Partly Cloudy:
A Report on the New Jersey Sunshine Law

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Executive Summary

The New Jersey Open Public Meetings Act, passed in 1975, is the foremost law promoting transparent practices with regard to meetings in the State of New Jersey. Also called the Sunshine Law, it was passed during the administration of Governor Brendan T. Byrne, in line with his "Government Under Glass" initiative.

While the spirit of the law promotes open government, revision is necessary to adapt it to current information technology, to promote uniform application in all jurisdictions, and eliminate gray areas and ambiguities. However, a new law is not enough. It is imperative to train public employees and elected officials concerning their obligations under the Sunshine Law. Key areas that need to be considered when revising the current Sunshine Law are:

- *Minutes* of meetings should be complete and accurately reflect what transpired at the meeting. An explicit time limit is necessary to establish when minutes need to be released after a public meeting is held.
- *Closed sessions* should not be used for routine matters. There should be more of a check on closed meetings so that topics which are not exempt under the law are discussed in open session.
- *Notices and agendas* should be timely and complete. They should contain enough information so that anyone who wants to understand what will be discussed at a meeting is able to and whoever wants to attend a meeting can.
- *Public comment* is crucial for a good working government. While limits may need to be imposed, the public should have a timely outlet for suggestions, questions, or concerns they might have during a public meeting.
- *Video and audio recording* of all public meetings should be affirmed as a right of the public. Where feasible, municipalities should also consider taking it upon themselves to record meetings to keep as public records.
- *Electronic meetings* must be addressed in the law to keep it up-to-date with the current information and technology era. The longer the State waits to address this issue, the more inadvertent violations of the law will occur.
- *Attorney fees* should be recoverable, and where necessary, stricter *sanctions* need to be imposed.

A change in the Sunshine Law is a good first step, but there needs to be a series of initiatives to open up public meetings in State. We are recommending three such steps.

- *Training and education* are necessary components to change culture. All individuals who serve on public bodies should be required to receive training on the key components of the Sunshine Law.
- A *plain-language guide* on the Sunshine Law should be developed and distributed to government employees and elected officials throughout the State.
- A model of *open meetings oversight* should be considered to train public employees and educate the public as to how to file an open meetings violation. Such a body could have the power to sanction and fine public bodies that do not comply with law, or solely offer advisory opinions.

Introduction

The New Jersey Open Public Meetings Act, passed in 1975, which promotes transparent practices with regard to meetings, was passed during the Brendan T. Byrne Administration's "Government Under Glass" initiative. While the intention of the law is to promote open government, the law needs to be revised to adapt it to cover current information technology and to ensure that the law is applied more uniformly across jurisdictions by removing unnecessary ambiguity and vagueness.

A change in the law is not sufficient though to modify the current culture surrounding public meetings in New Jersey. Training and education should be required for both full-time government employees and elected officials of their obligations under the Sunshine Law. During the three decades since the law was passed, advancements in technology and communication have been rapid. Audio and video recordings can now be transmitted over the internet. The law should be revised taking into consideration these changes and how people are using these technologies to conduct business.

In addition, the 30-year life of the Sunshine Law has proven that implementing open meeting legislation has some pitfalls. The requirement to take minutes of all meetings and then to make them public is not always taken seriously by local governments, and the use of closed meetings is at times excessive and unjustified. There is a lack of uniformity throughout the State when it comes to implementing the Sunshine Law. The amount of time given to release minutes is interpreted differently by different municipalities and minutes are taken to different standards across the state. The nature and scope of public comment at meetings, which is determined by the municipality, is a useful tool for public participation and should be encouraged.

The Sunshine Law allows for citizens to bring action against a municipality that is found to violate the law. It does not, however, allow the recovery of attorney fees and other costs related to bringing about a suit. The cost of filing a suit is a deterrent for many individuals to challenge an open meeting violation. When a municipality is found in violation of the Sunshine Law, it can be fined, though there have been very few fines imposed for violations. A court must find that the Sunshine Law was violated "knowingly," which has been difficult to prove.

This report includes a brief history of the New Jersey Open Public Meetings Act, a description of the major problems with the law and its implementation, and suggestions on how to improve access to public meetings in the State. We include comparisons to other states' open meetings laws and provide examples of the issues at hand. Not surprisingly, many issues that were present during the debate surrounding the passage of the 1975 law are still with us today.

History

Open public meetings have a long history in the United States and many states instituted open meetings laws beginning in the 1950s (Pupillo, 1993). New Jersey was not far behind with its “Right to attend public meetings” law of 1960. This law was proposed each year between 1954 and 1960, with the exception of 1956, but was not passed into law until 1960. The purpose of this proposed law was to “further freedom of information to the public of the transaction of governmental business by insuring to the citizens of the State the right to attend public meetings” ("Legislative History of RS 10:4-1 to 5, Right to attend public meetings", 1963, p. 1).

With time however, residents of the State found problems and loopholes in the law. Attorney General George F. Kugler authored *New Jersey’s Right to Know: A Report on Open Government* in 1974. The Report’s purpose was to distinguish between the right to know about governmental business and the right to privacy. One of the main concerns about the 1960 law was its limitation of primarily focusing on open meetings where official action was taken. Kugler argued that the alienation of citizens by public bodies leads to apathy, and that as government expands, there is a greater need for checks and balances (Kugler Jr., 1974). Open meetings laws provide an avenue for citizens to become involved in government in addition to acting as an active checks mechanism. Shortly after this report, new open meetings legislation was proposed.

Today’s Open Public Meetings Act (N.J. Stat. Ann. § 10:4-6 to 4-21) was initially introduced on January 28, 1974 by Assemblyman Byron M. Baer ("Legislative history of RS 10:4-6 to 4-21, Open Public Meetings Act", 1976). It was a complement to then-Governor Brendan Byrne’s “Government Under Glass” commitment. This commitment to transparent government came in the wake of the national Watergate scandal when there was perceived to be little public trust in government (Shure, 2006).

