

As Introduced

135th General Assembly

Regular Session

2023-2024

H. B. No. 211

Representative Gross

**Cosponsors: Representatives Hillyer, Wiggam, Dean, Lear, Hall, Ferguson, Fowler
Arthur, Click**

A BILL

To amend section 121.22 of the Revised Code to name 1
this act the Free to Speak Act and to require a 2
public body to permit members of the public to 3
comment or testify about matters of public 4
concern before the public body at its public 5
meeting. 6

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

Section 1. That section 121.22 of the Revised Code be 7
amended to read as follows: 8

Sec. 121.22. (A) This section shall be liberally construed 9
to require public officials to take official action and to 10
conduct all deliberations upon official business only in open 11
meetings unless the subject matter is specifically excepted by 12
law. 13

(B) As used in this section: 14

(1) "Public body" means any of the following: 15

(a) Any board, commission, committee, council, or similar 16

decision-making body of a state agency, institution, or 17
authority, and any legislative authority or board, commission, 18
committee, council, agency, authority, or similar decision- 19
making body of any county, township, municipal corporation, 20
school district, or other political subdivision or local public 21
institution; 22

(b) Any committee or subcommittee of a body described in 23
division (B) (1) (a) of this section; 24

(c) A court of jurisdiction of a sanitary district 25
organized wholly for the purpose of providing a water supply for 26
domestic, municipal, and public use when meeting for the purpose 27
of the appointment, removal, or reappointment of a member of the 28
board of directors of such a district pursuant to section 29
6115.10 of the Revised Code, if applicable, or for any other 30
matter related to such a district other than litigation 31
involving the district. As used in division (B) (1) (c) of this 32
section, "court of jurisdiction" has the same meaning as "court" 33
in section 6115.01 of the Revised Code. 34

(2) "Meeting" means any prearranged discussion of the 35
public business of the public body by a majority of its members. 36

(3) "Regulated individual" means either of the following: 37

(a) A student in a state or local public educational 38
institution; 39

(b) A person who is, voluntarily or involuntarily, an 40
inmate, patient, or resident of a state or local institution 41
because of criminal behavior, mental illness, an intellectual 42
disability, disease, disability, age, or other condition 43
requiring custodial care. 44

(4) "Public office" has the same meaning as in section 45

149.011 of the Revised Code. 46

(C) All meetings of any public body are declared to be 47
public meetings open to the public at all times. A member of a 48
public body shall be present in person at a meeting open to the 49
public to be considered present or to vote at the meeting and 50
for purposes of determining whether a quorum is present at the 51
meeting. 52

The minutes of a regular or special meeting of any public 53
body shall be promptly prepared, filed, and maintained and shall 54
be open to public inspection. The minutes need only reflect the 55
general subject matter of discussions in executive sessions 56
authorized under division (G) or (J) of this section. 57

(D) This section does not apply to any of the following: 58

(1) A grand jury; 59

(2) An audit conference conducted by the auditor of state 60
or independent certified public accountants with officials of 61
the public office that is the subject of the audit; 62

(3) The adult parole authority when its hearings are 63
conducted at a correctional institution for the sole purpose of 64
interviewing inmates to determine parole or pardon and the 65
department of rehabilitation and correction when its hearings 66
are conducted at a correctional institution for the sole purpose 67
of making determinations under section 2967.271 of the Revised 68
Code regarding the release or maintained incarceration of an 69
offender to whom that section applies; 70

(4) The organized crime investigations commission 71
established under section 177.01 of the Revised Code; 72

(5) Meetings of a child fatality review board established 73

under section 307.621 of the Revised Code, meetings related to a 74
review conducted pursuant to guidelines established by the 75
director of health under section 3701.70 of the Revised Code, 76
and meetings conducted pursuant to sections 5153.171 to 5153.173 77
of the Revised Code; 78

(6) The state medical board when determining whether to 79
suspend a license or certificate without a prior hearing 80
pursuant to division (G) of either section 4730.25 or 4731.22 of 81
the Revised Code; 82

(7) The board of nursing when determining whether to 83
suspend a license or certificate without a prior hearing 84
pursuant to division (B) of section 4723.281 of the Revised 85
Code; 86

(8) The state board of pharmacy when determining whether 87
to do either of the following: 88

(a) Suspend a license, certification, or registration 89
without a prior hearing, including during meetings conducted by 90
telephone conference, pursuant to Chapters 3719., 3796., 4729., 91
and 4752. of the Revised Code and rules adopted thereunder; or 92

