

SENATE, No. 1351

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 8, 2010

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Revises law concerning meetings of public bodies to provide greater public access to meetings and to information about meetings.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/26/2011)

S1351 WEINBERG, SWEENEY

2

1 AN ACT revising the law concerning meetings of public bodies and
2 amending P.L.2002, c.91 and amending and supplementing
3 P.L.1975, c.231.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1. Section 2 of P.L.1975, c.231 (C.10:4-7) is amended to read
9 as follows:

10 2. The Legislature finds and declares that the right of the public
11 to be present at all meetings of public bodies, and to witness in full
12 detail all phases of the deliberation, policy formulation, and
13 decision making of public bodies, is vital to the enhancement and
14 proper functioning of the democratic process; that secrecy in public
15 affairs fosters corruption and official misconduct, undermines the
16 faith of the public in government and the public's effectiveness in
17 fulfilling its role in a democratic society, and hereby declares it to
18 be the public policy of this State to insure the right of its citizens to
19 have adequate advance notice of and the right to attend, and to
20 review the minutes and recordings of, all meetings of public bodies
21 at which any business affecting the public is discussed or acted
22 upon in any way except only in those circumstances where
23 otherwise the public interest would be clearly endangered or the
24 personal privacy or guaranteed rights of individuals would be
25 clearly in danger of unwarranted invasion, and then only to the
26 narrowest extent.

27 The Legislature further declares it to be the public policy of this
28 State to insure that the aforesaid rights are implemented pursuant to
29 the provisions of this act so that no confusion, misconstructions or
30 misinterpretations may thwart the purposes hereof.

31 The Legislature, therefore, declares that it is the understanding
32 and the intention of the Legislature that in order to be covered by
33 the provisions of this act a public body must be organized by law
34 and be collectively empowered as a multi-member voting body to
35 spend public funds or affect persons' rights; that, therefore, informal
36 or purely advisory bodies with no effective authority are not
37 covered, nor are groupings composed of a public official with
38 subordinates or advisors, who are not empowered to act by vote
39 such as a mayor or the Governor meeting with department heads or
40 cabinet members, that specific exemptions are provided for the
41 Judiciary, parole bodies, the State Commission of Investigation, the
42 Apportionment Commission and political party organization; that
43 to be covered by the provisions of this act a meeting must be open
44 to all the public body's members, and the members present must
45 intend to discuss or act on the public body's business; and

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 therefore, typical partisan caucus meetings and chance encounters
2 of members of public bodies are neither covered by the provisions
3 of this act, nor are they intended to be so covered.
4 (cf: P.L.1981, c.176, s.1)

5
6 2. Section 3 of P.L.1975, c.231 (C.10:4-8) is amended to read
7 as follows:

8 3. As used in this act:

9 a. "Public body" means a commission, authority, board,
10 council, committee or any other group of two or more persons
11 organized under the laws of this State, and collectively empowered
12 as a voting body to perform a public governmental function
13 affecting the rights, duties, obligations, privileges, benefits, or
14 other legal relations of any person, or collectively authorized to
15 spend public funds including the Legislature, but does not mean or
16 include the judicial branch of the government, any grand or petit
17 jury, any parole board or any agency or body acting in a parole
18 capacity, the State Commission of Investigation, the
19 Apportionment Commission established under Article IV, Section
20 III, of the Constitution, or any political party committee organized
21 under Title 19 of the Revised Statutes. "Public body" also means,
22 but is not limited to, an independent authority, redevelopment
23 entity, or improvement authority.

24 b. "Meeting" means and includes any gathering whether
25 corporeal or by means of communication equipment, including the
26 use of electronic mail, instant messaging or similar technologies,
27 which is attended by, or open to, all of the members of a public
28 body, held with the intent, on the part of the members of the body
29 present, to discuss or act as a unit upon the specific public business
30 of that body. Meeting does not mean or include any such gathering
31 (1) attended by less than an effective majority of the members of a
32 public body, or (2) attended by or open to all the members of three
33 or more similar public bodies at a convention or similar gathering.

34 c. "Public business" means and includes all matters which
35 relate in any way, directly or indirectly, to the performance of the
36 public body's functions or the conduct of its business.