At the public hearing discussing this newly proposed law, the issue of meeting efficiency was raised as a concern. Some felt that wasted time would be common in open meetings. Baer countered that “our Founding Fathers never claimed that democratic means were always faster than undemocratic ones; it was sufficient that they were more just” (Byron M. Baer in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, p. 106) Another perennial issue raised was the fact that public issues were often discussed behind closed doors. Baer, then an Assemblyman, argued:

> This bill will have a favorable impact on New Jersey Government for generations to come. It is in harmony with the Byrne Administration’s commitment to ‘government under glass.’ …deception by those who govern has become a grave concern. It is now clear to many citizens that the withholding of crucial information has been part of a pattern of betrayal of the public interest by some public officials. In other cases, secrecy makes possible hiding official blunder, inefficiency, poor performance, injustice, arbitrariness or double dealing. The reality is that the public performance of some government bodies is pure theater; the

> decisions that will affect all of our lives are commonly being made behind closed doors. This often results in government dictated by special interests, carried out by the few to cater to the privileged. (Byron M. Baer in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, pp. 101-102)

In addition to the concerns of efficiency and the possibility of improperly closed sessions, the relationship between the public and the public officials was questioned. The sentiment at the time was that not only did citizens not trust public officials, but public officials did not trust the public. At that time, the legislative affairs chairman of Common Cause New Jersey thought that public officials "don't think the public has got the ability to sit in at some of these meetings or take an interest in what their government is doing" (Lewis S. Ripps in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, p. 97). However, "if people are to vote intelligently they must have access to as much information as possible about the actions of their public officials" (Byron M. Baer in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, p. 104).

Along with concerns directly voiced at the public hearing, many officials across the State wrote in support of or in opposition to the law. Large and small municipalities alike opposed the law. The mayor of the Borough of New Providence felt that municipalities should not be burdened by the law and that the bill would delay normal municipal operations. He also thought that the courts would have a backlog of cases and the cost of government would increase (Edward M. Bien in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, p. 221). The mayor of Trenton said that even though he was supporter of openness, he felt that the bill had major weaknesses (Arthur J. Holland in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, p. 224). Such weaknesses he noted were the restriction of government bodies to do their business efficiently, the notification requirement creating a burden on municipalities, and government actions, such as entering into contracts, would be questioned (Arthur J. Holland in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, p. 225).

Taxpayer associations were among those who showed support for the bill. One such association member voiced that: "This bill will…help protect us from those who dare disenfranchise the public, the average citizen, from observing, investigating and participating more fully in government business" (Maywood Taxpayer's Association in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, p. 229). The Alert Parents for Good Schools organization also supported this bill. They expressed concern that at many emergency meetings, public business was discussed that was not originally on the agenda. In addition, they felt the need for an agenda for the public to view prior to a meeting, as well as a yearly schedule of regular meetings, and had an interest in the ability to obtain minutes as a public record (Hancock and Paterson in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, pp. 230-231).

On October 21, 1975, Governor Brendan T. Byrne signed the bill into law. In his statement, he pointed out that “public bodies exist for the public’s convenience, not their own” (Governor Brendan T. Byrne's statement in "Legislative history of RS 10:4-6 to 4-21, Open Public Meetings Act", 1976, p. 1). The law gives citizens the right to be informed about governmental decisions, and possibly restores the trust between the two groups. Byrne suggested that the legislature act as a watchdog for open meetings, amending it when necessary. “This law ushers in a new era of openness for government at every level in New Jersey and demonstrates clearly the determination of the legislature and of this administration that the public’s business can and will be conducted in public” (Governor Brendan T. Byrne's statement in "Legislative history of RS 10:4-6 to 4-21, Open Public Meetings Act", 1976, p. 1)

On June 12, 2006, the official name of the Sunshine Law was amended to recognize the pioneering work of Senator Baer “in promoting greater openness in government.” Included in the bill to rename the law was a statement in support of governmental transparency: “It has long been recognized that openness in government promotes citizen participation in public affairs, increases public confidence in government, and makes public officials more accountable to the electorate” ("Renames "Open Public Meetings Act" in honor of Senator Byron M. Baer." 2006, p. 2). New Jersey P.L. 1975, C. 231 may now be cited as the Senator Byron M. Baer Open Public Meetings Act.

The New Jersey Open Public Meetings Act gives the public the right to attend meetings of public bodies. A public body under the law generally means a commission, authority, board, council, committee or any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body acting on behalf of the public ("Open Public Meetings Act", 1976, 10:4-8). The law requires public bodies to give advance notice of meetings for the purpose of giving the public time to arrange to attend. In addition, it requires that minutes be kept as a public record; these minutes also serve to inform those who did not attend meetings. The Sunshine Law also gives citizens the right to bring civil action against a public body that is violating the law ("Open Public Meetings Act", 1976, 10:4-15).

Although the essence of the law is apparent, there are some major pitfalls that should be addressed to improve access to public meetings.

Doing Things Right: The Borough of Hightstown

Though there are constant violations of the current Sunshine Law, some municipalities embrace the spirit of the law. One such municipality is the Borough of Hightstown located in Mercer County. The small municipality with limited resources does a good job of catering to the public with respect to meetings, and has an inclusive website on which meeting documents are posted. Candace Gallagher, the Borough Clerk and Administrator, stated that, "It has been my experience that, in any government project, the more open the process, the smoother things go. The public does not like to be excluded, and to do so suggests that bad things are happening behind closed doors, even if they are not." While other factors clearly also matter, having a town clerk with a commitment to openness seems to produce more progressive open meeting practices.

Hightstown has instituted a working model for open meeting practices. In order for the council members and the public to prepare for meetings, a meetings packet is posted online by Friday for the following Monday council meetings. This packet includes supplemental materials relating to the things that will be discussed at the upcoming meeting. In addition, the previous meeting's draft minutes are in the packet for approval. This is noteworthy since many towns do not release minutes until they have been formally approved. At the meeting, all council members receive this packet, and there are two copies circulated for the public to review.

At the beginning and the end of each meeting, the public is given a chance to comment. Each person may speak for up to three minutes during each designated public comment period. At one point in time the second comment session had been removed from the meetings, but was brought back upon request by citizens. During these comment sessions, citizens may address any issue.

On the Borough of Hightstown's website, one can find a schedule of meetings, minutes,[i] the aforementioned meeting packets, and much more information unrelated to open meetings. The more the borough posts to its website, the more open it is, which is thought to lead to greater trust with the public. The town also publishes a newsletter called the *Hightstown Crier* which includes meeting announcements. The Borough believes that since the website and newsletter have been used to publicize meetings, attendance has increased.

