

OPEN PUBLIC MEETINGS ACT

N.J.S.A. 10:4-6

This bill requires that the public and the press have advance notice of and the opportunity to attend most meetings, including executive sessions, of public bodies, except where the public interest or individual rights would be jeopardized. The public's right to know the process by which governmental decisions are made and to witness that process in full detail may be obstructed by needlessly barring members of the public and the press from certain policymaking meetings of public bodies. If the public and the press cannot attend, they cannot learn of many positions that are considered or taken at such meetings by individual officials serving the public. Lack of this information can lessen public confidence in governmental decisions and impair the public's function of holding officials accountable in a democracy.

Section 3 determines the scope of the act by defining 'public body,' 'meeting' and 'public business.' To be covered, a public body must be organized by law and be collectively empowered as a multi-member voting body to spend public funds or affect persons' rights. Therefore, informal or purely advisory bodies with no effective authority are not covered. Neither are groupings composed of a public official with subordinates or advisors, such as a mayor or the Governor meeting with department heads or cabinet members who are not empowered to act by vote. Specific exemptions are provided for the judiciary, parole bodies, the State Commission of Investigation and political party organizations.

To be covered, a meeting must be open to all the public body's members, and the members present must intend to discuss or act on the public body's business. Therefore, typical partisan caucus meetings and chance encounters of members of public bodies are not covered. Specific exemptions are provided for public bodies meeting as a part of a convention and meetings where an effective majority fails to attend.

Public business, to be covered, need merely be related in some way to the public body's function or business.

Section 3 also defines the 'adequate notice' which is required for the public body's regular and special meetings. Normally, 48 hours' advance notice must be prominently posted, filed with a certain officer of the public body, and provided to two newspapers. Publication of legal notice is not required.

Section 4 prohibits meetings without adequate notice except upon a 3/4 vote of the members present where the only matters that may be discussed are matters of such urgency, that waiting to give notice would result in substantial harm to the public interest. Notice of the meeting must be posted and provided to two newspapers as soon as possible.

Section 5 requires a statement at every meeting confirming that adequate notice was provided or if it was not provided, presenting the reasons why it was not provided. Embarrassing statements required for avoidable emergencies are intended to discourage public officials from circumventing notice requirements by deliberately waiting until matters become emergencies.

Section 6 prohibits purposely circumventing the act by failing to invite one or more members of a public body so that a meeting of a majority of a public body would not qualify under section 3b.

Section 7 provides that a public body may limit public participation in its meetings. In addition, specific topics which a public body may be permitted to discuss in

private are listed. Private deliberation is permitted in cases where the public interest would otherwise be endangered or the personal privacy or guaranteed rights of individuals would be in danger of unwarranted invasion. Public bodies may meet in closed session when the matters under discussion (1) are considered confidential by federal law, state statute or court rule, (2) would jeopardize receipt of federal funds, (3) constitute an unwarranted invasion of individual privacy, (4) concern collective bargaining, (5) involve purchase lease or investment using public funds, or concern the setting of banking rates, (6) concern investigations of violations or possible violations of the law, or techniques of protecting the safety and property of the public, where disclosure of such techniques could impair such protection, (7) are covered by the attorney-client privilege, (8) concern personnel, or (9) involve certain proceedings which could result in a civil penalty, suspension, or loss of license.

Section 8 requires that whenever a public body seeks to meet in private, it must first pass a resolution at a public meeting stating its intention to do so. The resolution must also state the general nature of the matters to be discussed and approximately when, if ever, the matters discussed can be made public.

Section 9 requires public bodies to keep comprehensible minutes on the essentials of all meetings. Minutes are not intended to be verbatim or even to include every comment made. The requirement that minutes be comprehensible is intended to include printing or handwriting clear to the average citizen and is intended to exclude shorthand. Minutes must be promptly available to the public, except for material covering meetings or portions of meetings closed to the public.

Section 10 provides that actions taken by a public body at a meeting not held in accordance with this act are voidable in Superior Court upon legal action brought by any person, provided that the action is filed within 45 days after the action in question has been made public. A public body may correct an action which does not comply with this act by acting anew at any time at a public meeting that does comply with this act; however such corrective action does not eliminate any individual liability for penalties under section 12. Section 10 also provides that an action such as adoption of an ordinance where there has been advance published notice of at least 48 hours shall not be voidable solely for failure to conform with notice requirements of this act.

Section 11 grants any citizen the right to apply for injunctive orders or other remedies to guarantee compliance with this act.

Section 12 provides \$100.00 penalties for a first offense of knowingly violating the preceding sections of the act and penalties of up to \$500.00 for subsequent offenses. Action for penalties may be brought in any county district court in the county where the alleged violation occurred, but only by appropriate officials in order to guard against harassment of members of the public body.

Under section 13, a yearly schedule and any revised schedule of any regular meetings are to be posted and distributed similarly to the 48-hour advance notice of meetings. However, unavailable information such as meeting locations or information on special meetings need not be included in such annual notices or revisions as long as they are provided in the 48-hour notice.

Section 14 requires public bodies to mail meeting notices to any member of the public and the media requesting them and authorizes charging a small fee, from which the media may be exempt, to cover the costs of notifying such parties.

N.J.S.A. 10:4-7

The Legislature finds and declares that the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society, and hereby declares it to be the public policy of this State to insure the right of its citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way except only in those circumstances where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

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

The Legislature, therefore, declares that it is the understanding and the intention of the Legislature that in order to be covered by the provisions of this act a public body must be organized by law and be collectively empowered as a multi-member voting body to spend public funds or affect persons' rights; that, therefore, informal or purely advisory bodies with no effective authority are not covered, nor are groupings composed of a public official with subordinates or advisors, who are not empowered to act by vote such as a mayor or the Governor meeting with department heads or cabinet members, that specific exemptions are provided for the Judiciary, parole bodies, the State Commission of Investigation, the Apportionment Commission and political party organization; that to be covered by the provisions of this act a meeting must be open to all the public body's members, and the members present must intend to discuss or act on the public body's business; and therefore, typical partisan caucus meetings and chance encounters of members of public bodies are neither covered by the provisions of this act, nor are they intended to be so covered.

