

## **A GUIDE TO THE NEW JERSEY OPEN PUBLIC MEETINGS ACT**

### **WHAT IS THE OPEN PUBLIC MEETINGS LAW?**

The Open Public Meetings Law, which is commonly referred to as the "Sunshine Law", was enacted in 1975. It establishes the right of all citizens to have adequate advance notice of all public meetings and the right to attend meetings at which any business affecting the public is discussed or acted upon. – N.J.S.A. 10:4-6 to 10:4-2

### **IS THE OPEN PUBLIC MEETINGS LAW THE SAME THING AS THE RIGHT-TO-KNOW LAW?**

No. The Open Public Meetings Law refers to public meetings. The Right-to-Know Law refers to public records. N.J.S.A. 47:1A-1 to 47:1A-4

### **TO WHOM DOES THE OPEN PUBLIC MEETING LAW APPLY?**

The law applies to any public body of the state, county, or municipal level of government that has legal authority to vote on public matters or to spend public funds.

### **TO WHOM DOES THE LAW NOT APPLY?**

The law specifically exempts the Judiciary, grand and petit juries, parole boards, the State Commission of Investigations, The Apportionment Committee and any political party committee.

In addition, the Law exempts informal or purely advisory bodies and meetings of a public official with subordinates.

### **ARE ALL GATHERINGS OF PUBLIC BODIES SUBJECT TO THE PROVISIONS OF THE OPEN PUBLIC MEETINGS LAW?**

No. In order to be covered by the provisions of the Law, a meeting (whether attended in person or conducted by means of communications equipment) must be: (1) open to all the public body's members, (2) attended by an effective majority of the members of that public body, and (3) the members present must intend to discuss or act upon public business. For example, political caucus meetings and change encounters of members of public bodies, or gatherings attended by or open to all members of three or more similar public bodies are not covered by the Law.

However, the Open Public Meetings Law specifically prohibits any person or public body from failing to invite a portion of its members in order to avoid the requirements of the Law.

## **WHAT MUST A PUBLIC BODY DO TO SATISFY THE REQUIREMENTS OF THE OPEN PUBLIC MEETINGS LAW?**

The Law requires public bodies to provide the public with: (a) adequate advance notice of all its meetings, (b) the right to attend its meetings, and (c) reasonable comprehensive minutes of all its meetings. In each of these areas, the Law sets forth specific requirements:

### **A. ADEQUATE NOTICE**

The Law requires the public bodies provide the public with adequate advance notice of all its meetings. This can be accomplished by either: (1) an "Annual Notice" or (2) a "48-hour notice."

The "Annual Notice" containing the time, date, and, to the extent known, the location of each meeting, must be provided within seven days of the annual organization or reorganization meeting of the public body. If there is no organization or reorganization meeting, "Annual Notice" must be provided by January 10th.

A "48-Hour Notice" is required when a public body wishes to convene a meeting which has not been listed on the annual notice or regularly scheduled meetings. The Law mandates the public body to provide a written notice at least 48 hours prior to the convening of the meeting. The "48-Hour Notice" must contain the time, date, location and, to the extent known, the agenda of the meeting.

Both the "Annual Notice" and the "48-Hour Notice" must be (1) prominently posted in at least one public place reserved for such announcements, (2) transmitted to two newspapers in time for publication 48-hours in advance of the meeting, (3) filed with appropriate Municipal or County Clerk or the Secretary of State if the public body has statewide authority, and (4) mailed to any person upon request.

### **B. MEETINGS**

The Law requires that public bodies permit all members of the public to attend their meetings. However, the right to attend meetings does not entitle members of the public to participate in the meetings.

The public body may exclude the public only from portions of a meeting known as the "executive" or "closed session." Prior to excluding the public, the public body must first adopt a resolution at a meeting which is open to the public indicating generally what matters will be discussed in closed session and when these discussions will be disclosed to the public. The following items are permitted to be discussed in closed session.