This example is particularly noteworthy since is shows open government practices can be implemented with even limited resources. Gallagher summed up her philosophy by stating: "I have found that the more information we provide to the public, the less critical they are. It is easy to criticize without having all of the information. To provide that broadens their point of view and lets them see things from the inside out, and the view is different."

While the Borough is largely open, there are limits to its open meeting practices; for example, it does not videotape meetings and some meetings have executive sessions. Nonetheless, Hightstown is at the forefront of open meetings practices in New Jersey.

The Sunshine Law: Current Issues

> Transparency in government should be a given, and municipal government is at the root of the democratic process. It all starts here. We are closest to the people, and the people should be informed and aware of what is happening. Everything works better when that is the case.
> (Gallagher, 2006)

Many of the issues that were relevant during the passage of the Open Public Meetings Act of 1974 are still salient today. Municipalities are still doing public business behind closed doors that should be open. There is no oversight body and distrust between citizens and public officials is perceived to be high. The current law needs to be revised and brought up-to-date with the information age. It should be more strongly enforced, as courts tend to give municipalities only a slap on the wrist when they are found to violate the law. This report outlines these, in addition to other problems with the status of open public meetings in New Jersey.

Minutes

Under the Sunshine Law, minutes are required to be taken at all meetings: regular, special, emergency, and closed. Regular meeting minutes are at minimum required to include: date, time, and place of meeting; members present; subjects considered; actions taken; and vote counts attributed to each member. Minutes also must include how the notice for the meeting was given and are required to be "promptly available" for public inspection ("Open Public Meetings Act", 1976, 10:4-14).

Despite these requirements, there are many examples of missing minutes or minutes not being available within a reasonable amount of time. A township council was reported in March 2006 to have not been taking minutes or recording monthly conference meetings (Moore, 2006). In August 2005, the *Star-Ledger* reported the same council as having stated that the meeting's agenda serves as its minutes. The *Star-Ledger* newspaper bluntly summarized: "While the state statute requires public bodies to keep comprehensible minutes on the essentials of all meetings, how towns do that seems to be open to interpretation" (Moore, 2005, p. 35). These inconsistencies represent a serious pitfall in current open meetings practices. In practice, meeting minutes do not always contain accurate or complete information, especially if the meeting addresses subjects other than those specified on the agenda.

In 2005, a borough council was found not having any executive session minutes from 2003 and 2004. An investigation into the allegations was done by the Somerset County Prosecutor's Office, but no officials were punished. The municipality assured the Prosecutor's Office that minutes would be taken at all future meetings. The individual who brought notice of the violations to prosecutor's office "was disappointed that the prosecutor's office did not 'at least slap the wrist of the borough attorney and past council members for not noticing [the violation] for several years'" (J. Tyrrell, 2005, p. 31). The Borough Attorney stated that he "can only attribute the lack of response and/or existence of records to the turnover in personnel" (J. Tyrrell, 2005b, p. 19).

In addition to missing minutes, many municipalities have been accused of taking too long to release the minutes, despite the requirements for them to be made "promptly available" to the public. In 2004, a local board of education was accused of taking more than a month to release minutes (Scott, 2004). In that same year, a redevelopment agency was ordered to release minutes within two weeks after approval. This redevelopment agency was also found to have not been keeping records during executive sessions (Guirguis, 2004).

While minutes are required by the law to be made "promptly available," the question of how long a custodian can take to make them available does not have an explicit answer. Such an answer could prove very useful. One town was accused by a former councilman of being two years behind on minutes in 2005. This councilman requested minutes from 2003 to 2005 and found that thirteen meetings in 2003 and 2004 did not have minutes available, which he called "absurd." The borough clerk defended the delay by saying that she did not have the time to type them up. She also said that although the law requires minutes to be made public, it "does not specify how soon" (Yellin, 2005b, p. L01). The Councilman was offered mediation by the Government Records Council, but did not take it. "Mediation does not work on an issue like this, because people promise they'll do it and they don't," he said (Yellin, 2005b, p. L01).

Citizens have the option of filing a complaint with the New Jersey Government Records Council (GRC) if they are denied access to public records. The GRC is a body that monitors the Open Public Records Act of New Jersey. Since 2002, they have reviewed and mediated complaints from the public regarding records requests and provide training of the law (Government Records Council). As of May 10, 2006, thirty-eight out of 697 closed GRC cases have to do with meetings or meeting minutes. Twenty out of these thirty-eight complaints specifically deal with minutes (Government Records Council).

The Sunshine Law requires that minutes be available for public inspection, but the simple fact that people are complaining to the GRC with respect to minutes suggests that the public does not have full access to these documents. It is impossible to determine how many others have been denied access to meeting minutes but did not choose to file a formal complaint. The review of the GRC complaints suggest that some municipalities are not keeping minutes and others are not releasing them within a reasonable time frame.

Of all of the state open meetings laws in the nation, including the District of Columbia, thirty-four stipulate what should be included, at a minimum, in minutes. The most common requirements are the date, place, and time of the meeting, along with the subjects considered, and the votes taken (Reporter's Committee for Freedom of the Press, 2006). Of the twenty-three that specify when the minutes should be available, fourteen specify a time frame (this includes having them available "before the next meeting") (Reporter's Committee for Freedom of the Press, 2006). Table 1 shows the fourteen states which have some timeframe associated with the release of minutes. Georgia requires that minutes be available within two business days while at the opposite end of the spectrum, Rhode Island requires them to be made available within thirty-five days.

Table 1: Time Limits to Release Minutes by State

	Time Limit Given to Approve Minutes	Time limit Given to Release Approved Minutes
Connecticut	48 hours	7 days
Delaware		before the next meeting
Georgia[II]		before the next meeting
Illinois[III]		within 7 days of approval
Kentucky		no later than the conclusion of the next meeting
Michigan	8 days	an additional 5 days
Mississippi[IV]		30 days
Nebraska		10 days or before the next meeting
Nevada		30 days
New Hampshire		144 hours (6 days)
New York		2 weeks
Rhode Island		35 days
Vermont		5 days
Virginia[V]		3 days after approval

New Jersey's Sunshine Law requires that specific information appear in public bodies' minutes, but it does not have a specific time frame for the minutes to be available. Having such a time frame would create more uniformity across the state, and less confusion about what "promptly available" means. When local governments do have websites, released meeting minutes should be posted. This allows greater access to the minutes by the public and is a time-saver for clerks who no longer have to fill multiple requests for meeting minutes. To make the minutes more useful to the public, this time limit should stipulate that except under exceptional circumstances, minutes should be made available to the public in advance of the public body's next meeting, as is required in several states. This schedule for production and disclosure would promote short-term accountability by allowing the public to comment on the prior meeting's minutes at the current meeting.

