

2017 -- S 0709

=====
LC002182
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

—————
A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - OPEN MEETINGS

Introduced By: Senator Michael J. McCaffrey

Date Introduced: April 04, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-46-1, 42-46-2, 42-46-4, 42-46-5, 42-46-6, 42-46-7, 42-46-8,
2 42-46-11 and 42-46-13 of the General Laws in Chapter 42-46 entitled "Open Meetings" are
3 hereby amended to read as follows:

4 **42-46-1. Public policy.**

5 It is essential to the maintenance of a democratic society that public business be
6 performed in an open and public manner and that the citizens be advised of and aware of the
7 performance of public officials and the deliberations and decisions that go into the making of
8 public policy. [Advances in technology should be used to allow and enable the public increased](#)
9 [opportunities to observe the performance and deliberations of their public officials as well as](#)
10 [provide greater access to material used in the course of the making of public policy.](#)

11 **42-46-2. Definitions.**

12 As used in this chapter:

13 (1) "Meeting" means the convening of a public body to discuss and/or act upon a matter
14 over which the public body has supervision, control, jurisdiction, or advisory power. As used
15 herein, the term "meeting" expressly includes, without limiting the generality of the foregoing,
16 so-called "workshop," "working," or "work" sessions [or "retreats"](#).

17 (2) ["Joint meeting" means the convening of two \(2\) or more public bodies to discuss](#)
18 [and/or act upon a matter over which the public bodies have supervision, control, jurisdiction, or](#)
19 [advisory power. As used herein, the term "meeting" expressly includes, without limiting the](#)

1 generality of the foregoing, so-called "workshop," "working," or "work sessions", or "retreats."

2 ~~(2)~~(3) "Open call" means a public announcement by the chairperson of the committee that
3 the meeting is going to be held in ~~executive~~ closed session and the chairperson must indicate
4 which exception of § 42-46-5 is being involved.

5 ~~(3)~~(4) "Public body" means any department, agency, commission, committee, board,
6 council, bureau, or authority or any subdivision thereof of state or municipal government or any
7 library that funded at least twenty-five percent (25%) of its operational budget in the prior budget
8 year with public funds, and shall include all authorities defined in § 42-35-1(b). As used herein,
9 the term "public body" expressly includes, without limiting the generality of the foregoing, so-
10 called "advisory panels," "review panels," "review committees," "task forces." For purposes of
11 this section, any political party, organization, or unit thereof meeting or convening is not and
12 should not be considered to be a public body; provided, however, that no such meeting shall be
13 used to circumvent the requirements of this chapter. For purposes of this section, members-elect
14 of a public body shall be subject to the requirements of this chapter.

15 ~~(4)~~(5) "Quorum", unless otherwise defined by applicable law, means a simple majority of
16 the membership of a public body. For purposes of this section, ex officio nonvoting members, and
17 members of a public body who have recused themselves pursuant to §§36-14-5 and 36-14-6 shall
18 not be included in calculating whether a public body meets a quorum.

19 (6) "Rolling quorum" means any series of gatherings of members of a public body at
20 which:

21 (i) Less than a quorum is present, whether in person or by means of electronic
22 communication, at any individual gathering;

23 (ii) The members of the public body attending one or more of the gatherings collectively
24 constitute a quorum; and

25 (iii) The series of gatherings was held to discuss and/or act upon a matter over which the
26 public body has supervision, control, jurisdiction, or advisory power.

27 ~~(5) "Prevailing plaintiff" includes those persons and entities deemed "prevailing parties"~~
28 ~~pursuant to 42 U.S.C. § 1988.~~

29 ~~(6)~~(7) "Open forum" means the designated portion of an open meeting, if any, on a
30 properly posted notice reserved for citizens to address comments to a public body relating to
31 matters affecting the public business.

32 (8) "Recordation" means the recording of the sound or video of an open meeting by use
33 of any electronic device designed to capture audio, photographs, or video of the public body.

34 (9) "Ceremonial speech or comment" means any comment or speech made by a member

1 of a public body meant to express thanks, condolences, or other expressions of good will,
2 fellowship, or fraternity.

