

Senator Lyle W. Hillyard proposes the following substitute bill:

ELECTRONIC COMMUNICATIONS IN PUBLIC MEETINGS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies provisions of the Open and Public Meetings Act that relate to electronic communications between members of public bodies.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ allows one or more members of a public body to transmit to any number of members of the public body an electronic message, whether simultaneously or in sequence;
- ▶ requires the electronic message to be sent to the chief officer or clerk of the body who shall maintain a public record of the electronic message;
- ▶ requires electronic message transmitted under this section to be classified as a public record under the Government Records Access and Management Act; and
- ▶ makes technical modifications.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **52-4-103**, as last amended by Laws of Utah 2007, Chapters 35 and 45

29 ENACTS:

30 **52-4-209**, Utah Code Annotated 1953



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

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

33 **52-4-103. Definitions.**

34 As used in this chapter:

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

36 (a) an electronic meeting originates; or

37 (b) the participants are connected.

38 (2) "Convening" means the calling of a meeting 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 (3) "Electronic meeting" means a public meeting convened or conducted by means of a

42 conference using electronic communications.

43 (4) "Electronic message" means a communication transmitted electronically, including:

44 (a) electronic mail;

45 (b) instant messaging;

46 (c) electronic chat;

47 (d) text messaging as defined in Section 76-4-401; or

48 (e) any other method that conveys a message or facilitates communication

49 electronically.

50 [~~4~~] (5) (a) "Meeting" means the convening of a public body, with a quorum present,

51 including a workshop or an executive session whether the meeting is held in person or by

52 means of electronic communications, for the purpose of discussing, receiving comments from

53 the public about, or acting upon a matter over which the public body has jurisdiction or

54 advisory power.

55 (b) "Meeting" does not mean:

57 (i) a chance meeting;
58 (ii) a social meeting; or
59 (iii) the convening of a public body that has both legislative and executive
60 responsibilities where no public funds are appropriated for expenditure during the time the
61 public body is convened and:

62 (A) the public body is convened solely for the discussion or implementation of
63 administrative or operational matters for which no formal action by the public body is required;
64 or

65 (B) the public body is convened solely for the discussion or implementation of
66 administrative or operational matters that would not come before the public body for
67 discussion or action.

68 [~~5~~] (6) "Monitor" means to hear or observe, live, by audio or video equipment, all of
69 the public statements of each member of the public body who is participating in a meeting.

70 [~~6~~] (7) "Participate" means the ability to communicate with all of the members of a
71 public body, either verbally or electronically, so that each member of the public body can hear
72 or observe the communication.

73 [~~7~~] (8) (a) "Public body" means any administrative, advisory, executive, or legislative
74 body of the state or its political subdivisions that:

- 75 (i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;
- 76 (ii) consists of two or more persons;
- 77 (iii) expends, disburses, or is supported in whole or in part by tax revenue; and
- 78 (iv) is vested with the authority to make decisions regarding the public's business.

79 (b) "Public body" does not include a:

- 80 (i) political party, political group, or political caucus; or
- 81 (ii) conference committee, rules committee, or sifting committee of the Legislature.

82 [~~8~~] (9) "Public statement" means a statement made in the ordinary course of business
83 of the public body with the intent that all other members of the public body receive it.

84 [~~9~~] (10) (a) "Quorum" means a simple majority of the membership of a public body,
85 unless otherwise defined by applicable law.

86 (b) "Quorum" does not include a meeting of two elected officials by themselves when
87 no action, either formal or informal, is taken on a subject over which these elected officials

88 have advisory power.

89 ~~[(10)]~~ (11) "Recording" means an audio, or an audio and video, record of the
90 proceedings of a meeting that can be used to review the proceedings of the meeting.

91 (12) "Transmit" means to send, convey, or communicate an electronic message by
92 electronic means.

93 Section 2. Section **52-4-209** is enacted to read:

94 **52-4-209. Electronic message transmissions.**

95 (1) Nothing in this chapter prohibits one or more members of a public body from
96 transmitting to any number of members of the public body, whether separately, simultaneously,
97 or in sequence, an electronic message regarding a matter over which the public body has
98 jurisdiction or advisory power.

99 (2) In order to promote transparency and public access to government records, a
100 member of a public body who transmits an electronic message described in Subsection (1) to a
101 quorum of the public body, or who retransmits an electronic message described in Subsection
102 (1) in a manner that causes the electronic message to have been received by a quorum of the
103 public body, shall:

104 (a) if practicable, simultaneously transmit the electronic message to the chief officer or
105 clerk of the public body; or

106 (b) if simultaneous transmission to the chief officer or clerk of the public body is not
107 practicable, transmit or otherwise provide to the chief officer or clerk of the public body, as
108 soon as possible, by the most expeditious means practicable, a copy of the electronic message.

109 (3) After receiving an electronic message or a copy of an electronic message as
110 described in Subsection (2), the chief officer or clerk of the body shall maintain the electronic
111 message or copy of the electronic message as a public record subject to Title 63G, Chapter 2,
112 Government Records Access and Management Act.

FISCAL NOTE

H.B. 54 2nd Sub. (Gray)

SHORT TITLE: **Electronic Communications in Public Meetings**

SPONSOR: **Hillyard, L.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.