Closed Sessions

According to New Jersey's open meetings law, closed sessions, sometimes referred to as executive sessions, are allowed if they are covered by one of the nine exemption categories. Box 1 lists the nine exemptions to the Open Public Meetings Act. However, closed meetings are still used to discuss public business which clearly is not exempt under the law. In July 2005, Hunterdon County Freeholders held a meeting regarding *ethics* in closed session (J. Tyrrell, 2005a; J. Tyrrell, 2005). Ethics is certainly not one of the acceptable exemptions. It has been argued that closed meetings are more productive than open meetings. However, this is not always the case. Audio tapes have revealed closed sessions where little work was done ("Closed

meeting in Ocean County/What was the point?" 2005), showing that closed sessions are not inherently efficient or productive.

Box 1: Nine Exemptions Allowed Under in Sunshine Law to Close a Meeting

1. Matters deemed by a court as confidential
2. Matters which would impair the right to receive federal funds
3. Matters that would violate individual privacy
4. Labor negotiations.
5. Matters involving purchase of real property if disclosure could adversely affect the public interest
6. Tactics used for protecting safety and property of the public.
7. Pending or potential litigation, contract negotiations, or matters falling within attorney-client privilege.
8. Matters involving the employment of a prospective or current employee
9. Deliberations following a public meeting that would result in the loss of license

While closed meetings are allowed if a public body cites a valid exemption, the too-frequent or routine use of executive sessions can cause residents to question a municipality's openness. In 2004 an Ocean County township held twenty-four closed meetings, an average of two per month. Surrounding towns had an average five closed meetings that year. The municipality claimed that they held these closed meetings before bi-monthly public meetings and the issues discussed at these closed meetings did not need to be discussed at an open meeting by law. In this example, some business was indeed allowed to be discussed behind closed doors while other business should not have been. For example, a street name change was discussed that should have been public. This name change raised concerns because some business owners on that street had incorporated the previous name into their business name. They also discussed nepotism practices and gave a contract without public knowledge (Renshaw, 2004a). In addition, none of their 2003 closed meeting minutes were formally approved (Renshaw, 2004b).

Open government advocates are concerned that exemptions are sometimes improperly claimed to avoid discussing business in open session. One open meetings advocate argued: "The law makes it too easy for officials to use such exemptions as excuses for executive sessions that end up going into matters that by law ought to be discussed in public" (O'Shea, 2005, p. 1). A proposed remedy would be for an agency to police the implementation of public meetings laws in New Jersey (O'Shea, 2005). An op/ed published in the *Daily Record* during Sunshine Week in 2005 suggests that the law "allows public bodies to meet secretly when discussing negotiations, personnel and litigation….[that] exception is the most troublesome because virtually everything a governing body does has the potential to involve litigation" ("Fight for openness", 2005, p. A8).

Another central problem regarding closed meetings is the lack of information given before closed meetings. The New Jersey Sunshine Law requires that an ordinance be passed before a closed meeting. This ordinance must include the "general nature of the subjects to be discussed" during the proposed closed meeting

and an approximation of when, if ever, the matters will be made public ("Open Public Meetings Act", 1976, 10:4-13). The purpose of this is to inform the public of what is being discussed during the closed meeting and allow them to retrieve the minutes once they become public. (Under the law, minutes of closed meetings must be made public if, and when, need for secrecy disappears, for instance, information on negotiations for a land purchase once the transaction is completed.) The public is also to be informed of the votes from the meeting after the closed meeting is adjourned.

In 2004, a borough council was accused of "routinely" violating the Open Public Meetings Act because they did not provide sufficient information before going into closed session. A councilman acknowledged the borough's wrongdoing: "[m]y understanding is that you have to give enough information for individuals…[to] know where to look at a later date" (Jett, 2004, p. 19). Earlier that same year, a superior court judge ordered the Perth Amboy City Council to provide more information before closed meetings as their notices were too vague (Epstein, 2004).

When going into closed session, many states require public bodies to meet in open session beforehand. They also may require the public body to disclose the reason for going into a closed meeting as opposed to keeping it open. When it comes to the information required before going into closed session, thirty-seven states, including the District of Columbia, require that the specific exemption be stated. Twenty require the subject of the meeting to be disclosed as well. Five states go further by requiring either a transcript, "verbatim record," or audio or videotape of the meeting (Reporter's Committee for Freedom of the Press, 2006). It has been argued that these measures are extreme and will dampen discussion. It may be true that discussion will be restricted but when these requirements are enacted, public officials are more likely to be held accountable for their actions.

Notice and Agenda

New Jersey's open meetings law requires that all public bodies submit a yearly schedule of regular meetings by the 10th of January. In addition, a 48-hour notice is required of all special and closed meetings, in addition to rescheduled regular meetings. This notice must be posted in a public place designated for such announcements, given to at least two newspapers, and the clerk of the municipality ("Open Public Meetings Act", 1976, 10:4-18). Only four of the fifty states and the District of Columbia do not have any notice requirements; twenty-six have a specific time requirement or require schedules of regular meetings (Reporter's Committee for Freedom of the Press, 2006). See table 2.

