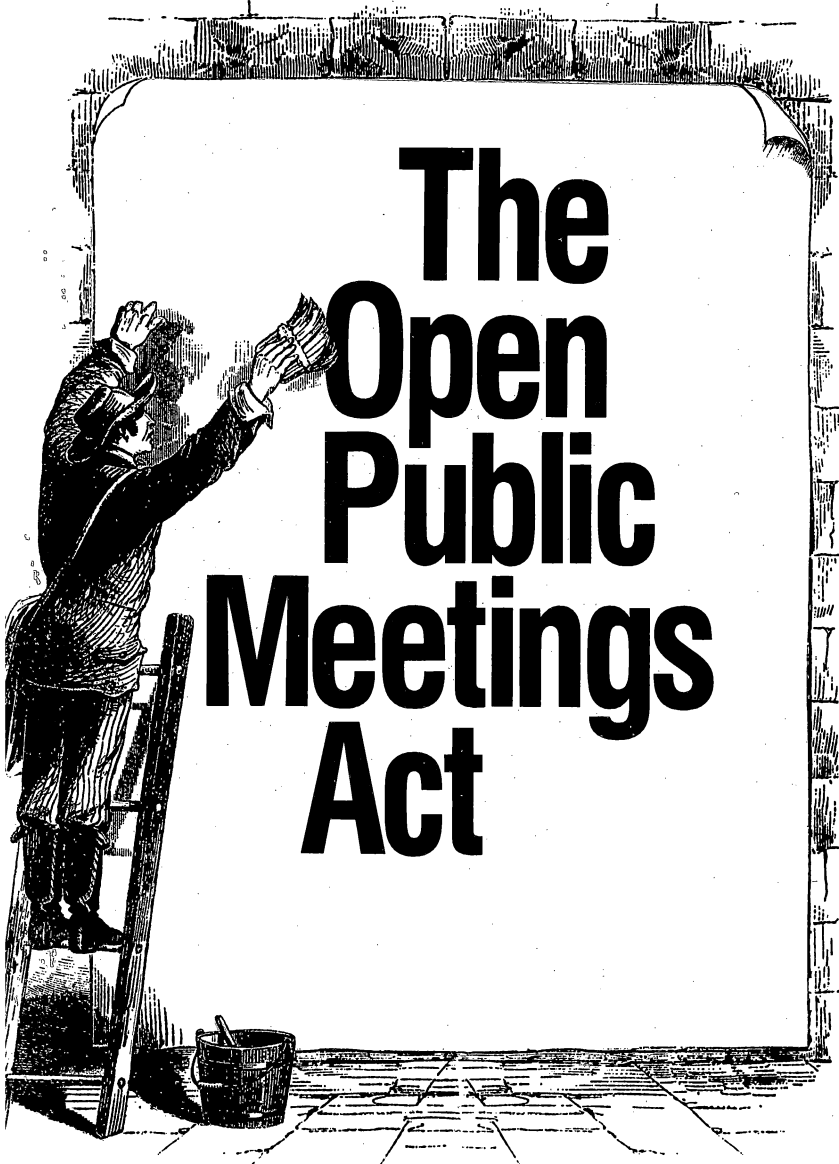


DIVISION OF LAW



The Open Public Meetings Act

LPS New Jersey Department of Law & Public Safety

DIVISION OF LAW

An illustration of a person standing on a ladder, painting a sign. The sign is rectangular with a decorative border and contains the text 'The Open Public Meetings Act'. The person is on the left side of the sign, reaching up to paint the top edge. The background is a textured, stippled grey.

The Open Public Meetings Act

Guide printed, January, 1986
Reprinted May, 1987

With special thanks to: Honorable Theodore A. Winard and
Deputy Attorneys General Mark J. Fleming and Gale P.
Simon.