N.J.S.A. 10:4-8

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.

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 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.

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, 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 in at least one public place reserved for such or similar announcements, (2) mailed, telephoned, telegraphed, 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.

N.J.S.A. 10:4-9

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

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

(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 in the public place described in section 3. d. above, and also by notifying the two newspapers described in section

3. d. by telephone, telegram, 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.

N.J.S.A. 10:4-9.1

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 provide electronic notice of any meeting of the public body through the Internet.

As used in this section, "electronic notice" means advance notice available to the public via electronic transmission of at least 48 hours, 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.

N.J.S.A. 10:4-9.2

Nothing in this act shall be construed as affecting or superseding the adequate notice requirements that are imposed by the "Open Public Meetings Act," P.L.1975, c. 231 (C.10:4-6 et seq.) and no electronic notice issued pursuant to this act shall be deemed to substitute for, or be considered in lieu of, such adequate notice.

N.J.S.A. 10:4-10

At the commencement of every meeting of a public body the person presiding shall announce publicly, and shall cause to be entered in the minutes of the meeting, an accurate statement to the effect:

a. that adequate notice of the meeting has been provided, specifying the time, place, and manner in which such notice was provided; or

b. that adequate notice was not provided, in which case such announcement shall state (1) the nature of the urgency and importance referred to in subsection 4. b. (1) and the nature of the substantial harm to the public interest likely to result from a delay in the holding of the meeting; (2) that the meeting will be limited to discussion of and acting with respect to such matters of urgency and importance; (3) the time, place, and manner in which notice of the meeting was provided; and (4) either (a) that the need for such meeting could not reasonably have been foreseen at a time when adequate

notice could have been provided, in which event, such announcement shall specify the reason why such need could not reasonably have been foreseen; or (b) that such need could reasonably have been foreseen at a time when adequate notice could have been provided, but such notice was not provided, in which event the announcement shall specify the reason why adequate notice was not provided.

N.J.S.A. 10:4-11

No person or public body shall fail to invite a portion of its members to a meeting for the purpose of circumventing the provisions of this act.

N.J.S.A. 10:4-12

a. Except as provided by subsection b. of this section all meetings of public bodies shall be open to the public at all times. 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 body shall be required to set aside a portion of every meeting of the municipal governing body, the length of the portion to be determined by the municipal governing body, for public comment on any governmental issue that a member of the public feels may be of concern to the residents of the municipality.

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

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

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

(3) Any 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 such 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 incompetent, his guardian) shall request in writing that the same be disclosed publicly.

(4) Any 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) Any matter involving the purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed.

(6) Any tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair such protection. Any investigations of violations or possible violations of the law.

(7) Any pending or anticipated litigation or contract negotiation other than in subsection b. (4) herein in which the public body is, or may become a party.

Any 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) Any 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 employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.

(9) Any 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.

N.J.S.A. 10:4-13

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

a. Stating the general nature of the subject to be discussed; 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.

N.J.S.A. 10:4-14

Each public body 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 this act.

N.J.S.A. 10:4-15

- 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 days after the action sought to be voided has been made public; 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 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.

N.J.S.A. 10:4-16

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.

N.J.S.A. 10:4-17

Any person who knowingly violates any of the foregoing sections of this act shall be fined \$100.00 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 summary proceeding under "the penalty enforcement law" ([N.J.S. 2A:58-1](#) et seq.). The Superior Court shall have jurisdiction to enforce said penalty upon complaint of the Attorney General or the county prosecutor. Whenever a member of a 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. Whenever such a member's objections to the holding of such meeting are overruled by the majority of those present, such a member may continue to participate at such meeting without penalty provided he has complied with the duties imposed upon him by this section.

N.J.S.A. 10:4-18

At least once each year, within 7 days following the annual organization or reorganization meeting of a public body, or if there be no such organization or reorganization meeting in the year, then by not later than January 10 of such year, every public body shall post and maintain posted throughout the year in the place

described in subsection 3. d. (1), mail to the newspapers described in subsection 3. d. (2), submit to the persons described in subsection 3. d. (3), for the purpose of public inspection a schedule of the regular meetings of the public body to be held during the succeeding year. Such schedule shall contain the location of each meeting to the extent it is known, and the time and date of each meeting. In the event that such schedule is thereafter revised, the public body, within 7 days following such revision, shall post, mail and submit such revision in the manner described above.

N.J.S.A. 10:4-19

Any person may request that a public body mail to him copies of any regular meeting schedule or revision described in section 13 of this act and any advance written notice described in subsection 3. d. of this act of any regular, special or rescheduled meeting of such body, and upon prepayment by such person of a reasonable sum, if any has been fixed by resolution of the public body to cover the costs of providing such notice, the public body shall mail to such person written advance notice of all of its meetings within the time prescribed by subsection 3. d. herein, subject only to the exceptions set forth in subsection 4. b. herein. Such resolution may provide that notice requested by the news media shall be mailed to such news media free of charge. All requests for notices made under this section shall terminate at midnight on December 31 of each year, but shall be subject to renewal upon a new request to the public body.

N.J.S.A. 10:4-20

If any section, subsection, clause, sentence, paragraph, or part of this act or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act.

N.J.S.A. 10:4-21

This act shall be liberally construed in order to accomplish its purpose and the public policy of this State as set forth in section 2.