

Filed for intro on 02/01/95
Senate Bill _____
By

House Bill No.HB0311
By Ritchie, II

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 44,
Part 1, relative to open public meetings and to enact the
“Open Meetings Act”.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 44, is amended by deleting Part 1 in its entirety and by substituting instead Sections 2 through 15 of this act.

SECTION 2. It is the public policy of this state that the public commissions, committees, boards and councils and the other public agencies in this state exist to aid in the conduct of the people’s business. It is the intent of this act that their actions be taken openly and that their deliberations be conducted openly. This act shall be known and may be cited as the “Open Meetings Act”.

SECTION 3. For the purposes of this act:

(1) “Meeting” means any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business.

(2) “Public body” includes all legislative, executive, administrative or advisory bodies of the state, counties, cities, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this state, and

any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the general assembly and committees or commissions thereof.

SECTION 4. (a) All meetings of public bodies shall be public meetings, except for the following:

(1) Collective negotiating matters between public employers and their employees or representatives, or deliberations concerning salary schedules for one (1) or more classes of municipal employees;

(2) That portion of the deliberations for decisions of the Public Service Commission in which there is discussed any of the following: commercial, financial, or other information that is obtained from a person and is privileged, proprietary, confidential, or a trade secret; information relating solely to the internal rules, practices, investigation techniques, and procedures of the commission; information the premature disclosure of which would be likely to lead to significant financial speculation in securities of a regulated entity or to significantly endanger the stability of any regulated entity; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed commission action; or information specifically exempted from disclosure by federal or state law;

(3) Meetings where the acquisition of real property is being considered or where the selling price of real estate is being considered;

(4) Where the constitution provides that a governmental unit can hold closed meetings;

(5) Meetings at public institutions of higher education relating to campus security or to the safety of staff and students and meetings at public institutions of higher education and of school boards of public districts to respond to actual danger to the safety of students, staff, and school premises, including discussion of emergency

security procedures and the utilization of personnel and equipment to respond to that danger;

(6) That portion of meetings of the state funding board and meetings of The Tennessee Consolidated Retirement System Board of Trustees and boards of trustees of public employee retirement systems operated under the authority granted pursuant to Tennessee Code Annotated, Title 8, Chapters 34, 35, 36, 37, . 38 and 39 where the sale or purchase of securities or investment contracts is to be considered, or in which matters relating to the determination of disability or the results of medical examinations are to be considered, if the request for a closed meeting is initiated by the person whose disability determination or whose medical examination results are to be considered and not by the board of trustees of the public employee retirement system;

(7) That portion of meetings of law enforcement agencies, committees, or commissions involved in the investigation of criminal activities that are concerned with or are to discuss informant sources, the hiring or assignment of undercover personnel, the purchase and assignment of undercover autos, or actual ongoing prior, or future investigations, or any budgetary considerations specifically concerning any of the foregoing;

(8) Meetings held to discuss litigation when an action against, affecting, or on behalf of the particular public body has been filed and is pending in a court or administrative tribunal, or when the public body finds that such an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting in accordance with Section 10;

(9) That portion of the meetings of the Utility Management Review Board, in which there is discussed commercial, financial, or other information that is obtained from a person and is privileged, proprietary, confidential, or a trade secret; information relating solely to matters internal to the Utility Management Review Board; information the premature disclosure of which would be likely to significantly frustrate implementation of

a proposed board action; or information specifically exempted from disclosure by federal or state law;

(10) Deliberations for decisions of the Board of Paroles; and

(11) That portion of the deliberations for decisions of the Tennessee State Racing Commission in which there is discussed any of the following: personal, commercial, financial or other information obtained from any source that is privileged, proprietary, confidential, or a trade secret; information relating solely to the internal rules, practices, investigation techniques, and procedures of the commission; or information specifically exempted from disclosure by federal or state law.

(b) This section does not prohibit any of the following:

(1) Any public body covered by this act from holding closed meetings to consider information regarding appointment, employment, or dismissal of any employee or officer or to hear testimony on a complaint lodged against an employee or officer to determine its validity;

(2) An agency of government from holding a closed meeting when federal regulation requires it;

(3) A school board or any committee thereof from hearing student disciplinary cases or from discussing matters relating to individual students in special education programs as defined by the State Board of Education, at a closed meeting;

(4) An advisory committee appointed to provide a public body with professional consultation on matters germane to its field of competence from holding a closed meeting to consider matters of professional ethics or performance;

(5) The corporate authorities of a municipality from enacting ordinances that provide for closed meetings for conciliating complaints of discrimination;

(6) A school board from holding closed meetings with representatives of a state association for the purpose of discussing a board's self-evaluation, practices and procedures, or professional ethics;

(7) Any public body covered by this act from holding closed meetings to consider the appointment of a member to fill a vacancy on that body;

(8) Any local public entity subject to this act from holding closed meetings to establish reserves or settle claims as provided in the Tennessee Governmental Tort Liability Act if otherwise the disposition of a claim or potential claim might be prejudiced, or to review or discuss claims, loss or risk management information, records, data, advice, or communications from or with respect to any insurer of the local public entity or any intergovernmental risk management association or self-insurance pool of which the local government is a member;

(9) The mayor and commissioners of a municipality organized under general law or private act from holding closed meetings to discuss matters that relate solely to the exercise of their executive or administrative responsibilities, nor shall those meetings be subject to Sections 4(a), 5, 6 or 10 of this act.

(c) Only those portions of any meeting expressly enumerated in this act as exceptions may be closed. No final action may be taken at a closed meeting. All final action taken at an open session shall be preceded by a public recital of the nature of the matter being considered and such other information as would inform the public of the business being conducted.