37 d. "Adequate notice" means written advance notice of at least
38 **[48 hours]** three business days, giving the time, date, location and
39 **[, to the extent known,]** the agenda of any regular, special or
40 rescheduled meeting, which notice shall accurately state whether
41 formal action may or may not be taken and which shall be (1)
42 prominently posted on the public body's Internet site, if the public
43 body has established an Internet site, and in at least one public place
44 reserved for such or similar announcements, (2) mailed, telephoned,
45 **[telegraphed]** faxed, mailed electronically, or hand delivered to at
46 least two newspapers which newspapers shall be designated by the
47 public body to receive such notices because they have the greatest
48 likelihood of informing the public within the area of jurisdiction of

1 the public body of such meetings, one of which shall be the official
2 newspaper, where any such has been designated by the public body
3 or if the public body has failed to so designate, where any has been
4 designated by the governing body of the political subdivision whose
5 geographic boundaries are coextensive with that of the public body
6 and (3) filed with the clerk of the municipality when the public
7 body's geographic boundaries are coextensive with that of a single
8 municipality, with the clerk of the county when the public body's
9 geographic boundaries are coextensive with that of a single county,
10 and with the Secretary of State if the public body has Statewide
11 jurisdiction. For any other public body the filing shall be with the
12 clerk or chief administrative officer of such other public body and
13 each municipal or county clerk of each municipality or county
14 encompassed within the jurisdiction of such public body. Where
15 annual notice or revisions thereof in compliance with section 13 of
16 this act set forth the location of any meeting, no further notice shall
17 be required for such meeting, except for notice pertaining to
18 agendas and formal action on the public body's Internet site, if the
19 body has established an Internet site, and posting in at least one
20 public place reserved for such or similar announcements. Notice
21 shall not be considered "adequate notice" within the meaning of this
22 subsection unless it includes separate specific starting times for the
23 public portion of any meeting and the portion of any meeting from
24 which the public is to be excluded pursuant to subsection b. of
25 section 7 of P.L.1975, c.231 (C.10:4-12). If it is determined that
26 any meeting for which annual notice has been given will include
27 both public and nonpublic portions, a revised notice for that
28 meeting shall be issued which includes separate specific starting
29 times for each portion.

30 e. "Agenda" means the list of all items of business to be
31 discussed or voted on at a public meeting. For purposes of
32 providing adequate notice, agendas shall include each individual
33 item to be discussed or acted upon and shall identify the names of
34 the parties to and approximate dollar amounts of any contracts or
35 proposed contracts, including employment contracts, to be
36 discussed or acted upon. No public body shall act upon or discuss a
37 matter that is not listed on the agenda for which notice was given
38 three business days prior to the meeting unless the conditions listed
39 in subsection b. of section 4 of P.L.1975, c.231 (C.10:4-9) exist.

40 (cf: P.L.1981, c.176, s.2)

41

42 3. Section 4 of P.L.1975, c.231 (C.10:4-9) is amended to read
43 as follows:

44 4. a. Except as provided by subsection b. of this section, or for
45 any meeting limited only to consideration of items listed in section
46 7. b. no public body shall hold a meeting unless adequate notice
47 thereof has been provided to the public.

1 b. Upon the affirmative vote of three quarters of the members
2 present a public body may hold a meeting notwithstanding the
3 failure to provide adequate notice if:

4 (1) such meeting is required in order to deal with matters of
5 such urgency and importance that a delay for the purpose of
6 providing adequate notice would be likely to result in substantial
7 harm to the public interest; and

8 (2) the meeting is limited to discussion of and acting with
9 respect to such matters of urgency and importance; and

10 (3) notice of such meeting is provided as soon as possible
11 following the calling of such meeting by posting written notice of
12 the same on the public body's Internet site, if the public body has
13 established an Internet site and in the public place described in
14 section 3. d. above, and also by notifying the two newspapers
15 described in section 3. d. by telephone, **[telegram,]** fax machine,
16 electronic mail, or by delivering a written notice of same to such
17 newspapers; and

18 (4) **[either (a)]** the public body could not reasonably have
19 foreseen the need for such meeting at a time when adequate notice
20 could have been provided **;** or (b) although the public body could
21 reasonably have foreseen the need for such meeting at a time when
22 adequate notice could have been provided, it nevertheless failed to
23 do so].

24 (cf: P.L.1975, c.231, s.4)

25

26 4. Section 1 of P.L.2002, c.91 (C.10:4-9.1) is amended to read
27 as follows:

28 1. In addition to the notice requirements of the "Open Public
29 Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), a public body
30 **[may]** shall provide electronic notice of any meeting of the public
31 body through the Internet, if the public body maintains an Internet
32 site or pages on an Internet site.

