



# Ohio Legislative Service Commission

## Bill Analysis

Amber Hardesty

### **S.B. 93**

130th General Assembly  
(As Introduced)

Sen. Jones

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## **BILL SUMMARY**

- Modifies the Open Meetings Law to use the terms "consider and discuss" and to remove the term "deliberations."
- Requires the Open Meetings Law to be liberally construed to require public officials to take official action and to conduct all consideration or discussion of public business only in open meetings unless the subject matter is specifically excepted by law.
- Adds the term "or discuss"/"or discussion" to the Open Meetings Law's provisions regarding the ability of certain public bodies to close meetings when meeting to consider or discuss granting assistance.
- Requires a public body's rules to provide that any person, upon request and payment of a reasonable fee, can obtain reasonable advance notification of all meetings at which any specific type of public business is to be considered or discussed.
- Declares a resolution, rule, or formal action adopted in an open meeting that results from consideration or discussion in a meeting not open to the public to be invalid unless it was for a specifically authorized purpose and conducted at an executive session held in compliance with the law.
- Replaces the term "discussing" with "considering or discussing" relating to a veterans service commission holding an executive session for applications, statements and certain other documents.
- Amends the definition of "meeting."

- Expands the provision regarding when a public body may hold an executive session to use variations of the terms "consider or discuss," instead of "consider."
- Clarifies what must be included in the motion and vote to hold an executive session.
- Includes more detail about what the minutes of an executive session of any public body must include.
- Permits any person to bring an action to enforce the Open Meetings Law for the failure of a public body or its members to comply with that Law.
- Alters the award available if a court of common pleas issues an injunction because of an action to enforce the Open Meetings Law to include litigation expenses and specifies the inclusion of certain fees and expenses related to producing proof of the reasonableness of the attorney's fees.
- States that a party need not demonstrate the presence of any public benefit to conclusively and irrebuttably presume irreparable harm and prejudice to the party.

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## CONTENT AND OPERATION

The bill modifies the Open Meetings Law. Among other provisions, the bill generally makes more consistent throughout the Open Meetings Law use of the terms "consider and discuss" and removes use of the term "deliberations."

### Consider or discuss

The bill changes the term "deliberations upon official business" to "consideration or discussion of public business" in the Open Meetings Law. In that regard, the bill now requires the following: the Open Meetings Law to be liberally construed to require public officials to take official action and to conduct all *consideration or discussion of public business* only in open meetings unless the subject matter is specifically excepted by law. Under current law, the Open Meetings Law is to 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.<sup>1</sup>

Similarly, the bill adds the term "or discuss"/"or discussion" to the Open Meetings Law's provisions regarding the ability of the Controlling Board, the Industrial Technology and Enterprise Advisory Council, the Tax Credit Authority, or the Minority Development Financing Advisory Board to close meetings. Under the bill, when

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<sup>1</sup> R.C. 121.22(A).



meeting to consider *or discuss* granting assistance, in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all members present, the Board, Council, or Authority can close the meeting during consideration *or discussion* of certain confidentially received information. Current law affords the ability for those bodies to close a meeting when meeting to consider granting assistance, in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all members present, during consideration of the certain confidentially received information.<sup>2</sup>

Additionally, in regard to the requirement that every public body, by rule, must establish a reasonable method in which any person can determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings, the bill requires the rule to provide that any person, upon request and payment of a reasonable fee, can obtain reasonable advance notification of all meetings at which any specific type of public business is to be *considered or* discussed. Current law requires the rule to provide that any person, upon request and payment of a reasonable fee, can obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed.<sup>3</sup>

Furthermore, the bill declares a resolution, rule, or formal action adopted in an open meeting that results from consideration or discussion (as opposed to deliberations in current law) in a meeting not open to the public to be invalid unless it was for a specifically authorized purpose and conducted at an executive session held in compliance with the law.<sup>4</sup>

The bill also replaces the term "discussing" with "considering or discussing" related to a veterans service commission holding an executive session for applications, statements, and certain other documents.<sup>5</sup>

## **Meeting**

For the purposes of the Open Meetings Law, the bill amends and appears to broaden the definition of "meeting." Under the bill, "meeting" means any 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, including, without limitation, for receiving or making reports, presentations, recommendations, or

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<sup>2</sup> R.C. 121.22(E).

<sup>3</sup> R.C. 121.22(F).

