

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Brewer

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 to further enforce the open meeting law.

PETITION OF:

NAME:

Mr. Brewer

DISTRICT/ADDRESS:

Worcester, Hampden, Hampshire and Franklin

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01854 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO FURTHER ENFORCE THE OPEN MEETING LAW.

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. Section 11A1/2 of chapter 30A is hereby amended by adding the following:-
2 Notwithstanding any general or special law to the contrary, the Office of Public Accountability
3 (“the Office”) is hereby created within the office of the attorney general. The Office shall be
4 governed by a board of advisers, known as the Open Meeting Law Board (“the Board”). The
5 Board shall consist of 4 persons to be appointed by the governor, 1 of whom shall be the
6 president of the Massachusetts Municipal Association or a designee, 1 of whom shall be the
7 president of the Massachusetts District Attorneys Association or a designee, and 1 of whom shall
8 be the president of the Massachusetts Newspaper Publishers Association or a designee; 1 person
9 to be appointed by the secretary of the commonwealth; and 2 persons to be appointed by the
10 attorney general, 1 of whom shall be a member of a public employee union and 1 of whom shall
11 serve as chair of the Board.

12 The terms of the members appointed shall be 3 years.

13 The Board shall review all complaints of violations of the open meeting law. The Board shall
14 refer complaints of violations of the open meeting law against local governmental bodies to the
15 appropriate district attorney within ten days of receiving the complaint. The Board shall direct
16 the attorney general to investigate any complaints of violations of the open meeting law by state
17 agencies. The Board shall receive a status report of any investigation conducted by the office of
18 the attorney general or the appropriate district attorney within ninety days of the date the
19 complaint was referred.

20 The Board shall also create educational materials to be made available to local officials in order
21 to foster awareness and compliance with the open meeting law.

22 The Board shall report annually to the clerks of the senate and house of representatives and the
23 joint committee on state administration and regulatory oversight a list of all allegations
24 investigated by the Board, including the name of the governing body investigated, the location of
25 the governing body, the date of the violation, and the type of violation alleged.

26 SECTION 2. Section 23A of chapter 39 is hereby amended by striking the definition of
27 “deliberation” and inserting in its place the following definition of “deliberation”:

28 “Deliberation”, an exchange between a quorum of members of a governmental body attempting
29 to arrive at a decision on any public business within its jurisdiction.

30 And be further amended by striking the definition of “meeting” and inserting in its place the
31 following:

32 “Meeting”, any corporal convening, or any other real-time electronic convening including but
33 not limited to video, telephone or web conferencing, and deliberation of a governmental body for
34 which a quorum is required in order to make a decision at which any public business or public
35 policy matter over which the governmental body has supervision, control, jurisdiction or
36 advisory power is discussed or considered; but shall not include any on-site inspection of any
37 project or program.

38 SECTION 3. Section 11A of chapter 30A is hereby amended by striking the definition of
39 “deliberation” and inserting in its place the following:

40 “Deliberation”, an exchange between a quorum of members of a governmental body attempting
41 to arrive at a decision on any public business within its jurisdiction.

42 And be further amended by striking the definition of “meeting” and inserting in its place the
43 following:

44 “Meeting”, any corporal convening, or any other real-time electronic convening including but
45 not limited to video, telephone or web conferencing, and deliberation of a governmental body for
46 which a quorum is required in order to make a decision at which any public business or public
47 policy matter over which the governmental body has supervision, control, jurisdiction or
48 advisory power is discussed or considered; but shall not include any on-site inspection of any
49 project or program.

50 SECTION 4. Section 23B of chapter 39 is hereby amended by striking the following:

51 “(8) To consider and interview applicants for employment by a preliminary screening committee
52 or a subcommittee appointed by a governmental body if an open meeting will have a detrimental
53 effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any
54 meeting, including meetings of a preliminary screening committee or a subcommittee appointed
55 by a governmental body, to consider and interview applicants who have passed a prior
56 preliminary screening.”

57 And inserting in its place the following:

58 “(8) To consider and interview applicants for employment only during the preliminary
59 interviewing process. All interviews after the first interview shall be open to the public.”

60 SECTION 5. Section 23B of chapter 39 is hereby amended by inserting after the word “attend”
61 in the first paragraph, the following: “witness, or view, as applicable.”

62 SECTION 6. Section 11A ½ of chapter 30A is hereby amended by inserting after the word
63 “attend” in the first paragraph, the following: “witness, or view, as applicable.”