33 As used in this section, "electronic notice" means advance notice
34 available to the public via electronic transmission of at least **[48**
35 **hours]** three business days, giving the time, date, location and, to
36 the extent known, the agenda of any regular, special or rescheduled
37 meeting, which notice shall accurately state whether formal action
38 may or may not be taken at such meeting.

39 As used in this section, "Internet" means the international
40 computer network of both federal and non-federal interoperable
41 packet switched data networks.

42 (cf: P.L.2002, c.91, s.1)

43

44 5. Section 7 of P.L.1975, c.231 (C.10:4-12) is amended to read
45 as follows:

46 7. a. Except as provided by subsection b. of this section all
47 meetings of public bodies shall be open to the public at all times.

1 No member of a public body, during any meeting of that public
2 body to which the public is admitted, shall communicate privately,
3 by any means, with any other member of the public body, with any
4 staff of the public body or of its members, or with any member of
5 the public who wishes to comment on, or whose personal interest
6 will be directly affected by, public business under consideration at
7 that meeting of the public body. Nothing in this act shall be
8 construed to limit the discretion of a public body to permit, prohibit
9 or regulate the active participation of the public at any meeting,
10 except that a **[municipal governing] public body [and a board of**
11 **education] , other than the Legislature,** shall be required to set aside
12 a portion of every meeting of the **[municipal governing] public**
13 **body [or board of education],** the length of the portion to be
14 determined by the **[municipal governing] public body [or board of**
15 **education],** for public comment on any governmental **[or school**
16 **district] issue** that a member of the public feels may be of concern
17 to the **[residents of the municipality or school district] public body.**
18 A public body, other than the Legislature, may require members of
19 the public to sign in before speaking, but only if signing in is
20 permitted up to the start of the comment period and is limited to
21 providing name and address. A public body, other than the
22 Legislature, shall be required to provide for public comment on
23 items that are added to the regular meeting agenda that were not on
24 the adequately-noticed agenda three business days prior. In so far
25 as practical, a public body shall also invite public comment before
26 taking final action on any matter at any meeting. Such comments
27 shall be limited to the matter at hand and the duration shall be not
28 less than three minutes per person wishing to speak. A public body
29 shall permit all proceedings of any public meeting to be recorded,
30 photographed, audiotaped, videotaped, broadcast or recorded for
31 broadcast by any member of the public or news organization,
32 subject only to such reasonable rules as the public body may adopt
33 prior to the meeting to minimize undue disruption to its meetings.

34 b. A public body may exclude the public only from that portion
35 of a meeting at which the public body discusses:

36 (1) Any matter which, by express provision of federal law or
37 State statute or rule of court shall be rendered confidential or
38 excluded from the provisions of subsection a. of this section.

39 (2) Any matter in which the release of information would
40 legally impair a right to receive funds from the Government of the
41 United States.

42 (3) Any material the disclosure of which constitutes an
43 unwarranted invasion of individual privacy such as any records,
44 data, reports, recommendations, or other personal material of any
45 educational, training, social service, medical, health, custodial,
46 child protection, rehabilitation, legal defense, welfare, housing,
47 relocation, insurance and similar program or institution operated by

1 a public body pertaining to any specific individual admitted to or
2 served by such institution or program, including but not limited to
3 information relative to the individual's personal and family
4 circumstances, and any material pertaining to admission, discharge,
5 treatment, progress or condition of any individual, unless the
6 individual concerned (or, in the case of a minor or incompetent, his
7 guardian) shall request in writing that the same be disclosed
8 publicly.

9 (4) Any collective bargaining agreement, or the terms and
10 conditions which are proposed for inclusion in any collective
11 bargaining agreement, including the negotiation of the terms and
12 conditions thereof with employees or representatives of employees
13 of the public body.

14 (5) Any matter involving the purchase, lease or acquisition of
15 real property with public funds, the setting of banking rates or
16 investment of public funds, where **[it]** public discussion could
17 **[adversely affect]** reasonably be expected to jeopardize the public
18 interest if discussion of such matters were disclosed.

19 (6) Any tactics and techniques utilized in protecting the safety
20 and property of the public, provided that their disclosure could
21 impair such protection. Any investigations of violations or
22 **[possible]** probable violations of the law.

