

§§1,2 –
C.48:2-10.1 &
48:2-10.2
§§3,4 –
C.48:2-32.8 &
48:2-32.9
§6 - Note

(CORRECTED COPY)

P.L. 2021, CHAPTER 96, *approved May 12, 2021*
Assembly Committee Substitute for
Assembly, Nos. 4556 and 4145

1 **AN ACT** concerning certain functions and duties of the Board of
2 Public Utilities and supplementing Title 48 of the Revised
3 Statutes and amending R.S.48:2-40.

4

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

7

8 1. (New section) As used in sections 1 through 4 of P.L. ,
9 c. (C.) (pending before the Legislature as this bill):

10 “Board” means the Board of Public Utilities or any successor
11 agency.

12 “Contested case” shall have the same meaning as provided in
13 section 2 of P.L.1968, c.410 (C.52:14B-2).

14 “Emergency” means a period of time during which the Governor
15 has declared the existence of a public health emergency, pursuant to
16 section 3 of P.L.2005, c.222 (C.26:13-3), or a state of emergency,
17 pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.).

18 “Policy matter” means a matter:

19 a. where the board conducts quasi-legislative proceedings that
20 are informational, intended to provide a forum for the expression of
21 public sentiment on a proposed agency action, or to examine broad
22 policy issues affecting entire industries or large, undefined classes
23 of people;

24 b. where the board has not established a proceeding; or

25 c. that is not the subject of a pending or impending contested
26 case.

27 “Public document search system” or “search system” means the
28 electronic public document search system established, maintained,
29 and updated, as appropriate, by the board, through the board’s
30 Internet website, pursuant to section 2 of P.L. , c. (C.)
31 (pending before the Legislature as this bill).

32

33 2. (New section) a. No later than 90 days after the effective
34 date of P.L. , c. (C.) (pending before the Legislature as this

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 bill), the board shall establish, maintain, and update, as appropriate,
2 an electronic public document search system, through the board's
3 Internet website, that shall allow users to obtain board proceeding
4 documents and docket information online. The search system shall
5 reflect all filings and comments made to the board, in electronic or
6 in printed form, and shall provide for the managing and facilitating
7 of public access to all filings, orders, notices, rulemakings,
8 comments, or other board proceeding documents, as well as allow
9 parties to electronically file these documents. The search system
10 shall be subject to all of the following requirements:

11 (1) as soon as practicable, and not later than seven calendar days
12 after a document is electronically filed with the board, the
13 document shall be publicly accessible on the search system, unless a
14 longer period of time is needed, as determined by the board, due to
15 an emergency or to address confidentiality, other privacy claims, or
16 digitization of non-electronic records;

17 (2) all documents on the search system shall be available to the
18 public free of charge;

19 (3) any information within a document that is prohibited from
20 public disclosure by law or board order shall be exempt from
21 inclusion in the search system;

22 (4) all board-initiated documents shall be text-searchable and in
23 a machine-readable format and the board shall encourage the filing
24 of documents in text-searchable and machine-readable formats,
25 which capabilities shall be preserved in the search system;

26 (5) to the extent practicable, external websites shall be able to
27 link documents to the search system;

28 (6) the board shall provide access to all digital audio and visual
29 files of board recordings when those files become available on its
30 website, and shall explore the technical and financial practicality of
31 including its recordings in the search system; and

32 (7) the search system shall provide a search function for public
33 use.

34 b. In developing the search system, the board shall implement
35 technology in order to improve security, data accessibility,
36 affordability, and performance, and to minimize the burden on pro
37 se litigants.

38
39 3. (New section) a. Notwithstanding the provision of written
40 advance notice of at least 48 hours, but otherwise in conformity
41 with the other provisions of the "Senator Byron M. Baer Open
42 Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), the Board
43 of Public Utilities shall make available to the public on its public
44 document search system, established pursuant to section 2 of
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 advance notice of every public meeting conducted by the board five
47 calendar days prior to the day of the meeting, unless a longer period

1 of advance notice is required by law, pursuant to the "Senator
2 Byron M. Baer Open Public Meetings Act," P.L.1975, c.231
3 (C.10:4-6 et seq.); provided, however, that nothing in this
4 subsection shall prohibit the board from updating any meeting
5 agenda or adding an agenda item or removing an agenda item, as
6 well as providing an updated agenda within the five calendar day
7 period, consistent with public transparency. The provision of this
8 subsection shall apply to every public board meeting, including any
9 public comment meeting, as described in section 4 of P.L. ,
10 c. (C.)(pending before the Legislature as this bill), regardless
11 of the number of board members present at the meeting.