Table 2: Notice Requirements for Regular Meetings by State

	Is a Meeting Schedule Required?	If Specified, By What Date?	If there an advance notice requirement, what is the time limit?
Arizona	No		24 hours
California[vi]	No		72 hours
Connecticut	Yes	January 31	None
Delaware	No		7 days
Hawaii	No		6 calendar days
Idaho	Yes		5 calendar days
Indiana	Yes		None
Iowa	No		24 hours
Massachusetts[vii]	No		48 hours
Minnesota	Yes		None
Nevada	No		3 working days
New Hampshire[viii]	No		24 hours
New Jersey	Yes	January 10	48 hours
New Mexico	No		24 hours
New York	No		7 days to news media; 72 hours in public
North Carolina	Yes		None
Oklahoma	Yes	December 15	1 business day
Pennsylvania	Yes		None
Rhode Island	Yes		48 hours
South Carolina	Yes		None
South Dakota	No		24 hours
Texas	No		72 hours
Utah	Yes		24 hours
Virginia	No		3 working days
West Virginia	No		5 days
Wisconsin	No		24 hours

Without proper notices, members of the public may not have enough time to make arrangements to attend meetings. In the extreme, this could result in a public session without any members of the public, which would clearly violate the spirit of the law. In 2005, the State's Department of Education recommended that members of the Plainfield school board receive Sunshine Law training after notice requirement violations. Adequate notice was not given for two meetings and it was found that some notices did not include the necessary elements (Weihrauch, 2005). In addition, the Board did not provide minutes in a timely fashion (Scott, 2004). In 2004, a county was accused of not properly advertising a freeholder retreat. The county administrator defended the violation by saying that the person responsible to advertise the retreat was not familiar with the law. He also noted that no decisions were made at this retreat (Mixon, 2004).

Along with notice, public bodies are required to make an agenda available to the

public prior to a meeting only if it wasn't part of the yearly announced schedule. This is a loophole with the current law. Like meeting minutes, where possible both notice and agendas should be posted on local government websites. The GRC has also received formal records complaints regarding access to meeting agendas. It is important that the agendas for both open and closed meetings are adequately detailed so that someone who did not attend the meeting can request information about it later. With respect to minutes, it is important that minutes include all topics discussed, including those that were not on the agenda. Again, this is to ensure that those who are unable to attend have at least an abbreviated version of the same information as those who did attend. It also allows for accountability of actions over the long term.

Public Comment

> If the power of governmental bodies goes unchecked, hasty and unwarranted action will be taken in the hope that the average citizen will not notice it until he is presented with a fait accompli. (Byron M. Baer in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, p. 104)

The Sunshine Law requires that all public bodies set aside a time for public comment regarding government issues that may be of interest to citizens of the municipality. All other logistics regarding public comment are at the discretion of the body ("Open Public Meetings Act", 1976, 10:4-12). Before the Sunshine Law was passed, citizens and activists voiced concern over the right to participate or comment at meetings. When discussing the law's passage in 1974, activists from the Alert Parents for Good Schools organization voiced that they specifically wanted to be able to speak about an agenda item before it was voted on (Hancock and Paterson in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, p. 230). Currently, it is not uncommon for public bodies to impose a time limit on comments or require citizens to sign up before the meeting for talk time.

In practice, there is a wide range of public comment policies and practices. At one town's board of education meeting in November 2005, people were told to set up a meeting with the superintendent when they had a question. Many members of the public complained. The meeting is "a public meeting. Why have a board meeting if you don't answer the questions of the public?" asked a resident of the district (Quinn, 2005, p. 1). The length of comment periods as well as the topics that can be addressed varies greatly. Some towns limit public comment to four minutes, with the intention of preventing comments from getting too specific to the person's own problem or situation (Quinn, 2005). In practice, sometimes these time limits are extended (Quinn, 2004). Other towns impose a limitation on participation: speaking only about items on the agenda. This effort is to reduce the amount of remarks that are not directly related to the meeting's topic (Ortiz, 2005). Another town imposes a three-minute rule but allow residents to address whatever topics they want (Yellin, 2005a).

Not all states give the public the right to participate in meetings. Ten states specifically give the public the right to comment; twenty-seven specifically do not.

Three states give the public body discretion regarding public comment. The remaining fourteen do not address the issue. Of those ten states that give the public the right to comment, six allow public bodies to impose time limits. Three states[ix] require that all public comments made at meetings appear in the minutes (Reporter's Committee for Freedom of the Press, 2006). Participation allows for feedback to public bodies, and due to the fact that public bodies represent the public, public comment should be allowed in some form or another. In the 1974 hearing for the Sunshine Law, one mayor stated: "[p]ublic participation in the workings of government is essential to the health of democracy" (Arthur J. Holland in *Public Hearing before Assembly, Judiciary Committee, on A-1030, The Open Public Meetings Act*, 1974, p. 223) While public bodies need to have some discretion in regulating public comment at their meetings, such as being able to establish time limits, it is important that sign-in procedures not be onerous, that limitations on subject matter be minimal and that the public have an opportunity to comment on significant business before the body takes a final vote. To do otherwise would discourage public participation.

Video and Audio Recordings

The right to videotape a meeting has been an ambiguous one in New Jersey. In 1984, a court decision upheld the right for citizens to videotape meetings ("Let's roll the videotape, you can't be serious", 2005). In October of 2000, a member of the public, Robert Tarus, tried to videotape a public meeting, but many audience members objected (Mazier, 2005). When asked to put the camera at the front of the room so the public would not be taped, he refused (Mazier, 2005). In November 2005, an appellate court ruled in Tarus v. Borough of Pine Hill that there is no common law right to videotape meetings (Bird, 2006). Currently, this case is on appeal to the Superior Court.

Thirty-one states allow for the public to audiotape meetings. All but one of these states also explicitly allow the public to video record meetings. Three states (Kentucky, Montana, and West Virginia[x]) only allow recordings to be done by news media. Florida, Hawaii, Illinois, and Minnesota require that some or all closed meetings be recorded by audio or videotape or transcribed by a court reporter (Reporter's Committee for Freedom of the Press, 2006). Transparency in public meetings is improved when any and all members of the public are allowed to audio or videotape an open meeting. Public bodies can and should impose reasonable rules to prevent taping by the public from causing significant disruption of their meeting. A balance need to be struck so that these rules do not abridge the right of members of the public to videotape at public meetings. This is especially critical for accountability with the limited availability of reporters and news personnel to appropriately cover all government meetings.

While the public has the right to tape, municipalities can also take it upon themselves to record meetings, and make those tapes available for public inspection and purchase. Many municipalities do this already (Moore, 2006). One of the biggest barriers to video-taping meetings is a lack of resources. Not all towns have the money to buy the equipment or manpower to operate it. Other municipalities have the resources but choose not to tape meetings. In the mid-1980s, Assemblyman Baer suggested changes to the law, which included a requirement for all closed sessions to

be tape-recorded (Kamen, 1986). If closed sessions are taped, they should not replace the minute requirement. Hard copies of meeting minutes are more accessible and permanent over the long-term.

