

OPEN AND PUBLIC MEETINGS ACT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies provisions of the Open and Public Meetings Act.

Highlighted Provisions:

This bill:

- ▶ modifies definitions applicable to the Open and Public Meetings Act, including:
 - deleting the definition of "convening"; and
 - modifying the definitions of "meeting" and "public body";
- ▶ repeals a provision relating to the transmission of electronic messages; and
- ▶ repeals obsolete language and makes conforming and technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

52-4-103, as last amended by Laws of Utah 2023, Chapters 139, 374 and 457

52-4-204, as last amended by Laws of Utah 2022, Chapters 169, 422

52-4-207, as last amended by Laws of Utah 2023, Chapter 100

52-4-209, as last amended by Laws of Utah 2018, Chapter 415

REPEALS:

52-4-210, as enacted by Laws of Utah 2011, Chapter 25

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **52-4-103** is amended to read:

52-4-103. Definitions.

As used in this chapter:

(1) "Anchor location" means the physical location from which:

33 (a) an electronic meeting originates; or

34 (b) the participants are connected.

35 (2) "Capitol hill complex" means the grounds and buildings within the area bounded by
36 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake
37 City.

38 ~~[(3)(a) "Convening" means the calling together of a public body by a person~~
39 ~~authorized to do so for the express purpose of discussing or acting upon a subject over which~~
40 ~~that public body has jurisdiction or advisory power.]~~

41 ~~[(b) "Convening" does not include the initiation of a routine conversation between~~
42 ~~members of a board of trustees of a large public transit district if the members involved in the~~
43 ~~conversation do not, during the conversation, take a tentative or final vote on the matter that is~~
44 ~~the subject of the conversation.]~~

45 ~~[(4)]~~ (3) "Electronic meeting" means a public meeting convened or conducted by
46 means of a conference using electronic communications.

47 ~~[(5) "Electronic message" means a communication transmitted electronically,~~
48 ~~including:]~~

49 ~~[(a) electronic mail;]~~

50 ~~[(b) instant messaging;]~~

51 ~~[(c) electronic chat;]~~

52 ~~[(d) text messaging, which means a communication in the form of electronic text or~~
53 ~~one or more electronic images sent by the actor from a telephone, computer, or other electronic~~
54 ~~communication device to another person's telephone, computer, or electronic communication~~
55 ~~device by addressing the communication to the person's telephone number or other electronic~~
56 ~~communication access code or number; or]~~

57 ~~[(e) any other method that conveys a message or facilitates communication~~
58 ~~electronically.]~~

59 ~~[(6)]~~ (4) "Fiduciary or commercial information" means information:

60 (a) related to any subject if disclosure:

61 (i) would conflict with a fiduciary obligation; or

62 (ii) is prohibited by insider trading provisions; or

63 (b) that is commercial in nature including:

- (i) account owners or borrowers;
- (ii) demographic data;
- (iii) contracts and related payments;
- (iv) negotiations;
- (v) proposals or bids;
- (vi) investments;
- (vii) management of funds;
- (viii) fees and charges;
- (ix) plan and program design;
- (x) investment options and underlying investments offered to account owners;
- (xi) marketing and outreach efforts;
- (xii) financial plans; or
- (xiii) reviews and audits excluding the final report required under Section 53B-8a-111.

~~[(7)] (5) (a) "Meeting" means [the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body or specified body has jurisdiction or advisory power.]~~ a gathering of a public body or specified body:

(i) whether in person or through electronic communications, or a combination of in person and through electronic communications;

(ii) with a quorum of the public body or specified body, as the case may be, present in person or electronically; and

(iii) for the express purpose of acting as a public body or specified body to discuss, receive public comment about, or take action upon a matter that is within the scope of the authority of the public body or specified body.

(b) "Meeting" includes a gathering of or conversation between two members of a three-member public body if the gathering or conversation:

(i) involves strategy or planning for action to be taken by the public body; or

(ii) includes a tentative or final vote on a matter that is or is likely to be under consideration by the public body.

