copy of the written notice of the
4 final decision of the head of the department setting forth the specific acts or
5 omissions that are the basis of the dismissal.

6 (11) The performance of the employee, to the extent that the agency has
7 performance records in its possession.

8 (12) The office or station to which the employee is currently assigned."

9 **SECTION 2.** G.S. 115C-320(a) reads as rewritten:

10 "(a) Each local board of education shall maintain a record of each of its employees,
11 showing the following information with respect to each employee:

12 (1) Name.

13 (2) Age.

14 (3) Date of original employment or appointment.

15 (4) The terms of any contract by which the employee is employed whether
16 written or oral, past and current, to the extent that the board has the written
17 contract or a record of the oral contract in its possession.

18 (5) Current position.

19 (6) Title.

20 (7) Current salary.

21 (8) Date and amount of each increase or decrease in salary with that local board
22 of education.

23 (9) Date and type of each promotion, demotion, transfer, suspension, separation,
24 or other change in position classification with that local board of education.

25 (10) ~~Date and general description of the reasons for each promotion with that~~
26 ~~local board of education. A general description of the reasons for each~~
27 promotion, demotion, transfer, suspension, separation, or other change in
28 position classification with that local board of education.

29 (11) ~~Date and type of each dismissal, suspension, or demotion for disciplinary~~
30 ~~reasons taken by the local board of education.~~ If the disciplinary action was a
31 dismissal, a copy of the written notice of the final decision of the local board
32 of education setting forth the specific acts or omissions that are the basis of
33 the dismissal.

34 (11) The performance of the employee, to the extent that the local board of
35 education has performance records in its possession.

36 (12) The office or station to which the employee is currently assigned."

37 **SECTION 3.** G.S. 115D-28(a) reads as rewritten:

38 "(a) Each board of trustees shall maintain a record of each of its employees, showing the
39 following information with respect to each employee:

40 (1) Name.

41 (2) Age.

42 (3) Date of original employment or appointment.

43 (4) The terms of any contract by which the employee is employed whether
44 written or oral, past and current, to the extent that the board has the written
45 contract or a record of the oral contract in its possession.

46 (5) Current position.

47 (6) Title.

48 (7) Current salary.

49 (8) Date and amount of each increase or decrease in salary with that community
50 college.

- 1 (9) Date and type of each promotion, demotion, transfer, suspension, separation,
- 2 or other change in position classification with that community college.
- 3 (10) ~~Date and general description of the reasons for each promotion with that~~
- 4 ~~community college.~~ A general description of the reasons for each promotion,
- 5 demotion, transfer, suspension, separation, or other change in position
- 6 classification with that community college.
- 7 (11) ~~Date and type of each dismissal, suspension, or demotion for disciplinary~~
- 8 ~~reasons taken by the community college.~~ If the disciplinary action was a
- 9 dismissal, a copy of the written notice of the final decision of the board of
- 10 trustees setting forth the specific acts or omissions that are the basis of the
- 11 dismissal.
- 12 (11) The performance of the employee, to the extent that the community college
- 13 has performance records in its possession.
- 14 (12) The office or station to which the employee is currently assigned."

15 **SECTION 4.** G.S. 122C-158(b) reads as rewritten:

16 "(b) The following information with respect to each employee is a matter of public
17 record:

- 18 (1) Name.
- 19 (2) Age.
- 20 (3) Date of original employment or appointment to the area authority.
- 21 (4) The terms of any contract by which the employee is employed whether
- 22 written or oral, past and current, to the extent that the agency has the written
- 23 contract or a record of the oral contract in its possession.
- 24 (5) Current position.
- 25 (6) Title.
- 26 (7) Current salary.
- 27 (8) Date and amount of each increase or decrease in salary with that area
- 28 authority.
- 29 (9) Date and type of each promotion, demotion, transfer, suspension, separation,
- 30 or other change in position classification with that area authority.
- 31 (10) ~~Date and general description of the reasons for each promotion with that area~~
- 32 ~~authority.~~ A general description of the reasons for each promotion,
- 33 demotion, transfer, suspension, separation, or other change in position
- 34 classification with that area authority.
- 35 (11) ~~Date and type of each dismissal, suspension, or demotion for disciplinary~~
- 36 ~~reasons taken by the area authority.~~ If the disciplinary action was a
- 37 dismissal, a copy of the written notice of the final decision of the area
- 38 authority setting forth the specific acts or omissions that are the basis of the
- 39 dismissal.
- 40 (11) The performance of the employee, to the extent that the area authority has
- 41 performance records in its possession.
- 42 (12) The office to which the employee is currently assigned."

43 **SECTION 5.** G.S. 153A-98(b) reads as rewritten:

44 "(b) The following information with respect to each county employee is a matter of
45 public record:

- 46 (1) Name.
- 47 (2) Age.
- 48 (3) Date of original employment or appointment to the county service.
- 49 (4) The terms of any contract by which the employee is employed whether
- 50 written or oral, past and current, to the extent that the county has the written
- 51 contract or a record of the oral contract in its possession.