(b) Restrict a person from obtaining further information 93
from the drug database established in section 4729.75 of the 94
Revised Code without a prior hearing pursuant to division (C) of 95
section 4729.86 of the Revised Code. 96

(9) The state chiropractic board when determining whether 97
to suspend a license without a hearing pursuant to section 98
4734.37 of the Revised Code; 99

(10) The executive committee of the emergency response 100
commission when determining whether to issue an enforcement 101
order or request that a civil action, civil penalty action, or 102

criminal action be brought to enforce Chapter 3750. of the 103
Revised Code; 104

(11) The board of directors of the nonprofit corporation 105
formed under section 187.01 of the Revised Code or any committee 106
thereof, and the board of directors of any subsidiary of that 107
corporation or a committee thereof; 108

(12) An audit conference conducted by the audit staff of 109
the department of job and family services with officials of the 110
public office that is the subject of that audit under section 111
5101.37 of the Revised Code; 112

(13) The occupational therapy section of the occupational 113
therapy, physical therapy, and athletic trainers board when 114
determining whether to suspend a license without a hearing 115
pursuant to division (E) of section 4755.11 of the Revised Code; 116

(14) The physical therapy section of the occupational 117
therapy, physical therapy, and athletic trainers board when 118
determining whether to suspend a license without a hearing 119
pursuant to division (F) of section 4755.47 of the Revised Code; 120

(15) The athletic trainers section of the occupational 121
therapy, physical therapy, and athletic trainers board when 122
determining whether to suspend a license without a hearing 123
pursuant to division (E) of section 4755.64 of the Revised Code; 124

(16) Meetings of the pregnancy-associated mortality review 125
board established under section 3738.01 of the Revised Code; 126

(17) Meetings of a fetal-infant mortality review board 127
established under section 3707.71 of the Revised Code; 128

(18) Meetings of a drug overdose fatality review committee 129
described in section 307.631 of the Revised Code; 130

(19) Meetings of a suicide fatality review committee	131
described in section 307.641 of the Revised Code;	132
(20) Meetings of the officers, members, or directors of an	133
existing qualified nonprofit corporation that creates a special	134
improvement district under Chapter 1710. of the Revised Code, at	135
which the public business of the corporation pertaining to a	136
purpose for which the district is created is not discussed;	137
(21) Meetings of a domestic violence fatality review board	138
established under section 307.651 of the Revised Code.	139
(E) The controlling board, the tax credit authority, or	140
the minority development financing advisory board, when meeting	141
to consider granting assistance pursuant to Chapter 122. or 166.	142
of the Revised Code, in order to protect the interest of the	143
applicant or the possible investment of public funds, by	144
unanimous vote of all board or authority members present, may	145
close the meeting during consideration of the following	146
information confidentially received by the authority or board	147
from the applicant:	148
(1) Marketing plans;	149
(2) Specific business strategy;	150
(3) Production techniques and trade secrets;	151
(4) Financial projections;	152
(5) Personal financial statements of the applicant or	153
members of the applicant's immediate family, including, but not	154
limited to, tax records or other similar information not open to	155
public inspection.	156
The vote by the authority or board to accept or reject the	157
application, as well as all proceedings of the authority or	158

board not subject to this division, shall be open to the public 159
and governed by this section. 160

(F) Every public body, by rule, shall establish a 161
reasonable method whereby any person may determine the time and 162
place of all regularly scheduled meetings and the time, place, 163
and purpose of all special meetings. A public body shall not 164
hold a special meeting unless it gives at least twenty-four 165
hours' advance notice to the news media that have requested 166
notification, except in the event of an emergency requiring 167
immediate official action. In the event of an emergency, the 168
member or members calling the meeting shall notify the news 169
media that have requested notification immediately of the time, 170
place, and purpose of the meeting. 171

The rule shall provide that any person, upon request and 172
payment of a reasonable fee, may obtain reasonable advance 173
notification of all meetings at which any specific type of 174
public business is to be discussed. Provisions for advance 175
notification may include, but are not limited to, mailing the 176
agenda of meetings to all subscribers on a mailing list or 177
mailing notices in self-addressed, stamped envelopes provided by 178
the person. 179

Every public body shall permit members of the public to 180
comment or testify about matters of public concern before the 181
public body at public meetings held by the public body. Every 182
public body, by rule, shall establish reasonable methods by 183
which a member of the public may so comment or testify and may 184
establish reasonable restrictions regarding time limits on the 185
comment or testimony. 186

