

As Introduced

**125th General Assembly
Regular Session
2003-2004**

S. B. No. 47

Senator Stivers

A B I L L

To amend section 121.22 and to enact section 101.17 1
of the Revised Code to create an exception in the 2
Open Meetings Law from the requirement of actual 3
physical presence for members of public bodies who 4
are called to active duty, to permit those 5
members, under specified circumstances, to vote 6
from their active duty locations within 7
twenty-four hours after a vote of the public body, 8
to amend Section 5 of Sub. H.B. 390 of the 124th 9
General Assembly to extend the time within which 10
members of the National Guard and reserve 11
components of the Armed Forces of the United 12
States who have been called to active duty must 13
pay real property and manufactured home taxes, and 14
to declare an emergency. 15

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 121.22 be amended and section 101.17 16
of the Revised Code be enacted to read as follows: 17

Sec. 101.17. (A) A member of the general assembly who is 18
called to active duty for two hundred seventy days or less need 19
not be present in person at a committee meeting or at a session of 20
the house of the general assembly of which the person is a member 21
in order to vote at that meeting or session, as applicable. Except 22
as otherwise provided in division (A)(3) of this section, the vote 23
of such a member shall be counted as a valid vote if the member's 24
vote is registered by telephone, facsimile transmission, 25
electronic mail or other internet communication, or other method 26
of communication within twenty-four hours after a vote is 27
conducted at the meeting or session, as applicable. 28

(2) To the extent feasible, such a member voting or 29
attempting to vote pursuant to division (A)(1) of this section 30
shall use private, nongovernmental resources. If the use of 31
private, nongovernmental resources is not feasible, a person 32
voting or attempting to so vote may utilize governmental 33
resources, if the person's commander or other appropriate 34
commanding officer approves the use of those resources for that 35
purpose. 36

(3) If a vote cast pursuant to division (A)(1) of this 37
section would constitute the deciding vote in any matter voted on 38
by the committee or the house of the general assembly of which 39
that person is a member, that vote shall not be counted. 40

(4) No member shall vote or attempt to vote under division 41
(A)(1) of this section if the casting of the member's vote would 42
interfere with the member's active duty obligations. Any such 43
member shall obtain the approval of the member's commanding 44
officer prior to voting or attempting to so vote under that 45
division. 46

(5) A member who votes pursuant to division (A)(1) of this section shall not be considered to be present for purposes of determining whether a quorum is present at the meeting or session, as applicable. 47
48
49
50

(B) As used in this section: 51

(1) "Committee" and "meeting" have the same meanings as in section 101.15 of the Revised Code. 52
53

(2) "Active duty" has the same meaning as in division (F) of section 5919.34 of the Revised Code. 54
55

Sec. 121.22. (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. 56
57
58
59

(B) As used in this section: 60

(1) "Public body" means any of the following: 61

(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; 62
63
64
65
66
67

(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section; 68
69

(c) 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 70
71
72
73
74
75

such a district other than litigation involving the district. As 76
used in division (B)(1)(c) of this section, "court of 77
jurisdiction" has the same meaning as "court" in section 6115.01 78
of the Revised Code. 79

(2) "Meeting" means any prearranged discussion of the public 80
business of the public body by a majority of its members. 81

(3) "Regulated individual" means either of the following: 82

(a) A student in a state or local public educational 83
institution; 84

(b) A person who is, voluntarily or involuntarily, an inmate, 85
patient, or resident of a state or local institution because of 86
criminal behavior, mental illness or retardation, disease, 87
disability, age, or other condition requiring custodial care. 88

(4) "Public office" has the same meaning as in section 89
149.011 of the Revised Code. 90

(C) All meetings of any public body are declared to be public 91
meetings open to the public at all times. A Except as otherwise 92
provided in divisions (K) and (L) of this section, a 93
public body shall be present in person at a meeting open to the 94
public to be considered present or to vote at the meeting and for 95
purposes of determining whether a quorum is present at the 96
meeting. 97

The minutes of a regular or special meeting of any public 98
body shall be promptly prepared, filed, and maintained and shall 99
be open to public inspection. The minutes need only reflect the 100
general subject matter of discussions in executive sessions 101
authorized under division (G) or (J) of this section. 102

