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February 2, 2021

SENATE BILL NO. 946

By: Daniels and Bullard

An Act relating to the Oklahoma Open Meeting Act; amending 25 O.S. 2011, Sections 304, as last amended by Section 1, Chapter 3, O.S.L. 2020 and 307, as last amended by Section 57, Chapter 476, O.S.L. 2019 and 310 (25 O.S. Supp. 2020, Sections 304 and 307), which relate to definitions and executive sessions; adding Judicial Nominating Commission to definition of public body; establishing purposes for permissible executive sessions; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 25 O.S. 2011, Section 304, as last amended by Section 1, Chapter 3, O.S.L. 2020 (25 O.S. Supp. 2020, Section 304), is amended to read as follows:

Section 304. As used in the Oklahoma Open Meeting Act:

1. "Public body" means the governing bodies of all municipalities located within this state, boards of county commissioners of the counties in this state, boards of public and higher education in this state and all boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts or any entity created by a public trust, including any committee or subcommittee composed of any of the members of a public trust or other legal entity receiving funds from the Rural Economic

1 Action Plan Fund as authorized by Section 2007 of Title 62 of the
2 Oklahoma Statutes, task forces or study groups in this state
3 supported in whole or in part by public funds or entrusted with the
4 expending of public funds, or administering public property, and
5 shall include all committees or subcommittees of any public body.
6 Public body shall include the Judicial Nominating Commission.
7 Public body shall not include the state judiciary, the Council on
8 Judicial Complaints when conducting, discussing, or deliberating any
9 matter relating to a complaint received or filed with the Council,
10 the Legislature, or administrative staffs of public bodies,
11 including, but not limited to, faculty meetings and athletic staff
12 meetings of institutions of higher education when those staffs are
13 not meeting with the public body, or entry-year assistance
14 committees. Furthermore, public body shall not include the
15 multidisciplinary teams provided for in Section 1-9-102 of Title 10A
16 of the Oklahoma Statutes and subsection C of Section 1-502.2 of
17 Title 63 of the Oklahoma Statutes or any school board meeting for
18 the sole purpose of considering recommendations of a
19 multidisciplinary team and deciding the placement of any child who
20 is the subject of the recommendations. Furthermore, public body
21 shall not include meetings conducted by stewards designated by the
22 Oklahoma Horse Racing Commission pursuant to Section 203.4 of Title
23 3A of the Oklahoma Statutes when the stewards are officiating at
24 races or otherwise enforcing rules of the Commission;

1 2. "Meeting" means the conduct of business of a public body by
2 a majority of its members being personally together or, as
3 authorized by Section 307.1 of this title, together pursuant to a
4 videoconference. Meeting shall not include informal gatherings of a
5 majority of the members of the public body when no business of the
6 public body is discussed;

7 3. "Regularly scheduled meeting" means a meeting at which the
8 regular business of the public body is conducted;

9 4. "Special meeting" means any meeting of a public body other
10 than a regularly scheduled meeting or emergency meeting;

11 5. "Emergency meeting" means any meeting called for the purpose
12 of dealing with an emergency. For purposes of the Oklahoma Open
13 Meeting Act, an emergency is defined as a situation involving injury
14 to persons or injury and damage to public or personal property or
15 immediate financial loss when the time requirements for public
16 notice of a special meeting would make such procedure impractical
17 and increase the likelihood of injury or damage or immediate
18 financial loss;

19 6. "Continued or reconvened meeting" means a meeting which is
20 assembled for the purpose of finishing business appearing on an
21 agenda of a previous meeting. For the purposes of the Oklahoma Open
22 Meeting Act, only matters on the agenda of the previous meeting at
23 which the announcement of the continuance is made may be discussed
24 at a continued or reconvened meeting;

1 7. "Videoconference" means a conference among members of a
2 public body remote from one another who are linked by interactive
3 telecommunication devices or technology and/or technology permitting
4 both visual and auditory communication between and among members of
5 the public body and/or between and among members of the public body
6 and members of the public. During any videoconference, both the
7 visual and auditory communications functions shall attempt to be
8 utilized; and

9 8. "Teleconference" means a conference among members of a
10 public body remote from one another who are linked by
11 telecommunication devices and/or technology permitting auditory
12 communication between and among members of the public body and/or
13 between and among members of the public body and members of the
14 public.

