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Bill Analysis
Legislative Service Commission

S.B. 232

126th General Assembly
(As Introduced)

Sens. Schuring, Coughlin, Dann, Fingerhut, Fedor, Grendell, Padgett

BILL SUMMARY

- Provides that a legislative committee or a public body cannot engage in actions that have the effect of circumventing the requirements of Ohio's Open Meetings Law, including conducting prearranged discussions of public business via electronic mail.
- Provides that electronic mail created or received by or coming under the jurisdiction of any public office may qualify as a public record.

CONTENT AND OPERATION

Ohio General Assembly Open Meetings Law

Background information

Under current law, generally all meetings of any committee are public meetings open to the public at all times. A "committee" is a committee of either house of the General Assembly, a joint committee of both houses of the General Assembly, including a committee of conference, or a subcommittee of any committee. A "meeting" is any prearranged discussion of the public business of a committee by a majority of its members. The secretary assigned to the chairperson of the committee must prepare, file, and maintain the minutes of every regular or special meeting of a committee. (R.C. 101.15(A) and (B).) Each committee is required to establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A committee is prohibited from holding a regular or special meeting unless it gives at least 24-hours advance notice to the news media that have requested notification. (R.C. 101.15(C).)

Any action of a committee relating to a bill or a resolution, or any other formal action of a committee, is invalid unless taken in an open meeting of the

committee. Any action of a committee relating to a bill or resolution, or any other formal action of a committee, taken in an open meeting is invalid if it results from deliberations in a meeting not open to the public. (R.C. 101.15(D).)

The Open Meetings Law does not apply to or affect either of the following (R.C. 101.15(F)):

(1) All meetings of the Joint Legislative Ethics Committee other than a meeting that is held for any of the following purposes:

(a) To consider the adoption, amendment, or rescission of any rule that the Joint Legislative Ethics Committee is authorized to adopt;

(b) To discuss and consider changes to any administrative operation of the Joint Legislative Ethics Committee other than any matter described in R.C. 121.11(G) (regarding the holding of an executive session);

(c) To discuss pending or proposed legislation.

(2) Meetings of a caucus.

Operation of the bill

The bill prohibits a committee from engaging in actions that have the effect of circumventing the requirements of the Open Meetings Law, including, but not limited to, the following (R.C. 101.15(H)):

(1) Conducting prearranged discussions of the same topic of public business via electronic mail that, when taken together, involve a majority of the members of the committee;

(2) Scheduling consecutive gatherings where the same topic of public business is discussed at each gathering and that, when taken together, are attended by a majority of the members of the committee.

Open Meetings Law for public bodies

Background information

Under current law, all meetings of any public body are public meetings open to the public at all times. A "public body" means (1) 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, (2) any committee or subcommittee of a body described in (1) above, or (3) 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 district or for any other matter related to such a district other than litigation involving the district. A "meeting" means any prearranged discussion of the public business of the public body by a majority of its members. A member of a public body must 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 must be promptly prepared, filed, and maintained and must be open to public inspection. (R.C. 121.22(B) and (C).)

This provision does not apply to any of the following (R.C. 121.22(D)):

- (1) A grand jury;
- (2) An audit conference conducted by the State Auditor 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;
- (5) Meetings of a child fatality review board and meetings conducted pursuant to R.C. 5153.71 to 5153.73 (regarding the child welfare training program);
- (6) The State Medical Board when determining whether to suspend a certificate without a prior hearing;
- (7) The Board of Nursing when determining whether to suspend a license or certificate without a prior hearing;
- (8) The State Board of Pharmacy when determining whether to suspend a license without a prior hearing;
- (9) The State Chiropractic Board when determining whether to suspend a license without a hearing;



(10) The executive committee of the Emergency Response Commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce R.C. Chapter 3750. (laws regarding emergency planning).

Every public body, by rule, must establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body is prohibited from holding a special meeting unless it gives at least 24-hours advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of 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. (R.C. 121.22(F).)

Operation of the bill

The bill prohibits a public body from engaging in actions that have the effect of circumventing the requirements of the Open Meetings Law regarding public bodies, including, but not limited to, the following (R.C. 121.22(K)):

(1) Conducting prearranged discussions of the same topic of public business via electronic mail that, when taken together, include a majority of members of the public body;

(2) Scheduling consecutive gatherings where the same topics of public business are discussed at each gathering and that, when taken together, are attended by a majority of the members of the public body.

Definition of "records"

Under current law, for the purposes of the Public Records Law, "records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. The bill includes "electronic mail" within the definition of "records." (R.C. 149.011(G).)

Legislative intent

The bill provides that in amending R.C. 101.15 and 121.22, it is the intent of the General Assembly to do each of the following (Section 3(A)):

(1) Codify the Ohio Supreme Court's holding in *State ex rel. Cincinnati Post v. City of Cincinnati* (1996), 76 Ohio St.3d 540, 543-544, that the requirements of R.C. 121.22 cannot be circumvented by scheduling consecutive meetings where the same topics of public business are discussed at each meeting and that, when taken together, are attended by a majority of the members of the public body;

(2) Extend the holding in the *State ex rel. Cincinnati Post* decision to provide that the requirements of R.C. 101.15 cannot be circumvented in a likewise manner;

(3) Based upon the rationale of the holding in the *State ex rel. Cincinnati Post* decision, provide that the requirements of R.C. 101.15 and 121.22 cannot be circumvented by conducting prearranged discussions of the same topic of public business via electronic mail that, when taken together, include a majority of the members of the committee or public body.

In amending R.C. 149.011, it is the intent of the General Assembly to codify the Ohio Supreme Court's affirmation in dicta in *State ex rel. Wilson-Simmons v. Lake County Sheriff's Dep't* (1998), 82 Ohio St.3d 37, 42 n.1, that electronic mail created or received by or coming under the jurisdiction of any public office can be a public record under R.C. 149.43 when it documents the organization, functions, policies, decisions, procedures, operations, or other activities of the public office (Section 3(B)).

HISTORY

ACTION	DATE
Introduced	11-21-05

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