Twenty-four percent of GRC complaints regarding meetings had to do with video- or audiotapes. In some cases, the complaints had to do with the copying of the tape. In one case, the complainant felt that tapes requested were improperly redacted. After mediation with the GRC, the tape was released without such redactions (GRC Case 2003-80). (The complaint was then pursued for reasons unrelated to the Open Public Meetings Act.) While allowing members of the public to record meetings is a good policy, it is also in the best interest of openness generally if municipalities themselves also record their meetings. Resources are clearly the biggest issue here but many large and small municipalities are already taping meetings. When meetings are videotaped and repeatedly played on local cable networks, an even greater number of residents have access to the information regarding their local government.

Electronic Meetings

Because the law was passed in the 1970s, it is not up-to-date with current information technology and this leads to confusion as to what is currently allowed under the law. Emails and teleconferences are constantly debated as a proper means of communicating with regard to open meetings. Since a quorum must be present for a meeting, currently under the Sunshine Law it is unclear whether sending and responding to emails about public business is considered a meeting and in turn, is subject to the law.

As for teleconferences, it is currently not uncommon for a member who cannot physically be at a meeting to participate by speakerphone given that all members of the public can hear. Having a completely virtual meeting seems to be harder to manage in accordance with the law and arguably would not embrace the spirit of openness and full participation.

Twenty states allow meetings to be conducted by telephone providing that the law is still followed in other respects. These meetings would need to have proper notice and require public access. Five states prohibit meetings held by teleconferences because members of the public body are required to be physically present in order to conduct a meeting. Nebraska does not allow teleconferences but instead allows videoconferences for statewide public bodies. There are limits to the Nebraska law, however: No more than half of the body's meetings can be held this way, and at least one member must be present in front of the public (Nebraska Open Meetings Act as referenced in Reporter's Committee for Freedom of the Press, 2006). Most other states either do not address this issue, or state that teleconferences "can't be used to circumvent" the law (Reporter's Committee for Freedom of the Press, 2006).

Since the New Jersey Sunshine Law does not address teleconferences, public bodies tend to use discretion and rely on court rulings and laws from other jurisdictions. As mentioned earlier, a quorum must be present for a meeting to take place. Currently, if members of a body wanted to hold a teleconference with all members calling in, it

would likely violate the act since there is no mechanism for the public to participate. The use of speakerphone by one member of a public body is more readily accepted, since the rest of the public body is in one place where members of the public can hear that person. An unpublished court decision[xi] by a New Jersey appellate court allowed members to "attend" meetings by use of speakerphone (New Jersey School Boards Association, 2003).

Because this previously mentioned decision was unpublished, "it is not binding on any other court–therefore, it is merely instructive"(New Jersey School Boards Association, 2003). However, as stated in Koch v. Board of Education of Jackson Township, using speakerphone is "contrary to the purposes and intent of the Open Public Meetings Act" (The Honorable Eugene D. Serpentelli as quoted in New Jersey School Boards Association, 2003). In response to a clarification request by an attorney representing boards of education in New Jersey, the attorney general stated in 2000 that:

> …on a number of occasions, members of State boards and public bodies subject to the Open Public Meetings Act and represented by this office have participated in pubic meetings by means of speaker telephones without first obtaining a court order. In those instances all of the other requirements of the OPMA were followed and appropriate measures were taken to ensure that members of the public attending the meeting had the opportunity to hear the member who was not physically present participate in and take action in connection with the public meeting. (New Jersey School Boards Association, 2003)

This provides some insight on how teleconferences might be treated to comply with the Sunshine Law.

Only eight states have provisions requiring that emails be subject to their open public meetings laws. Two states require that a gathering be present to be subject to the law. This small number might reflect the age of the acts, many of which may have not been updated in recent years to include electronic communications. Four states prohibit the use of emails as meetings; in Ohio, there is a requirement that members must be physically present to conduct a meeting. In Massachusetts, emails may only be used to distribute informational materials, such as agendas and reports, to prepare for meetings (Reporter's Committee for Freedom of the Press, 2006). The use of email to distribute information such as agendas, reports, draft minutes and the like to board members can certainly make board operations more convenient and efficient, but back and forth communication between board members should not be permitted because it could turn into an informal meeting. The use of chat rooms or instant messaging is even more likely to constitute a meeting, since response is in real-time.

All of these means of communication can be problematic because they do not allow for an actual meeting location, because there is no one place for the public to go to witness the meeting or to participate. Finally, these virtual meetings would shut out anyone who did not have access a computer and the internet. Since New Jersey has not addressed emails as meetings, we can look at a similar open meetings law.

In opinion 98-28, the Attorney General of Florida concluded that if

> one board member e-mails another board member a report to be discussed at an upcoming meeting, the Florida sunshine law has not been violated. If that same board member were to e-mail the report and invite comments from other board members, a violation has occurred. (Reporter's Committee for Freedom of the Press, 2006)

When revising the Sunshine Law, issues involving the use of telecommunications need to be addressed in order to avoid confusion and possible inadvertent violations.

Violations: Sanctions, Fines, and Attorney's Fees

> The biggest problem with the existing Open Public Meetings Act, is that it lacks a meaningful enforcement mechanism. The current law leaves enforcement up to the county prosecutors, who rarely ever enforce it, and to private citizens, who are not allowed to recover their attorney fees if they prevail in court.
> (John Paff as quoted in O'Shea, 2006)

While the law allows for public bodies to be fined for violations, there have been very few fines imposed. In 2005, the Hackensack City Council promised to comply with the law after a settlement. The suit was filed by North Jersey Media Group, owner of *The Record*, against the council and the clerk for allegedly holding closed meetings that discussed public business and for taking more than 60 days to fulfill a minutes request. The council denied such allegations. *The Record's* attorney, Dina Sforza said the purpose for "filing the complaint was to ensure that the meetings are open to the public and if there are matters that need to be discussed in closed session that they be done appropriately and in compliance with the law" (Alvarado, 2005).

Many states, though not all, allow for the imposition of fines when open public meetings laws are violated. Ten states do not impose any fines at all, and while three others allow fines to be imposed, they do not specify any particular amount. Rhode Island has the highest first offense fine, which is up to $5,000. Table 3 presents a list of the fine ranges for first offense violations. Seventeen states require that the offense be "knowing," "willful," "intentional," and/or "purposeful."