~~[(b)]~~ (c) "Meeting" does not mean:

- 95 (i) a chance gathering or social gathering;
- 96 (ii) a ~~[convening]~~ gathering of the State Tax Commission to consider a confidential tax
- 97 matter in accordance with Section 59-1-405; ~~[or]~~
- 98 (iii) a ~~[convening]~~ gathering of a three-member board of trustees of a large public
- 99 transit district as defined in Section 17B-2a-802 if:
- 100 (A) the board members do not, during the conversation, take a tentative or final vote on
- 101 the matter that is the subject of the conversation; or
- 102 (B) the conversation pertains only to day-to-day management and operation of the
- 103 public transit district~~[-]~~;
- 104 (iv) a gathering of a public body with a quorum present if:
- 105 (A) the gathering is part of an event that is initiated or hosted by someone other than
- 106 the public body;
- 107 (B) all members of the public body are invited to or allowed to attend the event; and
- 108 (C) the public body does not take any action as a public body at the gathering.
- 109 ~~[(c)]~~ (d) "Meeting" does not mean ~~[the convening]~~ a gathering of a public body that has
- 110 both legislative and executive responsibilities if:
- 111 (i) no public funds are appropriated for expenditure during the time the public body is
- 112 ~~[convened]~~ gathered together; and
- 113 (ii) the public body is ~~[convened]~~ gathered solely for the discussion or implementation
- 114 of an administrative or operational ~~[matters]~~ matter:
- 115 (A) for which no formal action by the public body is required; or
- 116 (B) that would not come before the public body for discussion or action.
- 117 ~~[(8)]~~ (6) "Monitor" means to hear or observe, live, by audio or video equipment, all of
- 118 the public statements of each member of the public body who is participating in a meeting.
- 119 ~~[(9)]~~ (7) "Participate" means the ability to communicate with all of the members of a
- 120 public body, either verbally or electronically, so that each member of the public body can hear
- 121 or observe the communication.
- 122 ~~[(10)]~~ (8) (a) "Public body" means:
- 123 (i) ~~[any]~~ an administrative, ~~[advisory]~~ executive, or legislative body of the state or ~~[its~~
- 124 ~~political subdivisions that]~~ of a political subdivision of the state if the body:
- 125 (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

126 (B) consists of two or more ~~[persons]~~ individuals;

127 (C) expends, disburses, or is supported in whole or in part by tax revenue; and

128 (D) is vested with the authority to make decisions regarding the public's business; ~~[or]~~

129 (ii) an advisory body of the state or of a political subdivision of the state if the body:

130 (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

131 (B) consists of two or more individuals; and

132 (C) expends, disburses, or is supported in whole or in part by tax revenue; or

133 ~~[(ii)]~~ (iii) any administrative, advisory, executive, or policymaking body of an

134 association, as that term is defined in Section 53G-7-1101, that:

135 (A) consists of two or more persons;

136 (B) expends, disburses, or is supported in whole or in part by dues paid by a public

137 school or whose employees participate in a benefit or program described in Title 49, Utah State

138 Retirement and Insurance Benefit Act; and

139 (C) is vested with authority to make decisions regarding the participation of a public

140 school or student in an interscholastic activity, as that term is defined in Section 53G-7-1101.

141 (b) "Public body" includes:

142 (i) an interlocal entity or joint or cooperative undertaking, as those terms are defined in

143 Section 11-13-103;

144 (ii) a governmental nonprofit corporation as that term is defined in Section 11-13a-102;

145 (iii) the Utah Independent Redistricting Commission; and

146 (iv) a project entity, as that term is defined in Section 11-13-103.

147 (c) "Public body" does not include:

148 (i) a political party, a political group, or a political caucus;

149 (ii) a conference committee, a rules committee, or a sifting committee of the

150 Legislature;

151 (iii) a school community council or charter trust land council, as that term is defined in

152 Section 53G-7-1203;

153 (iv) a taxed interlocal entity, as that term is defined in Section 11-13-602, if the taxed

154 interlocal entity is not a project entity; or

155 (v) the following Legislative Management subcommittees, which are established in

156 Section 36-12-8, when meeting for the purpose of selecting or evaluating a candidate to

recommend for employment, except that the meeting in which a subcommittee votes to recommend that a candidate be employed shall be subject to the provisions of this act:

(A) the Research and General Counsel Subcommittee;

(B) the Budget Subcommittee; and

(C) the Audit Subcommittee.

