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S.B. 293*
133rd General Assembly

Bill Analysis

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Version: As Reported by Senate General Government and Agency Review

Primary Sponsors: Sens. Manning and Blessing

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SUMMARY

- Creates a procedure within the Court of Claims to hear complaints alleging a violation of the Open Meetings Law.
- Provides for the assignment of a special master to refer the case to mediation or to proceed with the case and submit a report and recommendation to the Court of Claims.
- Requires that any appeal from an order of the Court of Claims be taken to the court of appeals of the appellate district where the principal place of business of the public body that is alleged to have violated the Open Meetings Law is located.
- Allows a court of appeals to award reasonable attorney's fees to an aggrieved person if the court determines that the public body violated the Open Meetings Law and obviously filed the appeal with the intent to delay compliance with the Court of Claims' order or to unduly harass the aggrieved person.
- Provides that all filing fees collected by a clerk of the common pleas court are to be paid to the county treasurer for deposit into the county general revenue fund.
- Provides that all filing fees collected by the clerk of the Court of Claims are to be kept by the Court of Claims to assist in paying for its costs to implement the bill's provisions.

* The analysis was prepared before the report of the Senate General Government and Agency Review Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

DETAILED ANALYSIS

Open Meetings Law – generally

Ohio law generally requires 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.¹

Overview

Any person alleging a violation of the Open Meetings Law may do one of the following, but not both:

- Under the bill, file a complaint with the clerk of the Court of Claims or the clerk of the court of common pleas, as provided under “**Action in the Court of Claims.**”
- Under current law, bring an action for an injunction in the court of common pleas in the county in which the public body involved is located, as provided under “**Action for an injunction.**”

Action in the Court of Claims

Under the bill, any person alleging a violation of the Open Meetings Law may file a complaint with the clerk of the Court of Claims or the clerk of the court of common pleas (see, “**Overview,**” above).

Powers of Court of Claims

Under the bill, in order to provide for an expeditious and economical procedure that attempts to resolve disputes alleging a violation of the Open Meetings Law, except for a court that hears an action for an injunction, the Court of Claims is the sole and exclusive authority in Ohio that adjudicates or resolves complaints based on alleged violations of that Law. The clerk of the Court of Claims must designate one or more current employees or hire one or more individuals to serve as special masters to hear complaints. All special masters must have been engaged in the practice of law in Ohio for at least four years and be in good standing with Ohio Supreme Court at the time of designation or hiring. The clerk may assign administrative and clerical work associated with complaints to current employees or may hire additional employees that may be necessary to perform such work.²

The bill states that the Court of Claims has exclusive, original jurisdiction to hear complaints alleging a violation of the Open Meetings Law by a public body.³

¹ R.C. 121.22(A).

² R.C. 2743.76(A).

³ R.C. 2743.03(A)(3)(c).

The powers of the Court of Claims prescribed in the Court of Claims Law apply to proceedings in that court under the bill's provisions.⁴

Clerk of common pleas court

The clerk of the common pleas court in each county acts as the clerk of the Court of Claims for purposes of accepting complaints alleging a violation of the Open Meetings Law, accepting filing fees for those complaints, and serving those complaints.⁵

Person aggrieved may seek relief

The bill provides that a person allegedly aggrieved by a violation of the Open Meetings Law may seek relief under that Law or pursuant to the bill's Court of Claims procedures, provided that a person who files a complaint under either provision may not seek relief that pertains to the same allegation in a complaint filed under the other provision. If the allegedly aggrieved person files a complaint under the bill and the Court of Claims determines that the complaint constitutes a case of first impression that involves an issue of substantial public interest or a unique or complex case that manifestly requires discovery, hearings, or oral testimony, the court must dismiss the complaint without prejudice and direct the person to commence an action for an injunction in the court of common pleas with appropriate jurisdiction under the Open Meetings Law (discussed below, at "**Action for an injunction**").⁶

Filing of complaint

An allegedly aggrieved person who chooses to file a complaint with the Court of Claims must file that complaint, on a form prescribed by the clerk of the Court of Claims, with that clerk or with the clerk of the common pleas court of the county in which the public body that allegedly violated the Open Meetings Law is located. The person must attach to the complaint copies of any documents, written responses, or other communications relating to the alleged violation from the public body or its authorized representative, and pay a \$25 filing fee. The clerk must serve a copy of the complaint on the public body and its authorized representative in accordance with the civil rule on the methods of service of process. If the complaint is filed with the clerk of the common pleas court, that clerk must forward the complaint to the clerk of the Court of Claims, and to no other court, within five business days after service on the public body and its authorized representative is complete.