The Open Public Meetings Act

[N.J.S.A. 10:4-6 to 10:4-21]

A Guide for New Jersey Public Officials and Citizens

Thomas H. Kean
Governor

W. Cary Edwards
Attorney General

Deborah T. Poritz
Division Director

New Jersey State Library



Division of Law

New Jersey Department of Law & Public Safety



Dear Citizen:

Over the last two decades there has been an increasing emphasis on both the national and state levels to increase public involvement in government decision-making. In 1963, the New Jersey Legislature enacted "The Right to Know" law providing for access to government documents and records. That legislation was complemented in 1975 by the enactment of the Open Public Meetings Act, more commonly known as "The Sunshine Law."

By its terms, "The Sunshine Law" applies to municipal, county and state governmental bodies. Thus, it is especially important for members of these public bodies, their attorneys as well as taxpayers and citizens to be aware of the requirements of the Act. This guide is intended to provide all concerned individuals with a substantive explanation of the components of the "Open Public Meetings Act." (The entire act is set forth in the Appendix.)

I hope you will find this information useful.

Sincerely,

A handwritten signature in cursive script that reads "W. Cary Edwards". The signature is written in dark ink and is positioned above the printed name.

W. CARY EDWARDS
Attorney General

Table of Contents

Introduction	
I. Purpose	1
II. The Scope of the Act	2
A. Definition of "Public Body"	
B. Definition of "Meeting"	
III. Requirement of Notice	6
A. 48 Hour Notice	
B. Waiver of Notice Requirement—Emergency Meetings	
C. Statement at Meeting Regarding Adequate Notice	
D. Failure to Invite Members of Public Body to Meeting	
IV. Closed Sessions at Public Meetings	12
A. Subject Matter of Closed Sessions	
B. Procedure to Go Into Closed Session	
V. Minutes	19
VI. Enforcement Actions	20
A. Voiding of Official Action	
B. Injunctive Relief	
C. Penalties	
VII. Annual Notice	23
VIII. Requests for Notice of Meetings	24
IX. Construction of the Act	25
Appendix	

I. Purpose

The purpose of the Open Public Meetings Act, N.J.S.A. 10:4-6 to 10:4-21, is succinctly stated in the legislative findings and declaration, *i.e.*, "to insure the right of citizens to have adequate advance notice of and the right to attend meetings of public bodies at which any business affecting the public is discussed or acted upon in any way except in those circumstances where the public interest would be endangered or the personal privacy or rights of individuals would be endangered." The "Sunshine Law" is the legislative mechanism established to insure that those rights are implemented and guaranteed to members of the public.

New Jersey's Open Public Meetings Act addresses three major areas. The first area deals with the notice of meetings of public bodies. The second area concerns the conduct of meetings of public bodies and deals with instances in which closed sessions are permitted. The third area concerns the effect of violations of the Open Public Meetings Act upon the validity of actions taken by public bodies and defines the penalty to be charged persons who knowingly violate the Act. The entire Act is set forth in the Appendix.

II. The Scope of the Act

A. Definition of "Public Body"

"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.
[N.J.S.A. 10:4-8a]

This subsection defines those entities which are public bodies and therefore are required to comply with the Act. The provisions of the Act apply to any commission, authority, board or other statutorily created entity which is empowered either to perform a governmental function affecting the rights, duties, obligations or legal relations of any person or to spend public funds. It is clear that the Act applies to public bodies at all levels of government, State, County and Municipal. It applies to all public bodies in the executive and legislative branches of State government, with certain exceptions, but does not apply to the judiciary. Public bodies exempted are any grand or petit jury, any parole board, any agency or body acting in a parole capacity, the State Commission of Investigation and any political party committee. As a general proposition, purely informal or advisory bodies with no effective authority are not

covered by the act. The public body must be collectively empowered to affect persons' rights or to spend public funds.

Example: The Law Committee of the State Board of Education, an advisory body with no effective authority to affect personal rights or to spend public money, is not a public body subject to the provisions of the Act. The Law Committee does not have effective authority, absent the exercise of authority by the full State Board of Education.

Example: The Agenda Committee of the State Board of Education is a public body because it can effectively prevent matters from coming to the attention of the full State Board of Education and thus can affect personal rights.

