

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

A M E N D M E N T S

to

SENATE, No. 781

(Sponsored by Senators WEINBERG and PENNACCHIO)

REPLACE SECTION 2 TO READ:

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

3. As used in this act:

a. "Public body" means a commission, authority, board, council, committee or any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, or collectively authorized to spend public funds including the Legislature, but does not mean or include the judicial branch of the government, any grand or petit jury, any parole board or any agency or body acting in a parole capacity, the State Commission of Investigation, the Apportionment Commission established under Article IV, Section III, of the Constitution, or any political party committee organized under Title 19 of the Revised Statutes. "Public body" also means, but is not limited to, an independent authority, redevelopment entity, or improvement authority, as well as any quasi-governmental agency. "Public body" also means, but is not limited to, 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 Educational Information and Resource Center, and any joint insurance fund established by two or more public bodies, and any substantially similar successor organization or association.

b. "Meeting" means and includes any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does not mean or include any such gathering (1) attended by less than [an effective majority of the members of] a quorum of a public body, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering. 'Meeting does not include a chance encounter or any gathering at which members of a

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public body or of a subcommittee do not discuss or act upon the public business of that public body or subcommittee.'

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

d. "Adequate notice" means written advance notice of at least 48 hours '[, excluding weekends and State holidays]' , giving the time, date, location and [, to the extent known,] the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken and which shall be (1) prominently posted on the public body's Internet site, if the public body has established an Internet site, and in at least one public place reserved for such or similar announcements, (2) mailed, telephoned, [telegraphed] faxed, mailed electronically, or hand delivered to at least two newspapers which newspapers shall be designated by the public body to receive such notices because they have the greatest likelihood of informing the public within the area of jurisdiction of the public body of such meetings, one of which shall be the official newspaper, where any such has been designated by the public body or if the public body has failed to so designate, where any has been designated by the governing body of the political subdivision whose geographic boundaries are coextensive with that of the public body and (3) filed with the clerk of the municipality when the public body's geographic boundaries are coextensive with that of a single municipality, with the clerk of the county when the public body's geographic boundaries are coextensive with that of a single county, and with the Secretary of State if the public body has Statewide jurisdiction. For any other public body the filing shall be with the clerk or chief administrative officer of such other public body and each municipal or county clerk of each municipality or county encompassed within the jurisdiction of such public body. Where annual notice or revisions thereof in compliance with section 13 of this act set forth the location of any meeting, no further notice shall be required for such meeting, except for notice pertaining to agendas and formal action on the public body's Internet site, if the body has established an Internet site, and posting in at least one public place reserved for such or similar announcements, transmittal to the newspapers described in paragraph (2) of this subsection and to any member of the public who shall have requested such notice. Notice shall not be considered "adequate notice" within the meaning of this subsection unless it includes the estimated starting time, as nearly so as can be established, for the beginning of the portion of any meeting from which the public is not excluded.

e. "Agenda" means the list of all items of business to be discussed or voted on at a public meeting. For purposes of providing adequate notice, agendas shall include each individual item to be discussed or acted upon, and a brief description thereof, and shall identify the names of the parties to and approximate dollar amounts of any contracts, including employment contracts, to be discussed or acted upon. No public body shall act upon a matter that is not listed on

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the agenda for which notice was given 48 hours '[, excluding weekends and State holidays,]' prior to the meeting. In addition, a public body, upon the affirmative vote of a majority of the members present at a meeting, may add an item to the agenda for that meeting 'when necessary to deal with a matter of such urgency and importance that a delay for the purpose of providing adequate notice would be likely to result in substantial harm to the public interest, and' provided that the minutes contain a statement that explains the reason for adding that item to the agenda, why the item did not appear on the agenda for that meeting, and why delaying consideration of the item '[is not in] would be likely to result in substantial harm to' the public interest, except that the Legislature may add an item to its agenda at any time.

f. "Subcommittee" means any subordinate committee of a public body, except the Legislature, regardless of label, that is formally created by that body, comprised of two or more members, but less than a quorum, of the public body '[and recognized by the public body as a subcommittee thereof]' .

