

HOUSE No.

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:	DISTRICT/ADDRESS:
John W. Scibak	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 Sections 11A and 11A½ of Chapter 30A are hereby repealed.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

3 SECTION 2. Sections 9F and 9G of Chapter 34 are hereby repealed.

4

5 SECTION 3 Sections 23A through 23C of Chapter 39 are hereby repealed.

6

7 SECTION 4. Said Chapter 30A is hereby amended by adding the following new sections:—

8

9 Section 19. Definitions

10

11 For purposes of Sections 19 through 25 of this chapter the following terms shall have the following
12 meanings:—

13

14 (a) "Executive Session" Any part of a meeting of a public body executive to the public for deliberation of
15 certain matters.

16

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

22

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

25

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

28

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

32

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

34

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

37

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

42

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

45

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

48

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

51

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

53

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

56

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

60

61 (j) "Public Body" Any multiple-member board commission committee or subcommittee within the
62 executive or legislative branch of the Commonwealth or within any county district city region or town
63 however created elected appointed or otherwise constituted established to serve a public purpose. The
64 governing board of a local housing redevelopment or other similar authorities shall be deemed a local
65 public body. The governing board or body of any other authority established by the general court to
66 serve a public purpose in the Commonwealth or any part thereof shall be deemed a state public body.
67 The term "public body" shall not include the general court or the committees or recess commissions
68 thereof bodies of the judicial branch or bodies appointed by a constitutional officer solely for the
69 purpose of advising one or more constitutional officers nor shall it include the board of bank
70 incorporation or the Policyholders Protective Board. A sub-committee shall be deemed to include any
71 multiple-member body created to advise or make recommendations to a public body.

72

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

75

76 Section 20. Open Meeting Law Division; Open Meeting Law Advisory Commission; Annual Report
77 Education and Training.

78

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

86

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

90

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

92

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

94

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

96

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

98

99 (b) There shall be an open meeting law advisory commission. The commission shall consist of five
100 members four of whom shall be appointed by the attorney general including a nominee of the
101 Massachusetts Municipal Association and a nominee of the Massachusetts Newspaper Publishers
102 Association; and one of whom shall be appointed by the secretary of the Commonwealth. The
103 commission shall review issues relative to the open meeting law and shall submit to the attorney
104 general and to the House and Senate chairs of the joint committee on state administration and
105 regulatory oversight recommendations for changes to the regulations trainings and educational
106 initiatives relative to the open meeting law as it deems necessary and appropriate.

107

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

112

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

114

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

117

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

119

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

122

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

125

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

128

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

131

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

135

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

137

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

139

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

141

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

143

144 Section 21. Open Meetings; Notice Required; Participation by Absent Members; Conduct; Certification;
145 Open Sessions.

146

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

149

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

156

157 (c) For meetings of a local public body notice shall be filed with the municipal clerk and posted in a
158 manner conspicuously visible to the public at all hours in or on the municipal building in which the
159 clerk's office is located. For meetings of a regional or district public body notice shall be filed and posted
160 in each city or town within the region or district in the manner prescribed in this section for local public
161 bodies. For meetings of a regional school district the secretary of the regional school district committee
162 shall be considered to be its clerk and shall file notice with the clerk of each city or town within such
163 district and shall post the notice in the manner prescribed in this section for local public bodies. For
164 meetings of a county public body notice shall be filed in the office of the county commissioners and a
165 copy thereof shall be publicly posted in a manner conspicuously visible to the public at all hours in such
166 place or places as the county commissioners shall designate for the purpose. For meetings of a state
167 public body notice shall be filed with the attorney general the secretary of state and the information
168 technology division which shall post such notice on the mass.gov web site.

169

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

176

177 (e) After notifying the chair of the public body any person may make a video or audio recording of an
178 open session of a meeting of a public body or may transmit the meeting through any medium subject to
179 reasonable requirements of the chair as to the number placement and operation of equipment used so
180 as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall
181 inform other attendees of any such recordings.

182

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

188

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

200

201 Section 22. Executive Sessions.

202

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

205

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

207

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

210

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

214

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

217

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

219

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

221

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

229

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

231

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

234

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

236

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

242

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

245

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

248

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

250

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

252

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

255

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

258

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

264

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

268

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

271

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

274

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

277

278 (11) To negotiate cable license agreements.

279

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

281

282 (a) A public body shall create and maintain accurate minutes of all meetings including executive
283 sessions setting forth the date time and place the members present or absent a summary of the
284 discussions on each subject a list of documents and other exhibits used at the meeting the decisions
285 made and the actions taken at each meeting including the record of all votes.

286

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

289

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

293

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

296

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

302

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

305

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

309

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

319

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

326

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

331

332 (2) upon request by any person to inspect or copy the minutes of a executive session or any portion
333 thereof the body shall respond to said request within 10 days following receipt and shall release any
334 such minutes not covered by an exemption under subsection (f); provided however that if the body has
335 not performed a review pursuant to paragraph (1) of this subsection the public body shall perform the
336 review and release the non-exempt minutes or any portion thereof not later than the body's next
337 meeting or 30 days whichever first comes. A public body shall not assess a fee for the time spent in its
338 review.

339

340 Section 24. Enforcement.

341

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

343

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

355

356 (c) Upon the receipt of a complaint by any person the attorney general shall determine in a timely
357 manner whether there has been a violation of the open meeting law. The attorney general may and
358 before imposing any civil penalty shall hold a hearing on any such complaint. Following a determination
359 that a violation has occurred the attorney general shall determine whether the public body one or more
360 of the members or both are responsible and whether the violation was intentional or unintentional.
361 Upon the finding of a violation the attorney general may issue an order:-

362

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

364

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

366

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

368

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

371

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

373

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

375

376 (7)prescribing other appropriate action.

377

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

385

386 (e) If any public body or member thereof shall fail to comply with the requirements set forth in any
387 order issued by the attorney general hereunder or shall fail to pay any civil penalty imposed thereby
388 within 21 days of the date of issuance of such order or within 30 days following the decision of the
389 superior court if judicial review of such order has been timely sought the attorney general may file an
390 action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state
391 public bodies and with respect to all other public bodies in the superior court in any county in which the

392 public body acts or meets. If such body or member has not timely sought judicial review of the order
393 such order shall not be open to review in an action to compel compliance.

394

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

397

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

412

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

415

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

419

420 Section 25. Rulemaking Authority.

421

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

424

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

428

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