

# HB0439S01 compared with HB0439

~~text~~ shows text that was in HB0439 but was deleted in HB0439S01.

text shows text that was not in HB0439 but was inserted into HB0439S01.

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Representative Cheryl K. Acton proposes the following substitute bill:

## ELECTED PUBLIC BODY TRANSPARENCY AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Cheryl K. Acton**

Senate Sponsor: ~~\_\_\_\_\_~~ Kirk A. Cullimore

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### LONG TITLE

#### General Description:

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

#### Highlighted Provisions:

This bill:

- ▶ modifies the requirement for recording votes in the meeting minutes for a public body that has members who were elected to the public body ~~(.)~~;
- ▶ modifies a provision relating to electronic meetings; and
- ▶ makes technical changes.

#### Money Appropriated in this Bill:

None

#### Other Special Clauses:

None

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### Utah Code Sections Affected:

AMENDS:

**52-4-203**, as last amended by Laws of Utah 2021, Chapters 84, 176, and 345

[52-4-207, as last amended by Laws of Utah 2021, Chapter 242](#)

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

Section 1. Section **52-4-203** is amended to read:

**52-4-203. Written minutes of open meetings -- Public records -- Recording of meetings.**

(1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings.

(2) (a) Written minutes of an open meeting shall include:

(i) the date, time, and place of the meeting;

(ii) the names of members present and absent;

(iii) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;

(iv) a record, by individual member, of each vote taken by the public body;

(v) the name of each person who:

(A) is not a member of the public body; and

(B) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;

(vi) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(a)(v); and

(vii) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.

(b) A public body may satisfy the requirement under Subsection (2)(a)(iii) or (vi) that minutes include the substance of matters proposed, discussed, or decided or the substance of testimony or comments by maintaining a publicly available online version of the minutes that provides a link to the meeting recording at the place in the recording where the matter is proposed, discussed, or decided or the testimony or comments provided.

(c) A public body that has members who were elected to the public body shall satisfy

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the requirement described in Subsection (2)(a)(iv) by recording each vote:

(i) in list format;

(ii) by category for each action taken by a member, including yes votes, no votes, and absent members; and

(iii) by each member's name.

(3) A recording of an open meeting shall:

(a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and

(b) be properly labeled or identified with the date, time, and place of the meeting.

(4) (a) As used in this Subsection (4):

(i) "Approved minutes" means written minutes:

(A) of an open meeting; and

(B) that have been approved by the public body that held the open meeting.

(ii) "Electronic information" means information presented or provided in an electronic format.

(iii) "Pending minutes" means written minutes:

(A) of an open meeting; and

(B) that have been prepared in draft form and are subject to change before being approved by the public body that held the open meeting.

(iv) "Specified local public body" means a legislative body of a county, city, town, or metro township.

(v) "State public body" means a public body that is an administrative, advisory, executive, or legislative body of the state.

(vi) "State website" means the Utah Public Notice Website created under Section 63A-16-601.

(b) Pending minutes, approved minutes, and a recording of a public meeting are public records under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) Pending minutes shall contain a clear indication that the public body has not yet approved the minutes or that the minutes are subject to change until the public body approves them.

(d) A public body shall require an individual who, at an open meeting of the public

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body, publicly presents or provides electronic information, relating to an item on the public body's meeting agenda, to provide the public body, at the time of the meeting, an electronic or hard copy of the electronic information for inclusion in the public record.

(e) A state public body shall:

(i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes of an open meeting:

(A) post to the state website a copy of the approved minutes and any public materials distributed at the meeting;

(B) make the approved minutes and public materials available to the public at the public body's primary office; and

(C) if the public body provides online minutes under Subsection (2)(b), post approved minutes that comply with Subsection (2)(b) and the public materials on the public body's website; and

(iii) within three business days after holding an open meeting, post on the state website an audio recording of the open meeting, or a link to the recording.

(f) A specified local public body shall:

(i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes of an open meeting, post and make available a copy of the approved minutes and any public materials distributed at the meeting, as provided in Subsection (4)(e)(ii); and

(iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(g) A public body that is not a state public body or a specified local public body shall:

(i) make pending minutes available to the public within a reasonable time after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes of an open meeting:

(A) post and make available a copy of the approved minutes and any public materials distributed at the meeting, as provided in Subsection (4)(e)(ii); or

(B) comply with Subsections (4)(e)(ii)(B) and (C) and post to the state website a link to

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a website on which the approved minutes and any public materials distributed at the meeting are posted; and

(iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(h) A public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.

(i) Approved minutes of an open meeting are the official record of the meeting.

(5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.

(6) The written minutes or recording of an open meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(7) Notwithstanding Subsection (1), a recording is not required to be kept of:

(a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; or

(b) an open meeting of a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are \$50,000 or less.

Section 2. 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) The resolution, rule, or ordinance 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

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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; or

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

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

~~[(a) give public notice of the meeting:]~~

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

~~[(ii) except for an electronic meeting under Subsection (5)(a), post written notice at the anchor location; and]~~

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

~~[(i) notice of the electronic meeting to the members of the public body 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; and]~~

~~[(ii) a description of how the members will be connected to the electronic meeting:]~~

~~(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 who are not physically present at the anchor location may attend the meeting remotely by electronic means.~~

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(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; or

(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 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.

(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.