



COUNTY ADVISORY BULLETIN

CAB

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COMMISSIONERS MAY MAINTAIN MEETING MINUTES AND RECORDS BY ELECTRONIC MEANS

Bill Number: S.B. 84

ORC Sections Amended: 305.09, 305.10, and 305.11

Co-sponsors:

Sens. Schaffer, Bocchieri, Cates, Amstutz, Fedor, Harris, Mason, Padgett, Seitz, Schuler, Schuring, Spada, Wilson, Smith, Stivers, Faber, Gardner, Niehaus, Sawyer

Reps. Combs, J. McGregor, Flowers, Mallory, Chandler, Adams, Blessing, Budish, DeBose, Domenick, Dyer, Evans, R. Hagan, Hughes, Patton, Schindel, Uecker

Effective Date: 7/18/08

Bill Summary:

As modern technology and communication methods continue to advance, counties often find that outdated statutory requirements do not accommodate modern technology. A number of counties have approached CCAO and the General Assembly to allow county governments to take advantage of these new technological developments.

Record keeping is a great example, particularly the requirement of keeping minutes of boards of county commissioners meetings. As you know, minutes are an attempt to maintain a public and historical record of governmental action. With much more developed audio/visual techniques available to capture the record, both local

government and public access advocates have pushed for legislative changes allowing these technologies. While traditionally written minutes may not tell the whole story, intentionally or unintentionally, technology such as video lessens this risk dramatically.

Senate Bill 84, sponsored by Senator Tim Schaffer, and amended by Representative Jeff Wagner, is an example of the recognition and embracing of such new technological developments. Generally, SB 84 allows boards of county commissioners to elect to maintain the minutes or official record of proceedings by electronic means such as audiotape and videotape.

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1. What are minutes?

Minutes are the official record of the proceedings of the board of county commissioners. Minutes must be "full and accurate" and state sufficient facts and information to permit the public to understand and appreciate the rationale behind the public body's decision. While minutes do not have to record the meeting verbatim, an oft-cited test for the accuracy of minutes is:

"Can someone who didn't attend a particular meeting read the minutes and understand everything that occurred during the meeting and understand why action was or was not taken?"

Minutes are open for public inspection. Draft copies of minutes prepared by the clerk for approval at the next meeting have been determined to be a public record even if they have not been yet approved by the commissioners.

Immediately upon the opening of each day's session of the board of county commissioners, the records of the proceedings of the session of the previous day shall be read, or provided to each commissioner in written form, by the clerk of the board and, if correct, approved and signed by the commissioners

2. What are a clerk's responsibilities in keeping the minutes of the board of county commissioners?

The clerk of a board of county commissioners has several duties related to maintaining a record of board proceedings. Generally, the clerk must keep a full record of the board's proceedings, and a general index of the proceedings, entering each motion with the name of the person making it on the record. The clerk must call and record the yeas and nays on each motion made at the meeting.

More specifically, the clerk must state fully and clearly in the record of proceedings any question relating to the powers and duties of the board that is raised for its consideration by any interested person, together with the decision on the question, and must call and record the yeas and nays by which the decision is made. When an interested party or an interested party's counsel requests, the clerk must record any legal proposition the board decides, the decision thereon, and the votes by which the board reaches the decision. If either party, in person or by counsel, takes exception to the decision, the clerk must record the exceptions with the record of the decision.

3. How does SB 84 change the way a clerk maintains the minutes of the board of county commissioners?

Under the act, the board may elect to maintain a full record of its proceedings by electronic means by adopting a resolution that directs the clerk to maintain a full record in that manner (reminder, this is not mandatory, but permissive language). The clerk also must maintain a general index of the electronic record in either a written form or by electronic means, as determined by the board in its resolution. The board's resolution also may authorize the clerk to maintain a written summary of the record of the proceedings, so long as the summary includes a notation that the full record of the proceedings is maintained by electronic means.

4. What if the electronic means should fail?

If the electronic means malfunctions, the clerk must re-create the full written record of the proceedings.

5. If my board elects to maintain the minutes by electronic means, how do I approve the minutes at the following board meeting?

If the clerk maintains the full record of the proceedings by electronic means, the act requires the board to orally approve the electronic record of the proceedings at the following meeting. However the clerk must first certify that the entire record of the proceedings at the prior meeting is captured completely and accurately in the electronic record.

6. How does my board of county commissioners make the switch to electronic means of record keeping?

As mentioned above, the board simply needs to adopt a resolution electing an electronic means of recordkeeping. The board also may resolve to have the clerk maintain a written summary of the record as well so long as the written summary notes that the electronic record is the official record of proceedings.

This written summary may prove helpful should the electronic means fail. In addition, if a county elects to maintain minutes by electronic means, it is necessary to allow persons to hear or view the electronic recording upon request and thus equipment must be available if a person would request to do so. In addition, if a person wants a copy of an audio or video recording, one would have to be reproduced for them either in house or by using an outside vendor in a reasonable period of time. In such a case, the cost of such reproduction could be charged to the requestor. A written summary may also help to reduce the number of requests to review or reproduce the full electronic record of proceedings of the board.

7. Are there additional requirements to maintaining electronic minutes?

Beyond the clerk certifying that the entire record of the prior proceedings was captured for approval of the minutes, the clerk has no additional requirements to maintaining electronic minutes. The requirement upon clerks to maintain a general index of the proceedings is the same whether the minutes are captured by written or electronic means.

However, the chairperson of the board has an additional requirement. Should the board elect to maintain the record by electronic means, the chairperson must announce that the record is being maintained in such a manner and, during the proceedings, ensure that each person self-identifies prior to speaking during the proceedings.

As always, please don't hesitate to contact CCAO policy staff regarding this public records CAB. CCAO Policy Analyst Josh Hahn primarily authored this advisory bulletin. You can reach Josh at 614-221-5627 or jhahn@ccao.org. Also you should contact your county prosecutor or legal counsel if you need further specific legal advice.