23 (7) Any **[pending or anticipated litigation or contract**
24 **negotiation]** consultation with legal counsel concerning the legal
25 rights and duties of the public body with regard to current litigation
26 or litigation likely to be filed in which the public body is, or is
27 likely to become, a party, or concerning current or anticipated
28 contract negotiations, other than in subsection b. (4) herein in which
29 the public body is, or may become a party.

30 **[Any matters falling within the attorney-client privilege, to the**
31 **extent that confidentiality is required in order for the attorney to**
32 **exercise his ethical duties as a lawyer.]**

33 (8) Any matter involving the employment, appointment,
34 termination of employment, terms and conditions of employment,
35 evaluation of the performance of, promotion or disciplining of any
36 specific prospective public officer or employee or current public
37 officer or employee employed or appointed by the public body,
38 unless **[all the individual employees or appointees whose rights**
39 **could be adversely affected]** the individual employee or employees
40 whose case or cases are to be discussed request in writing that such
41 matter or matters be discussed at a public meeting. Public bodies
42 shall give timely notice to any employee or officer in advance of
43 any closed meeting at which his or her termination, hiring,
44 promotion or discipline may be discussed so that the employee or
45 officer may ask that the matter or matters pertaining to him or her
46 not be discussed in closed session. However, the matter may still
47 be discussed in closed session if another known employee or officer

1 whose termination, hiring, promotion or discipline would
2 unavoidably have to be disclosed in the discussion declines in
3 writing to have the matter discussed in public.

4 (9) Any deliberations of a public body occurring after a public
5 hearing that may result in the imposition of a specific civil penalty
6 upon the responding party or the suspension or loss of a license or
7 permit belonging to the responding party as a result of an act or
8 omission for which the responding party bears responsibility.

9 c. The grounds for exclusion of the public set forth in
10 subsection b. of this section shall be construed strictly to minimize
11 instances in which meetings or portions of meetings are closed to
12 the public. The public may not be excluded from a public body's
13 discussion of actual or potential contracts or agreements involving
14 public funds or public concessions that are conducted with or in the
15 presence of actual or potential adverse or beneficial parties.

16 (cf: P.L.2008, c.14, s.1)

17

18 6. Section 8 of P.L.1975, c.231 (C.10:4-13) is amended to read
19 as follows:

20 8. No public body shall exclude the public from any meeting to
21 discuss any matter described in subsection 7. b. until the public
22 body shall first adopt a resolution, at a meeting to which the public
23 shall be admitted:

24 a. Stating as specifically as possible the **【general】** nature of the
25 subject to be discussed and the specific basis for excluding the
26 public; and b. Stating as precisely as possible, the time when and
27 the circumstances under which the discussion conducted in closed
28 session of the public body can be disclosed to the public.

29 (cf: P.L.1975, c.231, s.8)

30

31 7. Section 9 of P.L.1975, c.231 (C.10:4-14) is amended to read
32 as follows:

33 9. Each public body shall keep **【reasonably comprehensible】**
34 comprehensive minutes of all its meetings, including any portion of
35 a meeting from which the public was excluded pursuant to section 7
36 of P.L.1975, c.231 (C.10:4-12), showing, at a minimum, the time
37 and place, the members present, the subjects considered, the actions
38 taken, including all motions made, the identities of the moving and
39 seconding members, the vote of each member and each member's
40 stated reasons, if any, for his or her action or vote, the identity of
41 each member of the public who spoke and a summary of what was
42 said, and any other information required to be shown in the minutes
43 by law **【, which】** . Each public body shall cause to be recorded by
44 sound recording devices all meetings of that public body, including
45 any emergency meeting held pursuant to section 4 of P.L.1975,
46 c.231 (C.10:4-9), and shall maintain possession of the recordings
47 for at least seven years to permit their use in litigation, to enforce
48 the provisions of P.L.1975, c.231 (C.10:4-6 et seq.), or for public

1 access. The recordings and draft minutes, marked as such, shall be
2 promptly made available to the public, either within two weeks of
3 the meeting or at least three days before the next regularly
4 scheduled meeting, whichever is sooner, to the extent that making
5 such matters public shall not be inconsistent with section 7 of this
6 act. The minutes of a meeting of a public body shall include any
7 audio or video recording of the meeting, or any portion of a
8 meeting, made by the public body and such recording shall be
9 available to the public on the same basis as other meeting minutes.
10 However, all recordings of meetings or portions of meetings closed
11 pursuant to subsection b. of section 7 of P.L.1975, c.231 (C.10:4-
12 12) shall be deemed confidential and not a public record, except
13 that a court of competent jurisdiction may determine that disclosure
14 is necessary or proper for the enforcement of the laws of this or
15 another state of the United States.