3 **42-46-4. Closed meetings.**

4 (a) By open call, a public body may hold a meeting closed to the public upon an
5 affirmative vote of the majority of its members. A meeting closed to the public shall be limited to
6 matters allowed to be exempted from discussion at open meetings by § 42-46-5. The vote of each
7 member on the question of holding a meeting closed to the public and the reason for holding a
8 closed meeting, by a citation to a subdivision of § 42-46-5(a), and a statement specifying the
9 nature of the business to be discussed, shall be recorded and entered into the minutes of the
10 meeting.

11 (b) No public body shall discuss in closed session any public matter which does not fall
12 within the citations to § 42-46-5(a) referred to by the public body in voting to close the meeting,
13 even if these discussions could otherwise be closed to the public under this chapter.

14 ~~(b)~~(c) All votes taken in closed sessions shall be disclosed once the session is reopened;
15 provided, however, ~~a~~ the specific vote taken in a closed session need not be disclosed for the
16 period of time during which its disclosure would jeopardize any strategy, negotiation or
17 investigation undertaken pursuant to discussions conducted under § 42-46-5(a); and further
18 provided, however, the public body must disclose that a vote did occur. The subject and results
19 from a vote not disclosed at a meeting shall be disclosed at the next regularly scheduled meeting
20 of the public body unless the public body takes a vote in a properly noticed closed session
21 pursuant to §42-46-5 affirming that disclosure of the vote would continue to jeopardize a strategy,
22 negotiation or investigation exempt from disclosure under §42-46-5(a) and announces in public
23 that such a vote was taken.

24 ~~**42-46-5. Purposes for which meeting may be closed --- Use of electronic**~~
25 ~~**communications --- Judicial proceedings --- Disruptive conduct. Purposes for which meeting**~~
26 ~~**may be closed.**~~

27 (a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one
28 or more of the following purposes:

29 (1) Any discussions of the job performance, character, or physical or mental health of a
30 person or persons provided that such person or persons affected shall have been notified in
31 advance in writing and advised that they may require that the discussion be held at an open
32 meeting.

33 Failure to provide such notification shall render any action taken against the person or
34 persons affected null and void. Before going into a closed meeting pursuant to this subsection, the

1 public body shall state for the record that any persons to be discussed have been so notified and
2 this statement shall be noted in the minutes of the meeting.

3 (2) ~~Meetings or work Sessions sessions~~ pertaining to collective bargaining ~~or litigation,~~
4 ~~or work sessions pertaining to collective bargaining or litigation;~~ provided, however, a public
5 body may not enter closed session for purposes of discussion with a representative for a group of
6 employees.

7 (3) Meetings to discuss actual or imminent litigation. For purposes of this section, a
8 public body may only enter closed session for discussions regarding actual or imminent litigation
9 concerning the public body or persons employed by the public body. Mere presence of the public
10 body's legal counsel does not satisfy the requirements for a closed session. In citing to this
11 subsection, the public body shall list the names of all parties to the litigation as set forth in the
12 case caption, the case number, and court or administration agency where the matter is being
13 litigated.

14 ~~(3)~~(4) Discussion regarding the matter of security including, but not limited to, the
15 deployment of security personnel or devices.

16 ~~(4)~~(5) Any investigative proceedings regarding allegations of misconduct, either civil or
17 criminal.

18 ~~(5)~~(6) Any discussions or considerations related to the acquisition or lease of real
19 property for public purposes, or of the disposition of publicly held property wherein advanced
20 public information would be detrimental to the interest of the public.

21 ~~(6)~~(7) Any discussions related to or concerning a prospective business or industry
22 locating in the state of Rhode Island when an open meeting would have a detrimental effect on
23 the interest of the public.

24 ~~(7)~~(8) A matter related to the question of the investment of public funds where the
25 premature disclosure would adversely affect the public interest. Public funds shall include any
26 investment plan or matter related thereto, including, but not limited to, state lottery plans for new
27 promotions.

28 ~~(8)~~(9) Any executive sessions of a local school committee exclusively for the purposes:
29 (i) of conducting student disciplinary hearings; or (ii) of reviewing other matters which relate to
30 the privacy of students and their records, including all hearings of the various juvenile hearing
31 boards of any municipality; provided, however, that any affected student shall have been notified
32 in advance in writing and advised that he or she may require that the discussion be held in an
33 open meeting.

