



Am. Sub. H.B. 441

126th General Assembly
(As Passed by the House)

Reps. C. Evans, Hoops, Ujvagi, Healy, D. Evans, Wolpert, Faber, Allen, Setzer, Bubb, Book, Chandler, Combs, DeBose, Domenick, Key, Schneider, Seitz

BILL SUMMARY

- Authorizes for a two-year period a pilot program that allows members of the judicial corrections board that oversees the STAR Community Justice Center in Franklin Furnace, Ohio, or its successor judicial advisory board, to be present at board meetings by teleconference or interactive video teleconference.
- Requires the Center's executive director to issue a report on the effects of member participation in board meetings in this manner on the board's operation.
- Generally authorizes attendance at nonprofit corporation meetings and participation in voting at nonprofit corporation meetings by "authorized communications equipment" without the need for express authority in the articles, regulations, or bylaws of the corporation.
- Allows nonprofit corporations to provide otherwise in their articles or regulations.
- Validates any meeting conducted or vote taken by a nonprofit corporation on or after August 19, 2005, that would have been valid if the bill's provisions concerning nonprofit corporations and the use of authorized communications equipment were in effect at the time of the meeting or vote.

CONTENT AND OPERATION

STAR Community Justice Center provisions

Background law

Current law specifies (1) that, subject to specified exceptions, all meetings of any public body must be public meetings open to the public at all times and (2) that a member of a public body generally must be *present in person* at a meeting open to the public (a) to be considered present or to vote at the meeting and (b) for purposes of determining whether a quorum is present at the meeting (R.C. 121.22(C)--not in the bill).¹ There is an exception (see **COMMENT 1**) to this "present in person" requirement of the Open Meetings Law.

Changes proposed by the bill

Notwithstanding the requirements of current law described above, for a period of two years immediately following the bill's effective date, a pilot program is authorized that allows the judicial corrections board that oversees the STAR Community Justice Center located in Franklin Furnace, Ohio, or its successor judicial advisory board under the provisions of Am. Sub. H.B. 162 of the 126th General Assembly (see **COMMENT 2**), to adopt a rule that authorizes its members to be present at meetings of the board open to the public *by teleconference or by interactive video teleconference*, in lieu of being physically present, in order to be considered *present or to vote at those meetings* and for purposes of determining whether *a quorum is present* at those meetings. Any such rule also must establish a method to authenticate the identity of any judicial corrections board member, or successor judicial advisory board member, who will be present at those meetings by teleconference or by interactive video teleconference. (Section 4.)

If such a rule is adopted, the Center's executive director must submit, not later than 18 months after the bill's effective date, to the House Speaker, Senate President, and House and Senate Minority Leaders a report that describes the effects on the operation of the Center's judicial corrections board or successor

¹ Current law defines a "public body" as (a) any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority and any legislative authority or board, committee, commission, 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 item (a), or (c) a court of jurisdiction of certain sanitary districts when meeting for certain purposes (R.C. 121.22(B)(1)--not in the bill).

judicial advisory board of member participation in board meetings by teleconference or by interactive video teleconference. The report must describe any additional costs the judicial corrections board or successor judicial advisory board incurred, and any cost savings the board realized, through member participation in board meetings in this manner. If any of the recipients of the report determines that the pilot program results could be profitably applied to meetings of all public bodies or only to public bodies whose members must travel long distances to attend meetings, the recipient may recommend the relevant type of legislation for introduction. (Section 5.)

Meetings and votes of nonprofit corporations by mail or authorized communications equipment

Background

H.B. 42 of the 126th General Assembly, effective August 19, 2005, enacted changes to the Ohio Nonprofit Corporation Law that generally had the effect of authorizing member or director (1) attendance at meetings by means other than physical presence and (2) voting by communications equipment *if* the articles, regulations, or bylaws of the nonprofit corporation (or the regulations, constitution, or other fundamental agreement when dealing with the incorporation of an unincorporated society or association) *authorized* that attendance or use of communications equipment. In particular, because the definition of "authorized communications equipment" for the Law enacted by that act required specific authorization by articles, regulations, bylaws, etc. to permit the use of communications equipment (a) for the purpose of giving notice of meetings or any notice required under the Law, (b) for member or director attendance and participation in meetings, (c) for giving a copy of any document or transmitting any writing required or permitted under the Law, or (d) for member or director voting, a nonprofit corporation currently must enact *an express authorization* for the use of electronic or other forms of communications equipment (R.C. 1702.01(Q)).