(D) This section does not apply to any of the following: 103

(1) A grand jury; 104

(2) An audit conference conducted by the auditor of state or 105

independent certified public accountants with officials of the	106
public office that is the subject of the audit;	107
(3) The adult parole authority when its hearings are	108
conducted at a correctional institution for the sole purpose of	109
interviewing inmates to determine parole or pardon;	110
(4) The organized crime investigations commission established	111
under section 177.01 of the Revised Code;	112
(5) Meetings of a child fatality review board established	113
under section 307.621 of the Revised Code and meetings conducted	114
pursuant to sections 5153.171 to 5153.173 of the Revised Code;	115
(6) The state medical board when determining whether to	116
suspend a certificate without a prior hearing pursuant to division	117
(G) of either section 4730.25 or 4731.22 of the Revised Code;	118
(7) The board of nursing when determining whether to suspend	119
a license or certificate without a prior hearing pursuant to	120
division (B) of section 4723.281 of the Revised Code;	121
(8) The state board of pharmacy when determining whether to	122
suspend a license without a prior hearing pursuant to division (D)	123
of section 4729.16 of the Revised Code;	124
(9) The state chiropractic board when determining whether to	125
suspend a license without a hearing pursuant to section 4734.37 of	126
the Revised Code.	127
(10) The executive committee of the emergency response	128
commission when determining whether to issue an enforcement order	129
or request that a civil action, civil penalty action, or criminal	130
action be brought to enforce Chapter 3750. of the Revised Code.	131
(E) The controlling board, the development financing advisory	132
council, the industrial technology and enterprise advisory	133
council, the tax credit authority, or the minority development	134
financing advisory board, when meeting to consider granting	135

ssistance pursuant to Chapter 122. or 166. of the Revised Code, in 136
order to protect the interest of the applicant or the possible 137
investment of public funds, by unanimous vote of all board, 138
council, or authority members present, may close the meeting 139
during consideration of the following information confidentially 140
received by the authority, council, or board from the applicant: 141

(1) Marketing plans; 142

(2) Specific business strategy; 143

(3) Production techniques and trade secrets; 144

(4) Financial projections; 145

(5) Personal financial statements of the applicant or members 146
of the applicant's immediate family, including, but not limited 147
to, tax records or other similar information not open to public 148
inspection. 149

The vote by the authority, council, or board to accept or 150
reject the application, as well as all proceedings of the 151
authority, council, or board not subject to this division, shall 152
be open to the public and governed by this section. 153

(F) Every public body, by rule, shall establish a reasonable 154
method whereby any person may determine the time and place of all 155
regularly scheduled meetings and the time, place, and purpose of 156
all special meetings. A public body shall not hold a special 157
meeting unless it gives at least twenty-four hours' advance notice 158
to the news media that have requested notification, except in the 159
event of an emergency requiring immediate official action. In the 160
event of an emergency, the member or members calling the meeting 161
shall notify the news media that have requested notification 162
immediately of the time, place, and purpose of the meeting. 163

The rule shall provide that any person, upon request and 164
payment of a reasonable fee, may obtain reasonable advance 165

otification of all meetings at which any specific type of public 166
business is to be discussed. Provisions for advance notification 167
may include, but are not limited to, mailing the agenda of 168
meetings to all subscribers on a mailing list or mailing notices 169
in self-addressed, stamped envelopes provided by the person. 170

(G) Except as provided in division (J) of this section, the 171
members of a public body may hold an executive session only after 172
a majority of a quorum of the public body determines, by a roll 173
call vote, to hold an executive session and only at a regular or 174
special meeting for the sole purpose of the consideration of any 175
of the following matters: 176

(1) To consider the appointment, employment, dismissal, 177
discipline, promotion, demotion, or compensation of a public 178
employee or official, or the investigation of charges or 179
complaints against a public employee, official, licensee, or 180
regulated individual, unless the public employee, official, 181
licensee, or regulated individual requests a public hearing. 182
Except as otherwise provided by law, no public body shall hold an 183
executive session for the discipline of an elected official for 184
conduct related to the performance of the elected official's 185
official duties or for the elected official's removal from office. 186
If a public body holds an executive session pursuant to division 187
(G)(1) of this section, the motion and vote to hold that executive 188
session shall state which one or more of the approved purposes 189
listed in division (G)(1) of this section are the purposes for 190
which the executive session is to be held, but need not include 191
the name of any person to be considered at the meeting. 192