34 Failure to provide such notification shall render any action taken against the student or

1 students affected null and void. Before going into a closed meeting pursuant to this subsection,
2 the public body shall state for the record that any students to be discussed have been so notified
3 and this statement shall be noted in the minutes of the meeting.

4 ~~(9)(10)~~ Any hearings on, or discussions of, a grievance filed pursuant to a collective
5 bargaining agreement.

6 ~~(10)(11)~~ Any discussion of the personal finances of a prospective donor to a library.

7 (b) ~~No meeting of members of a public body or use of electronic communication,~~
8 ~~including telephonic communication and telephone conferencing, shall be used to circumvent the~~
9 ~~spirit or requirements of this chapter; provided, however, these meetings and discussions are not~~
10 ~~prohibited.~~

11 (1) ~~Provided, further however, that discussions of a public body via electronic~~
12 ~~communication, including telephonic communication and telephone conferencing, shall be~~
13 ~~permitted only to schedule a meeting.~~

14 (2) ~~Provided, further however, that a member of a public body may participate by use of~~
15 ~~electronic communication or telephone communication while on active duty in the armed services~~
16 ~~of the United States.~~

17 (3) ~~Provided, further however, that a member of that public body, who has a disability as~~
18 ~~defined in chapter 87 of title 42 and:~~

19 (i) ~~Cannot attend meetings of that public body solely by reason of his or her disability;~~
20 ~~and~~

21 (ii) ~~Cannot otherwise participate in the meeting without the use of electronic~~
22 ~~communication or telephone communication as reasonable accommodation, may participate by~~
23 ~~use of electronic communication or telephone communication in accordance with the process~~
24 ~~below.~~

25 (4) ~~The governor's commission on disabilities is authorized and directed to:~~

26 (i) ~~Establish rules and regulations for determining whether a member of a public body is~~
27 ~~not otherwise able to participate in meetings of that public body without the use of electronic~~
28 ~~communication or telephone communication as a reasonable accommodation due to that~~
29 ~~member's disability;~~

30 (ii) ~~Grant a waiver that allows a member to participate by electronic communication or~~
31 ~~telephone communication only if the member's disability would prevent him/her from being~~
32 ~~physically present at the meeting location, and the use of such communication is the only~~
33 ~~reasonable accommodation; and~~

34 (iii) ~~Any waiver decisions shall be a matter of public record.~~

1 (c) ~~This chapter shall not apply to proceedings of the judicial branch of state government~~
2 ~~or probate court or municipal court proceedings in any city or town.~~

3 (d) ~~This chapter shall not prohibit the removal of any person who willfully disrupts a~~
4 ~~meeting to the extent that orderly conduct of the meeting is seriously compromised.~~

5 **42-46-6. Notice.**

6 (a) All public bodies shall give written notice of their regularly scheduled meetings at the
7 beginning of each calendar year. The notice shall include the dates, times, and places of the
8 meetings and shall be provided to members of the public upon request and to the secretary of
9 state at the beginning of each calendar year in accordance with subsection (f). If the dates, times,
10 or places of the regularly scheduled meetings are changed during the calendar year, the public
11 body shall update the written notice and refile them with the secretary of state in accordance with
12 subsection (f) of this section.

13 (b) Public bodies shall give supplemental written public notice of any meeting within a
14 minimum of forty-eight (48) hours excluding weekends and state holidays before the date of the
15 hearing.

16 (c) This supplemental notice shall include the date the notice was posted, the date, time
17 and place of the meeting, and a statement specifying the nature of the business to be discussed.

18 (d) Copies of the supplemental notice shall be maintained by the public body for a
19 minimum of one year in a format that allows for their physical retrieval. ~~Nothing contained herein~~
20 ~~shall prevent a public body, other than a school committee, from adding additional items to the~~
21 ~~agenda by majority vote of the members. School committees may, however, add items for~~
22 ~~informational purposes only, pursuant to a request, submitted in writing, by a member of the~~
23 ~~public during the public comment session of the school committee's meetings. Said informational~~
24 ~~items may not be voted upon unless they have been posted in accordance with the provisions of~~
25 ~~this section. Such additional items shall be for informational purposes only and may not be voted~~
26 ~~on except where necessary to address an unexpected occurrence that requires immediate action to~~
27 ~~protect the public or to refer the matter to an appropriate committee or to another body or official.~~

28 (e) Nothing contained herein shall prevent a public body, from adding additional items to
29 the agenda by majority vote of the members; provided, however, such items shall not be used to
30 circumvent the notice requirement of subsection (b) of this section. Such additional items shall be
31 for informational purposes only and may not be voted on except when necessary to address an
32 unexpected occurrence that requires immediate action to protect the public or to refer the matter
33 to an appropriate committee or to another body or official.

