

**As Introduced**

**130th General Assembly  
Regular Session  
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**S. B. No. 93**

**Senator Jones**

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**A B I L L**

To amend section 121.22 of the Revised Code to 1  
require that further information be stated in 2  
motions to hold executive sessions under the Open 3  
Meetings Act, to expand the fees and expenses that 4  
may be recovered for violation of the Act, and to 5  
make other changes to the Act. 6

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

**Section 1.** That section 121.22 of the Revised Code be amended 7  
to read as follows: 8

**Sec. 121.22.** (A) This section shall be liberally construed to 9  
require public officials to take official action and to conduct 10  
all ~~deliberations upon official~~ consideration or discussion of 11  
public business only in open meetings unless the subject matter is 12  
specifically excepted by law. 13

(B) As used in this section: 14

(1) "Public body" means any of the following: 15

(a) Any board, commission, committee, council, or similar 16  
decision-making body of a state agency, institution, or authority, 17  
and any legislative authority or board, commission, committee, 18  
council, agency, authority, or similar decision-making body of any 19

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) 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~~ assemblage, congregation, or other gathering of a majority of the members of a public body for the consideration or discussion of the public business of the public body by a majority of its members, including, without limitation, for receiving or making reports, presentations, recommendations, or comments or for receiving or giving advice concerning the public business of the public body.

(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) 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.

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~~ of an executive sessions session authorized under division (G) or (J) of this section need only reflect the general subject matter of matters considered or discussed in the executive session, but the minutes shall include the time that the public body convened and adjourned from the executive session, shall identify by name all individuals who were in attendance during the executive session except for the name of the individual to be considered or discussed under division (G)(1) of this section, and shall indicate the period of time each named individual attended the executive session.

(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	81
suspend a certificate without a prior hearing pursuant to division	82
(G) of either section 4730.25 or 4731.22 of the Revised Code;	83
(7) The board of nursing when determining whether to suspend	84
a license or certificate without a prior hearing pursuant to	85
division (B) of section 4723.281 of the Revised Code;	86
(8) The state board of pharmacy when determining whether to	87
suspend a license without a prior hearing pursuant to division (D)	88
of section 4729.16 of the Revised Code;	89
(9) The state chiropractic board when determining whether to	90
suspend a license without a hearing pursuant to section 4734.37 of	91
the Revised Code;	92
(10) The executive committee of the emergency response	93
commission when determining whether to issue an enforcement order	94
or request that a civil action, civil penalty action, or criminal	95
action be brought to enforce Chapter 3750. of the Revised Code;	96
(11) The board of directors of the nonprofit corporation	97
formed under section 187.01 of the Revised Code or any committee	98
thereof, and the board of directors of any subsidiary of that	99
corporation or a committee thereof;	100
(12) An audit conference conducted by the audit staff of the	101
department of job and family services with officials of the public	102
office that is the subject of that audit under section 5101.37 of	103
the Revised Code.	104
(E) The controlling board, the industrial technology and	105
enterprise advisory council, the tax credit authority, or the	106
minority development financing advisory board, when meeting to	107
consider <u>or discuss</u> granting assistance pursuant to Chapter 122.	108
or 166. of the Revised Code, in order to protect the interest of	109
the applicant or the possible investment of public funds, by	110
unanimous vote of all board, council, or authority members	111

present, may close the meeting during consideration or discussion 112  
of the following information confidentially received by the 113  
authority, council, or board from the applicant: 114

(1) Marketing plans; 115

(2) Specific business strategy; 116

(3) Production techniques and trade secrets; 117

(4) Financial projections; 118

(5) Personal financial statements of the applicant or members 119  
of the applicant's immediate family, including, but not limited 120  
to, tax records or other similar information not open to public 121  
inspection. 122

The vote by the authority, council, or board to accept or 123  
reject the application, as well as all proceedings of the 124  
authority, council, or board not subject to this division, shall 125  
be open to the public and governed by this section. 126

(F) Every public body, by rule, shall establish a reasonable 127  
method whereby any person may determine the time and place of all 128  
regularly scheduled meetings and the time, place, and purpose of 129  
all special meetings. A public body shall not hold a special 130  
meeting unless it gives at least twenty-four hours' advance notice 131  
to the news media that have requested notification, except in the 132  
event of an emergency requiring immediate official action. In the 133  
event of an emergency, the member or members calling the meeting 134  
shall notify the news media that have requested notification 135  
immediately of the time, place, and purpose of the meeting. 136

The rule shall provide that any person, upon request and 137  
payment of a reasonable fee, may obtain reasonable advance 138  
notification of all meetings at which any specific type of public 139  
business is to be considered or discussed. Provisions for advance 140  
notification may include, but are not limited to, mailing the 141

agenda of meetings to all subscribers on a mailing list or mailing 142  
notices in self-addressed, stamped envelopes provided by the 143  
person. 144

(G) Except as provided in division (J) of this section, the 145  
members of a public body may hold an executive session only after 146  
a majority of a quorum of the public body determines, by a roll 147  
call vote, to hold an executive session and only at a regular or 148  
special meeting for the sole purpose of the consideration or 149  
discussion of any of the following matters: 150