(2) To consider the purchase of property for public purposes, 193
or for the sale of property at competitive bidding, if premature 194
disclosure of information would give an unfair competitive or 195
bargaining advantage to a person whose personal, private interest 196
is adverse to the general public interest. No member of a public 197

body shall use division (G)(2) of this section as a subterfuge for 198
providing covert information to prospective buyers or sellers. A 199
purchase or sale of public property is void if the seller or buyer 200
of the public property has received covert information from a 201
member of a public body that has not been disclosed to the general 202
public in sufficient time for other prospective buyers and sellers 203
to prepare and submit offers. 204

If the minutes of the public body show that all meetings and 205
deliberations of the public body have been conducted in compliance 206
with this section, any instrument executed by the public body 207
purporting to convey, lease, or otherwise dispose of any right, 208
title, or interest in any public property shall be conclusively 209
presumed to have been executed in compliance with this section 210
insofar as title or other interest of any bona fide purchasers, 211
lessees, or transferees of the property is concerned. 212

(3) Conferences with an attorney for the public body 213
concerning disputes involving the public body that are the subject 214
of pending or imminent court action; 215

(4) Preparing for, conducting, or reviewing negotiations or 216
bargaining sessions with public employees concerning their 217
compensation or other terms and conditions of their employment; 218

(5) Matters required to be kept confidential by federal law 219
or regulations or state statutes; 220

(6) Details relative to the security arrangements and 221
emergency response protocols for a public body or a public office, 222
if disclosure of the matters discussed could reasonably be 223
expected to jeopardize the security of the public body or public 224
office; 225

(7) In the case of a county hospital operated pursuant to 226
Chapter 339. of the Revised Code, to consider trade secrets, as 227
defined in section 1333.61 of the Revised Code. 228

If a public body holds an executive session to consider any 229
of the matters listed in divisions (G)(2) to (7) of this section, 230
the motion and vote to hold that executive session shall state 231
which one or more of the approved matters listed in those 232
divisions are to be considered at the executive session. 233

A public body specified in division (B)(1)(c) of this section 234
shall not hold an executive session when meeting for the purposes 235
specified in that division. 236

(H) A resolution, rule, or formal action of any kind is 237
invalid unless adopted in an open meeting of the public body. A 238
resolution, rule, or formal action adopted in an open meeting that 239
results from deliberations in a meeting not open to the public is 240
invalid unless the deliberations were for a purpose specifically 241
authorized in division (G) or (J) of this section and conducted at 242
an executive session held in compliance with this section. A 243
resolution, rule, or formal action adopted in an open meeting is 244
invalid if the public body that adopted the resolution, rule, or 245
formal action violated division (F) of this section. 246

(I)(1) Any person may bring an action to enforce this 247
section. An action under division (I)(1) of this section shall be 248
brought within two years after the date of the alleged violation 249
or threatened violation. Upon proof of a violation or threatened 250
violation of this section in an action brought by any person, the 251
court of common pleas shall issue an injunction to compel the 252
members of the public body to comply with its provisions. 253

(2)(a) If the court of common pleas issues an injunction 254
pursuant to division (I)(1) of this section, the court shall order 255
the public body that it enjoins to pay a civil forfeiture of five 256
hundred dollars to the party that sought the injunction and shall 257
award to that party all court costs and, subject to reduction as 258
described in division (I)(2) of this section, reasonable 259

attorney's fees. The court, in its discretion, may reduce an award 260
of attorney's fees to the party that sought the injunction or not 261
award attorney's fees to that party if the court determines both 262
of the following: 263

(i) That, based on the ordinary application of statutory law 264
and case law as it existed at the time of violation or threatened 265
violation that was the basis of the injunction, a well-informed 266
public body reasonably would believe that the public body was not 267
violating or threatening to violate this section; 268

(ii) That a well-informed public body reasonably would 269
believe that the conduct or threatened conduct that was the basis 270
of the injunction would serve the public policy that underlies the 271
authority that is asserted as permitting that conduct or 272
threatened conduct. 273