15 SECTION 2. AMENDATORY 25 O.S. 2011, Section 307, as last
16 amended by Section 57, Chapter 476, O.S.L. 2019 (25 O.S. Supp. 2020,
17 Section 307), is amended to read as follows:

18 Section 307. A. No public body shall hold executive sessions
19 unless otherwise specifically provided in this section.

20 B. Executive sessions of public bodies will be permitted only
21 for the purpose of:

22 1. Discussing the employment, hiring, appointment, promotion,
23 demotion, disciplining or resignation of any individual salaried
24 public officer or employee;

1 2. Discussing negotiations concerning employees and
2 representatives of employee groups;

3 3. Discussing the purchase or appraisal of real property;

4 4. Confidential communications between a public body and its
5 attorney concerning a pending investigation, claim, or action if the
6 public body, with the advice of its attorney, determines that
7 disclosure will seriously impair the ability of the public body to
8 process the claim or conduct a pending investigation, litigation, or
9 proceeding in the public interest;

10 5. Permitting district boards of education to hear evidence and
11 discuss the expulsion or suspension of a student when requested by
12 the student involved or the student's parent, attorney or legal
13 guardian;

14 6. Discussing matters involving a specific handicapped child;

15 7. Discussing any matter where disclosure of information would
16 violate confidentiality requirements of state or federal law;

17 8. Engaging in deliberations or rendering a final or
18 intermediate decision in an individual proceeding pursuant to
19 Article II of the Administrative Procedures Act;

20 9. Discussing matters involving safety and security at state
21 penal institutions or correctional facilities used to house state
22 inmates;

23 10. Discussing contract negotiations involving contracts
24 requiring approval of the Board of Corrections, which shall be

1 limited to members of the public body, the attorney for the public
2 body, and the immediate staff of the public body. No person who may
3 profit directly or indirectly by a proposed transaction which is
4 under consideration may be present or participate in the executive
5 session; or

6 11. Discussing the following:

- 7 a. the investigation of a plan or scheme to commit an act
8 of terrorism,
- 9 b. assessments of the vulnerability of government
10 facilities or public improvements to an act of
11 terrorism,
- 12 c. plans for deterrence or prevention of or protection
13 from an act of terrorism,
- 14 d. plans for response or remediation after an act of
15 terrorism,
- 16 e. information technology of the public body but only if
17 the discussion specifically identifies:
 - 18 (1) design or functional schematics that demonstrate
19 the relationship or connections between devices
20 or systems,
 - 21 (2) system configuration information,
 - 22 (3) security monitoring and response equipment
23 placement and configuration,

- (4) specific location or placement of systems,
components or devices,
 - (5) system identification numbers, names, or
connecting circuits,
 - (6) business continuity and disaster planning, or
response plans, or
 - (7) investigation information directly related to
security penetrations or denial of services, or
- f. the investigation of an act of terrorism that has
already been committed.

For the purposes of this subsection, the term "terrorism" means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes.

C. Notwithstanding the provisions of subsection B of this section, the following public bodies may hold executive sessions:

1. The State Banking Board, as provided for under Section 306.1 of Title 6 of the Oklahoma Statutes;

2. The Oklahoma Industrial Finance Authority, as provided for in Section 854 of Title 74 of the Oklahoma Statutes;

3. The Oklahoma Development Finance Authority, as provided for in Section 5062.6 of Title 74 of the Oklahoma Statutes;

4. The Oklahoma Center for the Advancement of Science and Technology, as provided for in Section 5060.7 of Title 74 of the Oklahoma Statutes;

1 5. The Oklahoma Health Research Committee for purposes of
2 conferring on matters pertaining to research and development of
3 products, if public disclosure of the matter discussed would
4 interfere with the development of patents, copyrights, products, or
5 services;

6 6. The Workers' Compensation Commission for the purposes
7 provided for in Section 20 of Title 85A of the Oklahoma Statutes;