(G) Except as provided in divisions (G)(8) and (J) of this 187
section, the members of a public body may hold an executive 188

session only after a majority of a quorum of the public body 189
determines, by a roll call vote, to hold an executive session 190
and only at a regular or special meeting for the sole purpose of 191
the consideration of any of the following matters: 192

(1) To consider the appointment, employment, dismissal, 193
discipline, promotion, demotion, or compensation of a public 194
employee or official, or the investigation of charges or 195
complaints against a public employee, official, licensee, or 196
regulated individual, unless the public employee, official, 197
licensee, or regulated individual requests a public hearing. 198
Except as otherwise provided by law, no public body shall hold 199
an executive session for the discipline of an elected official 200
for conduct related to the performance of the elected official's 201
official duties or for the elected official's removal from 202
office. If a public body holds an executive session pursuant to 203
division (G) (1) of this section, the motion and vote to hold 204
that executive session shall state which one or more of the 205
approved purposes listed in division (G) (1) of this section are 206
the purposes for which the executive session is to be held, but 207
need not include the name of any person to be considered at the 208
meeting. 209

(2) To consider the purchase of property for public 210
purposes, the sale of property at competitive bidding, or the 211
sale or other disposition of unneeded, obsolete, or unfit-for- 212
use property in accordance with section 505.10 of the Revised 213
Code, if premature disclosure of information would give an 214
unfair competitive or bargaining advantage to a person whose 215
personal, private interest is adverse to the general public 216
interest. No member of a public body shall use division (G) (2) 217
of this section as a subterfuge for providing covert information 218
to prospective buyers or sellers. A purchase or sale of public 219

property is void if the seller or buyer of the public property 220
has received covert information from a member of a public body 221
that has not been disclosed to the general public in sufficient 222
time for other prospective buyers and sellers to prepare and 223
submit offers. 224

If the minutes of the public body show that all meetings 225
and deliberations of the public body have been conducted in 226
compliance with this section, any instrument executed by the 227
public body purporting to convey, lease, or otherwise dispose of 228
any right, title, or interest in any public property shall be 229
conclusively presumed to have been executed in compliance with 230
this section insofar as title or other interest of any bona fide 231
purchasers, lessees, or transferees of the property is 232
concerned. 233

(3) Conferences with an attorney for the public body 234
concerning disputes involving the public body that are the 235
subject of pending or imminent court action; 236

(4) Preparing for, conducting, or reviewing negotiations 237
or bargaining sessions with public employees concerning their 238
compensation or other terms and conditions of their employment; 239

(5) Matters required to be kept confidential by federal 240
law or regulations or state statutes; 241

(6) Details relative to the security arrangements and 242
emergency response protocols for a public body or a public 243
office, if disclosure of the matters discussed could reasonably 244
be expected to jeopardize the security of the public body or 245
public office; 246

(7) In the case of a county hospital operated pursuant to 247
Chapter 339. of the Revised Code, a joint township hospital 248

operated pursuant to Chapter 513. of the Revised Code, or a 249
municipal hospital operated pursuant to Chapter 749. of the 250
Revised Code, to consider trade secrets, as defined in section 251
1333.61 of the Revised Code; 252

(8) To consider confidential information related to the 253
marketing plans, specific business strategy, production 254
techniques, trade secrets, or personal financial statements of 255
an applicant for economic development assistance, or to 256
negotiations with other political subdivisions respecting 257
requests for economic development assistance, provided that both 258
of the following conditions apply: 259

(a) The information is directly related to a request for 260
economic development assistance that is to be provided or 261
administered under any provision of Chapter 715., 725., 1724., 262
or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 263
5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 264
5709.81 of the Revised Code, or that involves public 265
infrastructure improvements or the extension of utility services 266
that are directly related to an economic development project. 267

(b) A unanimous quorum of the public body determines, by a 268
roll call vote, that the executive session is necessary to 269
protect the interests of the applicant or the possible 270
investment or expenditure of public funds to be made in 271
connection with the economic development project. 272

If a public body holds an executive session to consider 273
any of the matters listed in divisions (G)(2) to (8) of this 274
section, the motion and vote to hold that executive session 275
shall state which one or more of the approved matters listed in 276
those divisions are to be considered at the executive session. 277

A public body specified in division (B) (1) (c) of this 278
section shall not hold an executive session when meeting for the 279
purposes specified in that division. 280