g. "Quasi-governmental agency" means any association, commission, agency, authority, organization, public-private entity, or any other entity, in which one or more public agencies exercise substantial control as evidenced by whether the public agency, as defined in section 1 of P.L.1995, c.23 (C.47:1A-1.1), maintains the ability to review, approve, or reject the quasi-governmental agency's proposals or plans, holds a beneficial interest in the quasi-governmental agency's assets, is the 'primary' source of funding of, or is indebted to, or is a creditor of, or guarantor of the debts of, the quasi-governmental agency. The term shall not include any organization organized under paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code (26 U.S.C. s.501) that was not created by, or with the approval of, a public agency '[solely] primarily' for the purpose of assisting that public agency or any labor organization or any contractor providing goods or services to a public agency. 'However, nothing contained herein shall affect the application of P.L.1975, c.231 (C.10:4-6 et seq.) to entities that otherwise fall within the definition of "public body."'

h. "Quorum" means a majority of the full membership of a public body or of a subcommittee.

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

REPLACE SECTION 3 TO READ:

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

4. a. Except as provided by subsection b. of this section, or for any meeting limited only to consideration of items listed in 'subsection b. of' section 7 '[. b.] of P.L.1975, c.231 (C.10:4-12)' , no public body, or subcommittee thereof, shall hold a meeting unless adequate notice thereof has been provided to the public.

b. Upon the affirmative vote of [three quarters] '[two-thirds] three-quarters' of the members present a public body may hold a meeting notwithstanding the failure to provide adequate notice if:

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

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

(3) notice of such meeting is provided as soon as possible following the calling of such meeting by posting written notice of the same on the public body's Internet site, if the public body has established an Internet site and in the public place described in 'subsection d. of' section 3. '[d.] of P.L.1975, c.231 (C.10:4-8)' above, and also by notifying the two newspapers described in section 3. d. by telephone, [telegram,] fax machine, electronic mail, or by delivering a written notice of same to such newspapers; and

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

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

REPLACE SECTION 4 TO READ:

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

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

As used in this section, "electronic notice" means advance notice available to the public via electronic transmission of at least 48 hours '[, excluding weekends and State holidays]' , giving the time, date, location and [, to the extent known,] the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken at such meeting.

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

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

OMIT SECTION 5 IN ITS ENTIRETY

INSERT NEW SECTION 5 TO READ:

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

7. a. Except as provided by subsection b. of this section all meetings of public bodies shall be open to the public at all times. Except for communications that are purely administrative or procedural in nature, no member of a public body, other than the Legislature, during any meeting of that public body to which the

public is admitted, shall communicate privately, by means of communication equipment, including electronic mail, instant messaging or similar technologies, including directly or indirectly through staff or legal counsel, with any other member of the public body about any matter on the agenda for that meeting, and no member shall communicate privately with any other person, other than staff or legal counsel, about any matter on the agenda for that meeting by means of communication equipment, including electronic mail, instant messaging or similar technologies. Nothing in this act shall be construed to limit the discretion of a public body to permit, prohibit, or regulate the active participation of the public at any meeting, except that a [municipal governing] public body [and a board of education] , other than the Legislature, shall be required to set aside a portion of every meeting of the [municipal governing] public body [or board of education, the length of the portion to be determined by the municipal governing body or board of education,] for public comment at the meeting in question, with such comments being limited to items on the agenda and on any governmental [or school district] issue that a member of the public feels may be of concern to and within the authority of the [residents of the municipality or school district] public body. A public body, other than the Legislature, shall permit all proceedings of any public meeting to be recorded, photographed, audiotaped, videotaped, broadcast or recorded for broadcast by any member of the public or news organization, subject only to such reasonable rules as the public body may adopt prior to the meeting to minimize undue disruption to its meetings.

A public body shall prepare a written policy that is intended to maximize public participation and that addresses the amount of time it will devote to receiving public comments at meetings and shall include that written policy on each meeting agenda prepared by the public body and on the public body's Internet site, if the public body has established an Internet site, and in the public place described in subsection d. of section 3 of P.L.1975, c.231 (C.10:4-8). The Director of the Division of Local Government Services in the Department of Community Affairs shall prepare guidelines for public bodies that create minimum standards ensuring public participation.

