

HOUSE No. 3039

The Commonwealth of Massachusetts

PRESENTED BY:

John W. Scibak

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act regulating open meetings of state, local, and regional public bodies.

PETITION OF:

NAME:

John W. Scibak

DISTRICT/ADDRESS:

2nd Hampshire

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4696 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT REGULATING OPEN MEETINGS OF STATE, LOCAL, AND REGIONAL PUBLIC BODIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Sections 11A and 11A½ of Chapter 30A are hereby repealed.
- 2 SECTION 2. Sections 9F and 9G of Chapter 34 are hereby repealed.
- 3 SECTION 3 Sections 23A through 23C of Chapter 39 are hereby repealed.
- 4 SECTION 4. Said Chapter 30A is hereby amended by adding the following new sections:—
- 5 Section 19. Definitions
- 6 For purposes of Sections 19 through 25 of this chapter the following terms shall have the
- 7 following meanings:—
- 8 (a) "Executive Session" Any part of a meeting of a public body executive to the public for
- 9 deliberation of certain matters.

10 (b) "Deliberation" Any communication between a quorum of a public body on any public
11 business within its jurisdiction. Deliberation does not include the mere distribution of a meeting
12 agenda scheduling information or distribution of other procedural meeting details nor does it
13 include the distribution of reports or documents that may be discussed at a meeting provided that
14 no opinion of a member is expressed.

15 (c) "Emergency" A sudden generally unexpected occurrence or set of circumstances demanding
16 immediate action.

17 (d) "Intentional Violation" Any act or omission by a public body or any member thereof in
18 knowing violation of the open meeting law.

19 (e) "Meeting" Any corporal convening or electronic convening which shall include video web or
20 telephone conferencing or electronic mail and deliberation by a public body with respect to any
21 matter within the body's jurisdiction. A meeting shall not include:—

22 (A) An on-site inspection of any project or program provided that the members do not deliberate.

23 (B) Attendance by a quorum of a public body at any public or private gathering such as a
24 conference training program media social or other event provided that the members do not
25 deliberate.

26 (C) Attendance by a quorum of a public body at a meeting of another public body that has
27 complied with the notice requirements of the open meeting law provided that the visiting
28 members do not deliberate but communicate only by open participation in the meeting on those
29 matters under discussion by the host body.

30 (D) A meeting of a quasi-judicial board or commission held for the sole purpose of making a
31 decision required in an adjudicatory proceeding brought before it.

32 (E) Any session of a Town Meeting convened under Section 10 of Chapter 39 or attendance by a
33 quorum of a public body at any such session.

34 (f) "Minutes" The written report of a meeting created by a public body as required by subsection
35 (a) of Section 22 and Section 5A of Chapter 66.

36 (g) "Open Meeting Law" Sections 19 through 25 inclusive of Chapter 30A.

37 (h) "Post Notice" To display conspicuously the written announcement of a meeting in hard copy
38 or electronic format.

39 (i) "Preliminary Screening" The initial stage of screening applicants which shall not include
40 interviewing candidates conducted by a committee or subcommittee of a public body solely for
41 the purpose of providing to the public body a list of those applicants qualified for interview and
42 further consideration.

43 (j) "Public Body" Any multiple-member board commission committee or subcommittee within
44 the executive or legislative branch of the Commonwealth or within any county district city
45 region or town however created elected appointed or otherwise constituted established to serve a
46 public purpose. The governing board of a local housing redevelopment or other similar
47 authorities shall be deemed a local public body. The governing board or body of any other
48 authority established by the general court to serve a public purpose in the Commonwealth or any
49 part thereof shall be deemed a state public body. The term "public body" shall not include the
50 general court or the committees or recess commissions thereof bodies of the judicial branch or
51 bodies appointed by a constitutional officer solely for the purpose of advising one or more

52 constitutional officers nor shall it include the board of bank incorporation or the Policyholders
53 Protective Board. A sub- committee shall be deemed to include any multiple-member body
54 created to advise or make recommendations to a public body.

55 (k) "Quorum" A simple majority of the members of the public body unless otherwise defined by
56 general or special act executive order or other authorizing provision.

57 Section 20. Open Meeting Law Division; Open Meeting Law Advisory Commission; Annual
58 Report Education and Training.

59 (a) There shall be in the department of the attorney general a division of open meeting law. The
60 attorney general shall designate an assistant attorney general as director of said division. Said
61 director may appoint and remove subject to the approval of the attorney general such expert
62 clerical or other assistants as the work of the division may require. The division shall perform the
63 duties imposed upon the attorney general by the open meeting law which may include
64 participating appearing and intervening in any administrative or judicial proceedings pertaining
65 to the enforcement of the open meeting law.