Table 3: Fine Ranges for First Offense

	Fine Range	Intent Requirement
Arizona	Up to $500	
Florida	Up to $500	
Georgia	Up to $500	“Knowing and willful”
Idaho	Up to $150 for first offense; up to $300 for subsequent offenses	“Knowingly”
Illinois	Up to $1500	
Iowa	$100 to $500	
Kansas	Up to $500	
Kentucky	Up to $100	
Louisiana	Up to $100	“Knowing and willfully”
Maine	$500	“Willful”
Maryland	Up to $100	“Willfully;” “Knowing”
Massachusetts	Up to $1000	
Michigan	Up to $1000 for first offense; up to $2000 for subsequent offenses	“Intentionally”
Minnesota	Up to $300	“Intentionally”
Missouri	Up to $1000 for “knowing” violation; Up to $5000 for “purposeful” violation	“Knowingly;” “Purposefully”
Nebraska	Up to $500	“Knowing”
New Jersey	$100 for first offense; $500 for subsequent offenses	“Knowingly”
New Mexico	Up to $500	
Ohio	$500	
Oklahoma	Up to $500	
Pennsylvania	Up to $100	“Intent and purpose”
Rhode Island	Up to $5000	“Willful”
South Dakota	Up to $200	
Texas	$100 to $500	“Knowingly”
Vermont	Up to $500	“Knowing;” “Intentionally”
Virginia	$250 to $1000 for first offense; $1000 to $2500 for subsequent offenses	“Willfully and knowingly”
Washington	$100	“Knowing”
West Virginia	$100 to $500 for first offense; $100 to $1000 for subsequent offenses	“Knowing and willful”
Wisconsin	$25 to $300	

When municipal bodies violate the Sunshine Law, they are rarely seriously sanctioned. In 2004, the Monmouth County Board of Freeholders was let off the hook for holding closed sessions without proper notice. They also did not have closed session minutes available upon request and promised they would approve all outstanding minutes. Guy Baehr, board member of the New Jersey Foundation for Open Government, commented that "the freeholders are getting off with less than a slap on the wrist" (Rizzo, 2004, p. 1). After reading a report about the Board's minutes violations from the prior three years, Baehr noted that "they violated the law 17 times and could have been fined $1,700. That's not going to break the county's budget but certainly it would underline the importance of the Sunshine Law" (Rizzo, 2004, p. 1). Currently, there is little sanctioning of public bodies that do violate the Sunshine Law.

Another major problem with the current law is the lack of enforcement. As it stands now, a member of the public can take a public body to court for violating the Sunshine Law. Another option is to file a formal complaint with the county prosecutors' office. Going to court takes a significant amount of time and money, which limits the number of people willing to file cases. It is unclear how many complaints are filed with county prosecutors and what are the final outcomes of those complaints since access to that information is limited. If a resident did want to file a complaint with a county prosecutor, currently, there is little public information available on how to do so.

The Sunshine Law does not allow for those who bring a successful legal action against a public body to recover attorney fees. In August 2006, it was determined that attorney fees could be recouped in court for hiring a lawyer to access public records under the Sunshine Law's sister statute, the Open Public Records Act (Kidd, 2006). This reasoning should also be applied for members of the public to recover attorney fees for challenging meetings violations. Some states allow for fees to be recovered, but this is discretionary. Minnesota requires that "specific intent to violate the law" be present before attorney fees are awarded. New Jersey is one of only four states that do not specifically give citizens the right to recover attorney fees or costs incurred. Maine, Massachusetts, and South Dakota allow only for costs related to the case, but not fees, to be recovered (Reporter's Committee for Freedom of the Press, 2006).

Ways to Improve Openness in Meetings

Paula Franzese, the Peter W. Rodino Professor of Law at Seton Hall University School of Law, and Daniel J. O'Hern, Sr, a retired Associate Justice of the New Jersey Supreme Court, wrote an article in the *Rutgers Law Review* titled "Restoring the Public Trust: An Agenda For Ethics Reform of State Government and a Proposed Model for New Jersey." While this article touches upon ethics violations in general, it offers some valuable advice that can be appropriately applied to open meetings.

Franzese and O'Hern suggest distribution of a plain-language ethics guide for employees and third-parties (Franzese & O'Hern Sr., 2005). A similar guide for the Sunshine Law would benefit those who come into contact with the law on a regular basis. This plain-language guide to open meetings should be initiated in conjunction with widespread education and training of government representatives and attorneys. Currently, school board members throughout the state are required to receive ethics training within the first year of their term (James-Beavers, 1999). This type of training could be used as a model and made mandatory for all members of public bodies. While the training would not have to be restricted to open meetings issues they should be a primary focus. Revised laws alone will not change a culture of secrecy. Education and training are also necessary for individuals to full understand their responsibilities as public officials with respect to open meetings.

Some form of open public meetings commission, ombudsman, or oversight office should be considered for the state. As it now stands, there is no central body to conduct training on open meetings and educate the public as to how to file an Open Public Meetings Act violation. There is also no central authority which logs and tracks complaints concerning open meeting violations. In the United States, there are several models of open meetings oversight. In practice, all of these oversight bodies operate differently and the models are quite complex. Some bodies can offer binding opinions while others can only write advisory and non-binding opinions.

The models include commissions, ombudsmen, commissions which function largely like an ombudsman, offices with statutory involvement under the state's attorney general, and freestanding offices of information practices. Connecticut, Hawaii, Maryland, Minnesota, New York, and Virginia all have some sort of oversight body. Serious consideration needs to be given to what type of oversight model would work most effectively in the New Jersey context.

Conclusion

Many towns around the State are doing a good job of implementing the Sunshine Law. Unfortunately, others continue to get away with limiting access, either intentionally or through ignorance. If there was more uniformity in the application of the law throughout the State, the Sunshine Law would be more effective. When legislators look to revamp the Sunshine Law, they should pay particular attention to the following areas:

- *Minutes* of meetings should be complete and accurately reflect what transpired at the meeting. An explicit time limit is necessary to establish when minutes need to be released after a public meeting is held.
- *Closed sessions* should not be used for routine matters. There should be more of a check on closed meetings so that topics which are not exempt under the law are discussed in open session.
- *Notices and agendas* should be timely and complete. They should contain enough information so that anyone who wants to understand what will be discussed at a meeting is able to and whoever wants to attend a meeting can.
- *Public comment* is crucial for a good working government. While limits may need to be imposed, the public should have a timely outlet for suggestions, questions, or concerns they might have during a public meeting.
- *Video and audio recording* of all public meetings should be affirmed as a right of the public. Where feasible, municipalities should also consider taking it upon themselves to record meetings to keep as public records.
- *Electronic meetings* must be addressed in the law to keep it up-to-date with the current information and technology era. The longer the State waits to address this issue, the more inadvertent violations of the law will occur.
- *Attorney fees* should be recoverable, and where necessary, stricter *sanctions* need to be imposed.