Whenever the provisions of any other law address the receipt of public comments by a public body, the provisions of that law and the provisions of this section shall be complied with to the maximum extent possible and practical; however, the provisions of the Municipal Land Use Law, P.L.1975, c.291 (C.40:55D-1 et seq.), regarding the receipt of public comments shall be followed notwithstanding the provisions of this section.

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

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

(2) matter in which the release of information would impair a right to receive funds from the Government of the United States;

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(3) material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal material of any educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance, and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by an institution or program, including but not limited to, information relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress, or condition of any individual, unless the individual concerned (or, in the case of a minor or an incapacitated individual, the individual's guardian) shall request in writing that the material be disclosed publicly;

(4) collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body;

(5) matter involving the purchase, lease, or acquisition of real property with public funds, the setting of banking rates, or investment of public funds, if [it] public discussion could adversely affect the public interest if discussion of the matters were disclosed;

(6) tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair that protection, or investigations of violations or [possible] probable violations of the law;

(7) [pending or anticipated litigation or contract negotiation] 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 connection with any executed contract which the public body is, or is likely to become, a party, or concerning current or anticipated contract negotiations, other than in subsection b. (4) herein in which the public body is, or may become, a party, or matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer;

(8) matter involving the employment, appointment, termination of employment, [terms and conditions of employment,] evaluation of the performance of, promotion, or disciplining of any specific [prospective public officer or employee or current] public officer or employee, prospective or current, employed or appointed by the public body [, unless all the individual employees or appointees whose rights could be adversely affected request in writing that the matter or matters be discussed at a public meeting]. Public bodies shall give written notice of at least two business days to any officer or employee, and any adversely affected individual or individuals, in advance of any proposed meeting at which his or her employment, appointment, termination, evaluation of the performance of, promotion or discipline may be discussed. The matter or matters pertaining to him or her shall be discussed in closed session unless the officer or employee and any

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adversely affected individual or individuals, but not a third party representative, requests in writing that the matter or matters be discussed in open session. This paragraph shall not apply to a public body's discussions or actions relating to tenure matters.

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

c. The grounds for exclusion of the public set forth in subsection b. of this section shall be construed strictly to minimize instances in which meetings or portions of meetings are closed to the public. The public may not be excluded from a public body's discussion of actual contracts or executed contracts, except that a public body may go into closed session for consultations with legal counsel, pursuant to paragraph (7) of subsection b. of this section, when there is current litigation, or litigation is likely to be filed, concerning an actual or executed contract.¹

(cf: P.L.2013, c.103, s.57)

REPLACE SECTION 6 TO READ:

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

8. No public body shall exclude the public from any meeting to discuss any matter described in subsection 'b. of section' 7. '[b.] of P.L.1975, c.231 (C.10:4-12)' until the public body shall first adopt a resolution, at a meeting to which the public shall be admitted:

a. Stating '[as specifically as possible]' the [general nature of the] 'reasonably specific' subject to be discussed and the 'reasonably' specific basis for excluding the public; and

b. Stating as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public.

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

REPLACE SECTION 7 TO READ:

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

9. The Legislature shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with section 7 of P.L.1975, c.231 (C.10:4-12). Each public body, other than the Legislature, shall [keep reasonably comprehensible] cause the public body to keep comprehensive minutes of all its meetings, including any portion of a meeting from which the public was excluded pursuant to section 7 of P.L.1975, c.231 (C.10:4-12), showing, at a minimum, the time and place, the members present, the subjects considered, the