16 (cf: P.L.1975, c.231, s.9)

17

18 8. Section 10 of P.L.1975, c.231 (C.10:4-15) is amended to
19 read as follows:

20 10. a. Any action taken by a public body at a meeting which
21 does not conform with the provisions of this act shall be voidable in
22 a proceeding in lieu of prerogative writ in the Superior Court, which
23 proceeding may be brought by any person within 45 days after the
24 action sought to be voided has been made public; provided,
25 however, that a public body may take corrective or remedial action
26 by acting de novo at a public meeting held in conformity with this
27 act and other applicable law regarding any action which may
28 otherwise be voidable pursuant to this section; and provided further
29 that any action for which advance published notice of at least [48
30 hours] three business days is provided as required by law shall not
31 be voidable solely for failure to conform with any notice required in
32 this act. No action under this section shall be subject to dismissal
33 on the grounds that the matters in question no longer present a case
34 or controversy.

35 b. Any party, including any member of the public, may
36 institute a proceeding in lieu of prerogative writ in the Superior
37 Court to challenge any action taken by a public body on the grounds
38 that such action is void for the reasons stated in subsection a. of this
39 section, and if the court shall find that the action was taken at a
40 meeting which does not conform to the provisions of this act, the
41 court shall declare such action void. Any party, other than a public
42 body, that prevails in an action brought pursuant to this section, or
43 whose complaint is found to have been instrumental in bringing
44 about compliance, shall be awarded the amount of reasonable
45 attorney's fees incurred in bringing the action. The cost of any
46 attorney's fee awarded by the court shall be paid by the public
47 body.

48 (cf: P.L.1975, c.231, s.10)

1 9. Section 11 of P.L.1975, c.231 (C.10:4-16) is amended to
2 read as follows:

3 11. Any person, including a member of the public, may apply to
4 the Superior Court for injunctive orders or other remedies to insure
5 compliance with the provisions of this act, and the court shall issue
6 such orders and provide such remedies as shall be necessary to
7 insure compliance with the provisions of this act. Any party, other
8 than a public body, that prevails in an action brought pursuant to
9 this section shall be awarded the amount of reasonable attorney's
10 fees incurred in bringing the action. The cost of any attorney's fee
11 awarded by the court shall be paid by the public body.

12 (cf: P.L.1975, c.231, s.11)

13

14 10. Section 12 of P.L.1975, c.231 (C.10:4-17) is amended to
15 read as follows:

16 12. Any person who knowingly violates any of the foregoing
17 sections of this act shall be fined **[\$100.00]** up to \$1,000 for the
18 first offense and no less than **[\$100.00]** \$1,000 nor more than
19 **[\$500.00]** \$5,000 for any subsequent offense **[, recoverable by the**
20 **State by]** . The Attorney General, county prosecutor, or any
21 member of the public shall have standing to bring an action in
22 Superior Court to prove that a violation of P.L.1975, c.231 (C.10:4-
23 6 et seq.) has occurred.

24 Any person upon whom a fine is imposed shall pay the
25 prevailing part's litigation costs and reasonable attorney's fees.

26 An action may be brought in a summary proceeding under ["the
27 penalty enforcement law" (N.J.S.2A:58-1 et seq.)] the "Penalty
28 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
29 The Superior Court shall have jurisdiction to enforce said penalty
30 upon complaint of the Attorney General or the county prosecutor or
31 any member of the public. Whenever a member of a public body
32 believes that a meeting of such body is being held in violation of
33 the provisions of this act, he shall immediately state this at the
34 meeting together with specific reasons for his belief which shall be
35 recorded in the minutes of that meeting, and if the meeting is one
36 from which the public is excluded, the member's statement and
37 reasons shall also be announced at and recorded in the minutes of
38 the next meeting of the public body at which the public is not
39 excluded. Whenever such a member's objections to the holding of
40 such meeting are overruled by the majority of those present, such a
41 member may continue to participate at such meeting without
42 penalty provided he has complied with the duties imposed upon him
43 by this section.