SECTION 5. All meetings required by this act to be public shall be held at specified times and places within the territorial jurisdiction of the public body and which are accessible and convenient to the public. No meeting required by this act to be public shall be held on a legal holiday unless the regular meeting day falls on that holiday.

SECTION 6. (a) Every public body subject to this act shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and places of such meetings. Public notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least twenty-four (24) hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting,

but the validity of any action taken by the public body which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda. However, this requirement of public notice of reconvened meetings does not apply to any case where the meeting was open to the public and:

(1) It is to be reconvened within twenty-four (24) hours, or

(2) An announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda.

Notice of an emergency meeting shall be given as soon as practicable, but in any event prior to the holding of such meeting, to any news medium which has filed an annual request for notice under subsection (b) of this section.

(b) Public notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. The body shall supply copies of the notice of its regular meetings, and of the notice of any special, emergency, rescheduled or reconvened meeting, to any news medium that has filed an annual request for such notice. Any such news medium shall also be given the same notice of all special, emergency, rescheduled or reconvened meetings in the same manner as is given to members of the public body provided such news medium has given the public body an address or telephone number within the territorial jurisdiction of the public body at which such notice may be given.

SECTION 7. In addition to the notice required by Section 6, each public body subject to this act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings.

If a change is made in regular meeting dates, at least ten (10) days' notice of such change shall be given by publication in a newspaper of general circulation in the area in which such body functions. However, in the case of bodies of local governmental units with a population of less than five hundred (500) in which no newspaper is published, such ten (10)

days' notice may be given by posting a notice of such change in at least three (3) prominent places within the governmental unit. Notice of such change shall also be posted at the principal office of the public body or, if no such office exists, at the building in which the meeting is to be held. Notice of such change shall also be supplied to those news media which have filed an annual request for notice as provided in subsection (b) of Section 6.

SECTION 8. The notice requirements of this act are in addition to, and not in substitution of, any other notice required by law. Failure of any news medium to receive a notice provided for by this act shall not invalidate any meeting provided notice was in fact in accordance with this act.

SECTION 9. Subject to the provisions of law relative to the rights of witnesses at proceedings conducted by a court, commission, administrative agency or other tribunal in this state which are televised or broadcast or at which motion pictures are taken, any person may record the proceedings at meetings required to be open by this act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.

If a witness at any meeting required to be open by this act which is conducted by a commission, administrative agency or other tribunal, refuses to testify on the grounds that such witness may not be compelled to testify if any portion of his testimony is to be broadcast or televised or if motion pictures are to be taken of him while he is testifying, the authority holding the meeting shall prohibit such recording during the testimony of the witness. Nothing in this section shall be construed to extend the right to refuse to testify at any meeting not subject to such provisions.

SECTION 10.

(a) All public bodies shall keep written minutes of all their meetings, whether open or closed. Such minutes shall include, but need not be limited to:

- (1) The date, time and place of the meeting;

(2) The members of the public body recorded as either present or absent;

and

(3) A general description of all matters proposed, discussed, or decided, and a record of any votes taken.

(b) The minutes of meetings open to the public shall be available for public inspection within seven (7) days of the approval of such minutes by the public body. Minutes of meetings closed to the public shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential.

(c) The public body shall periodically, but no less than semi-annually, meet to review minutes of all closed sessions. At such meetings a determination shall be made, and reported in an open session that:

1) The need for confidentiality still exists as to all or part of those minutes; or

(2) That the minutes or portions thereof no longer require confidential treatment and are available for public inspection.

SECTION 11. A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this act. A motion to close any meeting at a public institution of higher education or of a school board of a public school district to respond to actual danger to the safety of students, staff and school premises, as described in item (a)(5) of Section 4, shall include a description of the actual danger. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public provided each meeting in such series involves the same particular matters and is scheduled to be held within no more than three (3) months of the vote. The vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 4 of this act which authorizes the closing of the meeting to the

public shall be recorded and entered into the minutes of the meeting. Nothing in this section or this act shall be construed to require that any meeting be closed to the public.

At any open meeting of a public body, for which proper notice under this act has been given, the body may, without additional notice under Section 6, hold a closed meeting in accordance with this act. Only topics specified in the vote to close under this section may be considered during the closed meeting.

SECTION 12.

(a) Where the provisions of this act are not complied with, or where there is probable cause to believe that the provisions of this act will not be complied with, any persons, including the District Attorney General of the county in which such noncompliance may occur, may bring a civil action in the circuit court for the judicial circuit in which the alleged noncompliance has occurred or is about to occur, or in which the affected public body has its principal office, prior to or within forty-five (45) days after the meeting alleged to be a violation of this act or within forty-five (45) days of the discovery of a violation by the District Attorney General.

(b) In deciding such a case the court may examine in camera any portion of the minutes of a meeting at which a violation of the act is alleged to have occurred, and may take such additional evidence as it deems necessary.

(c) The court, having due regard for orderly administration and the public interest, as well as for the interests of the parties, may grant such relief as it deems appropriate, including granting a relief by mandamus requiring that a meeting be open to the public, granting an injunction against future violations of this act, ordering the public body to make available to the public such portion of the minutes of a meeting as is not authorized to be kept confidential under this act, or declaring null and void any final action taken at a closed meeting in violation of this act.

(d) The court may assess against any party, except a District Attorney General, reasonable attorney's fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with this section, provided that costs

may be assessed against any private party or parties bringing an action pursuant to this section only upon the court's determination that the action is malicious or frivolous in nature.

SECTION 13. A violation of any of the provisions of this act is a Class C misdemeanor.

SECTION 14.. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. The provisions of this act constitute minimum requirements for home rule units; any home rule unit may enact an ordinance prescribing more stringent requirements binding upon itself which would serve to give further notice to the public and facilitate public access to meetings.

SECTION 16. This act shall take effect July 1, 1995, the public welfare requiring it.