

**HOUSE . . . . . No. 3039**

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the Year Two Thousand 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 Sections 11A and 11A½ of Chapter 30A are hereby repealed.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 Sections 9F and 9G of Chapter 34 are hereby repealed.

3 SECTION 3 Sections 23A through 23C of Chapter 39 are hereby repealed.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

6 Section 19. Definitions

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

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

11 (b) "Deliberation" Any communication between a quorum of a public body on any public  
12 business within its jurisdiction. Deliberation does not include the mere distribution of a meeting

13 agenda scheduling information or distribution of other procedural meeting details nor does it  
14 include the distribution of reports or documents that may be discussed at a meeting provided that  
15 no opinion of a member is expressed.

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

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

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

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

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

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

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

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

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

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

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

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

45 (j) "Public Body" Any multiple-member board commission committee or subcommittee  
46 within the executive or legislative branch of the Commonwealth or within any county district  
47 city region or town however created elected appointed or otherwise constituted established to  
48 serve a public purpose. The governing board of a local housing redevelopment or other similar  
49 authorities shall be deemed a local public body. The governing board or body of any other  
50 authority established by the general court to serve a public purpose in the Commonwealth or any  
51 part thereof shall be deemed a state public body. The term "public body" shall not include the  
52 general court or the committees or recess commissions thereof bodies of the judicial branch or  
53 bodies appointed by a constitutional officer solely for the purpose of advising one or more  
54 constitutional officers nor shall it include the board of bank incorporation or the Policyholders

55 Protective Board. A sub- committee shall be deemed to include any multiple-member body  
56 created to advise or make recommendations to a public body.

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

59 Section 20. Open Meeting Law Division; Open Meeting Law Advisory Commission;  
60 Annual Report Education and Training.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

108 Section 21. Open Meetings; Notice Required; Participation by Absent Members;  
109 Conduct; Certification; Open Sessions.

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

112 (b) Except in an emergency in addition to any notice otherwise required by law a public  
113 body shall post notice of every meeting at least 48 hours prior to such meeting excluding  
114 Saturdays Sundays and legal holidays. In an emergency a public body shall post notice as soon

115 as reasonably possible prior to such meeting. Notice shall be printed in a legible easily  
116 understandable format and shall contain the date time and place of such meeting and a listing of  
117 topics that the chair reasonably anticipates will be discussed at the meeting.

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

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

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

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

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



159 Section 22. Executive Sessions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

211 (9) To meet or confer with a mediator as defined in Section 23C of Chapter 233 with  
212 respect to any litigation or decision on any public business within its jurisdiction involving  
213 another party<sup>289</sup> group or entity provided that:—

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

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

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

220 (11) To negotiate cable license agreements.

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

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

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

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

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

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

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

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

247 (f) The minutes of any executive session the notes recordings or other materials used in  
248 the preparation of such minutes and all documents and exhibits used at the session may be  
249 withheld from disclosure to the public in their entirety under exemption (a) of clause 26 of  
250 Section 7 of Chapter 4 as long as publication may defeat the lawful purposes of the executive  
251 session but no longer provided that the executive session was held in compliance with Section 22  
252 of this chapter. When the purpose for which a valid executive session was held has been served  
253 the minutes preparatory materials and documents and exhibits of the session shall be disclosed  
254 unless the attorney-client privilege or one of more of the exemptions under clause 26 of Section  
255 7 of Chapter 4 apply to withhold these records or any portion thereof from disclosure.

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

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

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

274 Section 24. Enforcement.

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

277 (b) At least 30 days prior to the filing of a complaint with the office of open  
278 government the complainant shall file a written complaint with the public body setting forth the  
279 circumstances which constitute the alleged violation; provided however that such complaint shall  
280 be filed with the public body within 30 days of the date of the alleged violation. The public body  
281 shall within 14 business days of receipt of a complaint send a copy of the complaint to the office  
282 of open government and notify said office of any remedial action taken. Any remedial action  
283 taken by the public body in response to a complaint under this subsection shall not be admissible  
284 as evidence against the public body that a violation occurred in any later administrative or

285 judicial proceeding relating to such alleged violation. The attorney general may authorize an  
286 extension of time to the public body for the purpose of taking remedial action upon the written  
287 request of the public body and a showing of good cause to grant the extension.

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

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

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

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

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

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

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

303 (7)prescribing other appropriate action.

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

311 (e) If any public body or member thereof shall fail to comply with the requirements set  
312 forth in any order issued by the attorney general hereunder or shall fail to pay any civil penalty  
313 imposed thereby within 21 days of the date of issuance of such order or within 30 days following  
314 the decision of the superior court if judicial review of such order has been timely sought the  
315 attorney general may file an action to compel compliance. Such action shall be filed in Suffolk  
316 superior court with respect to state public bodies and with respect to all other public bodies in the  
317 superior court in any county in which the public body acts or meets. If such body or member has  
318 not timely sought judicial review of the order such order shall not be open to review in an action  
319 to compel compliance.

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

323 Any action under this subsection shall be filed in Suffolk superior court with respect to  
324 state public bodies and with respect to all other public bodies in the superior court in any county  
325 in which the public body acts or meets. In any action filed pursuant to this subsection in addition



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

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

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

344 Section 25. Rulemaking Authority.

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

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

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