(1) ~~To consider the~~ The appointment, employment, dismissal, 151  
discipline, promotion, demotion, or compensation of a public 152  
employee or official, or the investigation of charges or 153  
complaints against a public employee, official, licensee, or 154  
regulated individual, unless the public employee, official, 155  
licensee, or regulated individual requests a public hearing. 156  
Except as otherwise provided by law, no public body shall hold an 157  
executive session for the discipline of an elected official for 158  
conduct related to the performance of the elected official's 159  
official duties or for the elected official's removal from office. 160  
~~If a public body holds an executive session pursuant to division~~ 161  
~~(G)(1) of this section, the~~ The motion and vote to hold ~~that~~ an 162  
executive session for these purposes shall state which one or more 163  
of the approved purposes listed in division (G)(1) of this section 164  
are the purposes for which the executive session is to be held, 165  
but need not include the name of ~~any~~ the person to be considered 166  
~~at~~ or discussed during the meeting executive session. 167

(2) ~~To consider the~~ (a) The purchase of property for public 168  
purposes, or for the sale of property at competitive bidding, if 169  
premature disclosure of information would give an unfair 170  
competitive or bargaining advantage to a person whose personal, 171  
private interest is adverse to the general public interest. ~~No~~ The 172  
motion and vote to hold an executive session for these purposes 173

shall specifically state whether the executive session is to 174  
consider or discuss the purchase of property for public purposes 175  
or the sale of property at competitive bidding. 176

(b) No member of a public body shall use division (G)(2) of 177  
this section as a subterfuge for providing covert information to 178  
prospective buyers or sellers. A purchase or sale of public 179  
property is void if the seller or buyer of the public property has 180  
received covert information from a member of a public body that 181  
has not been disclosed to the general public in sufficient time 182  
for other prospective buyers and sellers to prepare and submit 183  
offers. 184

(c) If the minutes of the public body show that all meetings 185  
of the public body and deliberations consideration by or 186  
discussions of the public body have been conducted in compliance 187  
with this section, any instrument executed by the public body 188  
purporting to convey, lease, or otherwise dispose of any right, 189  
title, or interest in any public property shall be conclusively 190  
presumed to have been executed in compliance with this section 191  
insofar as title or other interest of any bona fide purchasers, 192  
lessees, or transferees of the property is concerned. 193

(3) Conferences with an attorney for the public body 194  
concerning disputes involving the public body that are the subject 195  
of pending or imminent court action~~+~~. The motion and vote to hold 196  
an executive session for this purpose shall identify by name the 197  
public body's attorney and shall state whether the executive 198  
session concerns a pending court action or an imminent court 199  
action. If the executive session concerns a pending court action, 200  
the motion and vote to hold the executive session shall identify 201  
by case number the pending court action and its subject matter, 202  
but if the executive session concerns an imminent court action, 203  
the motion and vote to hold the executive session shall describe 204  
the imminent court action only if disclosure of it would not, in 205

the opinion of the public body, create or cause a material 206  
disadvantage to the public body relative to the imminent court 207  
action. If, for this reason, the motion and vote to hold an 208  
executive session does not describe the imminent court action, the 209  
public body, not later than six months after holding the executive 210  
session, shall disclose at a meeting of the public body the 211  
imminent court action that was the subject of the executive 212  
session. At that meeting, the public body shall amend the minutes 213  
of the prior meeting during which the public body held the 214  
executive session, so that the minutes describe the imminent court 215  
action that was the subject of the executive session. 216

(4) Preparing for, conducting, or reviewing negotiations or 217  
bargaining sessions with public employees concerning their 218  
compensation or other terms and conditions of their employment; 219

(5) Matters required to be kept confidential by federal or 220  
state law or regulations ~~or state statutes~~. The motion and vote 221  
to hold an executive session because of these requirements shall 222  
identify the federal or state law or regulation that requires that 223  
the matters being considered or discussed by the public body in 224  
the executive session be kept confidential. 225

(6) Details relative to the security arrangements and 226  
emergency response protocols for a public body or a public office, 227  
if disclosure of the matters considered or discussed could 228  
reasonably be expected to jeopardize the security of the public 229  
body or public office; 230

(7) In the case of a county hospital operated pursuant to 231  
Chapter 339. of the Revised Code, a joint township hospital 232  
operated pursuant to Chapter 513. of the Revised Code, or a 233  
municipal hospital operated pursuant to Chapter 749. of the 234  
Revised Code, ~~to consider~~ trade secrets, as defined in section 235  
1333.61 of the Revised Code. 236



If a public body holds an executive session to consider or 237  
discuss any of the matters listed in ~~divisions~~ division (G)(2) ~~to~~ 238  
(4), (6), or (7) of this section, the motion and vote to hold that 239  
executive session shall state which one or more of the approved 240  
matters listed in those divisions are to be considered or 241  
discussed at the executive session. 242

