

No. 1986-84

AN ACT

SB 303

Requiring public agencies to hold certain meetings and hearings open to the public; and providing penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Sunshine Act.

Section 2. Legislative findings and declaration.

(a) Findings.—The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process and 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.

(b) Declarations.—The General Assembly hereby declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this act.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Administrative action.” The execution of policies relating to persons or things as previously authorized or required by official action of the agency adopted at an open meeting of the agency. The term does not, however, include the deliberation of agency business.

“Agency.” The body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business, of all the following: the General Assembly, the executive branch of the government of this Commonwealth, including the Governor’s Cabinet when meeting on official policymaking business, any board, council, authority or commission of the Commonwealth or of any political subdivision of the Commonwealth or any State, municipal, township or school authority, school board, school governing body, commission, the boards of trustees of all State-aided colleges and universities, the councils of trustees of all State-owned colleges and universities, the boards of trustees of all State-related universities and all community colleges or similar organizations created by or pursuant to a statute which declares in substance that the organization performs, or has for its purpose the performance of, an essential governmental function and through the joint action of its members exercises governmental authority and takes official action. The term does not include a caucus nor a meeting of an ethics committee created under rules of the Senate or House of Representatives.

“Agency business.” The framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.

“Caucus.” A gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action in the General Assembly.

“Conference.” Any training program or seminar, or any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.

“Deliberation.” The discussion of agency business held for the purpose of making a decision.

“Emergency meeting.” A meeting called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property.

“Executive session.” A meeting from which the public is excluded, although the agency may admit those persons necessary to carry out the purpose of the meeting.

“Litigation.” Any pending, proposed or current action or matter subject to appeal before a court of law or administrative adjudicative body, the decision of which may be appealed to a court of law.

“Meeting.” Any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.

“Official action.”

(1) Recommendations made by an agency pursuant to statute, ordinance or executive order.

(2) The establishment of policy by an agency.

(3) The decisions on agency business made by an agency.

(4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

“Public notice.”

(1) For a meeting:

(i) Publication of notice of the place, date and time of a meeting in a newspaper of general circulation, as defined by 45 Pa.C.S. § 101 (relating to definitions), which is published and circulated in the political subdivision where the meeting will be held, or in a newspaper of general circulation which has a bona fide paid circulation in the political subdivision equal to or greater than any newspaper published in the political subdivision.

(ii) Posting a notice of the place, date and time of a meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(iii) Giving notice to parties under section 9(c).

(2) For a recessed or reconvened meeting:

(i) Posting a notice of the place, date and time of the meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(ii) Giving notice to parties under section 9(c).

“Special meeting.” A meeting scheduled by an agency after the agency’s regular schedule of meetings has been established.

Section 4. Open meetings.

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 7, 8 or 12.

Section 5. Recording of votes.

In all meetings of agencies, the vote of each member who actually votes on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of roll call votes, recorded.

Section 6. Minutes of meetings, public records and recording of meetings.

Written minutes shall be kept of all open meetings of agencies. The minutes shall include:

(1) The date, time and place of the meeting.

(2) The names of members present.

(3) The substance of all official actions and a record by individual member of the roll call votes taken.

(4) The names of all citizens who appeared officially and the subject of their testimony.

Section 7. Exceptions to open meetings.

(a) Executive session.—An agency may hold an executive session under section 8.

(b) Conference.—An agency is authorized to participate in a conference which need not be open to the public. Deliberation of agency business may not occur at a conference.

(c) Certain working sessions.—Boards of auditors may conduct working sessions not open to the public for the purpose of examining, analyzing, discussing and deliberating the various accounts and records with respect to which such boards are responsible, so long as official action of a board with respect to such records and accounts is taken at a meeting open to the public and subject to the provisions of this act.

Section 8. Executive sessions.

(a) Purpose.—An agency may hold an executive session for one or more of the following reasons:

(1) To discuss any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee, provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting. The agency's decision to discuss such matters in executive session shall not serve to adversely affect the due process rights granted by law, including those granted by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(2) To hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration.

(3) To consider the purchase or lease of real property up to the time an option to purchase or lease the real property is obtained or up to the time an agreement to purchase or lease such property is obtained if the agreement is obtained directly without an option.

(4) To consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.

(5) To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.

(6) For duly constituted committees of a board or council of trustees of a State-owned, State-aided or State-related college or university or community college or of the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standings.

(b) Procedure.—The executive session may be held during an open meeting, at the conclusion of an open meeting, or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session.

(c) Limitation.—Official action on discussions held pursuant to subsection (a) shall be taken at an open meeting. Nothing in this section or section 7 shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of section 4.

Section 9. Public notice.

(a) Meetings.—An agency shall give public notice of its first regular meeting of each calendar or fiscal year not less than three days in advance of the meeting and shall give public notice of the schedule of its remaining regular meetings. An agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice. Public notice is not required in the case of an emergency meeting or a conference. Professional licensing boards within the Bureau of Professional and Occupational Affairs of the Department of State of the Commonwealth shall include in the public notice each matter involving a proposal to revoke, suspend or restrict a license.