A change in the Sunshine Law is a good first step, but there needs to be a series of initiatives to open up public meetings in State. We are recommending three such steps.

- *Training and education* are necessary components to change culture. All individuals who serve on public bodies should be required to receive training on the key components of the Sunshine Law.
- A *plain-language guide* on the Sunshine Law should be developed and distributed to government employees and elected officials throughout the State.
- A model of *open meetings oversight* should be considered to train public employees and educate the public about how to file an open meetings violation. Such a body could have the power to sanction and fine public bodies that do not comply with law, or solely offer advisory opinions.

The New Jersey Sunshine Law is an important component of democratic accountability and governmental transparency. It has great potential, but implementation and practice need to be better. With more enforcement, better training, and more specific helpful guidelines public meetings in the state can be more open.

Methodology

The empirical data for this report came from a number of sources including archival documents, government databases, news articles, and a comprehensive guide to open government laws. Historical documents regarding legislative actions were obtained from the New Jersey State Library. News articles were collected from *Lexis-Nexis* and *Access World News* databases with the bulk of the articles being published between January 2004 to the September 2006.

The report also references complaints made to the Government Records Council of New Jersey. The GRC lists all of its cases on its website. Complaints regarding meetings were identified by using the search words "minutes" and "meetings." The complaints identified began with the initiation of the GRC in 2003 until May 10, 2006. See table 4 for a breakdown of the relevant cases.

Table 4: GRC case breakdown

Total GRC Cases		**697**
GRC Cases Regarding Meetings		
	Minutes	20
	Agendas	2
	Notices	2
	Audio/Videotapes	9
	Transcripts	2
	Other	3
	Subtotal	*38*

All information on state comparisons were gathered from the fifth edition of the *Open Government Guide* put together by The Reporter's Committee for Freedom of the Press (http://www.rcfp.org). The Open Government Guide outlines the freedom of information and open meetings laws in all fifty states and the District of Columbia. This fifth edition was updated in 2006, providing the most up-to-date information about state's open meetings laws.

Glossary

*Term definitions are taken from the NJ Open Public Meetings Law
**Term definitions are taken from the NJ Open Public Records Law

Adequate notice* means written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken.

Custodian** of a government record or custodian means in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be.

Emergency meetings* may be held when an urgent and important matter arises and a delay of the meeting for the purpose of providing adequate notice would likely result in substantial harm to the public interest. The minutes of such meetings must include the nature of the urgency and importance of the matter discussed and the nature of harm possible if the meeting is not held promptly.

Fees apply to the researching, releasing, and copying of documents requested formally under US Freedom of Information Act or state counterparts such as the NJ Open Public Records Act.

The **Freedom of Information Act** is a federal statute that allows anyone to request and review or secure documents from federal agencies that are considered public records.

Government record** refers to any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision.

Meeting* means and includes any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body.

Minutes* are written records of meetings by public bodies. They include the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required by law, which shall be promptly available to the public.

The **National Freedom of Information Coalition** (NFOIC) is a loose affiliation of member state organizations that seek to protect the public's right to know regarding

FOIA and state counterparts. It meets annually.

The **New Jersey Foundation for Open Government** (NJFOG) is a non-profit, non-partisan organization that advocates transparency in local and state government.

The **Open Public Meetings Act** is a New Jersey state statute that allows the general public to attend meetings of public agencies.

The **Open Public Records Act** is a New Jersey state statute that allows anyone to request and review or secure documents from state agencies that are considered public records.

Public body* means a commission, authority, board, council, committee or any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, or collectively authorized to spend public funds.

Public business* means and includes all matters which relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business.

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[i] Minutes are only kept online for 2005 and 2006 due to limited space.
[ii] "A summary of the subjects acted on and those members present at a meeting must be written and made available to the public for inspection within two business days of the adjournment. The minutes of the meeting shall be promptly recorded and open to

public inspection once approved as official by the agency, but in no case later than immediately following the next regular agency meeting. O.C.G.A. § 50-14-1(e)(2)." (Reporter's Committee for Freedom of the Press, 2006)

[iii] Must be posted on municipal website as well (Reporter's Committee for Freedom of the Press, 2006).

[iv] "Minutes must be recorded within 30 days and are a public record. § 25-41-11; Op. Att'y Gen. July 16, 1986 to Bennie G. Thompson. Draft minutes are also a public record, and must be made available within 14 working days after a request is made. Op. Att'y Gen. Aug. 22, 1983 to Mike Davis; Op. Att'y Gen. Jan. 2, 1986 to Charles S. Tindall III." (Reporter's Committee for Freedom of the Press, 2006)

[v] Must also post minutes on internet. VA must release draft minutes within ten days; then release final minutes within three days of approval. (Reporter's Committee for Freedom of the Press, 2006)

[vi] Must also send agenda or agenda packet to those who request. (Reporter's Committee for Freedom of the Press, 2006)

[vii] Excluding Sundays. (Reporter's Committee for Freedom of the Press, 2006)

[viii] Excluding Sundays. (Reporter's Committee for Freedom of the Press, 2006)

[ix] Somewhat ironically, two of the three states that require comments be written into the minutes do not specifically give the right to comment.

[x] "W. Va. Code § 6-9A-9. "While the amendment contemplates video and sound recordings made at meetings by radio and television stations, it would seem that the right to make such recordings should also be extended to reporters and other members of the public." (Reporter's Committee for Freedom of the Press, 2006)

[xi] An unreported court opinion or decision, according to Zimmerman's Research Guide at LexisNexis.com, is one that "has not been published in any official or near-official case reporter." Such court decisions can often be found in newspapers and law websites. Hegarty and Romeo v. Old Bridge Board of Education Appellate Division Dkt. No. A-6300-95T3, decided Jan. 9, 1997.