34 (e)(f) Written public notice shall include, but need not be limited to, posting a copy of the

1 [supplemental](#) notice at the principal office of the public body holding the meeting, or if no
2 principal office exists, at the building in which the meeting is to be held, and in at least one other
3 prominent place within the governmental unit, and electronic filing of the [supplemental](#) notice
4 with the secretary of state pursuant to subsection (f) [of this section and making a copy available](#)
5 [on the public body's website if a website is maintained](#); ~~however, nothing contained herein shall~~
6 ~~prevent a public body from holding an emergency meeting, upon an affirmative vote of the~~
7 ~~majority of the members of the body when the meeting is deemed necessary to address an~~
8 ~~unexpected occurrence that requires immediate action to protect the public. If an emergency~~
9 ~~meeting is called, a meeting notice and agenda shall be posted as soon as practicable and shall be~~
10 ~~electronically filed with the secretary of state pursuant to subsection (e) and, upon meeting, the~~
11 ~~public body shall state for the record and minutes why the matter must be addressed in less than~~
12 ~~forty eight (48) hours and only discuss the issue or issues which created the need for an~~
13 ~~emergency meeting. Nothing contained herein shall be used in the circumvention of the spirit and~~
14 ~~requirements of this chapter.~~

15 (d) ~~Nothing within this chapter shall prohibit any public body, or the members thereof,~~
16 ~~from responding to comments initiated by a member of the public during a properly noticed open~~
17 ~~forum even if the subject matter of a citizen's comments or discussions were not previously~~
18 ~~posted, provided such matters shall be for informational purposes only and may not be voted on~~
19 ~~except where necessary to address an unexpected occurrence that requires immediate action to~~
20 ~~protect the public or to refer the matter to an appropriate committee or to another body or official.~~
21 ~~Nothing contained in this chapter requires any public body to hold an open forum session, to~~
22 ~~entertain or respond to any topic nor does it prohibit any public body from limiting comment on~~
23 ~~any topic at such an open forum session. No public body, or the members thereof, may use this~~
24 ~~section to circumvent the spirit or requirements of this chapter.~~

25 (e) ~~A school committee may add agenda items not appearing in the published notice~~
26 ~~required by this section under the following conditions:~~

27 (1) ~~The revised agenda is electronically filed with the secretary of state pursuant to~~
28 ~~subsection (f), and is posted on the school district's website and the two (2) public locations~~
29 ~~required by this section at least forty eight (48) hours in advance of the meeting;~~

30 (2) ~~The new agenda items were unexpected and could not have been added in time for~~
31 ~~newspaper publication;~~

32 (3) ~~Upon meeting, the public body states for the record and minutes why the agenda~~
33 ~~items could not have been added in time for newspaper publication and need to be addressed at~~
34 ~~the meeting;~~

1 (4) ~~A formal process is available to provide timely notice of the revised agenda to any~~
2 ~~person who has requested that notice, and the school district has taken reasonable steps to make~~
3 ~~the public aware of this process; and~~

4 (5) ~~The published notice shall include a statement that any changes in the agenda will be~~
5 ~~posted on the school district's web site and the two (2) public locations required by this section~~
6 ~~and will be electronically filed with the secretary of state at least forty-eight (48) hours in advance~~
7 ~~of the meeting.~~

8 (f) ~~All notices required by this section to be filed with the secretary of state shall be~~
9 ~~electronically transmitted to the secretary of state in accordance with rules and regulations which~~
10 ~~shall be promulgated by the secretary of state. This requirement of the electronic transmission and~~
11 ~~filing of notices with the secretary of state shall take effect one year after this subsection takes~~
12 ~~effect.~~

13 (g) ~~If a public body fails to transmit notices in accordance with this section, then any~~
14 ~~aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8.~~

15 (h) Beginning January 1, 2018, all public bodies shall post their electronic filing with the
16 secretary of state all public documents to be discussed at the noticed meeting.