44 (cf: P.L.1994, c.58, s.41)

45

46 11. Section 13 of P.L.1975, c.231 (C.10:4-18) is amended to
47 read as follows:

1 13. At least once each year, within 7 days following the annual
2 organization or reorganization meeting of a public body, or if there
3 be no such organization or reorganization meeting in the year, then
4 by not later than January 10 of such year, every public body shall
5 publish in the newspapers designated in subsection d. of section 3
6 of P.L.1975, c.231 (C.10:4-8) a schedule of the regular meetings of
7 the public body to be held during the succeeding year. The public
8 body shall also post and maintain posted throughout the year on the
9 public body's Internet site, if the public body has established an
10 Internet site, and in the place reserved for such or similar
11 announcements described in subsection 3. d. (1), mail to the
12 newspapers described in subsection 3. d. (2), submit to the persons
13 described in subsection 3. d. (3), for the purpose of public
14 inspection a schedule of the regular meetings of the public body to
15 be held during the succeeding year. Such schedule shall contain
16 the location of each meeting to the extent it is known, and the time
17 and date of each meeting. In the event that such schedule is
18 thereafter revised, the public body, within 7 days following such
19 revision, shall publish in the designated newspapers a revised
20 schedule, and shall post, mail and submit such revision in the
21 manner described above.

22 (cf: P.L.1975, c.231, s.13)

23

24 12. Section 14 of P.L.1975, c.231 (C.10:4-19) is amended to
25 read as follows:

26 14. Any person may request that a public body mail or
27 electronically mail to him, at his option, copies of any regular
28 meeting schedule or revision described in section 13 of this act and
29 any advance written notice described in subsection 3. d. of this act
30 of any regular, special or rescheduled meeting of such body, and
31 upon prepayment by such person of a reasonable sum, if any has
32 been fixed by resolution of the public body to cover the costs of
33 providing such notice, the public body shall mail to such person
34 written advance notice of all of its meetings within the time
35 prescribed by subsection 3. d. herein, subject only to the exceptions
36 set forth in subsection 4. b. herein. Such resolution may provide
37 that notice requested by the news media shall be mailed to such
38 news media free of charge. If a person requests advance written
39 notice by electronic mail, no payments shall be required. All
40 requests for notices made under this section shall terminate at
41 midnight on December 31 of each year, but shall be subject to
42 renewal upon a new request to the public body.

43 (cf: P.L.1975, c.231, s.14)

44

45 13. (New section) In the case of State agencies, the Secretary of
46 State, through the Department of State, shall create and maintain an
47 Internet site for the posting of information, including time, date,
48 location, and purpose, of public hearings and meetings of State

1 agencies. Each State agency shall promptly notify the Secretary of
2 State and submit the necessary information concerning that
3 agency's public hearings and meetings.

4
5 14. (New section) At least quarterly, a public body shall
6 conduct a review of the minutes of any previous meeting when any
7 part has been withheld from public access. The review shall
8 determine whether any part of any minutes that have been withheld
9 from public access can now be made accessible to the public. If the
10 public body determines that any part of previously withheld minutes
11 can now be disclosed to the public, it shall make that part thereof
12 accessible to the public.

13
14 15. (New section) In addition to any other penalties imposed by
15 law, an appointed member of a public body may be removed from
16 the public body by the appointing authority because of two or more
17 violations of P.L.1975, c.231 (C.10:4-6 et seq.) that result in a
18 significant denial of the public's right of access as provided by that
19 act.

20
21 16. (New section) Every public body that maintains or publishes
22 an Internet site, or maintains or publishes web pages on an Internet
23 site operated by a government or non-public entity, shall have
24 posted on that site: the public body's annual schedule of regular
25 meetings and its agendas of those meetings and revisions thereto;
26 notice of any meeting held without adequate notice pursuant to one
27 of the exceptions to the adequate notice requirement listed in
28 subsection b. of section 4 of P.L.1975, c.231 (C.10:4-9); the
29 minutes, prepared pursuant to section 9 of P.L.1975, c.231 (C.10:4-
30 14), of each meeting of the public body, including the minutes of
31 the closed portion of any meeting to the extent that those minutes
32 have been made available to the public, which shall remain posted
33 on the site for a period of at least five years from the date of
34 posting; resolutions and ordinances, to the extent they are not
35 already set forth in the minutes; any resolution adopted by the
36 public body for the purpose of complying with the provisions of
37 section 8 of P.L.1975, c.231 (C.10:4-13), which shall remain posted
38 on the site for a period of at least five years from the date of
39 posting; and, in the case of municipalities and counties, their
40 ordinances.

41 Public bodies that maintain an Internet site or pages on that site
42 pursuant to this section shall provide any requestor with free paper
43 copies of any information that is required to be posted on the
44 Internet site but is not so posted.

