



H.B. 568

126th General Assembly
(As Introduced)

Reps. Healy, D. Stewart, Fende, Williams, Oelslager, S. Patton

BILL SUMMARY

- Makes certain meetings and records of private entities doing business with the public sector open to the public.

CONTENT AND OPERATION

Open meetings of private, for-profit or nonprofit entities

Open meeting on certain topics

The bill generally requires that the governing board meetings of any private, for-profit or nonprofit entity be open to the public at all times *when there is discussion or action taken on any contract or proposed contract with a public body¹ for which the entity receives or will receive public money.* A member of the governing board of such an entity must be present in person at such a meeting or portion of such a meeting to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting. (R.C. 121.22(K).)

Preparation of minutes of an open meeting

The minutes of any meeting or portion of a meeting at which a public contract or proposed public contract is discussed or acted upon must be promptly prepared, filed, and maintained and must be open to public inspection. The minutes open to public inspection need not reflect any discussion or business of

¹ Any board, commission, committee, or similar decision-making body of a state agency, institution, or authority, and a legislative authority or board, commission, committee, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution (R.C. 121.22(B)(1)).

the entity that does not involve the contract or proposed contract with a public body for which the entity receives or will receive public money. If any discussion or proposed contract concerns any of the matters otherwise appropriate for an executive session² of a public body set forth in the Open Meetings Law, the matter may be discussed in private, and the minutes need only reflect the general subject matter of the discussion and that the matter was discussed in private as if it were a matter of an executive session of a public body. (R.C. 121.22(K).)

Notification to public of open meeting

The bill requires every private, for-profit or nonprofit entity that does business with any public body to establish a reasonable method whereby any person may determine the time, place, and purpose of all meetings of its governing board at which business with a public body may be discussed or acted upon. No such meeting can be held unless the entity gives at least 24 hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate formal action. In the event of such an emergency, the member or members calling the meeting must notify the news media that have requested notification immediately of the time, place, and purpose of the meeting. The notification method must provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notice of all meetings at which any type of business with a public body is to be discussed. Provisions for advance notice 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. (R.C. 121.22(L).)

Validity of actions

Under the bill, any action of a private, for-profit or nonprofit entity concerning a contract or proposed contract with a public body for which the entity receives or will receive public money is invalid unless adopted in an open meeting

² *A public body may hold an executive session from which the public is excluded. The public body can only hold an executive session if a majority of a quorum of the public body determines by a roll call vote to hold the executive session during a regular or special meeting and if the topic is one authorized by law to be discussed at an executive session, including (1) personnel matters, (2) the purchase of property or the sale of property by competitive bidding, (3) conferences with an attorney for the public body concerning disputes involving it that are the subject of pending or imminent court action, (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 rules or state statutes, and (6) details of security arrangements and emergency response protocols. (R.C. 121.22(G).)*

or open portion of a meeting of the entity's governing board. The public body or public bodies involved are not liable to the entity under the contract or proposed contract for any matters not discussed in an open meeting or open portion of a meeting unless the matter concerns a subject that would be appropriate for an executive session of the public body had the discussion occurred before the public body. (R.C. 121.22(M).)

Enforcement of open meeting requirements

The bill provides that a private, for-profit or nonprofit entity is subject to the same enforcement authority, other than removal, that is specified for enforcement of the Open Meetings Law, as if it were acting as a public body (R.C. 121.22(N)). The Open Meetings Law now authorizes any person to bring an action in a common pleas court to enforce its requirements within two years after the date of the alleged or threatened violation. The court may issue an injunction and, under certain conditions, require the offending public body to pay a civil forfeiture, court costs, and reasonable attorney's fees (R.C. 121.22(I).)

Open records of private, for-profit or nonprofit entities

Current law defines "public record" for purposes of the Open Records Law to mean, subject to various exceptions, (1) records kept by any public office including, but not limited to, state, county, city, village, township, and school district units and (2) records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for-profit entity operating the alternative school under the Education Law. The bill adds to this definition *records kept by a private, for-profit or nonprofit entity pertaining to the delivery of products or services to a public body in exchange for the receipt of public funds.* (R.C. 149.43(A)(1).)

The Open Records Law currently requires that (1) public records be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours and (2) a public office or person responsible for public records make copies of public records available at cost within a reasonable period of time. Existing law also requires that public offices, in order to facilitate broader access to public records, maintain public records in a manner that they can be made available for inspection. The bill also applies this requirement to private entities that contract to do business with a public body. (R.C. 149.43(B)(1).)

Current law requires a public office or person responsible for public records to transmit a copy of a public record to any person by United States mail within a reasonable time after receiving the request for the copy. A public office may adopt a policy and procedures that it will follow in so transmitting copies of public

records by United States mail and must comply with any policy and procedures it adopts; the policy may limit the number of records that it will transmit by mail to ten per month, unless the requester of the records certifies that the requester does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. The bill also requires a private entity that contracts to do business with a public body to transmit, upon request, the public records it keeps by United States mail and authorizes the private entity to adopt the policies and procedures described in this paragraph. (R.C. 149.43(B)(3).)

Under present law, if a person is allegedly aggrieved by the failure of a public office to prepare promptly a public record and make it available to the person for inspection or copying, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that compels compliance and awards reasonable attorney's fees. The bill also authorizes a person allegedly aggrieved by the failure of a private entity that contracts to do business with a public body to provide for inspection or copying the public records it keeps to bring such a mandamus action. (R.C. 149.43(C).)

HISTORY

ACTION	DATE
Introduced	04-13-06

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