Changes proposed by the bill

In general

The bill amends the definition of "authorized communications equipment" and *removes the requirement* for articles, regulations, bylaws, or other documentary form of *express authorization* to use communications equipment (R.C. 1702.01(Q)).² In addition, the bill removes language throughout the Ohio

² "Authorized communications equipment" would mean (similar to the remaining half of the current definition) any communications equipment that provides a transmission (e.g.,

Nonprofit Corporation Law referring to the "permitted or authorized use" of this equipment by articles, regulations, bylaws, or other express authorization (R.C. 1702.08(A), 1702.11(A)(4) and (B)(1), 1702.17(C), 1702.19(C), 1702.20(B), 1702.22(A)(1), 1702.27(A)(2)(a), 1702.38(C)(1), 1702.39(A)(1) and (B)(1)(b), 1702.42(B)(1), and 1702.58(E)(1)).

The general effect of these changes is to confer authority to use various forms of communications equipment for nonprofit corporation meeting, voting, and notice purposes unless it is otherwise provided in the entity's articles or regulations. See, for example, R.C. 1702.17(C) (unless otherwise provided in a nonprofit corporation's articles or regulations, attendance at a meeting by voting members and proxy holders may be by the use of authorized communications equipment that affords those individuals an opportunity to participate in, to vote at, and to read or hear the proceedings of the meeting, and contemporaneously communicate with persons who are physically present at it) and R.C. 1702.22 (unless otherwise provided in a nonprofit corporation's articles or regulations, voting members present in person, by the use of authorized communications equipment, by mail, or, if permitted, by proxy at any meeting will constitute a *quorum* for the meeting).

Accordingly, under the bill, unless otherwise provided *in its articles or regulations*, a nonprofit corporation generally may use authorized communications equipment for meeting attendance, notice, and voting purposes; the use of the equipment is authorized, then, by law under the bill instead of having to be permitted by the articles, regulations, bylaws, etc. of the nonprofit corporation as under current law (R.C. 1702.17(C), 1702.20(B), 1702.22(A)(1), and 1702.27(A)(2)(a)).

Validation of actions taken on or after August 19, 2005

The bill provides that any meeting conducted or vote taken by a nonprofit corporation on or after August 19, 2005 (the effective date of H.B. 42 of the 126th General Assembly) pursuant to the Ohio Nonprofit Corporation Law provisions amended by the bill *is valid* if the meeting or vote would have been valid under those provisions as amended by the bill (Section 3 of the bill).

by telephone, telecopy, or any electronic means) from which it can be determined that the transmission was authorized by, and accurately reflects the intention of, the member or director involved and, with respect to meetings, allows all participants to contemporaneously communicate with each other.



COMMENT

1. Current law that governs the meetings of financial planning and supervision commissions established for specific school districts allows members of these entities to be "present" at a meeting other than "in person" if it is held by teleconference and provisions are made for public attendance at any location involved in the teleconference (R.C. 3316.05(K)--not in the bill).

2. Am. Sub. H.B. 162 of the 126th General Assembly, effective October 12, 2006, abolishes the judicial corrections boards of community-based correctional facilities and programs (CBCFs) and of district community-based correctional facilities and programs (DCBCFs). Instead of judicial corrections boards, Am. Sub. H.B. 162 creates both judicial advisory boards and facility governing boards. Under the act, the formulation of a proposal for a CBCF or DCBCF begins by the establishment of a *judicial advisory board* by judgment entry. The judicial advisory board must consist of not less than three judges. Each general division judge of the court of common pleas in the county or counties wishing to formulate a proposal or to continue operation of an existing facility is eligible to become a member of the judicial advisory board but is not required to be a member. A judicial advisory board also may invite a non-general division judge from the county or counties proposing the creation of a CBCF or DCBCF or a general division judge from a court of common pleas outside the county or counties proposing the creation who regularly sends offenders to its facility to be a member of the judicial advisory board. Service on the judicial advisory board is a judicial function.

The judicial advisory board must meet at least once a year, but may meet as often as the members consider necessary, to provide advice to the associated facility governing board (see below) regarding the public safety needs of the community, admission criteria for any CBCF or DCBCF, and the general requirements of the CBCF or DCBCF program. The judicial advisory board provides advice to the associated facility governing board on whether a proposed or existing CBCF or DCBCF will be operated, managed, and controlled by a director appointed by the facility governing board or by a nonprofit or private entity pursuant to contract. The judicial advisory board also may communicate directly with the Division of Parole and Community Services and provide advice to the facility governing board regarding a specified state financial assistance agreement.

Am. Sub. H.B. 162 provides that a *facility governing board* formulates the proposal for a CBCF or DCBCF, submits the proposal to the Division of Parole and Community Services, and then governs the facility. The facility governing board of a CBCF or DCBCF must consist of at least six members, with each

member serving a three-year term (after initial staggered terms of one year, two years, or three years). The judicial advisory board is responsible for appointing two-thirds of the members, and the board or boards of county commissioners of the member counties must appoint the remaining one-third of the members. In the case of a DCBCF, no more than one-half of the members may be from the same county.

HISTORY

ACTION	DATE
Introduced	12-06-05
Reported, H. State Government	05-30-06
Passed House (93-4)	11-28-06

h0441-ph-126.doc/kl