17 (i) A public body is subject to a fine of no less than one hundred dollars (\$100) for each
18 document found to be in noncompliance with this section.

19 **42-46-7. Minutes.**

20 (a) All public bodies shall keep written minutes of all their meetings. The minutes shall
21 include, but need not be limited to:

22 (1) The date, time, and place of the meeting;

23 (2) The members of the public body recorded as either present or absent;

24 (3) A record by individual members of any vote taken; ~~and~~

25 (4) A summary of the proceedings and comments made by members of the public body
26 and any other participant of the meeting and;

27 ~~(4)~~(5) Any other information relevant to the business of the public body that any member
28 of the public body requests be included or reflected in the minutes.

29 (b) (1) A record of all votes taken at all meetings of public bodies, listing how each
30 member voted on each issue, shall be a public record and shall be posted electronically online on
31 a public body's website, the secretary of state's website, and made available, to the public at the
32 office of the public body, within ~~two (2) weeks~~ seven (7) days of the date of the vote. The
33 minutes shall be public records and unofficial minutes shall be available, to the public at the
34 office of the public body, within ~~thirty-five (35)~~ twenty-one (21) days of the meeting ~~or at~~ but no

1 [later than five \(5\) days prior to](#) the next regularly scheduled meeting, whichever is earlier, except
2 where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body
3 by majority vote extends the time period for the filing of the minutes and publicly states the
4 reason.

5 (2) In addition to the provisions of subdivision (b)(1), all volunteer fire companies,
6 associations, fire district companies, or any other organization currently engaged in the mission of
7 extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is
8 a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21)
9 days of the meeting, but not later than seven (7) days prior to the next regularly scheduled
10 meeting, whichever is earlier, on the secretary of state's website [and if available on their website](#).

11 (c) The minutes of a closed session shall be made available at the next regularly
12 scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to
13 §§ 42-46-4 and 42-46-5. [At the end of each calendar year, a public body shall make all closed](#)
14 [session minutes available pursuant to this section unless the public body takes a vote in a properly](#)
15 [noticed closed session pursuant to §42-46-5 and affirms in open session that the minutes can](#)
16 [remain subject to closure pursuant to §42-46-4\(c\).](#)

17 (d) All public bodies ~~within the executive branch of the state government and all state~~
18 ~~public and quasi-public boards, agencies and corporations, and those public bodies set forth in~~
19 ~~subdivision (b)(2),~~ shall keep official and/or approved minutes of all meetings of the body and
20 shall file a copy of the minutes of all open meetings with the secretary of state for inspection by
21 the public within thirty-five (35) days of the meeting; ~~provided that this subsection shall not apply~~
22 ~~to public bodies whose responsibilities are solely advisory in nature,~~ [and make available on the](#)
23 [public body's website if a website exists.](#)

24 (e) All minutes and unofficial minutes required by this section to be filed with the
25 secretary of state shall be electronically transmitted to the secretary of state in accordance with
26 rules and regulations which shall be promulgated by the secretary of state. If a public body fails to
27 transmit minutes or unofficial minutes in accordance with this subsection, then any aggrieved
28 person may file a complaint with the attorney general in accordance with § 42-46-8.

29 [\(f\) A public body is subject to a fine of no less than one hundred dollars \(\\$100\) for each](#)
30 [document found to be in noncompliance with this section.](#)

31 **42-46-8. Remedies available to aggrieved persons or entities.**

32 (a) Any citizen or entity of the state who is aggrieved as a result of violations of the
33 provisions of this chapter may file a complaint with the attorney general. The attorney general
34 shall investigate the complaint and if the attorney general determines that the allegations of the

1 complaint are meritorious ~~he or she~~ the attorney general may file a complaint on behalf of the
2 complainant in the superior court against the public body. The presence or absence of a person or
3 entity at a meeting of a public body shall not disqualify the person or entity from seeking
4 remedies available under this chapter.

5 (b) No complaint may be filed by the attorney general after ~~one hundred eighty (180)~~
6 three hundred sixty-five (365) days from the date of public approval of the minutes of the meeting
7 at which the alleged violation occurred, or, in the case of an unannounced or improperly closed
8 meeting, after one hundred eighty (180) days from the public action of a public body revealing
9 the alleged violation, whichever is greater.

