

SENATE No. 1399

The Commonwealth of Massachusetts

In the Year Two Thousand 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
2 following:-

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

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

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

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

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

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

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

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

33 “Meeting”, any corporal convening, or any other real-time electronic convening including
34 but not limited to video, telephone or web conferencing, and deliberation of a governmental body

for which a quorum is required in order to make a decision at which any public business or public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

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

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

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

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

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

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

subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.”

And inserting in its place the following:

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

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

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

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

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

after receiving notice of the filing of a complaint authorized by this section, the governmental body opens to the public any meeting or opens to the public the records of any such meeting, and

the requested meeting or public record are described in the complaint, and
the requested meeting or public record had been requested in writing by the complainant
before filing the complaint, and
before the complaint was filed, the governmental body or custodian of the record had
refused to open to the public the requested meeting or to make the requested public record
available to the complainant.

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

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

after receiving notice of the filing of a complaint authorized by this section, the
governmental body opens to the public any meeting or opens to the public the records of any
such meeting, and

the requested meeting or public record are described in the complaint, and
the requested meeting or public record had been requested in writing by the complainant
before filing the complaint, and

98 before the complaint was filed, the governmental body or custodian of the record had
99 refused to open to the public the requested meeting or to make the requested public record
100 available to the complainant.

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

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

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

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

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

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

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

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

SECTION 13. Section 23B of chapter 39 is hereby amended by striking the following

“A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions. No votes taken in open session shall be by secret ballot.”

And inserting in its place the following paragraph:-

“A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be made available to the public and kept in a public building that is accessible to members of the public during regular business hours; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become

139 a part of the record of said executive sessions. No votes taken in open session shall be by secret
140 ballot.”