~~[(11)]~~ (9) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

~~[(12)]~~ (10) ~~[(a)]~~ "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

~~[(b)] "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken.]~~

~~[(13)]~~ (11) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

~~[(14)]~~ (12) "Specified body":

(a) means an administrative, advisory, executive, or legislative body that:

(i) is not a public body;

(ii) consists of three or more members; and

(iii) includes at least one member who is:

(A) a legislator; and

(B) officially appointed to the body by the president of the Senate, speaker of the House of Representatives, or governor; and

(b) does not include a body listed in Subsection ~~[(10)(c)(ii) or (10)(c)(v)]~~ (8)(c)(ii) or (8)(c)(v).

~~[(15)] "Transmit" means to send, convey, or communicate an electronic message by electronic means.]~~

Section 2. Section **52-4-204** is amended to read:

52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for meeting recorded.

(1) A closed meeting may be held if:

(a) (i) a quorum is present;

(ii) the meeting is an open meeting for which notice has been given under Section

188 52-4-202; and

189 (iii) (A) two-thirds of the members of the public body present at the open meeting vote
190 to approve closing the meeting;

191 (B) for a meeting that is required to be closed under Section 52-4-205, if a majority of
192 the members of the public body present at an open meeting vote to approve closing the
193 meeting;

194 (C) for an ethics committee of the Legislature that is conducting an open meeting for
195 the purpose of reviewing an ethics complaint, a majority of the members present vote to
196 approve closing the meeting for the purpose of seeking or obtaining legal advice on legal,
197 evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the
198 complaint;

199 (D) for the Political Subdivisions Ethics Review Commission established in Section
200 63A-15-201 that is conducting an open meeting for the purpose of reviewing an ethics
201 complaint in accordance with Section 63A-15-701, a majority of the members present vote to
202 approve closing the meeting for the purpose of seeking or obtaining legal advice on legal,
203 evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the
204 complaint;

205 (E) for a project entity that is conducting an open meeting for the purposes of
206 determining the value of an asset, developing a strategy related to the sale or use of that asset;

207 (F) for a project entity that is conducting an open meeting for purposes of discussing a
208 business decision, the disclosure of which could cause commercial injury to, or confer a
209 competitive advantage upon a potential or actual competitor of, the project entity; or

210 (G) for a project entity that is conducting an open meeting for purposes of discussing a
211 record, the disclosure of which could cause commercial injury to, or confer a competitive
212 advantage upon a potential competitor of, the project entity; or

213 (b) (i) for the Independent Legislative Ethics Commission, the closed meeting is
214 ~~convened~~ held for the purpose of conducting business relating to the receipt or review of an
215 ethics complaint, if public notice of the closed meeting is given under Section 52-4-202, with
216 the agenda for the meeting stating that the meeting will be closed for the purpose of
217 "conducting business relating to the receipt or review of ethics complaints";

218 (ii) for the Political Subdivisions Ethics Review Commission established in Section

63A-15-201, the closed meeting is [~~convened~~] held for the purpose of conducting business relating to the preliminary review of an ethics complaint in accordance with Section 63A-15-602, if public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the review of ethics complaints";

(iii) for the Independent Executive Branch Ethics Commission created in Section 63A-14-202, the closed meeting is [~~convened~~] held for the purpose of conducting business relating to an ethics complaint, if public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to an ethics complaint"; or

(iv) for the Data Security Management Council created in Section 63A-16-701, the closed meeting is [~~convened~~] held in accordance with Subsection 63A-16-701(7), if public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to information technology security."

(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.

(3) (a) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

(b) (i) A public body may not take a vote in a closed meeting, except for a vote on a motion to end the closed portion of the meeting and return to an open meeting.

(ii) A motion to end the closed portion of a meeting may be approved by a majority of the public body members present at the meeting.

(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

(a) the reason or reasons for holding the closed meeting;

(b) the location where the closed meeting will be held; and

(c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

(5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.

Section 3. Section **52-4-207** is amended to read:

52-4-207. Electronic meetings -- Authorization -- Requirements.

(1) Except as otherwise provided for a charter school in Section 52-4-209, a public body may ~~[convene and]~~ conduct an electronic meeting in accordance with this section.