10 (c) Nothing within this section shall prohibit any individual from retaining private
11 counsel for the purpose of filing a complaint in the superior court within the time specified by this
12 section against the public body which has allegedly violated the provisions of this chapter;
13 provided, however, that if the individual has first filed a complaint with the attorney general
14 pursuant to this section, and the attorney general declines to take legal action, the individual may
15 file suit in superior court within ninety (90) days of the attorney general's closing of the complaint
16 or within one hundred eighty (180) days of the alleged violation, whichever occurs later.

17 (d) The court shall award reasonable attorney fees and costs to a prevailing plaintiff,
18 other than the attorney general, except where special circumstances would render such an award
19 unjust. The court may issue injunctive relief and declare null and void any actions of a public
20 body found to be in violation of this chapter. In addition, the court may impose a civil fine not
21 exceeding five thousand dollars (\$5,000) against a public body or any of its members found to
22 have committed a willful or knowing violation of this chapter and a civil fine not to exceed one
23 thousand dollars (\$1,000) against a public body found to have violated this chapter. A judgment
24 in the plaintiff's favor shall not be a prerequisite to obtaining an award of attorneys' fees and/or
25 costs if the court determines that the defendant's case lacked grounding in fact or in existing law
26 or a good faith argument for extension, modification or reversal of existing law.

27 (e) Nothing within this section shall prohibit the attorney general from initiating a
28 complaint on behalf of the public interest.

29 (f) Actions brought under this chapter may be advanced on the calendar upon motion of
30 the petitioner.

31 (g) The attorney general shall consider all complaints filed under this chapter to have also
32 been filed under section 38-2-8(b) if applicable.

33 **42-46-11. Reported violations.**

34 Every year the attorney general shall prepare a report summarizing the complaints

1 received pursuant to this chapter, which shall be submitted to the legislature and which shall
2 include information as to how many complaints were found to be meritorious and the action taken
3 by the attorney general in response to those complaints. [The attorney general shall publish the full
4 text of all complaints and the action taken by the attorney general in response to those complaints,
5 as well as all advisory opinions issued related to this chapter, on a keyword searchable website.](#)

6 **42-46-13. Accessibility for persons with disabilities.**

7 (a) All public bodies, to comply with the nondiscrimination on the basis of disability
8 requirements of R.I. Const., Art. I, § 2 and applicable federal and state nondiscrimination laws
9 (29 U.S.C. § 794, chapter 87 of this title, and chapter 24 of title 11), shall develop a transition
10 plan setting forth the steps necessary to ensure that all open meetings of said public bodies are
11 accessible to persons with disabilities.

12 (b) The state building code standards committee shall, by September 1, 1989 adopt an
13 accessibility of meetings for persons with disabilities standard that includes provisions ensuring
14 that the meeting location is accessible to and usable by all persons with disabilities.

15 (c) This section does not require the public body to make each of its existing facilities
16 accessible to and usable by persons with disabilities so long as all meetings required to be open to
17 the public pursuant to chapter 46 of this title are held in accessible facilities by the dates specified
18 in subsection (e).

19 (d) The public body may comply with the requirements of this section through such
20 means as reassignment of meetings to accessible facilities, alteration of existing facilities, or
21 construction of new facilities. The public body is not required to make structural changes in
22 existing facilities where other methods are effective in achieving compliance with this section.

23 (e) The public body shall comply with the obligations established under this section by
24 July 1, 1990, except that where structural changes in facilities are necessary in order to comply
25 with this section, such changes shall be made by December 30, 1991, but in any event as
26 expeditiously as possible unless an extension is granted by the state building commissioner for
27 good cause.

28 (f) Each municipal government and school district shall, with the assistance of the state
29 building commission, complete a transition plan covering the location of meetings for all public
30 bodies under their jurisdiction. Each chief executive of each city or town and the superintendent
31 of schools will submit their transition plan to the governor's commission on disabilities for review
32 and approval. The governor's commission on disabilities with assistance from the state building
33 commission shall approve or modify, with the concurrence of the municipal government or
34 school district, the transition plans.

