

SENATE, No. 343

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator BAER

1 AN ACT to amend and supplement the "Open Public Meetings Act,"
2 approved October 21, 1975 (P.L.1975, c.231).

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

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

9 9. Each public body shall keep reasonably comprehensible minutes
10 of all its meetings showing the time and place, the members present,
11 the subjects considered, the actions taken, the vote of each member,
12 and any other information required to be shown in the minutes by
13 law[, which]. Each public body of the State or of a county shall cause
14 to be recorded by sound recording devices all or any portion of a
15 meeting of that public body from which the public is excluded as
16 provided by subsection b. of section 7 of P.L.1975, c.231 (C.10:4-12)
17 or any emergency meeting held pursuant to section 4 of P.L.1975,
18 c.231 (C.10:4-9) and shall maintain possession of the recordings for
19 a reasonable period of time to permit their use in litigation, to enforce
20 the provisions of this act, or to permit public access when there is no
21 longer any basis for excluding the public from the discussion of the
22 matter or matters.

23 The recorded tapes and the minutes shall be promptly available to
24 the public to the extent that making such matters public shall not be
25 inconsistent with section 7 of this act.

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

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28 2. Section 10 of P.L.1975, c.231 (C.10:4-15) is amended to read
29 as follows:

30 10. a. Any action taken by a public body at a meeting which does
31 not conform with the provisions of this act shall be voidable in a
32 proceeding in lieu of prerogative writ in the Superior Court, which

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

Matter underlined thus is new matter.

1 proceeding may be brought by any person within 45 days after the
2 action sought to be voided has been made public; provided, however,
3 that a public body may take corrective or remedial action by acting de
4 novo at a public meeting held in conformity with this act and other
5 applicable law regarding any action which may otherwise be voidable
6 pursuant to this section; and provided further that any action for which
7 advance published notice of at least 48 hours is provided as required
8 by law shall not be voidable solely for failure to conform with any
9 notice required in this act.

10 No action under this section shall be subject to dismissal on
11 grounds that the matters in question no longer present a case or
12 controversy.

13 b. Any party, including any member of the public, may institute a
14 proceeding in lieu of prerogative writ in the Superior Court to
15 challenge any action taken by a public body on the grounds that such
16 action is void for the reasons stated in subsection a. of this section,
17 and if the court shall find that the action was taken at a meeting which
18 does not conform to the provisions of this act, the court shall declare
19 such action void.

20 Any party, including any member of the public, who prevails in an
21 action brought pursuant to this section shall be awarded the amount of
22 reasonable attorney's fees incurred in bringing the action, but not
23 exceeding a total of \$10,000. The cost of any attorney's fee awarded
24 by the court shall be paid by the public body.

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

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

29 11. Any person, including a member of the public, may apply to the
30 Superior Court for injunctive orders or other remedies to insure
31 compliance with the provisions of this act, and the court shall issue
32 such orders and provide such remedies as shall be necessary to insure
33 compliance with the provisions of this act. Any person, including a
34 member of the public, who prevails in an action for injunctive relief
35 pursuant to this section shall be awarded the amount of reasonable
36 attorney's fees incurred in bringing the action, but not exceeding a
37 total of \$10,000. The cost of any attorney's fees awarded by the court
38 shall be paid by the public body.

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

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

43 12. Any person who knowingly or negligently violates any of the
44 foregoing sections of this act shall be fined \$100.00 for the first
45 offense and no less than \$100.00 nor more than \$500.00 for any
46 subsequent offense, recoverable by the State by a summary proceeding

1 under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). For the
2 purposes of this section, a person acts negligently if his conduct
3 involves gross negligence. The Superior Court shall have jurisdiction
4 to enforce said penalty upon complaint of the Attorney General or the
5 county prosecutor, but the Attorney General or county prosecutor may
6 refer the matter to the Public Advocate. Whenever a member of a
7 public body believes that a meeting of such body is being held in
8 violation of the provisions of this act, he shall immediately state this
9 at the meeting together with specific reasons for his belief which shall
10 be recorded in the minutes of that meeting. Whenever such a member's
11 objections to the holding of such meeting are overruled by the majority
12 of those present, such a member may continue to participate at such
13 meeting without penalty provided he has complied with the duties
14 imposed upon him by this section.

15 (cf: P.L.1991, c.91, s.217)

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

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23 6. This act shall take effect immediately.

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STATEMENT

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28 This bill revises provisions of the "Open Public Meetings Act"
29 concerning the records of certain public meetings and the enforcement
30 of the Act.

31 (1) Records of meetings. To the existing requirement under the
32 Act that public bodies make reasonably comprehensible minutes of all
33 meetings, the bill adds a requirement, applicable only to public bodies
34 of the State and the several counties, that sound recordings be made
35 of all or any portion of a public meeting from which the public is
36 excluded. These recordings are to be retained by the public body for
37 a reasonable time as necessary for their use in litigation or in the
38 enforcement of the Act, or to permit public access once the basis for
39 the original exclusion of the public from the discussion so recorded no
40 longer exists.

41 (2) Dismissal of actions to nullify. The bill amends the provisions
42 of the Act authorizing the institution of proceedings in lieu of
43 prerogative writ to void any action by a public body at a meeting
44 which does not conform to the requirements of the Act. Under the
45 amendment, such a lawsuit would not be subject to dismissal on
46 grounds that the matters in question no longer present a case or

1 controversy.

2 (3) Attorney's fees. The bill provides that reasonable attorney's
3 fees, up to a maximum of \$10,000, are to be awarded to any person
4 who prevails (a) in a suit challenging an action taken by a public body
5 on the grounds that it is void for failure to comply with the Act, or (b)
6 in an action for an injunction to insure compliance with the provisions
7 of the Act. The cost of any such attorney's fee would be paid by the
8 public body.

9 (4) Civil penalty for gross negligence. The bill amends the civil
10 penalty provisions of the Act so that fines may be imposed on
11 members of public bodies for negligent violations of the act as well as
12 knowing violations. A public body member's conduct would be
13 deemed negligent if it involved gross negligence.

14 (5) Removal of public body member in certain cases. The bill
15 authorizes appointing authorities to remove appointed members of
16 public bodies for repeated violations of the Act which result in a
17 significant denial of the public's statutory right of access.

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22 Revises provisions of the "Open Public Meetings Act" to ensure
23 greater compliance.