Upon receipt of a filed complaint, the clerk of the Court of Claims must assign a case number for the action and a special master to examine the complaint. Notwithstanding any provision to the contrary in the bill's Court of Claims provisions, upon the recommendation of the special master, the Court of Claims on its own motion may dismiss the complaint at any

⁴ R.C. 2743.76(H), by reference to R.C. 2743.05, not in the act.

⁵ R.C. 2743.76(B).

⁶ R.C. 2743.76(C).

time. The allegedly aggrieved person may voluntarily dismiss the complaint filed by that person.⁷

Special master referral to mediation

Upon service of a complaint, except as described below, the special master immediately must refer the case to mediation services that the Court of Claims makes available to persons. If, in the interest of justice considering the circumstances of the case or the parties, the special master determines that the case should not be referred to mediation, the special master must notify the court that the case was not referred to mediation, and the case proceeds in accordance with the procedures described under “**Special master’s report and recommendation**,” below.

If the case is referred to mediation, any further proceeding must be stayed until the conclusion of the mediation. The mediation proceedings may be conducted by teleconference, telephone, or other electronic means. If an agreement is reached during mediation, the court must dismiss the complaint. If an agreement is not reached, the special master must notify the court that the case was not resolved and that the mediation has been terminated.⁸

Within ten business days after the termination of the mediation or the notification to the court that the case was not referred to mediation, the public body or its authorized representative must file a response, and if applicable, a motion to dismiss the complaint, with the clerk of the Court of Claims and transmit copies of the pleadings to the allegedly aggrieved party. No further motions or pleadings will be accepted by the clerk of the Court of Claims or by the special master unless the special master directs in writing that a further motion or pleading be filed.⁹

All of the following apply prior to the submission of the special master’s report and recommendation to the Court of Claims:¹⁰

- The special master cannot permit any discovery.
- The parties may attach supporting affidavits to their respective pleadings.
- The special master may require either or both of the parties to submit additional information or documentation supported by affidavits.

Special master’s report and recommendation

Not later than 30 business days after receiving the response, or motion to dismiss the complaint, of the public body or its authorized representative, the special master must submit to the Court of Claims a report and recommendation based on the ordinary application of

⁷ R.C. 2743.76(D).

⁸ R.C. 2743.76(E)(1).

⁹ R.C. 2743.76(E)(2).

¹⁰ R.C. 2743.76(E)(3).

statutory and case law as they existed at the time of the filing of the complaint. For good cause shown, the special master may extend the 30 day period for submission of the report and recommendation to the Court of Claims.¹¹

Upon submission of the special master's report and recommendation to the Court of Claims, the clerk must send copies to each party by certified mail, return receipt requested, not later than three business days after the filing of the report and recommendation. Either party may object to the report and recommendation within seven business days after receiving the report and recommendation by filing a written objection with the clerk and sending a copy to the other party by certified mail, return receipt requested. Any objection must be specific and state with particularity all grounds for the objection.

If neither party timely objects, the Court of Claims must promptly issue a final order adopting the report and recommendation, unless the Court determines that there is an error of law or other defect evident on the face of the report and recommendation. If either party timely objects, the other party may file with the clerk a response within seven business days after receiving the objection and send a copy of the response to the objecting party by certified mail, return receipt requested. The court, within seven business days after the response to the objection is filed, must issue a final order that adopts, modifies, or rejects the report and recommendation.¹²

Court of Claims determines violation of the Open Meetings Law

If the Court of Claims determines that the public body violated the Open Meetings Law as alleged by the aggrieved person, and if no appeal from the court's final order is taken, all of the following apply:¹³

- The public body must comply with the remedy that the court requires in its order.
- The aggrieved person is entitled to recover from the public body the \$25 filing fee and any other costs associated with the action that the aggrieved person incurred, but is not entitled to recover attorney's fees, unless certain circumstances regarding an appeal apply, as described under "**Court of appeals may award attorney's fees,**" below.
- The court of claims must issue an injunction to compel the members of the public body to comply with the Open Meetings Law.

Appeal from a final order

Any appeal from a final order of the Court of Claims, or from an order of the Court of Claims dismissing the complaint, must be taken to the court of appeals of the appellate district

¹¹ R.C. 2743.76(F)(1).

¹² R.C. 2743.76(F)(2).