Example: The Governor, the Commissioner of the Department of Environmental Protection and the Superintendent of the State Police get together for a discussion of problems about which the three are concerned. These persons, although public officials, do not constitute a group organized under the laws of New Jersey and are not a public body. Therefore, their meeting is not subject to the provisions of the Act.

Example: A department head periodically meets with his staff members to review department business. Occasionally, other members of the executive branch may advise him and his staff on certain matters. The decision-making authority remains with the department head and these groups have only an advisory role. They are therefore not public bodies and not subject to the Act.

B. Definition of "Meeting"

"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. [N.J.S.A. 10:4-8b]

Generally, any formal or informal gathering attended by or open to all members of a public body which is called with the intent of discussing or acting upon public business is subject to the Act. Only gatherings attended by an effective majority of the public body's members are subject to the Act. The Act's requirements extend to gatherings in which there is discussion as well as action related to the performance of the body's functions or the conduct of its business.

Example: Mr. A, Mr. B and Ms. C serve on a board of county commissioners and constitute a quorum of that board. A, B and C are also social acquaintances. The Act does not ban A, B and C from meeting socially provided that they do not discuss public business in social settings.

Example: A meeting of a township planning board is held by telephone due to the vacation schedules of the members. Even though such meeting is conducted by means of electronic communications equipment, it is subject to the Act and arrangements should be

made to permit the public to listen to the meeting.

Example: A state college board of trustees schedules a retreat to discuss the future of the college in the upcoming decade. Because the board of trustees will discuss school business at the retreat, it is subject to the Act.

III. Requirement of Notice

A. 48 Hour Notice

"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 [N.J.S.A. 10:4-18] set forth the location of any

meeting, no further notice shall be required for such meeting.

[N.J.S.A. 10:4-8d]

Advance written notice must be given at least 48 hours prior to a meeting of a body. This requirement does not apply to meetings whose date, time and location are already listed in the Annual Notice (see discussion under Annual Notice, N.J.S.A. 10:4-18 at page 17). The 48 hour notice should state the time, date and location of the meeting, the agenda of the meeting to the extent it is known, and whether formal action will be taken at the meeting. No public body may hold a meeting if the required notice has not been given, with the exception of an "emergency meeting." See discussion of emergency meetings below.

The Act requires that both the annual notice and the 48 hour notice be distributed in the following manner. Such notice should be prominently posted in a public place generally reserved for announcements of this nature, transmitted to at least two area newspapers, filed with the clerk of the governmental body and mailed to any person who has requested advanced notice and who has paid the fee to cover the cost of providing that notice. The newspapers selected should be those most likely to inform the people within the public body's jurisdiction of the meeting. It has been held that actual publication of the notice is not required to comply with the Act. Only transmittal to an appropriate newspaper in a sufficient amount of time to allow for publication at least 48 hours before the meeting is necessary to comply with the statute. See *Worts v. Mayor and Council of Upper Township*, 176 N.J. Super. 78 (Ch. Div. 1980).

B. Waiver of Notice Requirement-Emergency Meetings

- 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. [N.J.S.A. 10:4-12b] 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. [N.J.S.A. 10:4-8d] 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]

In an emergency situation, a public body may hold a meeting even though the required notice has not been provided. An

emergency situation occurs when matters of urgency and importance arise and substantial harm to the public interest would likely result if a meeting was delayed in order to provide proper notice. The discussion and actions taken at such a meeting must be limited to the urgent matter and may not extend to other topics. Before an emergency meeting may be held, three quarters of the members of the body must vote to conduct a meeting even though adequate notice to the public has not been provided. As soon as possible after the emergency meeting, the public body must post written notice of the meeting and notify two newspapers of the meeting.

Example: During a teachers' strike, a local school board convenes an emergency meeting to approve a tentative contract proposal. Such meeting is necessary to allow the teachers to return to work as soon as possible and thus 48 hour notice is not required. No matters other than the proposed contract may be discussed at this meeting.

