

10:4-6 "Senator Byron M. Baer Open Public Meetings Act."

This act shall be known and may be cited as the "Senator Byron M. Baer 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 set forth the location of any meeting, no further notice shall be required for such meeting.

10:4-9.1 Electronic notice of meeting of public body; terms defined

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.

10:4-9.2 Construction of act

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.

10:4-9.3 Conduct of public meetings during periods of emergency.

a. Notwithstanding any other provision of law, rule, or regulation to the contrary, during a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, a public body shall be permitted to perform any of the following by means of communication or other electronic equipment:

- (1) conduct a meeting and any public business to be conducted thereat,
- (2) cause a meeting to be open to the public ,
- (3) vote, or
- (4) receive public comment.

A public body shall not be deemed to have violated any provision of P.L.1975, c.231 (C.10:4-6 et seq.) in performing such functions by means of communication or other electronic equipment as provided in this subsection.

b. Notwithstanding any other provision of law, rule, or regulation to the contrary, during such periods of emergency, a public body may elect to provide electronic notice pursuant to section 1 of P.L.2002, c.91 (C.10:4-9.1) in lieu of the adequate notice required under P.L.1975, c.231 (C.10:4-6 et seq.), and shall not be deemed to have violated any provision of law thereunder in providing such electronic notice. To the extent practicable, a public body providing only electronic notice of a meeting pursuant to this subsection shall limit public business discussed or effectuated thereat to matters necessary for the continuing operation of government and which relate to the applicable emergency declaration.

c. This section shall not be construed to limit any authorization under law to perform the functions as specified herein irrespective of any emergency.

d. The Department of Community Affairs, and, with regard to any board of education, the State Board of Education, may adopt rules and regulations to effectuate the purposes of this act, P.L.2020, c.11 (C.10:4-9.3). The rules and regulations established pursuant to this section shall be effective immediately upon filing with the Office of Administrative Law for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

10:4-12 Meetings open to public ; exceptions.

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 and a board of education shall be required to set aside a portion of every meeting of the municipal governing 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 on any governmental or school district issue that a member of the public feels may be of concern to the residents of the municipality or school district.

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;

(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 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 violations of the law;

(7) 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, 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 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; or

(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.