(b) If the court of common pleas does not issue an injunction 274
pursuant to division (I)(1) of this section and the court 275
determines at that time that the bringing of the action was 276
frivolous conduct, as defined in division (A) of section 2323.51 277
of the Revised Code, the court shall award to the public body all 278
court costs and reasonable attorney's fees, as determined by the 279
court. 280

(3) Irreparable harm and prejudice to the party that sought 281
the injunction shall be conclusively and irrebuttably presumed 282
upon proof of a violation or threatened violation of this section. 283

(4) A member of a public body who knowingly violates an 284
injunction issued pursuant to division (I)(1) of this section may 285
be removed from office by an action brought in the court of common 286
pleas for that purpose by the prosecuting attorney or the attorney 287
general. 288

(J)(1) Pursuant to division (C) of section 5901.09 of the 289
Revised Code, a veterans service commission shall hold an 290

executive session for one or more of the following purposes unless 291
an applicant requests a public hearing: 292

(a) Interviewing an applicant for financial assistance under 293
sections 5901.01 to 5901.15 of the Revised Code; 294

(b) Discussing applications, statements, and other documents 295
described in division (B) of section 5901.09 of the Revised Code; 296

(c) Reviewing matters relating to an applicant's request for 297
financial assistance under sections 5901.01 to 5901.15 of the 298
Revised Code. 299

(2) A veterans service commission shall not exclude an 300
applicant for, recipient of, or former recipient of financial 301
assistance under sections 5901.01 to 5901.15 of the Revised Code, 302
and shall not exclude representatives selected by the applicant, 303
recipient, or former recipient, from a meeting that the commission 304
conducts as an executive session that pertains to the applicant's, 305
recipient's, or former recipient's application for financial 306
assistance. 307

(3) A veterans service commission shall vote on the grant or 308
denial of financial assistance under sections 5901.01 to 5901.15 309
of the Revised Code only in an open meeting of the commission. The 310
minutes of the meeting shall indicate the name, address, and 311
occupation of the applicant, whether the assistance was granted or 312
denied, the amount of the assistance if assistance is granted, and 313
the votes for and against the granting of assistance. 314

(K) A member of a public body who is called to active duty and who is stationed in the United States need not be present in person at a meeting open to the public in order to be considered present or to vote at the meeting. It is sufficient for such a member of a public body to be present via methods of telecommunications by which members of the public can hear and interact with the member of the public body. Such presence of a member of a public body also shall be considered for purposes of determining whether a quorum is present at the meeting. 315
316
317
318
319
320
321
322
323

(L)(1) A member of a public body who is called to active duty for two hundred seventy days or less need not be present in person at a meeting of that body in order to vote at that meeting. Except as otherwise provided in division (L)(3) of this section, the vote of such a member shall be counted as a valid vote if the member's vote is registered by telephone, facsimile transmission, electronic mail or other internet communication, or other method of communication within twenty-four hours after a vote is conducted at the meeting. 324
325
326
327
328
329
330
331
332

(2) To the extent feasible, such a member of a public body voting or attempting to vote pursuant to division (L)(1) of this section shall use private, nongovernmental resources. If the use of private, nongovernmental resources is not feasible, a person voting or attempting to so vote may utilize governmental resources, if the person's commander or other appropriate commanding officer approves the use of those resources for that purpose. 333
334
335
336
337
338
339
340

(3) If a vote cast pursuant to division (L)(1) of this section would constitute the deciding vote in any matter voted on by the public body, that vote shall not be counted. 341
342
343

(4) No member of a public body shall vote or attempt to vote under division (L)(1) of this section if the casting of the member's vote would interfere with the member's active duty obligations. Any such member shall obtain the approval of the member's commanding officer prior to voting or attempting to so vote under that division. 344
345
346
347
348
349

(5) A member of a public body who votes pursuant to division (L)(1) of this section but who does not meet the requirements of division (K) of this section shall not be considered to be present for purposes of determining whether a quorum is present at the meeting. 350
351
352
353
354

(M) As used in this section, "active duty" has the same meaning as in division (F) of section 5919.34 of the Revised Code. 355
356

Section 2. That existing section 121.22 of the Revised Code is hereby repealed. 357
358

Section 3. That Section 5 of Sub. H.B. 390 of the 124th General Assembly be amended to read as follows: 359
360