45
46 17. (New Section) When a public body provides information on
47 the Internet, it shall make a reasonable effort to make the existence
48 and location of its site or pages known to members of the public

1 within its jurisdiction by, at a minimum, including such information
2 in its required written public notices, agendas, and minutes and by
3 announcing it at its public meetings.

4
5 18. This act shall take effect immediately.

6
7
8 STATEMENT

9
10 This bill revises the “Senator Byron M. Baer Open Public
11 Meetings Act,” N.J.S.A.10:4-6 et seq., to provide greater public
12 access to meetings of public bodies and to information about those
13 meetings.

14 Specifically, the bill would:

15 amend the findings and declarations section of the current law to
16 express the Legislature’s belief that secrecy in public affairs fosters
17 corruption and official misconduct, to make it clear that the public
18 has a right to review the minutes and recordings of all meetings of
19 public bodies, and to provide that exceptions to the right of access
20 should be narrowly construed;

21 provide that independent authorities, redevelopment entities and
22 improvement authorities are subject to the act’s provisions;

23 provide that a gathering of the members of a public body that is
24 conducted through the use of electronic mail, instant messaging or
25 similar technologies constitutes a “meeting” of the public body;

26 extend the required period for adequate notice of a meeting of a
27 public body from 48 hours to three business days and require such
28 notice, as well as certain other information, to be posted on a public
29 body’s Internet site, if the public body has established an Internet
30 site;

31 provide that a meeting notice will not be considered adequate
32 unless it includes separate specific starting times for the public
33 portion of any meeting and the portion of any meeting from which
34 the public is to be excluded and that if it is determined that any
35 meeting for which annual notice has been given will include both
36 public and nonpublic portions, a revised notice for that meeting will
37 be issued which includes separate specific starting times for each
38 portion;

39 eliminate a provision in the act that currently allows a public
40 body to provide advance notice of its agenda for a meeting “to the
41 extent known” and provide, instead, that meeting agendas must list
42 each individual item to be discussed or acted upon and to identify
43 the names of the parties to, and the approximate dollar value of, any
44 contracts or proposed contracts to be discussed or acted upon. A
45 public body would be prohibited, except in cases of emergency,
46 from discussing or acting upon any matter not so listed;

47 provide that when a public body holds an emergency meeting,
48 notice of such meeting will be provided as soon as possible on the

1 public body's Internet site and that the required notice to two
2 newspapers may be provided by fax machine or electronic mail
3 instead of by telegraph;

4 eliminate a provision of existing law that allows a public body,
5 upon affirmative vote of three-quarters of the members present, to
6 hold a meeting notwithstanding the failure to provide adequate
7 notice when the public body could have reasonably foreseen the
8 need for such a meeting at a time when adequate notice could have
9 been provided;

10 replace a provision of existing law which allows a public body to
11 provide electronic notice of a meeting through the Internet with a
12 requirement that such Internet notice be given if the public body
13 maintains an Internet site or pages on an Internet site;

14 prohibit a member of a public body during a meeting of that
15 body from communicating privately by any means with any other
16 member of the public body, with any staff of the public body or its
17 members, or with any member of the public who wishes to
18 comment on, or whose personal interest will be directly affected by,
19 public business under consideration at that meeting of the public
20 body;

21 expand a requirement of existing law that municipal governing
22 bodies and boards of education must set aside a portion of each
23 meeting for public comment to apply to all public bodies, except the
24 Legislature; allow a public body to require members of the public
25 wishing to be heard to sign up by providing the person's name and
26 address; expand the scope of public comments which must be
27 allowed; and require a public body to permit meetings to be
28 recorded, photographed, audiotaped, videotaped, broadcast or
29 recorded for broadcast by any member of the public or a news
30 organization, subject only to reasonable rules of the public body
31 adopted to minimize disruption of a meeting;

32 narrow the ability of a public body to go into closed session to
33 consider a matter in which the release of information would impair
34 the right to receive federal funds to circumstances where the release
35 of information would "legally" impair the right to receive federal
36 funds;

37 provide that a public body may go into closed session to consider
38 the purchase, lease or acquisition of real property with public funds,
39 the setting of bank rates or investment of public funds where public
40 discussion could "reasonably be expected to jeopardize" the public
41 interest, instead of where public discussion could "adversely affect"
42 the public interest as provided by current law;