(2) (a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.

(b) A resolution, rule, or ordinance described in Subsection (2)(a) that governs an electronic meeting shall establish the conditions under which a remote member is included in calculating a quorum.

(c) A resolution, rule, or ordinance described in Subsection (2)(a) may:

(i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;

(ii) require a quorum of the public body to:

(A) be present at a single anchor location for the meeting; and

(B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection;

(iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;

(iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability;

(v) if the public body is statutorily authorized to allow a member of the public body to act by proxy, establish the conditions under which a member may vote or take other action by proxy; or

(vi) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.

(3) A public body that ~~[convenes and]~~ conducts an electronic meeting shall:

(a) give public notice of the electronic meeting in accordance with Section 52-4-202;

(b) except for an electronic meeting described in Subsection (5), post written notice of the electronic meeting at the anchor location; and

(c) except as otherwise provided in a rule of the Legislature applicable to the public

body, at least 24 hours before the electronic meeting is scheduled to begin, provide each member of the public body a description of how to electronically connect to the meeting.

(4) (a) Except as provided in Subsection (5), a public body that ~~convenes and~~ conducts an electronic meeting shall provide space and facilities at an anchor location for members of the public to attend the open portions of the meeting.

(b) A public body that ~~convenes and~~ conducts an electronic meeting may provide means by which members of the public may attend the meeting remotely by electronic means.

(5) Subsection (4)(a) does not apply to an electronic meeting if:

(a) (i) the chair of the public body determines that:

(A) conducting the meeting as provided in Subsection (4)(a) presents a substantial risk to the health or safety of those present or who would otherwise be present at the anchor location; or

(B) the location where the public body would normally meet has been ordered closed to the public for health or safety reasons; and

(ii) the public notice for the meeting includes:

(A) a statement describing the chair's determination under Subsection (5)(a)(i);

(B) a summary of the facts upon which the chair's determination is based; and

(C) information on how a member of the public may attend the meeting remotely by electronic means;

(b) (i) during the course of the electronic meeting, the chair:

(A) determines that continuing to conduct the electronic meeting as provided in Subsection (4)(a) presents a substantial risk to the health or safety of those present at the anchor location; and

(B) announces during the electronic meeting the chair's determination under Subsection (5)(b)(i)(A) and states a summary of the facts upon which the determination is made; and

(ii) in ~~convening~~ conducting the electronic meeting, the public body has provided means by which members of the public who are not physically present at the anchor location may attend the electronic meeting remotely by electronic means;

(c) (i) the public body is a special district board of trustees established under Title 17B, Chapter 1, Part 3, Board of Trustees;

(ii) the board of trustees' membership consists of:

(A) at least two members who are elected or appointed to the board as owners of land, or as an agent or officer of the owners of land, under the criteria described in Subsection 17B-1-302(2)(b); or

(B) at least one member who is elected or appointed to the board as an owner of land, or as an agent or officer of the owner of land, under the criteria described in Subsection 17B-1-302(3)(a)(ii);

(iii) the public notice required under Subsection 52-4-202(3)(a)(i)(B) for the electronic meeting includes information on how a member of the public may attend the meeting remotely by electronic means; and

(iv) the board of trustees allows members of the public attending the meeting by remote electronic means to participate in the meeting; or

(d) (i) the public body is a special service district administrative control board established under Title 17D, Chapter 1, Part 3, Administrative Control Board;

(ii) the administrative control board's membership consists of:

(A) at least one member who is elected or appointed to the board as an owner of land, or as an agent or officer of the owner of land, under the criteria described in Subsection 17D-1-304(1)(a)(iii)(A) or (B), as applicable; or

(B) members that qualify for election or appointment to the board because the owners of real property in the special service district meet or exceed the threshold percentage described in Subsection 17D-1-304(1)(b)(i);

(iii) the public notice required under Subsection 52-4-202(3)(a)(i)(B) for the electronic meeting includes information on how a member of the public may attend the meeting remotely by electronic means; and

(iv) the administrative control board allows members of the public attending the meeting by remote electronic means to participate in the meeting.

(6) A determination under Subsection (5)(a)(i) expires 30 days after the day on which the chair of the public body makes the determination.