1. Any matter considered confidential by federal law, state statute, or court rule;
2. Any matter in which the release of information would impair the receipt of federal funds;
3. Any material which would constitute an unwarranted invasion of individual privacy if disclosed;
4. Any collective bargaining agreements or other discussion of the terms and conditions of a collective bargaining agreement, including negotiations leading up to such an agreement.
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 disclosure of such matter could adversely affect the public interest.
6. Any tactics and techniques used in protecting the safety and property of the public and investigations of violations or possible violations of the law.
7. Any pending or anticipated litigation or contract negotiations in which the public body is or may become a party, and any matter falling within the attorney-client privilege, to the extent that confidentiality is required to preserve the attorney-client relationship.
8. Personnel matters related to the employment, appointment or termination of current or prospective employees, unless all individuals who could be adversely affected request, in writing, that the matter 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 fine upon an individual or the suspension or the loss of license or permit belonging to an individual. The New Jersey courts have recognized the potential for misuse of the closed session exceptions by public bodies and have, therefore, strictly construed these exceptions in an effort to further the legislative intent of providing open public meetings in most instances.

C. MINUTES

The Law requires the public body to keep reasonably comprehensible minutes of all its meetings, showing the time and place, the members present, the subjects considered, the actions taken, the votes of each

member and any other information required by law to be recorded by minutes. These minutes are to be made promptly available to the public.

In addition, the Law requires that a statement be entered into the minutes at the outset of each meeting indicating (1) that adequate notice has been provided (specifying the time, date, and manner in which the notice was provided), or (2) that adequate notice was not provided and an explanation for the failure of public body to provide adequate notice.

#### **WHAT IF THERE ARE EMERGENCIES AND THE PUBLIC BODY CANNOT PROVIDE ADEQUATE NOTICE BEFORE IT CONVENES?**

A public body may convene an "emergency meeting" when an urgent and important matter arises and a delay of the meeting for the purpose of provide adequate notice would likely result in substantial harm to the public interest.

If an emergency meeting is convened without adequate notice, the public body is required to comply with very strict procedural requirements. These include: (1) an affirmative vote of three-quarters of the members present to conduct the meeting; (2) the providing of notice of the meeting as soon as possible following the calling of such a meeting; and (3) the inclusion in the minutes of a detailed statement explaining: (a) the nature of the urgency and its importance, (b) the nature of substantial harm to the public interest likely to result from a delay in holding the meeting, (c) that the meeting will be limited to those urgent and important matters, (d) the time, place and manner in which notice of the meeting was provided, and (e) that the need for such a meeting could not have been reasonably foreseen at a time when adequate notice could have been provided, or such need could have been foreseen, the reason(s) why adequate notice was not provided.

#### **WHAT CAN A CITIZEN DO IF A PUBLIC BODY VIOLATES THE OPEN PUBLIC MEETINGS LAW?**

The Law permits any person to file a lawsuit in New Jersey Superior Court to invalidate any action taken by a public body at a meeting which violates the Open Public Meetings Law. The lawsuit must be brought within 45 days after the public body's action sought to be nullified has been made public. In addition, any person may apply to New Jersey Superior Court for an injunction or other judicial relief to insure future compliance with the law.

Citizens may also complain to the County Prosecutor or the Attorney General about possible violations of the law and these officials may seek enforcement of the penalty section against any person who knowingly violates the law. The penalty section provides for fines of \$100 for the first offense, and between \$100 and \$500 for any subsequent offenses.

### **CAN A PUBLIC BODY CORRECT A VIOLATION OF THE OPEN PUBLIC MEETINGS LAW?**

Yes. If a public body meets in violation of the Open Public Meetings Law, it may subsequently convene another public meeting in conformity with the requirements of the law and reconsider the public business which had previously been discussed and acted upon. The intent of the Law is to ensure that public business is discussed and acted upon in public. The "Sunshine Law" does not attempt to inhibit the public body from properly performing its governmental functions.

### **GLOSSARY OF TERMS**

1. "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 collective authorized to spend public funds including the legislature, but does not mean or include the judicial branch of the government, any grant or petit jury, any parole board or agency or body acting in a parole capacity, the State Commission of Investigation, the Apportionment Commission established under Article IV, Section 111 of the Constitution, or any political party committee organized under Title 19 of the Revised Statutes.
2. "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.
3. "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.
4. "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, faxed or hand delivered to at least two newspapers which 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 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. When annual notice or revisions thereof in compliance with Section 132 of this act, sets forth the location of any meeting, no further notice shall be required for such meeting.