1 (g) The supplemental written notice required by §42-46-6(b) shall be given sufficiently in
2 advance of the meeting to allow a person to request in a timely manner the presence of an
3 interpreter or other reasonable accommodation for the meeting.

4 ~~(g)~~(h) The provisions of §§ 45-13-7 -- 45-13-10, inclusive, shall not apply to this section.

5 SECTION 2. Chapter 42-46 of the General Laws entitled "Open Meetings" is hereby
6 amended by adding thereto the following sections:

7 **42-46-3.1. Accommodation and recordings of open meetings.**

8 (a) Every meeting of all public bodies shall be open to the public unless closed pursuant
9 to §§42-46-4 and 42-46-5.

10 (b) All reasonable efforts must be made to ensure that the meeting allows for all persons
11 present to hear and observe an open meeting.

12 (c) A public body shall not prohibit the recordation of all or part of any of its open
13 meetings as long as such recordation does not interfere with the obligation of the public body to
14 maintain order under §42-46-5.

15 **42-46-3.2. Open electronic communications.**

16 (a) A communication or exchange of information between members of a public body
17 about public business or public policy over which the public body has supervision, jurisdiction,
18 advisory power, or control does not constitute a meeting for purposes of this chapter if:

19 (1) The communication is in writing;

20 (2) The writing is posted to an online message board or similar Internet application that is
21 viewable and searchable by the public; and

22 (3) The communication is displayed in real time and displayed on the online message
23 board or similar Internet application for no less than three hundred and sixty-five (365) days after
24 the communication is first posted.

25 (b) A public body may have no more than one online message board or similar Internet
26 application to be used for the purposes described in subsection (a) of this section. The online
27 message board or similar Internet application must be owned or controlled by the public body,
28 prominently displayed on the public body's primary Internet webpage, and no more than one click
29 away from the public body's primary Internet webpage.

30 (c) The online message board or similar Internet application described in subsection (a)
31 of this section may only be used by members of the public body or staff members of the public
32 body who have received specific authorization from a member of the public body. In the event
33 that a staff member posts a communication to the online message board or similar Internet
34 application, the name and title of the staff member must be posted along with the communication.

1 (d) If a public body removes from the online message board or similar Internet
2 application a communication that has been posted three hundred and sixty-five (365) days, the
3 public body shall maintain the posting for a period of six (6) years. This communication is public
4 information and must be disclosed in accordance with chapter 2 of title 38.

5 (e) The public body may not vote or take any action on any matter by posting a
6 communication to the online message board or similar Internet application.

7 **42-46-5.1. Electronic communications/use and prohibition of.**

8 (a) The use of electronic communication, including telephonic, text, electronic mail,
9 facsimile, teleconferencing, instant messaging, social networking, or similar means of
10 communications shall not be used by any member of a public body to, circumvent the spirit or
11 requirements of this chapter, provided that electronic communication may be used to:

12 (1) Schedule a meeting or determine the availability of members of a public body for the
13 purpose of conducting a meeting under this chapter.

14 (2) Allow a member of a public body to electronically communicate and participate in a
15 scheduled meeting of a public body if such member is on active duty in the armed services of the
16 United States and not physically present in the state of Rhode Island.

17 (3) Allow a member of a public body who has a disability as defined in chapter 87 of title
18 42 and:

19 (i) Cannot attend meetings of that public body solely by reason of their disability; and

20 (ii) Cannot otherwise participate in the meeting without the use of electronic
21 communication or telephone communication as a reasonable accommodation, to participate by
22 use of electronic communication or telephone communication in accordance with the process
23 subsection (a)(4) of this section.

24 (4) The governor's commission on disabilities is authorized and directed to:

25 (i) Establish rules and regulations for determining whether a member of a public body is
26 not otherwise able to participate in meetings of that public body without the use of electronic
27 communication or telephone communication as a reasonable accommodation due to that
28 member's disability;

29 (ii) Grant a waiver that allows a member to participate by electronic communication or
30 telephone communication only if the member's disability would prevent them from being
31 physically present at the meeting location, and the use of such communication is the only
32 reasonable accommodation; and

33 (iii) Any waiver decisions shall be a matter of public record.

34 **42-46-5.2. Exclusions.**

1 This chapter shall not apply to proceedings of the judicial branch of state government or
2 probate court or municipal court proceedings in any city or town.