12 b. For every public meeting conducted by the Board of Public
13 Utilities, as authorized by law, the board shall provide, in the
14 advance notice of that public meeting, pursuant to subsection a. of
15 this section, a description of any action that may be taken by the
16 board under each listed agenda item in the notice.

17
18 4. (New section) a. Members of the Board of Public Utilities
19 may engage in a discussion with interested parties on policy
20 matters, which discussions shall not be considered prohibited ex
21 parte communications; provided that nothing in this section shall
22 alter the prohibition on ex parte communications between members
23 and interested parties with regard to a contested case.

24 b. In order to increase transparency and accountability to the
25 public, the board shall hold a public comment meeting at least once
26 every three months in order to hear from the public and interested
27 stakeholders on policy matters before the board, and such matters as
28 the Legislature may from time to time designate. The public
29 comment meeting shall meet all requirements of the "Senator Byron
30 M. Baer Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et
31 seq.) and shall allow for oral or written statements by:

32 (1) any member of the public who is not a party pursuant to
33 paragraph (2) of this subsection, on any topic germane to the
34 interests of the board; and

35 (2) any party to a proceeding or party represented by counsel or
36 a government affairs agent, on specific topics noticed by the board.

37 c. The board shall adopt, within 30 days of the effective date of
38 P.L. , c. (C.)(pending before the Legislature as this bill),
39 written policies to govern the conduct of public comment meetings
40 that shall maximize public engagement, provide annual notice of the
41 scheduled dates for public comment meetings in accord with the
42 "Senator Byron M. Baer Open Public Meetings Act," P.L.1975,
43 c.231 (C.10:4-6 et seq.), allow for post-meeting written comments,
44 and reasonably minimize the inadvertent discussion of pending or
45 impending contested matters.

46
47 5. R.S.48:2-40 is amended to read as follows:

1 48:2-40. a. A majority vote of the board shall be necessary to
2 the issuance of an order.

3 b. (1) After the effective date of P.L.2011, c.63, the board
4 shall issue every order in written form.

5 (2) If a matter is an emergency that affects public health and
6 safety, the board may issue a temporary order on the matter orally,
7 but shall within 14 days thereafter issue the order as a written order
8 that does not differ substantively from the oral order. Any board
9 order issued orally may be made effective immediately, but,
10 regardless of its effective date, if that order is not issued in written
11 form within 14 calendar days thereafter, or the written order is
12 substantively different from the oral order, the oral order shall be
13 void and of no effect as of the 15th calendar day after its issuance.

14 c. The board shall issue any written order by filing a copy
15 thereof with the board secretary. Every written order issued by the
16 board shall be:

17 (1) served upon the person or public utility affected thereby
18 within ~~ten~~ seven calendar days from its filing by personally
19 delivering or by mailing a certified copy thereof in a sealed package
20 with postage prepaid to the person affected or to an officer or agent
21 of the public utility upon whom a summons may be served; and

22 (2) posted ~~upon the Internet website of the board~~ on its public
23 document search system, established pursuant to section 2 of
24 P.L. , c. (C.) (pending before the Legislature as this bill),
25 within seven calendar days from its filing.

26 d. All written orders of the board shall become effective upon
27 service thereof or upon such dates after the service thereof as may
28 be specified therein.

29 e. The board at any time may order a rehearing and extend,
30 revoke, or modify an order made by it.

31 (cf: P.L.2011, c.63, s.1)

32

33 6. This act shall take effect on the 90th day after the date of
34 enactment and the Board of Public Utilities may take any
35 anticipatory administrative action in advance thereof as shall be
36 necessary for the timely implementation of P.L. , c. (C.)
37 (pending before the Legislature as this bill).

38

39

40

41

42 _____
43 Requires BPU to establish and maintain electronic public
44 document search system on its website; requires BPU to provide
45 certain notice of its meetings and hold quarterly public comment
meetings.