8 7. A review committee, as provided for in Section 855 of Title
9 62 of the Oklahoma Statutes;

10 8. The Child Death Review Board for purposes of receiving and
11 conferring on matters pertaining to materials declared confidential
12 by law;

13 9. The Domestic Violence Fatality Review Board as provided in
14 Section 1601 of Title 22 of the Oklahoma Statutes;

15 10. The Opioid Overdose Fatality Review Board, as provided in
16 Section 2-1001 of Title 63 of the Oklahoma Statutes;

17 11. All nonprofit foundations, boards, bureaus, commissions,
18 agencies, trusteeships, authorities, councils, committees, public
19 trusts, task forces or study groups supported in whole or part by
20 public funds or entrusted with the expenditure of public funds for
21 purposes of conferring on matters pertaining to economic
22 development, including the transfer of property, financing, or the
23 creation of a proposal to entice a business to remain or to locate
24 within their jurisdiction if public disclosure of the matter

1 discussed would interfere with the development of products or
2 services or if public disclosure would violate the confidentiality
3 of the business;

4 12. The Oklahoma Indigent Defense System Board for purposes of
5 discussing negotiating strategies in connection with making possible
6 counteroffers to offers to contract to provide legal representation
7 to indigent criminal defendants and indigent juveniles in cases for
8 which the System must provide representation pursuant to the
9 provisions of the Indigent Defense System Act; ~~and~~

10 13. The Quality Investment Committee for purposes of discussing
11 applications and confidential materials pursuant to the terms of the
12 Oklahoma Quality Investment Act; and

13 14. The Judicial Nominating Commission for the purposes of
14 discussing the merits and qualifications of candidates for judicial
15 office to determine which candidates will be interviewed or solely
16 to meet with a candidate to discuss confidential information
17 relating to financial disclosure information or background checks.
18 Candidate interviews shall not be conducted in executive sessions
19 and Commissioners shall not vote or indicate how they intend to vote
20 in executive session.

21 D. Except as otherwise specified in this subsection, an
22 executive session for the purpose of discussing the purchase or
23 appraisal of real property shall be limited to members of the public
24 body, the attorney for the public body and the immediate staff of

1 the public body. No landowner, real estate salesperson, broker,
2 developer or any other person who may profit directly or indirectly
3 by a proposed transaction concerning real property which is under
4 consideration may be present or participate in the executive
5 session, unless they are operating under an existing agreement to
6 represent the public body.

7 E. No public body may go into an executive session unless the
8 following procedures are strictly complied with:

9 1. The proposed executive session is noted on the agenda as
10 provided in Section 311 of this title;

11 2. The executive session is authorized by a majority vote of a
12 quorum of the members present and the vote is a recorded vote; and

13 3. Except for matters considered in executive sessions of the
14 State Banking Board and the Oklahoma Savings and Loan Board, and
15 which are required by state or federal law to be confidential, any
16 vote or action on any item of business considered in an executive
17 session shall be taken in public meeting with the vote of each
18 member publicly cast and recorded.

19 F. A willful violation of the provisions of this section shall:

20 1. Subject each member of the public body to criminal sanctions
21 as provided in Section 314 of this title; and

22 2. Cause the minutes and all other records of the executive
23 session, including tape recordings, to be immediately made public.
24

1 SECTION 3. AMENDATORY 25 O.S. 2011, Section 310, is
2 amended to read as follows:

3 Section 310. Any member of the Legislature appointed as a
4 member of a committee of either house of the Legislature or joint
5 committee thereof shall be permitted to attend any executive session
6 authorized by the Oklahoma Open Meeting Act of any state agency,
7 board or commission whenever the jurisdiction of such committee
8 includes the actions of the public body involved; provided, however,
9 a member of the Legislature shall not be permitted to attend an
10 executive session of the Judicial Nominating Commission authorized
11 pursuant to paragraph 14 of subsection C of Section 307 of this
12 title.

13 SECTION 4. It being immediately necessary for the preservation
14 of the public peace, health or safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
18 February 2, 2021 - DO PASS
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