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actions taken, including all motions made, the identities of the moving and seconding members, the vote of each member and each member's stated reasons, if any, for his or her action or vote, the identity of each member of the public who spoke and a summary of what was said, and any other information required to be shown in the minutes by law [, which] . Minutes shall be made available to the public as soon as possible but not later than 60 days after the meeting, or by the second meeting of the public body occurring after the meeting for which the minutes were prepared, whichever occurs later, to the extent that making such matters public shall not be inconsistent with section 7 of P.L.1975, c.231 (C.10:4-12). Any member of a public body, other than the Legislature, who becomes aware of a meeting held in violation of '[this act] P.L.1975, c.231 (C.10:4-6 et seq.)' , including electronic communications among members of a public body, constituting a quorum thereof, that do not address a purely administrative matter, shall inform the presiding member who shall ensure that minutes of such meetings shall be made, and such electronic communications, if any, shall be included with the minutes of the meeting. Each public body, other than the Legislature, that possesses sound 'or video' recording devices that are available and functioning shall cause to be recorded by those sound 'or video' recording devices only the public portions of all meetings of that public body, including any emergency meeting held pursuant to section 4 of P.L.1975, c.231 (C.10:4-9), and shall maintain possession of the recordings for a period of time to be determined by the State Records Committee to permit their use in litigation, to enforce the provisions of P.L.1975, c.231 (C.10:4-6 et seq.), or for public access. 'Such recording shall reflect the public portions of meetings in their entirety, including the public comment portions of meetings.' The unedited recordings shall be promptly made available to the public, but not later than the 5th business day following the meeting, to the extent that making such matters public shall not be inconsistent with section 7 of this act. 'Public bodies shall only present the recordings as official and authentic representations of the public meetings if presented in their unedited form. Public bodies, if presenting edited versions of the recording, shall conspicuously label such as an edited version and shall include a notification that the official unedited recording is available on request from the public body.'

A subcommittee of a public body, other than the Legislature, shall prepare reports of its meetings which shall be filed with the public body pursuant to a schedule prepared by the public body, except that every subcommittee shall be required to file at least one report with the public body 'each quarter' . A report shall include a statement of the number of meetings of the subcommittee held since its last report, the names of the members of the subcommittee, and a concise statement of the matters discussed. A report of a subcommittee shall be available for public access in the same manner, and subject to the same limitations on access, as minutes of a meeting of a public body. 'A subcommittee that has given an oral report at a meeting of the public

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body of which it is a subcommittee shall be excused from providing the public body with a written report for that quarter.¹

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

REPLACE SECTION 8 TO READ:

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

10. a. Any action taken by a public body at a meeting which does not conform with the provisions of this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court, which proceeding may be brought by any person within 45 calendar days after the [action sought to be voided has been made public] date of the public meeting at which the minutes memorializing the action sought to be voided are approved 'and put online pursuant to section 16 of P.L. , c. (C.) (pending before the Legislature as this bill)' ; provided, however, that a public body may take corrective or remedial action by acting de novo at a public meeting held in conformity with this act and other applicable law regarding any action which may otherwise be voidable pursuant to this section; and provided further that any action for which advance published notice of at least 48 hours '[, excluding weekends and State holidays.]' is provided as required by law shall not be voidable solely for failure to conform with any notice required in this act.

b. Any party, including any member of the public, may institute a proceeding in lieu of prerogative writ in the Superior Court to challenge any action taken by a public body on the grounds that such action is void for the reasons stated in subsection a. of this section, and if the court shall find that the action was taken at a meeting which does not conform to the provisions of this act, the court shall declare such action void. Any party, other than a public body, that prevails in an action brought pursuant to this section '[may] shall' be awarded the amount of reasonable attorney's fees incurred in bringing the action. The cost of any attorney's fee awarded by the court shall be paid by the public body.

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

REPLACE SECTION 9 TO READ:

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

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

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

REPLACE SECTION 10 TO READ:

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

12. Any person who knowingly violates any of the foregoing sections of this act shall be fined ~~[\$100.00]~~ \$250.00 for the first offense and no less than ~~[\$100.00 nor more than]~~ \$500.00 for any subsequent offense ~~[, recoverable by the State by]~~ . A fine shall be paid by the individual found to have committed the violation out of that individual's personal funds. Under no circumstances shall public funds ¹, or contributions as defined in subsection b. of section 3 of P.L.1973, c.83 (C.19:44A-3) of "The New Jersey Campaign Contributions and Expenditures Reporting Act",¹ be used to pay a fine or to reimburse a person who has paid, or will pay, a fine for the cost of that fine. The Attorney General or county prosecutor, or any member of the public, shall have standing to bring an action in Superior Court to prove that a violation of P.L.1975, c.231 (C.10:4-6 et seq.) has occurred.

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

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

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