<sup>4</sup> R.C. 121.22(H).

<sup>5</sup> R.C. 121.22(J).



comments or for receiving or giving advice concerning the public business of the public body. Current law defines "meeting" as any prearranged discussion of the public business of the public body.<sup>6</sup>

## **Executive session**

Consistent with the discussion above, the bill amends the provision regarding when a public body may hold an executive session to use the terms "consideration or discussion," "considered or discussed," or "consider or discuss." Therefore the list of enumerated reasons for which a public body may hold an executive session expands to a meeting for the sole purpose of the consideration or discussion of the listed matters. Current law uses variations of "consider" in this provision.

## **Motion and vote**

The bill also clarifies what must be included in the motion and vote to hold an executive session.

(1) For certain public employee or official-related matters that motion and vote must include the name of the person to be considered or discussed during the executive session. If the executive session is to consider or discuss the purchase of property for public purposes, or the sale of property at competitive bidding, the motion and vote must specifically state those matters.

(2) For conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action, the motion and vote to hold an executive session must identify by name the public body's attorney and must state whether the executive session concerns a pending court action or an imminent court action.

(3) If the executive session concerns a pending court action, the motion and vote to hold the executive session must identify by case number the pending court action and its subject matter, but if the executive session concerns an imminent court action, the motion and vote to hold the executive session must describe the imminent court action only if disclosure of it would not, in the public body's opinion, create or cause a material disadvantage to the public body relative to the imminent court action. If, for this reason, the motion and vote to hold an executive session does not describe the imminent court action, the public body, not later than six months after holding the executive session, must disclose at a meeting of the public body the imminent court action that was the subject of the executive session. At that meeting, the public body

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<sup>6</sup> R.C. 121.22(B)(2).

must amend the minutes of the prior meeting during which the public body held the executive session, so that the minutes describe the imminent court action that was the subject of the executive session.

(4) If the executive session is regarding matters to be kept confidential by federal law or regulations, the motion and vote to hold an executive session must identify the federal or state law or regulation that requires that the matters being considered or discussed by the public body in the executive session be kept confidential. Current law only allows an executive session under this provision for matters required to be kept confidential by federal law or state statutes.

(5) If the executive session is regarding another matter, the motion and vote must state which one or more of the approved matters are to be considered or discussed.<sup>7</sup>

### **Executive session minutes**

The bill includes more detail about what the minutes of an executive session of any public body must include. Under the bill, the minutes of an executive session authorized under the Open Meetings Law need only reflect the general subject matter of matters considered or discussed in the executive session, but the minutes must include the time that the public body convened and adjourned from the executive session, must 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 the Open Meetings Law concerning the appointment, employment, dismissal, promotion, demotion, or compensation of a public employee or official or the investigation of charges or complaints against certain persons, and must indicate the period of time each named individual attended the executive session.

Current law provides that the executive session minutes need only reflect the general subject matter of discussions in authorized executive sessions.<sup>8</sup>

### **Court actions**

#### **Action to enforce**

The bill permits any person to bring an action to enforce the Open Meetings Law for the failure of a public body or its members to comply with that Law. Under current law, persons are permitted to bring an action to enforce the Law, but current law does

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<sup>7</sup> R.C. 121.22(G).

<sup>8</sup> R.C. 121.22(C).

not include the limitation of the action being for a failure of a public body or its members to comply with the Law.<sup>9</sup>

### **Court costs related to injunction**

Under the bill, if a court of common pleas issues an injunction because of an action to enforce the Open Meetings Law, the court must award to the party that sought the injunction's reasonable attorney's fees and all litigation expenses incurred, including fees and expenses incurred to produce proof of the reasonableness and amount of the attorney's fees and otherwise to litigate entitlement to the fees and expenses. Court costs, attorney's fees, and litigation expenses must be construed as remedial and not punitive. Current law does award attorney's fees, but does not include the description of what those fees are to include. Current law does not award all litigation expenses incurred.<sup>10</sup>

### **Irreparable harm and prejudice**

The bill states that a party to a court action need not demonstrate the presence of any public benefit to conclusively and irrebuttably presume irreparable harm and prejudice to the party.<sup>11</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	03-21-13

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<sup>9</sup> R.C. 121.22(I)(1).

<sup>10</sup> R.C. 121.22(I)(2).

<sup>11</sup> R.C. 121.22(I)(3).