66 (b) The attorney general shall create and distribute educational materials and provide training to
67 public bodies in order to foster awareness and compliance with the open meeting law. Open
68 meeting law training may include but not be limited to instruction in:—

69 (1) the general background of the legal requirements for the open meeting law;

70 (2) applicability of this chapter to governmental bodies;

71 (3) the role of the attorney general in enforcing the open meeting law; and

72 (4) penalties and other consequences for failure to comply with this chapter.

73 (b) There shall be an open meeting law advisory commission. The commission shall consist of
74 five members four of whom shall be appointed by the attorney general including a nominee of
75 the Massachusetts Municipal Association and a nominee of the Massachusetts Newspaper
76 Publishers Association; and one of whom shall be appointed by the secretary of the
77 Commonwealth. The commission shall review issues relative to the open meeting law and shall
78 submit to the attorney general and to the House and Senate chairs of the joint committee on state
79 administration and regulatory oversight recommendations for changes to the regulations trainings
80 and educational initiatives relative to the open meeting law as it deems necessary and
81 appropriate.

82 (b) The attorney general shall no later than January 31st of each calendar year file with the
83 commission and to the House and Senate chairs of the joint committee on state administration
84 and regulatory oversight a report providing information on the enforcement of the open meeting
85 law during the preceding calendar year. The report shall include but not be limited to:—

86 (1) the number of open meeting law complaints received by the attorney general;

87 (2) the number of hearings convened as the result of open meeting law complaints by the
88 attorney general;

89 (3) a summary of the determinations of violations made by the attorney general;

90 (4) a summary of the orders issued as the result of the determination of an open meeting law
91 violation by the attorney general;

92 (5) an accounting of the fines obtained by the attorney general as the result of open meeting law
93 enforcement actions;

94 (6) the number of actions filed in Superior Court seeking relief from an order of the attorney
95 general; and

96 (7) any additional information relevant to the administration and enforcement of the open
97 meeting law that the attorney general deems appropriate.

98 (c) The attorney general shall create and distribute educational materials and provide training to
99 public bodies in order to foster awareness and compliance with the open meeting law. Open
100 meeting law training may include but not be limited to instruction in:—

101 (1) the general background of the legal requirements for the open meeting law;

102 (2) applicability of this chapter to governmental bodies;

103 (3) the role of the attorney general in enforcing Chapter 30A of the general laws; and

104 (4) penalties and other consequences for failure to comply with this chapter.

105 Section 21. Open Meetings; Notice Required; Participation by Absent Members; Conduct;
106 Certification; Open Sessions.

107 (a) Except as provided in Section 22 of this chapter all meetings of a public body shall be open to
108 the public.

109 (b) Except in an emergency in addition to any notice otherwise required by law a public body
110 shall post notice of every meeting at least 48 hours prior to such meeting excluding Saturdays
111 Sundays and legal holidays. In an emergency a public body shall post notice as soon as
112 reasonably possible prior to such meeting. Notice shall be printed in a legible easily
113 understandable format and shall contain the date time and place of such meeting and a listing of
114 topics that the chair reasonably anticipates will be discussed at the meeting.

115 (c) For meetings of a local public body notice shall be filed with the municipal clerk and posted
116 in a manner conspicuously visible to the public at all hours in or on the municipal building in
117 which the clerk's office is located. For meetings of a regional or district public body notice shall
118 be filed and posted in each city or town within the region or district in the manner prescribed in
119 this section for local public bodies. For meetings of a regional school district the secretary of the
120 regional school district committee shall be considered to be its clerk and shall file notice with the
121 clerk of each city or town within such district and shall post the notice in the manner prescribed
122 in this section for local public bodies. For meetings of a county public body notice shall be filed
123 in the office of the county commissioners and a copy thereof shall be publicly posted in a manner
124 conspicuously visible to the public at all hours in such place or places as the county
125 commissioners shall designate for the purpose. For meetings of a state public body notice shall
126 be filed with the attorney general the secretary of state and the information technology division
127 which shall post such notice on the mass.gov web site.

128 (d) Members of a public body not present at the meeting location may participate in said meeting
129 through electronic means whether through audio or video technology or both provided the absent
130 members and all persons present at the meeting location are clearly audible to each other and to
131 the public attending the meeting and provided a quorum of the body including the chair are
132 present at the meeting location. Such authorized members may vote and shall not be deemed
133 absent for the purposes of Section 23(D) of Chapter 39.

