

OHIO OPEN MEETINGS ACT¹ PROPOSED STATUTORY REVISIONS

121.22 Public meetings - exceptions.

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

(B) As used in this section:

(1) “Public body” means any of the following:

(a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

(c) Any corporation created by a political subdivision described in division (B)(1)(a) of this section if it accepts any public funds from a public body.

(ed) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to section 6115.10 of the Revised Code, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, “court of jurisdiction” has the same meaning as “court” in section 6115.01 of the Revised Code.

(2) “Meeting” means any ~~prearranged~~ discussion of the public business of the public body by a majority of a quorum of its members.

¹ Correcting the most significant weakness of Ohio’s Open Meetings Act (OMA) requires revision not of the statute itself, but of the Ohio Constitution. Because Ohio’s OMA does not purport to be an exercise of police power by the state legislature, Ohio courts have practically voided the OMA’s operation against charter cities as violative of the Ohio Constitution’s “home rule provision” in Article XVIII in Section III. Courts have held that a charter municipality has the right to determine by charter the manner in which meetings will be held. Since Ohio is a home rule state, courts have concluded that when the local law and the state open government laws conflict, the local law prevails. Therefore, the Ohio Constitution should be revised as follows: “Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. However, the state Open Meetings Act governs over this section without exception” Ohio Constitution, § 18.03.

(3) “Regulated individual” means either of the following:

(a) A student in a state or local public educational institution;

(b) A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or retardation, disease, disability, age, or other condition requiring custodial care.

(4) “Public office” has the same meaning as in section 149.011 of the Revised Code.

(C)(1) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting. ~~A person shall not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.~~

(2) All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to:

(a) the date, time and place of the meeting;

(b) the members of the public body recorded as either present or absent; and

(c) a detailed summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

~~(3) The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section. A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.~~

(4) Each public body shall meet on no less than a monthly basis to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection.

(5) The verbatim record shall be preserved for two years, subject to the following conditions. If an action is brought claiming that public business not covered by a closed meeting exemption was transacted at a closed meeting held pursuant to this section

during the time when the tape is not available to the public, the court shall review the recording of the meeting in camera. If the court finds that this section was not violated, the action shall be dismissed and the recording shall be sealed and preserved in the records of the court until otherwise made available to the public pursuant to this section. If the court finds that this section was violated, the recording may be introduced at trial in its entirety subject to any protective orders as requested by either party and deemed appropriate by the court.

(D) This section does not apply to any of the following:

(1) A grand jury;

(2) An audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit;

(3) The adult parole authority when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine parole or pardon;

(4) The organized crime investigations commission established under section 177.01 of the Revised Code;

(5) Meetings of a child fatality review board established under section 307.621 of the Revised Code and meetings conducted pursuant to sections 5153.171 to 5153.173 of the Revised Code;

(6) The state medical board when determining whether to suspend a certificate without a prior hearing pursuant to division (G) of either section 4730.25 or 4731.22 of the Revised Code;

(7) The board of nursing when determining whether to suspend a license or certificate without a prior hearing pursuant to division (B) of section 4723.281 of the Revised Code;

(8) The state board of pharmacy when determining whether to suspend a license without a prior hearing pursuant to division (D) of section 4729.16 of the Revised Code;

(9) The state chiropractic board when determining whether to suspend a license without a hearing pursuant to section 4734.37 of the Revised Code.

(10) The executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce Chapter 3750. of the Revised Code.

(E) The controlling board, the development financing advisory council, the industrial technology and enterprise advisory council, the tax credit authority, or the minority development financing advisory board, when meeting to consider granting assistance pursuant to Chapter 122. or 166. of the Revised Code, in order to protect the interest of

the applicant or the possible investment of public funds, by unanimous vote of all board, council, or authority members present, may close the meeting during consideration of the following information confidentially received by the authority, council, or board from the applicant:

- (1) Marketing plans;
- (2) Specific business strategy;
- (3) Production techniques and trade secrets;
- (4) Financial projections;
- (5) Personal financial statements of the applicant or members of the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.

The vote by the authority, council, or board to accept or reject the application, as well as all proceedings of the authority, council, or board not subject to this division, shall be open to the public and governed by this section.

(F) Each public body shall provide an opportunity for public comment at meetings. Public comment shall be subject only to time, place and manner restrictions.

(G) Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings, including but not limited to providing public notice by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. At least one copy of the notice must be posted outside the building so that members of the public have access to the notice if the office or building is closed.

In addition, a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body. Any notice of an annual schedule of meetings shall remain on the website until a new public notice of the schedule of regular meetings is approved. Any notice of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting. Agendas for all regular, special, or emergency meetings must include sufficient detail to reasonably inform the public regarding what matters shall be discussed and what actions shall be taken. A public body that has a website that the full-time staff of the public body maintains shall also post on its website

the agenda of any regular meetings of the governing body of that public body. Any agenda of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded.

The rule shall provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

(H) Any person may record the proceedings at meetings required to be open by this section by tape, film or other means. The public body holding the meeting shall prescribe reasonable rules to govern the right to make such recordings and shall adopt these rules by law and make available copies of these rules at each meeting to any interested persons. The public body holding the meeting must allow any person to use the electrical outlet for taping and/or filming purposes within fifteen minutes prior to the start of the meeting, during the meeting and for fifteen minutes after the meeting to record the proceedings, may not charge any cost for the use of the outlet and may not require that the individual using the outlet physically attend the meeting to tape and/or film the meeting.