C. Statement at Meeting Regarding Adequate Notice

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) [N.J.S.A. 10:4-9b(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. 10:4-10]

At the beginning of every public meeting, the presiding officer must state that adequate notice has been provided and describe the time, place and manner that such notice was supplied. If adequate notice has not been provided, the presiding officer must describe the nature of the urgency and likely harm to the public caused by delaying the meeting to provide adequate notice, state that the meeting will be confined to the urgent matter, describe the time, place and manner in which notice was provided, and state that the need for the meeting could not reasonably have been foreseen at a time when adequate notice could have been provided or, if the meeting could reasonably have been foreseen at a time when adequate notice could have been provided, specify why adequate notice was not provided.

Example: At the beginning of a regular meeting of the State Merit System Board, the following is read by the Commissioner of Personnel.

In compliance with Chapter 231 of the Public Laws of 1975, notice of this meeting was given by way of annual notice filed with the Secretary

of State, the Trentonian, the Trenton Times, the Courier Post and the Newark Star Ledger on December 7, 1984, and posted at the Department of Personnel, 215 East State Street, Trenton, New Jersey.

D. Failure to Invite Members of Public Body to Meeting

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. 10:4-11]

This section bars failing to invite members of a public body to a meeting in an attempt to evade the Act.

IV. Closed Sessions at Public Meetings

A. Subject Matter of Closed Sessions

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.

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 1. 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. 10:4-12]

As a general proposition, all meetings of public bodies are to be open to the public. However, a public body may permit, prohibit or regulate the participation of the public at any such meeting. A public body may control the decorum of persons attending its meetings. Persons attending a meeting may televise, videotape or sound record the discussion held at a public meeting. However, a public body should adopt reasonable guidelines to regulate and control the manner of televising, videotaping or sound recording of its proceedings.

Example: Guidelines should include the number and type of electronic equipment permitted, the position of the equipment, the activity and location of the operator, lighting and other items deemed necessary to maintain order and prevent unnecessary intrusion into the proceedings.

The Act allows for nine different circumstances in which a public body may hold a closed session. If a matter does not fall within one of the nine statutory exceptions, the discussion of and voting on the matter must take place in open session regardless of how sensitive or controversial the matter may be.

1. Privacy Exception

This exception permits a public body to close that part of a meeting which involves discussion of matters involving disclosure of records of a public educational, health, welfare, medical, child protection or similar program pertaining to an individual served by such program including personal and family circumstances and medical progress, treatment or condition. This part of a meeting may be open, however, if the affected individual so requests in writing.

Example: The Board of Trustees of a State administered pension fund closes that part of its meetings in which individuals' applications for disability retirements are considered and decided. Such action is proper because these applications of public pension fund members include hospital records and medical reports obtained by the fund.

2. Collective Bargaining Exception

This exception allows a public body which is a party to a collective bargaining agreement to discuss proposed terms of a collective bargaining agreement in closed session. It also permits the public body to conduct the actual negotiations with representatives of a collective bargaining unit in closed session.

Example: An *ad hoc* group of county employees petitions the county to ban smoking in work areas. The governing body's discussion of the request and its meetings with the employees' group must be open because such activity does not constitute discussion or negotiation of a collective bargaining agreement.

3. Litigation and Attorney-Client Privilege Exception

This exception permits the conduct of a closed session to discuss pending or anticipated litigation and matters which are

embraced by the attorney-client privilege. In *Formal Opinion of the Attorney General No. 30—1976*, it was stated that in order to invoke this exception a public body must either be or expect to be a party to the litigation it wishes to discuss and the discussion must be limited to the pending anticipated litigation. The fact that a decision of a public body may be challenged in litigation or in an appeal does not in and of itself permit the body to conduct its deliberations in closed session under this exception. Moreover, this exception has been held to include the discussion of pending or anticipated litigation before a quasi-judicial administrative body. *Houman v. Mayor and Council of Borough of Pompton Lakes*, 155 N.J. Super. 129, 145 (Law Div. 1977).

The attorney-client privilege is designed to protect the communications a client makes to his attorney in confidence for the purpose of obtaining legal guidance and advice. This exception does not justify holding a closed session whenever a public body's attorney attends one of its meetings. Although a public body may seek the legal advice of its attorney on some portions of its deliberations, only those portions clearly attributable to discussion between the public body and its attorney are subject to the exception of the open public meeting requirement.