¹³ R.C. 2743.76(F)(3).

where the principal place of business of the public body that is alleged to have violated the Open Meetings Law is located. However, no appeal may be taken from a final order of the Court of Claims that adopts the special master's report and recommendation unless a timely objection to that report and recommendation was filed. If the Court of Claims materially modifies the special master's report and recommendation, either party may take an appeal to the court of appeals of the appellate district of the principal place of business where that public body is located, but the appeal must be limited to the issue in the report and recommendation that is materially modified by the Court of Claims. In order to facilitate the expeditious resolution of disputes over alleged violations of the Open Meetings Law, the appeal must be given such precedence over other pending matters as will ensure that the court will reach a decision promptly.¹⁴

Court of appeals may award attorney's fees

If a court of appeals in any appeal by the public body or its authorized representative determines that the public body violated the Open Meetings Law as alleged by the aggrieved person, and obviously filed the appeal with the intent either to delay compliance with the Court of Claims' order for no reasonable cause or to unduly harass the aggrieved person, the court of appeals may award reasonable attorney's fees to the aggrieved person in accordance with the provisions described below in "**Action for an injunction.**" No discovery may be conducted on the issue of the public body or its authorized representative filing the appeal with the alleged intent to delay compliance with the Court of Claims' order for no reasonable cause or to unduly harass the aggrieved person. These provisions are not to be construed as creating a presumption that the public body or its authorized representative filed the appeal with either such intent.¹⁵

Filing fees

All filing fees collected by a clerk of the common pleas court are to be paid to the county treasurer for deposit into the county general revenue fund. All such money collected during a month must be transmitted on or before the 20th day of the following month by the clerk of the common pleas court to the county treasurer.¹⁶

All filing fees collected by the clerk of the Court of Claims are to be kept by the Court of Claims to assist in paying for its costs to implement the bill's provisions. Not later than February 1 of each year, the clerk of the Court of Claims must prepare a report accessible to the public that details the fees collected during the preceding calendar year by the clerk of the Court of Claims and the clerks of the common pleas courts under the bill's provisions.¹⁷

¹⁴ R.C. 2743.76(G)(1).

¹⁵ R.C. 2743.76(G)(2).

¹⁶ R.C. 2743.76(I)(1).

¹⁷ R.C. 2743.76(I)(2).

The bill requires that a common pleas court must tax as costs or otherwise require the payment of the filing fee applicable in a case filed with the Court of Claims that alleges a violation of the Open Meetings Law.¹⁸

Authority of State Auditor

The bill provides that nothing in its provisions regarding the action with the Court of Claims is to be construed to limit the authority of the State Auditor to audit a public office for compliance with training programs and the adoption of a model public records policy for responding to public records requests.¹⁹

Civil action in definition of “vexatious litigator”

The bill specifies that a civil action within the definition of “vexatious litigator” includes the proceedings in the Court of Claims created in the bill.²⁰

Action for an injunction

Under current law, any person alleging a violation of the Open Meetings Law may bring an action for an injunction in the court of common pleas in the county in which the public body involved is located (see, “**Overview**,” above). The action must be brought within two years after the alleged violation or threatened violation. Upon proof of a violation or threatened violation, the court of common pleas must issue an injunction to compel the members of the public body to comply with the Open Meetings Law.²¹

If the court of common pleas issues an injunction, the court must order the public body that it enjoins to pay a civil forfeiture of \$500 to the party that sought the injunction and must award to that party all court costs and reasonable attorney’s fees. The court may reduce an award of attorney’s fees to the party that sought the injunction or not award attorney’s fees to that party if the court determines both of the following:²²

- That, based on the ordinary application of statutory law and case law as it existed at the time of the violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate the Open Meetings Law.
- That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

¹⁸ R.C. 2746.04(P).

¹⁹ R.C. 2743.76(J).

²⁰ R.C. 2323.52(A)(3).

²¹ R.C. 121.22(l)(1)(b).

²² R.C. 121.22(l)(2)(a).

If the court of common pleas does not issue an injunction and the court determines at that time that the bringing of the action was frivolous conduct, the court must award to the public body all court costs and reasonable attorney's fees.²³

A member of a public body who knowingly violates the injunction may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the Attorney General.²⁴

HISTORY

Action	Date
Introduced	03-17-20
Reported, S. General Government and Agency Review	---

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²³ R.C. 121.22(l)(2)(b) and 2323.51, not in the bill.

²⁴ R.C. 121.22(l)(4).