

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1451

STATE OF NEW JERSEY

DATED: MARCH 5, 2012

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably a Senate Committee Substitute for Senate Bill No.1451.

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

Specifically, the committee substitute:

amends the findings and declarations section of the current law to express the Legislature’s belief that secrecy in public affairs increases the risk of corruption and official misconduct, to make it clear that the public has a right to review the minutes and recordings of all meetings of public bodies, and to provide that a meeting of a subcommittee of a public body, other than the Legislature, may be subject to certain of the act’s provisions;

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

provides that the following quasi-public agencies are subject to the act’s provisions: the New Jersey League of Municipalities, the New Jersey Association of Counties, the New Jersey State Interscholastic Athletic Association, the New Jersey School Boards Association, the New Jersey Network Foundation, the Educational Information and Resource Center, and any joint insurance fund;

provides that quasi-governmental agencies are subject to the act’s provisions;

specifies that 501(c)(3) non-profit organizations are not quasi-governmental agencies unless created by, or with the approval of, a public agency solely for the purpose of assisting that public agency;

provides that a quorum of a public body is a majority of the membership of a public body or of a subcommittee;

provides that the required 48 hour period for adequate notice of a meeting of a public body will exclude weekends and State holidays, and requires such notice, as well as certain other information, to be

posted on a public body's Internet site, if the public body has established an Internet site;

provides that notice of agendas must be transmitted to certain newspapers and to members of the public who have requested such notice;

defines "subcommittee" as any subordinate committee of a public body, other than the Legislature, regardless of size or label that is formally created by a public body and comprised of less than a quorum of that public body;

provides that adequate notice of meetings of subcommittees will be required and that subcommittees must keep minutes of meetings;

provides that the provisions of existing law would continue to apply to the Legislature and that most of the changes would apply to public bodies other than the Legislature;

provides that a public body may discuss, but not act upon, any matter not listed on an agenda that is brought to the public body's attention by a member of the public;

allows public bodies to determine whether meetings of subcommittees shall be open to the public;

allows a public body, upon the affirmative vote of two-thirds of the members present at a meeting, to add an item to the agenda for that meeting provided that the minutes contain a statement of the reason therefore, except that the Legislature may add an item to its agenda at any time;

requires meeting agendas to include a brief description of each item;

provides that individuals signing up to testify at a meeting of a public body may be required to disclose their name and town of residence but not street address;

eliminates a provision of existing law that allows a public body to exclude the public from a portion of a meeting at which terms and conditions of employment are discussed;

provides that a meeting notice will not be considered adequate unless it includes separate estimated starting times, as nearly so as can be established, for the public portion of any meeting and for the first public comment period to be held at a meeting;

eliminates a provision in the act that currently allows a public body to provide advance notice of its agenda for a meeting "to the extent known" and provide, instead, that meeting agendas must list each individual item to be discussed or acted upon, with a brief description thereof, and to identify the names of the parties to, and the approximate dollar value of, any contracts or proposed contracts to be discussed or acted upon;

provides that when a public body holds an emergency meeting, notice of such meeting will be provided as soon as possible on the public body's Internet site and that the required notice to two

newspapers may be provided by fax machine or electronic mail instead of by telegraph;

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

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

except in the case of communications of a purely administrative nature, prohibits a member of a public body during a meeting of that body to which the public is admitted from communicating privately by any means with any other member of the public body, whether directly or indirectly through staff, about any agenda item and from communicating privately with any other person, other than staff, about any matter on the agenda for that meeting by means of communication equipment, including electronic mail, instant messaging or similar technologies;

expands a requirement of existing law that municipal governing bodies and boards of education must set aside a portion of each meeting for public comment to apply to all public bodies, except the Legislature;

allows a public body to require members of the public wishing to be heard to sign up by providing the person's name and municipality of residence; expands the scope of public comments which must be allowed and provides for two public comment periods, one prior to consideration of agenda matters and one to accept public comment on any governmental issue that a member of the public feels may be of concern to the public body; provides that a member of the public will be allowed to speak for at least three minutes on a matter; and requires a public body to permit meetings to be recorded, photographed, audiotaped, videotaped, broadcast or recorded for broadcast by any member of the public or a news organization, subject only to reasonable rules of the public body adopted to minimize disruption of a meeting;

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

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

provides that a public body may go into closed session to discuss “probable” violations of law, instead of “possible” violations of law as provided by current law;

eliminates the ability of a public body to go into closed session to discuss “pending or anticipated litigation” and provide instead that a public body may go into closed session to discuss any consultation with legal counsel concerning the legal rights and duties of the public body with regard to current litigation or litigation likely to be filed in which the public body is, or is likely to become, a party;

provides that public bodies will give written notice of at least two business days to any officer or employee in advance of any proposed meeting at which his or her termination, hiring, promotion or discipline may be discussed and the matter or matters pertaining to him or her will be discussed in closed session unless the employee, as well as every other known employee or officer whose termination, hiring, promotion or discipline would unavoidably have to be disclosed in the discussion, requests in writing that the matter or matters be discussed in open session;

requires public bodies to keep comprehensive minutes of meetings;

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

provides that the public may not be excluded from a public body’s discussion of actual or potential contracts;

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

requires a public body that possesses sound recording equipment that is functioning and available to sound record each of its meetings, including any portion of a closed meeting, and to maintain the recordings for a period of time to be determined by the State Records Committee so as to permit the recordings’ use in litigation, to enforce the provisions of the public meetings law and for public access, with the recordings made available to the public within seven days, subject to certain exceptions;

provides that the minutes of a meeting of a public body will include any available, unedited audio or video recording of the meeting, or any portion of a meeting, made by the public body and that such unedited recording shall be available to the public on the same basis as other meeting minutes, except that all recordings of closed meetings or portions of closed meetings will be deemed confidential and not a public record until such time as the justification for holding a closed meeting no longer exists after which such recordings shall be provided when minutes of that meeting are requested, and provided that a court of competent jurisdiction may

determine that disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States;

provides that certain e-mails among members of a public body will be considered minutes that are publicly accessible;

provides that an action for a second or subsequent violation brought against a public body in Superior Court to void an act of a public body taken at a meeting that was not held in conformity with the act will not be subject to dismissal on the grounds that the matter no longer presents a case or controversy;

provides that reasonable attorney's fees may be awarded to any party, other than a public body, who prevails in an action brought in Superior Court to challenge an action of a public body for failure to comply with the act's requirements, or who sought an injunction to compel compliance, with the act;

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

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

provides that a public body must post its annual meeting schedule on its Internet site, if it has established a site;

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

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

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

extends time that an action of a public body may be challenged in court from 45 to 60 days;

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

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

provides that when a public body provides information on the Internet it must make a reasonable effort to make the existence and location of its Internet site or pages known to members of the public by, at a minimum, including such information in its required written

public notices, agendas, and minutes and by announcing it at its public meetings;

provides that electronic communications among a quorum of a public body involving public business, other than routine administrative matters, will be made part of the minutes of a meeting and disclosed as soon as practicable; and

directs the Department of Community Affairs to establish an Internet website on which every public body and every subcommittee of a public body will post public notices, including notices of meetings of public bodies and subcommittees, or provide a link to a website maintained by the public body or subcommittee on which public notices, including notices of meetings of public bodies and subcommittees, are posted for viewing by members of the public.

The bill will take effect on the take effect on the 120th day after enactment.