134 (e) After notifying the chair of the public body any person may make a video or audio recording
135 of an open session of a meeting of a public body or may transmit the meeting through any
136 medium subject to reasonable requirements of the chair as to the number placement and

137 operation of equipment used so as not to interfere with the conduct of the meeting. At the
138 beginning of the meeting the chair shall inform other attendees of any such recordings.

139 (f) No person shall address a meeting of a public body without permission of the chair and all
140 persons shall at the request of the chair be silent. No person shall disrupt the proceedings of a
141 meeting of a public body. If after clear warning from the chair a person continues to disrupt the
142 proceedings the chair may order the person to withdraw from the meeting and if the person does
143 not withdraw the chair may authorize a constable or other officer to remove the person from the
144 meeting.

145 (g) The offices of open government shall create educational materials to be made available to
146 local officials in order to foster awareness and compliance with the open meeting law. Within
147 two weeks of qualification for office all persons serving on a public body shall certify on a form
148 prescribed by the office the receipt of a copy of the open meeting law and a copy of the
149 guidelines prepared by the attorney general explaining the open meeting law and its application.
150 Unless otherwise directed or approved by the office the appointing authority city or town clerk or
151 the executive director or other appropriate administrator of a state or regional body or their
152 designees shall obtain such certification from each person upon entering service and shall retain
153 it subject to the applicable records retention schedule where the body maintains its official
154 records. The certification shall be evidence that the member of a public body has read and
155 understands the requirements of the open meeting law and the consequences of violating it.

156 Section 22. Executive Sessions.

157 (a) A public body may meet in executive session for one or more of the purposes enumerated in
158 this section provided that:—

159 (1) the body has first convened in open session pursuant to Section 21;

160 (2) a majority of members of the body have voted to go into executive session and the vote of
161 each member is recorded by roll call and entered into the minutes;

162 (3) before the executive session the chair shall state the purpose for the executive session stating
163 all subjects that may be revealed without compromising the purpose for which the executive
164 session was called;

165 (4) the chair shall publicly announce whether the open session will reconvene at the conclusion
166 of the executive session; and

167 (5) accurate records of the executive session shall be maintained pursuant to Section 23.

168 (b) A public body may meet in executive session only for the following purposes:—

169 (1) To discuss the reputation character physical condition or mental health rather than
170 professional competence of an individual or to discuss the discipline or dismissal of or
171 complaints or charges brought against a public officer employee staff member or individual. The
172 individual to be discussed in such executive session shall be notified in writing by the public
173 body at least 48 hours prior to the proposed executive session; provided however that notification
174 may be waived upon written agreement of the parties. A public body shall hold an open session
175 if the individual involved requests that the session be open. If an executive session is held such
176 individual shall have the following rights:—

177 (A) to be present at such executive session during deliberations which involve that individual;

178 (B) to have counsel or a representative of his own choosing present and attending for the purpose
179 of advising the individual and not for the purpose of active participation in said executive
180 session;

181 (C) to speak on his own behalf; and

182 (D) to cause an independent record to be created of said executive session by audio-recording or
183 transcription at the individual's expense. The rights of an individual set forth in this paragraph
184 are in addition to the rights that he may have from any other source including but not limited to
185 rights under any laws or collective bargaining agreements and the exercise or non-exercise of the
186 individual rights under this section shall not be construed as a waiver of any rights of the
187 individual

188 (2) To conduct strategy sessions in preparation for negotiations with nonunion personnel or to
189 conduct collective bargaining sessions or contract negotiations with nonunion personnel.

190 (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may
191 have a detrimental effect on the bargaining or litigating position of the public body and the chair
192 50 declares.

193 (4) To discuss the deployment of security personnel or devices or strategies with respect thereto.

194 (5) To investigate charges of criminal misconduct or to consider the filing of criminal
195 complaints.

196 (6) To consider the purchase exchange lease or value of real property if the chair declares that an
197 open. meeting may have a detrimental effect on the negotiating position of the public body.

198 (7) To comply with or act under the authority of any general or special law or federal grant-in-
199 aid requirements.

200 (8) To consider or interview applicants for employment or appointment by a preliminary
201 screening committee if the chair declares that an open meeting will have a detrimental effect in
202 obtaining qualified applicants; provided however that this clause shall not apply to any meeting
203 including meetings of a preliminary screening committee to consider an interview applicants
204 who have passed a prior preliminary screening.