Example: The Public Utility Commission's deliberations on an anticipated rate increase are not covered by the litigation exception because the Commission is not a party to any pending or anticipated litigation.

Example: The attorney for a professional licensing board feels that a recent Supreme Court decision may require the authority to amend its regulations. The board and its attorney may not meet in closed session to discuss the effect of the decision.

Example: A secretary who was terminated by a local school board files a sex discrimination action against the board. The school board may meet in closed session to discuss the status of this matter.

4. Personnel Matters Exception

This exception permits a public body to close meetings to discuss matters concerning specific job applicants or employees unless all affected applicants and employees submit a written request that the meeting remain open. It should be noted that the courts have held that a public body may be required to hold a discussion with regard to one of the above matters in public session where an individual employee makes such a request, irrespective of whether any of the others request a public discussion of their individual matters. *Oliveri v. Carlstadt-East Rutherford Board of Education*, 160 N.J. Super. 131, 135 (App. Div. 1978). It would appear that an individual employee may not make such a request, though, when the discussion would bring the public's attention to personnel decisions affecting other employees whose rights could be adversely affected by the public decision.

Example: A county commission wishes to discuss imposing a residency requirement for its future employees. Because this matter does not involve a specific applicant or employee, it must be discussed in open session.

Example: A municipal utilities authority wishes to hire an attorney to provide advice to the authority. If the attorney is to serve as an independent contractor, the discussions concerning his employment must be public. However, if the attorney is to serve as an employee of the authority, the discussion of his employment may occur in closed session.

B. Procedure to Go Into Closed Session

No public body shall exclude the public from any meeting to discuss any matter described in subsection 7.b. [N.J.S.A. 10:4-12b] 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. 10:4-13]

Before meeting in closed session, a public body must adopt a resolution at an open meeting stating the nature of the matter to be considered in closed session and stating when the discussion occurring in the closed session can be revealed to the public. While in closed session, the public body may consider only the item covered by the resolution. This procedure must be followed to schedule a future closed meeting or to convert an open meeting into a closed meeting.

Example: A city council has been sued by one of its suppliers for breach of contract. During an open meeting of the council, a resolution is passed to discuss the status of the case with the council's attorney in closed session and stating that the discussion will be disclosed when the suit is terminated. The meeting is properly closed.

V. Minutes

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 by law to be shown in the minutes, 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. 10:4-6]. [N.J.S.A. 10:4-14]

All public bodies subject to the provisions of the Act are required to keep minutes of all open and closed meetings. Minutes shall record at least the following information:

- (a) the time and place of the meeting;
- (b) the names of all members of the body attending the meeting;
- (c) the subject considered at the meeting;
- (d) the actions taken at the meeting; and
- (e) the vote of each member on all items voted upon.

The minutes of each meeting are open to public inspection and copying except for those portions of the minutes relating to closed sessions. Minutes should be made promptly available to the public and need not be formally approved by the public body before distribution to the public.

VI. Enforcement Actions

A. Voiding of Official Action

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. 10:4-15]

This section allows any member of the public to file a suit to invalidate the action of a public body on the ground that the meeting at which the action was taken did not conform to the provisions of the Act, except for the 48 hour notice provision. To invalidate an official action under this section, a proceeding in lieu of prerogative writ must be commenced within 45 days of public notice of the official action. However, a public body may remedy its noncompliance by repeating its actions at a

public meeting held in compliance with the Act.

Example: The State Board of Education improperly closes a meeting to discuss and approve certification requirements for teachers. To avoid invalidation of the action taken at this meeting, the State Board must repeat its discussion and action at a subsequent public meeting.

B. Injunctive Relief

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. 10:4-16*]

This section allows any member of the public to apply to the court for an injunction or other remedies to insure compliance with the Act.

Example: A city council votes in closed session to sell a city-owned property. A citizen applies to the Superior Court to enjoin the sale because the decision was improperly made at a closed session.