64 SECTION 7. Section 23B of Chapter 39 of the General Laws, as appearing in the 2002 Official
65 Edition, is hereby amended by striking the 14th paragraph and inserting in its place the following
66 paragraph:—

67 The court may impose a civil fine against the governmental body of up to \$1,000 and a civil fine
68 of up to \$500 against each attending member of the governmental body for each meeting held in
69 violation of this section. The fine shall not be imposed against any member of the governmental
70 body who is recorded in opposition to the government act that is found in violation of the open

71 meeting law. In addition, the court may assess reasonable attorney's fees and costs against such
72 governmental body where the court finds that:

- 73 1. after receiving notice of the filing of a complaint authorized by this section, the
74 governmental body opens to the public any meeting or opens to the public the records of
75 any such meeting, and
- 76 2. the requested meeting or public record are described in the complaint, and
- 77 3. the requested meeting or public record had been requested in writing by the complainant
78 before filing the complaint, and
- 79 4. before the complaint was filed, the governmental body or custodian of the record had
80 refused to open to the public the requested meeting or to make the requested public
81 record available to the complainant.

82 SECTION 8. Section 11A ½ of Chapter 30A, of the General Laws, as appearing in the 2002
83 Official Edition, is hereby amended by adding thereto as the last paragraph reading as follows:

84 The court may impose a civil fine against the governmental body of up to \$1,000 and a civil fine
85 of up to \$500 against each attending member of the governmental body for each meeting held in
86 violation of this section. The fine shall not be imposed against any member of the governmental
87 body who is recorded in opposition to the government act that is found in violation of the open
88 meeting law. In addition, the court may assess reasonable attorney's fees and costs against such
89 governmental body where the count finds that:

- 90 1. after receiving notice of the filing of a complaint authorized by this section, the
91 governmental body opens to the public any meeting or opens to the public the records of
92 any such meeting, and
- 93 2. the requested meeting or public record are described in the complaint, and
- 94 3. the requested meeting or public record had been requested in writing by the complainant
95 before filing the complaint, and
- 96 4. before the complaint was filed, the governmental body or custodian of the record had
97 refused to open to the public the requested meeting or to make the requested public
98 record available to the complainant.

99 SECTION 9. Section 23B of chapter 39 of the general laws is hereby amended in the sixth
100 paragraph, by inserting after the words “time and place of such meeting” the following words:-

101 “, and the agenda for such meeting or a list of items to be discussed, if such agenda or items have
102 been determined by the time of the posting”.

103 SECTION 10. Section 11A ½ of chapter 30A of the general laws is hereby amended in the sixth
104 paragraph, by inserting after the words “time and place of such meeting” the following words:-

105 “, and the agenda for such meeting or a list of items to be discussed, if such agenda or items have
106 been determined by the time of the posting”.

107 SECTION 11. Section 23B of chapter 39 is hereby amended by striking the following: “No
108 quorum of a governmental body shall meet in private for the purpose of deciding on or
109 deliberating toward a decision on any matter except as provided by this section.”

110 And inserting in its place: “No quorum of a governmental body shall meet, by any means, in
111 private nor communicate by electronic mail or other electronic means for the purpose of deciding
112 on or deliberating toward a decision on any matter except as provided by this section.”

113 SECTION 12. Section 11A1/2 of chapter 30A is hereby amended by striking the following: “No
114 quorum of a governmental body shall meet in private for the purpose of deciding on or
115 deliberating toward a decision on any matter except as provided by this section.”

116 And inserting in its place: “No quorum of a governmental body shall meet, by any means, in
117 private nor communicate by electronic mail or other electronic means for the purpose of deciding
118 on or deliberating toward a decision on any matter except as provided by this section.”

119 SECTION 13. Section 23B of chapter 39 is hereby amended by striking the following
120 “A governmental body shall maintain accurate records of its meetings, setting forth the date,
121 time, place, members present or absent and action taken at each meeting, including executive
122 sessions. The records of each meeting shall become a public record and be available to the
123 public; provided, however, that the records of any executive session may remain secret as long as
124 publication may defeat the lawful purposes of the executive session, but no longer. All votes
125 taken in executive sessions shall be recorded roll call votes and shall become a part of the record
126 of said executive sessions. No votes taken in open session shall be by secret ballot.”

127 And inserting in its place the following paragraph:-

128 “A governmental body shall maintain accurate records of its meetings, setting forth the date,
129 time, place, members present or absent and action taken at each meeting, including executive

130 sessions. The records of each meeting shall become a public record and be made available to the
131 public and kept in a public building that is accessible to members of the public during regular
132 business hours; provided, however, that the records of any executive session may remain secret
133 as long as publication may defeat the lawful purposes of the executive session, but no longer. All
134 votes taken in executive sessions shall be recorded roll call votes and shall become a part of the
135 record of said executive sessions. No votes taken in open session shall be by secret ballot.”