- 1 (5) Current position.
- 2 (6) Title.
- 3 (7) Current salary.
- 4 (8) Date and amount of each increase or decrease in salary with that county.
- 5 (9) Date and type of each promotion, demotion, transfer, suspension, separation
- 6 or other change in position classification with that county.
- 7 (10) ~~Date and general description of the reasons for each promotion with that~~
- 8 ~~county.~~ A general description of the reasons for each promotion, demotion,
- 9 transfer, suspension, separation, or other change in position classification
- 10 with that county.
- 11 (11) ~~Date and type of each dismissal, suspension, or demotion for disciplinary~~
- 12 ~~reasons taken by the county.~~ If the disciplinary action was a dismissal, a
- 13 copy of the written notice of the final decision of the county setting forth the
- 14 specific acts or omissions that are the basis of the dismissal.
- 15 (11) The performance of the employee, to the extent that the county has
- 16 performance records in its possession.
- 17 (12) The office to which the employee is currently assigned."

SECTION 6. G.S. 160A-168(b) reads as rewritten:

"(b) The following information with respect to each city employee is a matter of public record:

- 21 (1) Name.
- 22 (2) Age.
- 23 (3) Date of original employment or appointment to the service.
- 24 (4) The terms of any contract by which the employee is employed whether
- 25 written or oral, past and current, to the extent that the city has the written
- 26 contract or a record of the oral contract in its possession.
- 27 (5) Current position.
- 28 (6) Title.
- 29 (7) Current salary.
- 30 (8) Date and amount of each increase or decrease in salary with that
- 31 municipality.
- 32 (9) Date and type of each promotion, demotion, transfer, suspension, separation,
- 33 or other change in position classification with that municipality.
- 34 (10) ~~Date and general description of the reasons for each promotion with that~~
- 35 ~~municipality.~~ A general description of the reasons for each promotion,
- 36 demotion, transfer, suspension, separation, or other change in position
- 37 classification with that municipality.
- 38 (11) ~~Date and type of each dismissal, suspension, or demotion for disciplinary~~
- 39 ~~reasons taken by the municipality.~~ If the disciplinary action was a dismissal,
- 40 a copy of the written notice of the final decision of the municipality setting
- 41 forth the specific acts or omissions that are the basis of the dismissal.
- 42 (11) The performance of the employee, to the extent that the municipality has
- 43 performance records in its possession.
- 44 (12) The office to which the employee is currently assigned."

SECTION 7. G.S. 162A-6.1(b) reads as rewritten:

"(b) The following information with respect to each authority employee is a matter of public record:

- 48 (1) Name.
- 49 (2) Age.
- 50 (3) Date of original employment or appointment to the service.

- 1 (4) The terms of any contract by which the employee is employed whether
2 written or oral, past and current, to the extent that the authority has the
3 written contract or a record of the oral contract in its possession.
- 4 (5) Current position.
- 5 (6) Title.
- 6 (7) Current salary.
- 7 (8) Date and amount of each increase or decrease in salary with that authority.
- 8 (9) Date and type of each promotion, demotion, transfer, suspension, separation,
9 or other change in position classification with that authority.
- 10 (10) ~~Date and general description of the reasons for each promotion with that~~
11 ~~authority.~~ A general description of the reasons for each promotion,
12 demotion, transfer, suspension, separation, or other change in position
13 classification with that authority.
- 14 (11) ~~Date and type of each dismissal, suspension, or demotion for disciplinary~~
15 ~~reasons taken by the authority.~~ If the disciplinary action was a dismissal, a
16 copy of the written notice of the final decision of the authority setting forth
17 the specific acts or omissions that are the basis of the dismissal.
- 18 (11) The performance of the employee, to the extent that the authority has
19 performance records in its possession.
- 20 (12) The office to which the employee is currently assigned."

21 **SECTION 8.** G.S. 143-318.16B reads as rewritten:

22 **"§ 143-318.16B. Assessments and awards of attorneys' fees.**

23 ~~When an action is brought pursuant to G.S. 143-318.16 or G.S. 143-318.16A, the court may~~
24 ~~make written findings specifying the prevailing party or parties, and may award the prevailing~~
25 ~~party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part~~
26 ~~of the costs. The court may order that all or any portion of any fee as assessed be paid~~
27 ~~personally by any individual member or members of the public body found by the court to have~~
28 ~~knowingly or intentionally committed the violation; provided, that no order against any~~
29 ~~individual member shall issue in any case where the public body or that individual member~~
30 ~~seeks the advice of an attorney, and such advice is followed.~~

31 (a) In any action brought pursuant to this Article in which a party successfully enjoins a
32 violation of this Article, or succeeds in having a court of competent jurisdiction declare a party
33 in violation of this Article, or succeeds in having a court declare an action taken in violation of
34 this Article as null and void, the court shall allow a party who substantially prevails in seeking
35 compliance by a public body with the requirements of this Article to recover its reasonable
36 attorneys' fees if attributable to that noncompliance. The court may not assess attorneys' fees
37 against the governmental body or governmental unit if the court finds that the governmental
38 body or governmental unit acted in reasonable reliance on any of the following:

- 39 (1) A judgment or an order of a court applicable to the governmental unit or
40 governmental body.
- 41 (2) The published opinion of an appellate court, an order of the North Carolina
42 Business Court, or a final order of the Trial Division of the General Court of
43 Justice.
- 44 (3) A written opinion, decision, or letter of the Attorney General.

