



Amendment to the Sunshine Law Permits Economic Development Executive Sessions

December 10, 2013

The recent Ohio state budget included an amendment to the Sunshine Law under Section 121.22 of the Ohio Revised Code that creates a new exception to the general rule that public bodies hold open meetings. The new exception allows a public body to enter into an executive session to consider certain confidential information related to economic development initiatives administered by a local government.

Types of economic development initiatives covered by the exception include information and applications in connection with incentives such as tax increment financing (TIF), enterprise zones, community reinvestment areas and joint economic development districts. For the new economic development exception to apply, the public body must meet certain subject matter and procedural requirements as outlined below.

Subject Matter

The statute defines the type of information a public body may consider in an economic development executive session. Information must meet three requirements:

1.
 - o The public body must hold the executive session to consider either: (A) an application for economic development assistance and information related to the applicant's marketing plans, specific business strategy, production techniques, trade secrets or personal financial statements; or (B) confidential information related to negotiations with other political subdivisions regarding requests for economic development.¹
 - o In addition to satisfying either alternative above, the confidential information must be either: (A) related directly to a request for economic development assistance under specified statutory schemes; or (B) related directly to public infrastructure improvements or the extension of utility services directly related to an economic development project.
 - o The executive session must be necessary to protect the applicant's interests, the potential investment or the expenditure of public funds to be made in connection with the economic development project. The public body's present members must unanimously agree to the executive session's necessity.

Procedure

As with all executive session exceptions, the public body must move to enter the executive session and state specifically which of the statutory exceptions for holding an executive session justifies the motion. However, unlike the other exceptions that require a majority vote to enter into an executive session, the economic development exception requires a unanimous vote before entering into the executive session.

The public body's board and any other person invited by the board may attend the executive session. The board may not make decisions or take votes in the executive session. The board may not discuss information outside of the subject matter requirements even if the non-permitted information intertwines with permitted information. The board need not take minutes of the executive session, but the minutes of the meeting at which the executive session occurs must reflect the general subject matter discussed in the closed session. Any material circulated during the executive session is not confidential.

In summary, for a public body to hold an executive session under the economic development exception to the Sunshine Law, the public body must complete the following checklist:

- Take a roll call vote:

- The present members must unanimously agree to the executive session because they consider it necessary to protect

the applicant's interest, the possible investment or the expenditure of public funds.

- If the board desires other individuals' attendance at the executive session, invite those individuals.
- Enter the executive session. Consider only:
 - Confidential information related to either:
 - An application for economic development assistance and information related to the applicant's marketing plans, specific business strategy, production techniques, trade secrets or personal financial statements; or
 - Negotiations with other political subdivisions regarding requests for economic development.
 - That is further related directly to either:
 - A request for economic development assistance under specified statutory schemes; or

- Public infrastructure improvements or the extension of utility services directly related to an economic development project.

- Be sure not to consider information that does not satisfy the above criteria, even if it intertwines with information that satisfies the above criteria.

- Do not make any decisions or conduct any votes.

- Be aware that any materials circulated are not confidential.

- - Move to enter an executive session.
 - Specifically state that the executive session will be to consider matters within the economic development exception. Use the statutory language describing the type of information to be considered in the executive session.
 - Upon conclusion of the executive session, be sure the minutes state the general subject matter discussed in the executive session. The minutes should use the statutory language to describe the subject matter discussed in the executive session along with any other general description.

Footnotes

1.
 - For example, this may include negotiations between a municipality and a township in forming a joint economic development district pursuant to Ohio Revised Code Sections 715.72 through 715.81.

Authors
