



HB 397 – REVISIONS TO OPEN MEETINGS & OPEN RECORDS AS INTRODUCED

HB 397, introduced in the 2011 Legislative session makes changes to the open meetings and open records laws. While there are many substantive changes proposed in the bill, many of the amendments are intended to bring clarity to the requirements of the current law

Open Meetings

- The bill revises the definition of covered meetings in three ways:
 1. The bill clarifies that a meeting is gathering of a quorum of a board or committee at which recommendations on any public matter of official business of the county is to be formulated, presented, discussed or voted upon.
 2. A covered meeting will include any time more than two members of a board or committee meet, *even if it is not a quorum*, if the purpose of the gathering is to evade or avoid the quorum requirements for conducting an open meeting.
 3. A quorum of a board of commissioners could no longer meet outside the county except for the limited purpose of training. No official business of the county could be discussed at the training.

- All votes at any covered meeting must be taken in public.

- Notice must be given for any gathering of a quorum held outside the county.

- Notices of meetings must be placed on the county's website, if it has one.

- Agendas for committee meetings must be posted in advance of the meeting.

- Minutes of executive sessions must be recorded but will remain confidential. However, minutes must be available for inspection by a court should a dispute arise as to whether an executive session was limited to topics allowed for discussion.

- Continues the exemption for the discussion of acquisition of real estate in executive session and further authorizes counties to authorize negotiations to purchase property, to enter into a contract to purchase property subject to a public vote, or to authorize entering into an option to purchase real estate subject to a public vote. However, no vote to acquire real estate will be binding until a vote is taken in an open meeting where the identity of the property and the terms of the acquisition are disclosed before the vote.

- Continues the existing exemption to discuss personnel matters in executive session, but clarifies that interviewing a candidate for director, county administrator, or other executive type position.

- Allows for discussion of records that are exempt from disclosure



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Open Meetings Continued:

- Expands penalties for knowingly and willingly conducting or participating in an illegal meeting to a criminal fine not to exceed \$1,000. In the alternative, a court could impose civil fines not to exceed \$1,000 for the first violation and a fine not to exceed \$2,500 for additional violations within 12 months of the initial violation.

Open Records

- HB 397 specifically requires that records be maintained in accordance with a record retention schedule.
- The commissioners may designate employees to be records custodian or open records officer.
- The county is required to produce records within three business days of a written request upon the chairman, senior official at any satellite office, a designed records custodian or a designated open records officer.
- If the records cannot be produced within three days, the county must provide written notice of when the documents will be available.
- Counties may continue to seek reimbursement for the cost to the taxpayers to search, retrieve, redact and produce the requested records. The copy charge remains at \$.25 per page. The county may only charge for redaction if the redaction is necessary to protect the confidentiality or privacy of information of private individuals and entities.
- In order to seek reimbursement of the cost for the fulfilling the request, the county must provide a written estimate of the costs.
- If the cost will be greater than \$10, the county may wait until the requestor agrees to pay the cost before finding the records.
- If the cost will be greater than \$500, then the county may require the requestor to pay before beginning the search and retrieval of the records.
- If a requestor fails to reimburse the taxpayers for the cost of a previous open records request, then the county will not be required to spend taxpayer funds responding to new requests until the past due amount is paid.
- HB 397 prevents lawyers involved in a lawsuit with the county from using the open records law to get documents related to their case. They will be required to use the discovery process established in law for obtaining records involved in a lawsuit.
- Counties would be required to provide printouts of data or selected data fields from a database, when requested.



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Open Meetings Records continued:

- If the county can produce a computer printout that complies with a request, then the county would not be required to create new programs or subroutines necessary to read data in an electronic format.
- HB 397 still provides that the county is not required to prepare reports, summaries or compilations that are not in existence at the time of the request.
- HB 397 specifies that counties are not required to answer questions in response to an open records request.
- Requests to inspect or copy emails and text messages should include enough information about the message for the county to find the emails and texts. If possible, the requestor should try to include the name, title or office of the person whose electronic messages are sought.
- Instead of providing separate printouts or copies of records or data, the county may provide access to records through a website accessible by the public.
- HB 397 continues the exemption for trial exhibits. However, it specifies that anyone who releases physical evidence used in a case involving sexual exploitation of children, electronically furnishing obscene material to minors, etc., may be convicted of a felony punishable by up to 20 years in prison and/or a \$100,000 fine.
- This bill clarifies the exemption for social security numbers and other private information.
- Failure to comply with the open records law is a misdemeanor. The first violation is punished by a \$1,000 fine.
- Additional open records violations within one year of the first violation are punished by a fine up to \$2,500.
- Anyone destroying open records to prevent their disclosure is a felony punished by two to ten years in prison.