(7) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

(8) Unless a public body adopts a resolution, rule, or ordinance described in Subsection

(2)(c)(v), a public body that is conducting an electronic meeting may not allow a member to vote or otherwise act by proxy.

(9) Except for a unanimous vote, a public body that is conducting an electronic meeting shall take all votes by roll call.

Section 4. Section **52-4-209** is amended to read:

52-4-209. Electronic meetings for charter school board.

(1) Notwithstanding the definitions provided in Section 52-4-103 for this chapter, as used in this section:

(a) "Anchor location" means a physical location where:

(i) the charter school board would normally meet if the charter school board were not holding an electronic meeting; and

(ii) space, a facility, and technology are provided to the public to monitor and, if public comment is allowed, to participate in an electronic meeting during regular business hours.

(b) "Charter school board" means the governing board of a school created under Title 53G, Chapter 5, Charter Schools.

(c) "Meeting" means the convening of a charter school board:

(i) with a quorum who:

(A) monitors a website at least once during the electronic meeting; and

(B) casts a vote on a website, if a vote is taken; and

(ii) for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the charter school board has jurisdiction or advisory power.

(d) "Monitor" means to:

(i) read all the content added to a website by the public or a charter school board member; and

(ii) view a vote cast by a charter school board member on a website.

(e) "Participate" means to add content to a website.

(2) (a) A charter school board may ~~[convene and]~~ conduct an electronic meeting in accordance with Section 52-4-207.

(b) A charter school board may ~~[convene and]~~ conduct an electronic meeting in accordance with this section that is in writing on a website if:

(i) the chair verifies that a quorum monitors the website;

(ii) the content of the website is available to the public;

(iii) the chair controls the times in which a charter school board member or the public participates; and

(iv) the chair requires a person to identify himself or herself if the person:

(A) participates; or

(B) casts a vote as a charter school board member.

(3) A charter school that conducts an electronic meeting under this section shall:

(a) give public notice of the electronic meeting:

(i) in accordance with Section 52-4-202; and

(ii) by posting written notice at the anchor location as required under Section 52-4-207;

(b) in addition to giving public notice required by Subsection (3)(a), provide:

(i) notice of the electronic meeting to the members of the charter school board at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present;

(ii) a description of how the members and the public may be connected to the electronic meeting;

(iii) a start and end time for the meeting, which shall be no longer than 5 days; and

(iv) a start and end time for when a vote will be taken in an electronic meeting, which shall be no longer than four hours; and

(c) provide an anchor location.

(4) The chair shall:

(a) not allow anyone to participate from the time the notice described in Subsection (3)(b)(iv) is given until the end time for when a vote will be taken; and
(b) allow a charter school board member to change a vote until the end time for when a vote will be taken.

(5) During the time in which a vote may be taken, a charter school board member may not communicate in any way with any person regarding an issue over which the charter school board has jurisdiction.

(6) A charter school conducting an electronic meeting under this section may not close a meeting as otherwise allowed under this part.

(7) (a) Written minutes shall be kept of an electronic meeting conducted as required in

405 Section 52-4-203.

406 (b) (i) Notwithstanding Section 52-4-203, a recording is not required of an electronic
407 meeting described in Subsection (2)(b).

408 (ii) All of the content of the website shall be kept for an electronic meeting conducted
409 under this section.

410 (c) Written minutes are the official record of action taken at an electronic meeting as
411 required in Section 52-4-203.

412 (8) (a) A charter school board shall ensure that the website used to conduct an
413 electronic meeting:

414 (i) is secure; and

415 (ii) provides with reasonably certainty the identity of a charter school board member
416 who logs on, adds content, or casts a vote on the website.

417 (b) A person is guilty of a class B misdemeanor if the person falsely identifies himself
418 or herself as required by Subsection (2)(b)(iv).

419 (9) Compliance with the provisions of this section by a charter school constitutes full
420 and complete compliance by the public body with the corresponding provisions of Sections
421 52-4-201 and 52-4-202.

422 Section 5. **Repealer.**

423 This bill repeals:

424 Section **52-4-210, Electronic message transmissions.**

425 Section 6. **Effective date.**

426 This bill takes effect on May 1, 2024.