

NEW JERSEY'S OPEN PUBLIC MEETINGS ACT "THE SUNSHINE LAW"

New Jersey's Open Public Meetings Act, known as "The Sunshine Law," is designed to ensure that decision-making government bodies in the state conduct their businesses in public except in specific circumstances where exclusion of the public is needed to protect the privacy of individuals, the safety of the public or the effectiveness of government in such areas as negotiations or investigations.

The main points of the Open Public Meetings Act, N.J.S.A 10:4-6 (1973), are:

- All meetings of public bodies in New Jersey must be open to the public unless closure is specifically permitted by law. If a meeting by members of a public body is closed to the public, the reason given must be one specifically authorized under the law.
- A public body is a group of two or more persons, empowered as a voting body or public fund-spending body to perform a public governmental function. The judicial branch, the Parole Board and the State Commission of Investigation and all political parties are excluded.
- A public meeting is one held by a public body at any level of government – state, county or local – with the intent to discuss or act as a body on public business. A meeting may be in person, by telephone conference call or by other means of electronic communication.
- Advisory bodies are not subject to the Sunshine Law, such as when a mayor or governor meets with department heads. However, if an advisory body has the power to eliminate options available to a decision-making body, it too becomes subject to the law.
- It is not necessary that a meeting result in some action; mere discussion of public matters is enough to make it a meeting public.

- Violations of the law may result in voiding of decisions made by the public body. Also, executive session discussion may be made public by court order, and penalties may be assessed against individual members.
- **PUBLIC NOTICE:** Every public body must publish its meeting schedule by Jan. 10 or within seven days of its annual organization meeting, whichever is later. A 48-hour written notice must also be given for any regular, special, adjourned or unscheduled meeting giving the time, date, location and as complete an agenda as known at time of notice. The notice must be prominently posted in a public place, usually in the municipal building, and delivered to at least two previously designated newspapers. Exceptions to public notice requirements are:
 - Emergency meetings, which may be called by a three-quarters vote, may be held only if substantial harm to the public interest would result from a delay and the need for the meeting could not have reasonably be foreseen. Whenever possible, the body must provide at least 48-hour notice. Discussion must be limited to the matter which prompted the emergency meeting.
 - Closed or executive sessions.
- **CLOSED SESSIONS:** Closed or "executive" sessions may be held without public notice, or during the course of a public meeting, provided that the subject matter is covered by one or more of the following legal exemptions:
 - Matters made confidential by state, federal law or rule by court.
 - Disclosure would result in an unwarranted invasion of individual privacy, unless the person affected consents in writing.
 - Disclosure would impair the body's right to receive federal or state funds.

- Collective bargaining.
 - Lease or acquisition of property, setting of banking rates, investment of public funds if disclosure would harm the public interest.
 - Investigations into violations of law.
 - Strategies to protect public security.
 - Pending, ongoing or anticipated litigation or contract negotiation, including attorney-client privilege. The threat of litigation must be more than theoretical for this exemption to apply.
 - Personnel matters affecting employees of the public bodies, unless all parties request or consent to a public hearing. Prior to discussion of personnel, affected employees must be given notice, known as a Rice notice, which gives the employee the right to request a public hearing.
 - Proceedings that could result in a suspension, civil penalty, or loss of a license or permit.
- Closed sessions are limited to discussion; all formal actions must be made in the open, regardless of subject matter.
 - Prior to any closed session, the body must adopt a resolution stating the general nature of the subject to be discussed and the time when the discussion can be disclosed. The precise nature of the matter discussed may be withheld until the need for the closed session has passed.
 - **MINUTES:** Minutes must be kept of closed sessions. The minutes should start with a statement of the time, place and manner of notice, or in the case of an emergency meeting, a statement sufficient to satisfy the emergency meeting notice requirements. Minutes should show, at a minimum, the names of the members

present, individual votes of each member, subjects considered and actions taken. Minutes must be promptly made available once the necessity of the closed session has passed.

IF YOU WITNESS WHAT YOU BELIEVE TO BE A VIOLATION OF THIS LAW, SAY IN A CLEAR VOICE:

"I am _____, resident of _____. (or reporter for _____.) I protest the closing of this meeting. I ask that you reconsider your intent to discuss this matter in closed session and further ask that this protest be recorded in the official minutes of the meeting."

VIOLATIONS: If you believe there has been a violation of the Open Public Meetings Act you can file a complaint with the appropriate county prosecutor or with the state Attorney General's office. Or you can file suit against the public body in state Superior Court.

FOR MORE INFORMATION

Society of Professional Journalists - New Jersey Chapter
www.njspj.org

New Jersey Foundation for Open Government
www.njfog.org

New Jersey Press Association
www.njpa.org

This summary is provided as a handy reference for journalists, public officials and the public by the Society of Professional Journalists, New Jersey Chapter. (Sept. 2007)