45 The court may order that all or any portion of any fee assessed be paid personally by any
46 individual member or members of the public body found by the court to have knowingly or
47 intentionally committed the violation; provided, that no order against any individual member
48 shall issue in any case where the public body or that individual member seeks the advice of an
49 attorney and such advice is followed.

50 (b) Notwithstanding subsection (a) of this section, the court may not assess attorneys'
51 fees against a public hospital created under Article 2 of Chapter 131E of the General Statutes if

1 the court finds that the action was brought by or on behalf of a competing health care provider
2 for obtaining information to be used to gain a competitive advantage."

3 **SECTION 9.** G.S. 143-318.11 is amended by adding a new subsection to read:

4 "(e) Recording a Closed Session. – Every public body electing to conduct or continue a
5 public meeting in closed session shall record the closed session in its entirety by audio or video
6 means. The recording shall be produced to a court of competent jurisdiction upon demand and
7 otherwise preserved at least until such time as the need for lawful confidentiality of the subject
8 of the closed session has passed."

9 **SECTION 10.** G.S. 132-9(c) reads as rewritten:

10 "(c) In any action brought pursuant to this section in which a party successfully compels
11 the disclosure of public records, the court shall allow the prevailing party to recover its
12 reasonable attorneys' fees if attributed to those public records, unless the court finds the agency
13 acted with substantial justification in denying access to the public records or the court finds
14 circumstances that would make the award of attorneys' fees unjust records.

15 Any attorneys' fees assessed against a public agency under this section shall be charged
16 against the operating expenses of the agency; provided, however, that the court may order that
17 all or any portion of any attorneys' fees so assessed be paid personally by any public employee
18 or public official found by the court to have knowingly or intentionally committed, caused,
19 permitted, suborned, or participated in a violation of this Article. No order against any public
20 employee or public official shall issue in any case where the public employee or public official
21 seeks the advice of an attorney and such advice is followed."

22 **SECTION 11.** Chapter 132 of the General Statutes is amended by adding a new
23 section to read:

24 **"§ 132-11. Public officer individual civil liability for unwarranted nondisclosure.**

25 In any case where the court finds that a public officer or official (State or local) violated the
26 public records access requirements of this Chapter without good cause, the court may, in its
27 discretion, find that the public officer or official is individually liable for a civil penalty of up to
28 fifty dollars (\$50.00) for each day that the public officer or official failed to provide access to
29 the public record without good cause. The clear proceeds of the civil penalty shall be remitted
30 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

31 **SECTION 12.** Chapter 114 of the General Statutes is amended by adding a new
32 Article to read:

33 "Article 8.

34 "Open Government Unit.

35 **"§ 114-45. Open Government Unit.**

36 (a) To further the goal of government transparency and to provide that public records,
37 as defined by G.S. 132-1, compiled by State agencies or by political subdivisions of the State
38 are the property of the people of North Carolina, there is created within the Department of
39 Justice, the Open Government Unit.

40 (b) The Open Government Unit shall do all of the following:

41 (1) Develop and implement education and awareness programs designed to
42 educate the public and government agencies of their rights and
43 responsibilities under the public records and open meetings laws.

44 (2) Serve as a moderator or mediator in resolving public record and open
45 meeting issues between parties, including adopting procedures and
46 guidelines for assisting in the informal resolution of open government
47 disputes and issuing advisory opinions.

48 (3) Assemble and maintain a collection of relevant State laws, opinions, rules,
49 and regulations related to public records and open meetings laws, which
50 shall be made available electronically as a resource.

- 1 (4) Report annually to the General Assembly on its activities generally on the
2 subject of open government as appropriate.
- 3 (5) Research and study open meetings and open records procedures in other
4 states and state legislatures and annually report to the General Assembly
5 with recommendations on how to improve access to meetings and records of
6 the General Assembly.
- 7 (6) Adopt and develop policies and procedures as may be necessary to
8 accomplish these functions.

9 (c) A reasonable fee shall be charged for services of moderation or mediation in
10 resolving public record and open meeting issues by the Open Government Unit of the
11 Department of Justice. The fee authorized by this section shall not exceed the actual cost of
12 preparing, researching, and conducting the moderation or mediation. The fee for moderation or
13 mediation services is a departmental receipt of the Department and must be used to offset the
14 cost of the Open Government Unit.

15 (d) This section shall not apply to the Judicial Department."

16 **SECTION 13.** Sections 1 through 9 of this act become effective December 1,
17 2011. Section 10 of this act becomes effective October 1, 2011, and applies to actions brought
18 on or after that date. Section 11 of this act becomes effective October 1, 2011, and applies to
19 violations on or after that date. The remainder of this act is effective when it becomes law.