205 (9) To meet or confer with a mediator as defined in Section 23C of Chapter 233 with respect to
206 any litigation or decision on any public business within its jurisdiction involving another
207 party²⁸⁹ group or entity provided that:—

208 (A) any decision to participate in mediation shall be made in an open session and the parties
209 issues involved and purpose of the mediation shall be disclosed; and

210 (B) no action shall be taken by any public body with respect to those issues which are the subject
211 of the mediation without deliberation and approval for such action at an open session.

212 (10) To conduct a confidential discussion with legal counsel for the purpose of obtaining legal
213 advice or assistance.

214 (11) To negotiate cable license agreements.

215 Section 23. Minutes; Voting; Documents and Records; Intersection with the Public Records
216 Law.

217 (a) A public body shall create and maintain accurate minutes of all meetings including
218 executive sessions setting forth the date time and place the members present or absent a

219 summary of the discussions on each subject a list of documents and other exhibits used at the
220 meeting the decisions made and the actions taken at each meeting including the record of all
221 votes.

222 (b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive
223 session shall be recorded by roll call and entered into the minutes.

224 (c) Minutes of all open sessions shall be created and approved in a timely manner. The
225 minutes of an open session if they exist and whether approved or in draft form shall be made
226 available upon request by any person within 10 days.

227 (d) Documents and other exhibits such as photographs recordings or maps used by the body at
228 an open or executive session shall along with the minutes be part of the official record of the
229 session.

230 (e) The minutes of any open session the notes recordings or other materials used in the
231 preparation of such minutes and all documents and exhibits used at the session shall be public
232 records in their entirety and not exempt from disclosure pursuant to any of the exemptions under
233 clause 26 of Section 7 of Chapter 4. notwithstanding the provisions of this paragraph the
234 following materials shall be exempt from disclosure to the public as personnel information:-

235 (1)materials used in a performance evaluation of an individual bearing on his professional
236 competence provided they were not created by the members of the body for the purposes of the
237 evaluation and

238 (2)materials used in deliberations about employment or appointment of individuals including
239 applications and supporting materials provided that any resume submitted by an applicant shall
240 not be exempt.

241 (f) The minutes of any executive session the notes recordings or other materials used in the
242 preparation of such minutes and all documents and exhibits used at the session may be withheld
243 from disclosure to the public in their entirety under exemption (a) of clause 26 of Section 7 of
244 Chapter 4 as long as publication may defeat the lawful purposes of the executive session but no
245 longer provided that the executive session was held in compliance with Section 22 of this
246 chapter. When the purpose for which a valid executive session was held has been served the
247 minutes preparatory materials and documents and exhibits of the session shall be disclosed
248 unless the attorney-client privilege or one of more of the exemptions under clause 26 of Section
249 7 of Chapter 4 apply to withhold these records or any portion thereof from disclosure.

250 For purposes of this subsection if a executive session is held pursuant to subsections (b)(2) or
251 (b)(3) of Section 22 then the minutes preparatory materials and documents and exhibits used at
252 the session may be withheld from disclosure to the public in their entirety unless and until such
253 time as a litigating negotiating or bargaining position is no longer jeopardized by such disclosure
254 at which time they shall be disclosed unless the attorney-client privilege or one or more of the
255 exemptions under clause 26 of Section 7 of Chapter 4 apply to withhold these records or any
256 portion thereof from disclosure.

257 (g)(1) The public body or its chair or designee shall at reasonable intervals review the minutes of
258 executive sessions to determine if the provisions of this subsection warrant continued non-
259 disclosure. Such determination shall be announced at the body's next meeting and such
260 announcement shall be included in the minutes of that meeting.

261 (2) upon request by any person to inspect or copy the minutes of a executive session or any
262 portion thereof the body shall respond to said request within 10 days following receipt and shall
263 release any such minutes not covered by an exemption under subsection (f); provided however

264 that if the body has not performed a review pursuant to paragraph (1) of this subsection the
265 public body shall perform the review and release the non-exempt minutes or any portion thereof
266 not later than the body's next meeting or 30 days whichever first comes. A public body shall not
267 assess a fee for the time spent in its review.

268 Section 24. Enforcement.

269 (a) subject to appropriation the attorney general shall interpret and enforce the open Meeting
270 Law.