~~(G)~~ Except as provided in division ~~(J)~~ of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division ~~(G)~~(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division ~~(G)~~(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division ~~(G)~~(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has

not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action. Only verbal or written notice of potential litigation satisfies the requirement that litigation is pending or imminent;

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by federal law or regulations or state statutes;

(6) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office;

(7) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code, a joint township hospital operated pursuant to Chapter 513. of the Revised Code, or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in section 1333.61 of the Revised Code.

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (7) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

A public body specified in division (B)(1)(c) of this section shall not hold an executive session when meeting for the purposes specified in that division.

The court of common pleas shall have the jurisdiction to invalidate a final action taken at a closed session not in accordance with this division. The procedures set forth in division (K)(1) of this section apply to invalidation of a final action. In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this section, the public body may not reenact the disputed decision in conformity with this section in order to evade liability.

(HJ) A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (GI) or (HL) of this section and conducted at an executive session held in compliance with this section. A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section.

~~(HK)(1) Where the provisions of this section are not complied with, or where there is probable cause to believe that the provisions of this section will not be complied with, any person, including the prosecuting attorney or the attorney general, may bring an action to enforce this section. Any person may bring an action to enforce this section.~~ An action under division (HK)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the prosecuting attorney or the attorney general, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions. A violation cannot be cured by remedial action. Even if the public body complies with this section after a violation, a claim may be brought under this section.

(2)(a) If the court of common pleas issues an injunction pursuant to division (HK)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred one thousand dollars to the party that sought the injunction and shall award to that party all court costs and, ~~subject to reduction as described in division (I)(2) of this section,~~ reasonable attorney's fees, regardless of whether the party that sought the injunction was represented by an attorney or represented himself or herself. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following: Attorneys' fees or costs awarded to a prosecuting attorney shall be provided to the county where the attorney's office is based. Attorneys' fees or costs awarded to the attorney general shall be provided to the state.

(b) Any person who intentionally violates this section shall be subject to personal liability in the form of a civil penalty in an amount not to exceed \$1,000 for a single occurrence, which may not be paid by the public body.

(c) If a person has been found to have intentionally violated this section in three or more actions brought under this section involving the same governing body, such person shall forfeit any further right to serve on such governing body or in any other capacity with such public body for a period of time equal to the term of office such person was then serving. The court determining the merits of any action in connection with any alleged third violation shall receive competent, relevant evidence in connection therewith and, upon finding as to the occurrence of a separate third violation, unrelated to the previous violations, issue its order declaring the position vacant and notify the appointing authority

or clerk of the governing body. As soon as practicable thereafter, the appointing authority or the governing body shall fill the position as in the case of any other vacancy.

~~(i) That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate this section;~~

~~(ii) That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.~~

~~(b) If the court of common pleas does not issue an injunction pursuant to division (D)(1) of this section and the court determines at that time that the bringing of the action was frivolous conduct, as defined in division (A) of section 2323.51 of the Revised Code, the court shall award to the public body all court costs and reasonable attorney's fees, as determined by the court.~~

(3) Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section.

(4) A member of a public body who knowingly violates an injunction issued pursuant to division (~~IK~~) (1) of this section may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the attorney general.

(5) Criminal charges may be brought under this section by the prosecuting attorney or the attorney general. Any person violating any of the provisions of this Act shall be guilty of a Class C misdemeanor.

~~(JL)~~(1) Pursuant to division (C) of section 5901.09 of the Revised Code, a veterans service commission shall hold an executive session for one or more of the following purposes unless an applicant requests a public hearing:

(a) Interviewing an applicant for financial assistance under sections 5901.01 to 5901.15 of the Revised Code;

(b) Discussing applications, statements, and other documents described in division (B) of section 5901.09 of the Revised Code;

(c) Reviewing matters relating to an applicant's request for financial assistance under sections 5901.01 to 5901.15 of the Revised Code.

(2) A veterans service commission shall not exclude an applicant for, recipient of, or former recipient of financial assistance under sections 5901.01 to 5901.15 of the Revised

Code, and shall not exclude representatives selected by the applicant, recipient, or former recipient, from a meeting that the commission conducts as an executive session that pertains to the applicant's, recipient's, or former recipient's application for financial assistance.

(3) A veterans service commission shall vote on the grant or denial of financial assistance under sections 5901.01 to 5901.15 of the Revised Code only in an open meeting of the commission. The minutes of the meeting shall indicate the name, address, and occupation of the applicant, whether the assistance was granted or denied, the amount of the assistance if assistance is granted, and the votes for and against the granting of assistance.

(M)(1) Effective January 1, 2010, the legislative branch of the state government shall create an independent regulatory body in the office of the Ohio Auditor of State's Open Government Unit with the power and authority to enforce this section.

(2) The Ohio Auditor of State's Open Government Unit serves the following purposes: offering education and training programs to government officials, the public and the media; answering questions concerning this chapter; working to resolve disputes under this chapter; and working to ensure compliance with this section.

(3) In furtherance of those purposes, the Ohio Auditor of State's Open Government Unit may, at the Unit's discretion, issue opinions regarding a public body's compliance with this section.

(4) If there is a proceeding under division (K) of this section and the Ohio Auditor of State's Open Government Unit has previously issued an opinion requiring specific action but the public body refuses to comply within a reasonable time, upon motion of the plaintiff the court may consider the public body's refusal willful and act in accordance with division (K) of this section.