Sec. 5. (A) This section applies to any real property or manufactured or mobile home that is: 361
362

(1) Owned by a member of the National Guard or a member of a reserve component of the Armed Forces of the United States who is called to active ~~or other~~ duty ~~under Operation Enduring Freedom, Operation Noble Eagle, or the directive issued by the Governor on September 28, 2001, or a successor to that directive;~~ 363
364
365
366
367

(2) Owned by the spouse of such a member; 368

(3) Owned jointly by such a member and that member's spouse or dependent parent; or 369
370

(4) Owned by the dependent parent of such a member who dies 371

during such duty or as the result of wounds or illness incurred 372
during such duty. 373

For purposes of this section, a "dependent parent" is a 374
parent who, at the time the member was activated, received from 375
the member at least half of the dependent parent's support, 376
including food, shelter, clothing, and medical and dental care. 377

(B) The member, the member's spouse, or the member's parent, 378
as applicable, may apply to the county treasurer for an extension 379
for the payment of taxes and assessments charged against the real 380
property or manufactured or mobile home and payable during the 381
period of the member's duty service and the six months ensuing 382
termination thereof. Application shall be made not later than the 383
last day of the sixth month after the month in which the member's 384
duty terminates. The applicant shall provide evidence satisfactory 385
to the county treasurer to demonstrate eligibility for the 386
extension as described in division (A) of this section. 387

If the county treasurer determines that the applicant 388
qualifies for an extension under this section, the county 389
treasurer shall enter into a contract with the applicant for 390
payment of the taxes and assessments in installments in the same 391
manner as, and subject to the same terms and conditions of, 392
contracts for the payment of delinquent taxes pursuant to section 393
323.31 of the Revised Code, except that the contract shall specify 394
that payments shall begin in the seventh month after the member's 395
duty terminates. Notwithstanding sections 319.49, 323.01, 323.121, 396
323.132, 4503.06, 5721.01, and 5721.011 of the Revised Code, taxes 397
and assessments, payment of which has been extended under this 398
section, do not constitute delinquent taxes and shall not be 399
placed on the delinquent land list or delinquent manufactured home 400
tax list unless the contract becomes void, and a new contract is 401
not entered into, pursuant to section 323.31 of the Revised Code. 402

(C) If a member, a member's spouse, or a member's parent 403

qualifies for the extension provided in this section, and that 404
member, spouse, or parent has designated an agent for the payment 405
of taxes and assessments the payment of which is so extended, that 406
agent shall not require the member, spouse, or parent to pay to 407
the agent any such taxes and assessments for the period for which 408
payment is extended under division (B) of this section. If such 409
taxes or assessments are paid by the member, spouse, or parent to 410
an agent as part of a mortgage loan installment payment, the agent 411
shall deduct the portion of the payment that represents such taxes 412
and assessments from the amount of each such payment payable 413
during the period of extension prescribed by division (B) of this 414
section. 415

(D) If the member, the member's spouse, or the member's 416
parent has entered into a contract pursuant to this section before 417
the first day of the seventh month after the month in which the 418
member's duty terminates, the county auditor and treasurer shall 419
remove from the tax list and duplicate, respectively, any 420
penalties and interest that were charged under section 323.121 or 421
4503.06 of the Revised Code during the member's duty and before 422
the first day of the seventh month after the month in which the 423
member's duty terminates. 424

(E) Notwithstanding section 323.131 of the Revised Code, a 425
county treasurer shall include a notice of, and information about, 426
the extension provided in this section on or with tax bills mailed 427
or delivered under section 323.13 or 4503.06 of the Revised Code. 428

Section 4. That existing Section 5 of Sub. H.B. 390 of the 429
124th General Assembly is hereby repealed. 430

Section 5. This act is hereby declared to be an emergency 431
measure necessary for the immediate preservation of the public 432
peace, health, and safety. The reasons for such necessity are that 433

active duty military personnel may face real economic hardships 434
while serving their country and urgently need the financial relief 435
provided by the real property and manufactured home tax extensions 436
authorized by this act and that military personnel serving in 437
civil offices are unable to cast necessary votes in those offices 438
while absent from this state serving on active duty. Therefore, 439
this act shall go into immediate effect. 440