A public body specified in division (B)(1)(c) of this section 243  
shall not hold an executive session when meeting for the purposes 244  
specified in that division. 245

(H) A resolution, rule, or formal action of any kind is 246  
invalid unless adopted in an open meeting of the public body. A 247  
resolution, rule, or formal action adopted in an open meeting that 248  
results from ~~deliberations~~ consideration or discussion in a 249  
meeting not open to the public is invalid unless ~~the deliberations~~ 250  
~~were~~ consideration or discussion was for a purpose specifically 251  
authorized in division (G) or (J) of this section and conducted at 252  
an executive session held in compliance with this section. A 253  
resolution, rule, or formal action adopted in an open meeting is 254  
invalid if the public body that adopted the resolution, rule, or 255  
formal action violated division (F) of this section. 256

(I)(1) Any person may bring an action to enforce this section 257  
for the failure of a public body or its members to comply with 258  
this section. An action under division (I)(1) of this section 259  
shall be brought within two years after the date of the alleged 260  
violation or threatened violation. Upon proof of a violation or 261  
threatened violation of this section in an action brought by any 262  
person, the court of common pleas shall issue an injunction to 263  
compel the members of the public body to comply with its 264  
provisions. 265

(2)(a) If the court of common pleas issues an injunction 266  
pursuant to division (I)(1) of this section, the court shall order 267  
the public body that it enjoins to pay a civil forfeiture of five 268

hundred dollars to the party that sought the injunction and shall 269  
award to that party all court costs, and, ~~subject to reduction as~~ 270  
~~described in division (I)(2) of this section,~~ shall award to the 271  
party's attorney reasonable attorney's fees and all litigation 272  
expenses incurred, including fees and expenses incurred to produce 273  
proof of the reasonableness and amount of the attorney's fees and 274  
to otherwise litigate entitlement to the fees and expenses. Court 275  
costs, attorney's fees, and litigation expenses awarded under this 276  
section shall be construed as remedial and not punitive. The 277  
court, in its discretion, may reduce an award of attorney's fees 278  
to the attorney of the party that sought the injunction or not 279  
award attorney's fees to the attorney of that party if the court 280  
determines both of the following: 281

(i) That, based on the ordinary application of statutory law 282  
and case law as it existed at the time of violation or threatened 283  
violation that was the basis of the injunction, a well-informed 284  
public body reasonably would believe that the public body was not 285  
violating or threatening to violate this section; 286

(ii) That a well-informed public body reasonably would 287  
believe that the conduct or threatened conduct that was the basis 288  
of the injunction would serve the public policy that underlies the 289  
authority that is asserted as permitting that conduct or 290  
threatened conduct. 291

(b) If the court of common pleas does not issue an injunction 292  
pursuant to division (I)(1) of this section and the court 293  
determines at that time that the bringing of the action was 294  
frivolous conduct, as defined in division (A) of section 2323.51 295  
of the Revised Code, the court shall award to the public body all 296  
court costs and reasonable attorney's fees, as determined by the 297  
court. 298

(3) Irreparable harm and prejudice to the party that sought 299  
the injunction shall be conclusively and irrebuttably presumed 300

upon proof of a violation or threatened violation of this section 301  
and the party need not demonstrate the presence of any public 302  
benefit. 303

(4) A member of a public body who knowingly violates an 304  
injunction issued pursuant to division (I)(1) of this section may 305  
be removed from office by an action brought in the court of common 306  
pleas for that purpose by the prosecuting attorney or the attorney 307  
general. 308

(J)(1) Pursuant to division (C) of section 5901.09 of the 309  
Revised Code, a veterans service commission shall hold an 310  
executive session for one or more of the following purposes unless 311  
an applicant requests a public hearing: 312

(a) Interviewing an applicant for financial assistance under 313  
sections 5901.01 to 5901.15 of the Revised Code; 314

(b) ~~Discussing~~ Considering or discussing applications, 315  
statements, and other documents described in division (B) of 316  
section 5901.09 of the Revised Code; 317

(c) Reviewing matters relating to an applicant's request for 318  
financial assistance under sections 5901.01 to 5901.15 of the 319  
Revised Code. 320

(2) A veterans service commission shall not exclude an 321  
applicant for, recipient of, or former recipient of financial 322  
assistance under sections 5901.01 to 5901.15 of the Revised Code, 323  
and shall not exclude representatives selected by the applicant, 324  
recipient, or former recipient, from a meeting that the commission 325  
conducts as an executive session that pertains to the applicant's, 326  
recipient's, or former recipient's application for financial 327  
assistance. 328

(3) A veterans service commission shall vote on the grant or 329  
denial of financial assistance under sections 5901.01 to 5901.15 330  
of the Revised Code only in an open meeting of the commission. The 331

minutes of the meeting shall indicate the name, address, and 332  
occupation of the applicant, whether the assistance was granted or 333  
denied, the amount of the assistance if assistance is granted, and 334  
the votes for and against the granting of assistance. 335

**Section 2.** That existing section 121.22 of the Revised Code 336  
is hereby repealed. 337