(H) A resolution, rule, or formal action of any kind is 281
invalid unless adopted in an open meeting of the public body. A 282
resolution, rule, or formal action adopted in an open meeting 283
that results from deliberations in a meeting not open to the 284
public is invalid unless the deliberations were for a purpose 285
specifically authorized in division (G) or (J) of this section 286
and conducted at an executive session held in compliance with 287
this section. A resolution, rule, or formal action adopted in an 288
open meeting is invalid if the public body that adopted the 289
resolution, rule, or formal action violated division (F) of this 290
section. 291

(I) (1) Any person may bring an action to enforce this 292
section. An action under division (I) (1) of this section shall 293
be brought within two years after the date of the alleged 294
violation or threatened violation. Upon proof of a violation or 295
threatened violation of this section in an action brought by any 296
person, the court of common pleas shall issue an injunction to 297
compel the members of the public body to comply with its 298
provisions. 299

(2) (a) If the court of common pleas issues an injunction 300
pursuant to division (I) (1) of this section, the court shall 301
order the public body that it enjoins to pay a civil forfeiture 302
of five hundred dollars to the party that sought the injunction 303
and shall award to that party all court costs and, subject to 304
reduction as described in division (I) (2) of this section, 305
reasonable attorney's fees. The court, in its discretion, may 306
reduce an award of attorney's fees to the party that sought the 307

injunction or not award attorney's fees to that party if the 308
court determines both of the following: 309

(i) That, based on the ordinary application of statutory 310
law and case law as it existed at the time of violation or 311
threatened violation that was the basis of the injunction, a 312
well-informed public body reasonably would believe that the 313
public body was not violating or threatening to violate this 314
section; 315

(ii) That a well-informed public body reasonably would 316
believe that the conduct or threatened conduct that was the 317
basis of the injunction would serve the public policy that 318
underlies the authority that is asserted as permitting that 319
conduct or threatened conduct. 320

(b) If the court of common pleas does not issue an 321
injunction pursuant to division (I)(1) of this section and the 322
court determines at that time that the bringing of the action 323
was frivolous conduct, as defined in division (A) of section 324
2323.51 of the Revised Code, the court shall award to the public 325
body all court costs and reasonable attorney's fees, as 326
determined by the court. 327

(3) Irreparable harm and prejudice to the party that 328
sought the injunction shall be conclusively and irrebuttably 329
presumed upon proof of a violation or threatened violation of 330
this section. 331

(4) A member of a public body who knowingly violates an 332
injunction issued pursuant to division (I)(1) of this section 333
may be removed from office by an action brought in the court of 334
common pleas for that purpose by the prosecuting attorney or the 335
attorney general. 336

(J) (1) Pursuant to division (C) of section 5901.09 of the Revised Code, a veterans service commission shall hold an executive session for one or more of the following purposes unless an applicant requests a public hearing:

(a) Interviewing an applicant for financial assistance under sections 5901.01 to 5901.15 of the Revised Code;

(b) Discussing applications, statements, and other documents described in division (B) of section 5901.09 of the Revised Code;

(c) Reviewing matters relating to an applicant's request for financial assistance under sections 5901.01 to 5901.15 of the Revised Code.

(2) A veterans service commission shall not exclude an applicant for, recipient of, or former recipient of financial assistance under sections 5901.01 to 5901.15 of the Revised Code, and shall not exclude representatives selected by the applicant, recipient, or former recipient, from a meeting that the commission conducts as an executive session that pertains to the applicant's, recipient's, or former recipient's application for financial assistance.

(3) A veterans service commission shall vote on the grant or denial of financial assistance under sections 5901.01 to 5901.15 of the Revised Code only in an open meeting of the commission. The minutes of the meeting shall indicate the name, address, and occupation of the applicant, whether the assistance was granted or denied, the amount of the assistance if assistance is granted, and the votes for and against the granting of assistance.

Section 2. That existing section 121.22 of the Revised

Code is hereby repealed. 366

Section 3. This act shall be known as the Free to Speak 367
Act. 368

Section 4. Section 121.22 of the Revised Code is presented 369
in this act as a composite of the section as amended by both 370
H.B. 45 and H.B. 254 of the 134th General Assembly. The General 371
Assembly, applying the principle stated in division (B) of 372
section 1.52 of the Revised Code that amendments are to be 373
harmonized and reconciled if reasonably capable of simultaneous 374
operation, finds that the composite is the resulting version of 375
the section in effect prior to the effective date of the section 376
as presented in this act. 377