271 (b) At least 30 days prior to the filing of a complaint with the office of open government the
272 complainant shall file a written complaint with the public body setting forth the circumstances
273 which constitute the alleged violation; provided however that such complaint shall be filed with
274 the public body within 30 days of the date of the alleged violation. The public body shall within
275 14 business days of receipt of a complaint send a copy of the complaint to the office of open
276 government and notify said office of any remedial action taken. Any remedial action taken by the
277 public body in response to a complaint under this subsection shall not be admissible as evidence
278 against the public body that a violation occurred in any later administrative or judicial
279 proceeding relating to such alleged violation. The attorney general may authorize an extension
280 of time to the public body for the purpose of taking remedial action upon the written request of
281 the public body and a showing of good cause to grant the extension.

282 (c) Upon the receipt of a complaint by any person the attorney general shall determine in a
283 timely manner whether there has been a violation of the open meeting law. The attorney general
284 may and before imposing any civil penalty shall hold a hearing on any such complaint.
285 Following a determination that a violation has occurred the attorney general shall determine
286 whether the public body one or more of the members or both are responsible and whether the

287 violation was intentional or unintentional. Upon the finding of a violation the attorney general
288 may issue an order:-

289 (1)compelling immediate and future compliance with the open meeting law;

290 (2)compelling attendance at a training session authorized by the attorney general;

291 (3)nullifying in a whole or in part any action taken at the meeting;

292 (4)imposing a civil penalty upon the public body of not more than one thousand dollars for each
293 intentional violation;

294 (5)reinstating an employee without loss of compensation seniority tenure or other benefits; fits;

295 (6)compelling that minutes records or other materials be made public and/or

296 (7)prescribing other appropriate action.

297 (d) A public body or any member of a body aggrieved by any order issued pursuant to this
298 section may notwithstanding any general or special law to the contrary obtain judicial review of
299 said order only through an action in superior court seeking relief in the nature of certiorari
300 provided that notwithstanding Section 4 of Chapter 249 any such action shall be commenced in
301 the court within 21 days of receipt of the order. Any order issued pursuant to this section shall
302 be stayed pending judicial review; provided however that if the order nullifies an action of the
303 public body the body shall not implement such action pending judicial review.

304 (e) If any public body or member thereof shall fail to comply with the requirements set forth
305 in any order issued by the attorney general hereunder or shall fail to pay any civil penalty
306 imposed thereby within 21 days of the date of issuance of such order or within 30 days following
307 the decision of the superior court if judicial review of such order has been timely sought the

308 attorney general may file an action to compel compliance. Such action shall be filed in Suffolk
309 superior court with respect to state public bodies and with respect to all other public bodies in the
310 superior court in any county in which the public body acts or meets. If such body or member has
311 not timely sought judicial review of the order such order shall not be open to review in an action
312 to compel compliance.

313 (f) As an alternative to the procedure set forth in subsection (c) of this section the attorney
314 general or three or more registered voters may initiate a civil action to enforce the open meeting
315 law.

316 Any action under this subsection shall be filed in Suffolk superior court with respect to state
317 public bodies and with respect to all other public bodies in the superior court in any county in
318 which the public body acts or meets. In any action filed pursuant to this subsection in addition to
319 all other remedies available to the superior court in law or in equity the court shall have all of the
320 remedies set forth in subsection (c) of this section and may also impose a civil penalty upon the
321 public body of not more than one thousand dollars for each intentional violation. In any action
322 filed pursuant to this subsection the order of notice on the complaint shall be returnable no later
323 than 10 days after the filing thereof and the complaint shall be heard and determined on the
324 return day or on such day thereafter as the court shall fix having regard to the speediest possible
325 determination of the cause consistent with the rights of the parties; provided however that orders
326 may be issued at any time on or after the filing of the complaint without notice when such order
327 is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under
328 this subsection the burden shall be on the respondent to show by a preponderance of the evidence
329 that the action complained of in such complaint was in accordance with and authorized by the
330 provisions of the open meeting law.

331 (g) It shall be a defense to the imposition of a penalty that the public body or any member thereof
332 after full disclosure acted in good faith compliance with the advice of the public body's legal
333 counsel.

334 (h) Payment of civil penalties under this section shall be made to the office of open government
335 to be used without further appropriation to provide for open meeting law education and training
336 throughout the Commonwealth.

337 Section 25. Rulemaking Authority.

338 The attorney general shall have the authority to promulgate rules and regulations to carry out the
339 provisions of Section 24(a) (b) (c) (d) and (e).

340 SECTION 5. Section 5A of Chapter 66 is hereby amended by deleting the words "sections
341 eleven A of chapter thirty A nine F of chapter thirty-four and twenty-three B of chapter thirty-
342 nine" and inserting in their place the following:—Section 23 of chapter thirty A.

343 SECTION 6 Sections 1 2 3 4 5 and 6 of this act shall take effect on July 1 2009.