(b) Notice.—With respect to any provision of this act that requires public notice to be given by a certain date, the agency, to satisfy its legal obligation, must give the notice in time to allow it to be published or circulated within the political subdivision where the principal office of the agency is located or the meeting will occur before the date of the specified meeting.

(c) Copies.—In addition to the public notice required by this section, the agency holding a meeting shall supply, upon request, copies of the public notice thereof to any newspaper of general circulation in the political subdivision in which the meeting will be held, to any radio or television station which regularly broadcasts into the political subdivision and to any interested parties if the newspaper, station or party provides the agency with a stamped, self-addressed envelope prior to the meeting.

(d) Meetings of General Assembly in Capitol Complex.—Notwithstanding any provision of this section to the contrary, in case of sessions of the General Assembly, all meetings of legislative committees held within the Capitol Complex where bills are considered, including conference committees, all legislative hearings held within the Capitol Complex where testimony is taken and all meetings of legislative commissions held within the Capitol Complex, the requirement for public notice thereof shall be complied with if, not later than the preceding day:

(1) The supervisor of the newsroom of the State Capitol Building in Harrisburg is supplied for distribution to the members of the Pennsylvania

Legislative Correspondents Association with a minimum of 30 copies of the notice of the date, time and place of each session, meeting or hearing.

(2) There is a posting of the copy of the notice at public places within the Main Capitol Building designated by the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(e) Announcement.—Notwithstanding any provision of this act to the contrary, committees may be called into session in accordance with the provisions of the Rules of the Senate or the House of Representatives and an announcement by the presiding officer of the Senate or the House of Representatives. The announcement shall be made in open session of the Senate or the House of Representatives.

Section 10. Rules and regulations for conduct of meetings.

Nothing in this act shall prohibit the agency from adopting, by official action, the rules and regulations necessary for the conduct of its meetings and the maintenance of order. The rules and regulations shall not be made to violate the intent of this act.

Section 11. Use of equipment during meetings.

(a) Recording devices.—Except as provided in subsection (b), a person attending a meeting of an agency shall have the right to use recording devices to record all the proceedings. Nothing in this section shall prohibit the agency from adopting and enforcing reasonable rules for their use under section 10.

(b) Rules of the Senate and House of Representatives.—The Senate and House of Representatives may adopt rules governing the recording or broadcast of their sessions and meetings and hearings of committees.

Section 12. General Assembly meetings covered.

Notwithstanding any other provision, for the purpose of this act, meetings of the General Assembly which are covered are as follows: All meetings of committees where bills are considered, all hearings where testimony is taken and all sessions of the Senate and the House of Representatives. Not included in the intent of this act are caucuses or meetings of any ethics committee created pursuant to the Rules of the Senate or the House of Representatives.

Section 13. Business transacted at unauthorized meeting void.

A legal challenge under this act shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which the act was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting. The court may enjoin any challenged action until a judicial determination of the legality of the meeting at which the action was adopted is reached. Should the court determine that the meeting did not meet the requirements of this act, it may in its discretion find that any or all official action taken at the meeting shall be invalid. Should the court determine that the meeting met the requirements of this act, all official action taken at the meeting shall be fully effective. The court may impose attorney fees for legal challenges commenced in bad faith.

Section 14. Penalty.

Any member of any agency who participates in a meeting with the intent and purpose by that member of violating this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding \$100 plus costs of prosecution.

Section 15. Jurisdiction and venue of judicial proceedings.

The Commonwealth Court shall have original jurisdiction of actions involving State agencies and the courts of common pleas shall have original jurisdiction of actions involving other agencies to render declaratory judgments or to enforce this act, by injunction or other remedy deemed appropriate by the court. The action may be brought by any person where the agency whose act is complained of is located or where the act complained of occurred.

Section 16. Confidentiality.

All acts and parts of acts are repealed insofar as they are inconsistent herewith, excepting those statutes which specifically provide for the confidentiality of information. Those deliberations or official actions which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matter related to the investigation of possible or certain violations of the law and quasi-judicial deliberations, shall not fall within the scope of this act.

Section 17. Repeals.

The following acts and parts of acts are repealed:

Act of June 21, 1957 (P.L.392, No.213), entitled, as amended, "An act requiring that meetings of the governing bodies of political subdivisions and of certain authorities and other agencies performing essential governmental functions shall be open to the public; requiring public notice of such meetings; and prescribing penalties."

Act of July 19, 1974 (P.L.486, No.175), entitled "An act requiring public agencies to hold certain meetings and hearings open to the public and providing penalties."

Section 18. Effective date.

This act shall take effect in six months.

APPROVED—The 3rd day of July, A. D. 1986.

DICK THORNBURGH