C. Penalties

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 county district court of the county in which the

violation occurred shall have jurisdiction to enforce said penalty upon complaint of the Attorney General or the county prosecutor, but the Attorney General or county prosecutor may refer the matter to the Public Advocate. 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. 10:4-17]

This section permits the Attorney General, county prosecutor or Public Advocate to seek the imposition of penalties against persons who knowingly violate the Act. Such persons shall be fined \$100.00 for the first offense and between \$100.00 and \$500.00 for any subsequent offense. If a member of a public body believes that a meeting is being conducted in violation of the Act, he should state his belief and his reasons for such belief at the meeting and have such statements recorded in the minutes. If the meeting proceeds, he may participate without fear of penalty under this section.

VII. Annual Notice

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.(a), [N.J.S.A. 10:4-8] 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. 10:4-18]

This section requires that each year a public body, by January 10 or seven days after its annual organization or reorganization meeting, disseminate a schedule of the regular meetings of the body to be held during the next year. Such notice must list the time, date and location of each meeting. The public body may reserve the annual notice during the year but must disseminate the revised notice within seven days of the revision.

VIII. Requests for Notice of Meeting Schedule

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 [N.J.S.A. 10:4-18] and any advance written notice described in subsection 3.d. of this act [N.J.S.A. 10:4-8d] 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 [N.J.S.A. 10:4-9b]. 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. 10:4-19]

This section provides that any person may request copies of the annual meeting schedule and the 48 hour meeting notice upon prepayment of a reasonable fee set by resolution of the public body. Such request terminates at the end of the calendar year but may be renewed by a new request to the public body.

IX. Construction of the Act

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. 10:4-20]

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

Pursuant to these sections, the Act is to be construed liberally in furtherance of the policy favoring public awareness of meetings of governmental bodies.

Appendix

10:4-6. Short title

This act shall be known and may be cited as the "Open Public Meetings Act."

10:4-7 Legislative findings and declaration

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.

10:4-8. Definitions

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 [N.J.S.A. 10:4-18] set forth the location of any meeting, no further notice shall be required for such meeting.

10:4-9. Meeting of public body; adequate notice to public; necessity; exceptions

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. [N.J.S.A. 10:4-12b] 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.

[N.J.S.A. 10:4-8d] 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.

10:4-10. Statement in minutes of meeting on adequate notice

At the commencement of every meeting of a public body the person presiding shall announce publicly, and then 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) [*N.J.S.A. 10:4-9b(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.

10:4-11. Failure to invite portion of members to circumvent provisions of act; prohibition

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.

10:4-12. Meetings open to public; exclusion of public; subject matter of discussion

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.

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.

10:4-13. Exclusion of public; resolution; adoption; contents

No public body shall exclude the public from any meeting to discuss any matter described in subsection 7.b. [N.J.S.A. 10:4-12b] 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.

10:4-14. Minutes of meetings; availability to public

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 8 of this act [N.J.S.A. 10:4-12].

10:4-15. Proceeding in lieu of prerogative writ to void action at nonconforming meeting; parties; limitation; corrective or remedial action

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.

10:4-16. Injunctive orders or other remedies to insure compliance

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.

10:4-17. Violations; penalty; statement at meeting of nonconformance; inclusion in minutes

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 county district court of the county in which the violation occurred shall have jurisdiction to enforce said penalty upon complaint of the Attorney General or the county prosecutor, but the Attorney General or county prosecutor may refer the matter to the Public Advocate. 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.

10:4-18. Schedule of regular meetings of public body; publicity; revision; procedure

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), [N.J.S.A. 10:4-8] 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.

10:4-19. Requests for notices of meetings; annual renewal

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 [N.J.S.A. 10:4-18] and any advance written notice described in subsection 3.d. of this act [N.J.S.A. 10:4-8d] 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 [N.J.S.A. 10:4-9b]. 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 of the public body.

10:4-20. Severability

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.

10:4-21. Liberal construction

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



LPS New Jersey Department of Law & Public Safety

DIVISION OF LAW