43 provide that a public body may go into closed session to discuss
44 "probable" violations of law, instead of "possible" violations of law
45 as provided by current law;

46 eliminate the ability of a public body to go into closed session to
47 discuss "pending or anticipated litigation" and provide instead that
48 a public body may go into closed session to discuss any

1 consultation with legal counsel concerning the legal rights and
2 duties of the public body with regard to current litigation or
3 litigation likely to be filed in which the public body is, or is likely
4 to become, a party;

5 provide that a public body will go into closed session to discuss
6 personnel matters unless the individual employee or employees
7 whose case or cases are to be discussed request that the matter be
8 heard in public; existing law provides for a closed meeting “unless
9 all of the individual employees or appointees whose rights could be
10 adversely affected” ask for an open meeting;

11 require public bodies to give the individual employee timely
12 notice of a hearing on a personnel matter affecting the employee
13 directly so that the employee may request an open meeting, and
14 provide that a meeting will be closed at the request of another
15 employee whose personnel matter would unavoidably be disclosed;

16 provide that grounds for holding a closed meeting will be
17 construed strictly to minimize instances in which meetings or
18 portions of meetings are closed to the public;

19 provide that the public may not be excluded from a public body’s
20 discussion of actual or potential contracts or agreements involving
21 public funds or public concessions that are conducted with, or in the
22 presence of, actual or potential adverse or beneficial parties;

23 require that when a public body adopts a resolution permitting
24 the public body to go into closed session, as permitted by existing
25 law, the resolution must state the general nature of the subject to be
26 disclosed in closed session “as specifically as possible”, as well as
27 “the specific basis for excluding the public”;

28 require a public body to sound record each of its meetings and to
29 maintain the recordings for seven years so as to permit the
30 recordings use in litigation, to enforce the provisions of the public
31 meetings law and for public access, with the recordings and draft
32 minutes made available to the public either within two weeks of a
33 meeting or at least three days before the next regularly scheduled
34 meeting, whichever is sooner;

35 provide that the minutes of a meeting of a public body will
36 include any audio or video recording of the meeting, or any portion
37 of a meeting, made by the public body and that such recording shall
38 be available to the public on the same basis as other meeting
39 minutes, except that all recordings of closed meetings or portions of
40 closed meetings will be deemed confidential and not a public
41 record, and provided that a court of competent jurisdiction may
42 determine that disclosure is necessary or proper for the enforcement
43 of the laws of this or another state of the United States;

44 provide that an action brought against a public body in Superior
45 Court to void an act of a public body taken at a meeting that was
46 not held in conformity with the act will not be subject to dismissal
47 on the grounds that the matter no longer presents case or
48 controversy;

1 provide that reasonable attorney's fees will be awarded to any
2 party, other than a public body, who prevails in an action brought in
3 Superior Court to challenge an action of a public body for failure to
4 comply with the act's requirements or whose complaint was
5 instrumental in bringing about compliance, or who sought an
6 injunction to compel compliance, with the act;

7 increase the fines for noncompliance with the act and authorize
8 the Attorney General, county prosecutor, or any member of the
9 public to bring an action in Superior Court to prove that a violation
10 of the public meetings law has occurred;

11 provide that when a member of a public body expresses his or
12 her belief that the public is being improperly excluded from a
13 meeting, the member's statement will be announced and recorded in
14 the minutes of the next meeting of the public body from which the
15 public is not excluded;

16 provide that a public body must post its annual meeting schedule
17 on its Internet site, if it has established a site, and publish that
18 schedule, as well as any revisions thereof, in two newspapers;

19 provide that no payment will be required of a person who
20 requests advance written notice by electronic mail of a public
21 body's meeting schedule;

22 require the Secretary of State to establish an Internet site on
23 which State agency information regarding hearings and meetings
24 will be posted;

25 require a public body to conduct a quarterly review of the
26 minutes of any meeting which have been withheld from public
27 access to determine if the minutes can be made available;

28 provide that an appointed member of a public body may be
29 removed for two or more violations of the public meetings law;

30 require a public body that has established an Internet site to post
31 thereon notices of meetings, agendas, minutes of meetings,
32 resolutions and ordinances, with certain of this information required
33 to remain posted for five years; and

34 provide that when a public body provides information on the
35 Internet it must make a reasonable effort to make the existence and
36 location of its Internet site or pages known to members of the public
37 by, at a minimum, including such information in its required written
38 public notices, agendas, and minutes and by announcing it at its
39 public meetings.