3 **42-46-5.3. Disruptive conduct.**

4 Nothing in this chapter shall prohibit the removal of any person who willfully disrupts a
5 meeting to the extent that orderly conduct of the meeting is seriously compromised. No one other
6 than a public body or a person designated to do so by the public body shall order a person
7 removed for violating the provisions of this section.

8 **42-46-5.4. Rolling quorum.**

9 Use of a rolling quorum shall constitute a violation of this chapter.

10 **42-46-6.2. Joint meeting.**

11 In the event of a joint meeting each public body shall be responsible for providing public
12 notice and minutes as otherwise required by this chapter.

13 **42-46-6.3. Emergency meeting/notice.**

14 (a) A public body may hold an emergency meeting, upon an affirmative vote of the
15 majority of the members of the body when the meeting is deemed necessary to address an
16 unexpected occurrence that requires immediate action to protect the public.

17 (b) If an emergency meeting is called, a meeting notice and agenda shall be posted as
18 soon as practicable and shall be electronically filed with the secretary of state pursuant to
19 subsection (c) and of this section;

20 (c) Upon convening of an emergency meeting, the public body shall state for the record
21 and in the open minutes why the matter must be addressed in less than forty-eight (48) hours in
22 accordance with §42-46-6(b) and only discuss the issue or issues which created the need for an
23 emergency meeting. Nothing contained herein shall be used to circumvent the spirit and
24 requirements of this chapter.

25 **42-46-6.4. Public comment.**

26 (a) A public body, or the members thereof, shall not be prohibited from responding to
27 comments initiated by a member of the public during a properly noticed open forum even if the
28 subject matter of a citizen's comments or discussions were not previously posted, provided such
29 matters shall be for informational purposes only and may not be voted on except where necessary
30 to address an unexpected occurrence that requires immediate action to protect the public or to
31 refer the matter to an appropriate committee or to another body or official.

32 (b) Nothing contained in this chapter requires any public body to hold an open forum
33 session, to entertain or respond to any topic nor does it prohibit any public body from limiting
34 comment on any topic at such an open forum session. No public body, or the members thereof,

1 may use this section to circumvent the spirit or requirements of this chapter.

2 (c) No public body shall be held in violation of any provision of this chapter for any
3 ceremonial speech or comment made at an open meeting of a public body.

4 (d) All notices required by this section to be filed with the secretary of state shall be
5 electronically transmitted to the secretary of state in accordance with rules and regulations which
6 shall be promulgated by the secretary of state.

7 (e) If a public body fails to transmit notices in accordance with this section, then any
8 aggrieved person may file a complaint with the attorney general in accordance §42-46-8.

9 **42-46-6.5. Compliance by public bodies.**

10 Not later than January 1, 2018, and annually thereafter, each public body shall state in
11 writing to the attorney general that it has designated a certified open meetings compliance officer
12 who has responsibility for compliance with this chapter and has been provided orientation and
13 training regarding this chapter. The attorney general may, in accordance with the provisions of
14 chapter 35 of title 42, promulgate rules and regulations necessary to implement the requirements
15 of this section.

16 **42-46-7.1. Livestreaming.**

17 (a) Effective January 1, 2018, all public bodies within the executive branch of the state
18 government and all state public and quasi-public boards, agencies and corporations, as well as all
19 city and town councils and elected and appointed school boards or committees excluding
20 subdivisions thereof shall video record in digital format its meetings and hearings, or portions
21 thereof, that are required to be public pursuant to this chapter. Such recordings shall be webcast
22 live, where practicable, and shall be made available to the public on the public body's website as
23 well as a website maintained by the secretary of state not more than seventy-two (72) hours after
24 adjournment of the meeting or the hearing recorded where they shall be available for at least five
25 (5) years.

26 (b) The secretary of state shall have the power and authority to promulgate rules and
27 regulations related to the quality, content, and manner of the livestreaming as well as the
28 hardware or software necessary to implement the provisions of this section.

29 (c) Furthermore, all closed sessions shall be audio or video recorded in digital format and
30 retained for at least five (5) years such that they are available for public inspection unless
31 otherwise exempt; provided however, the attorney general shall have access for purposes of
32 investigating a complaint pursuant to §42-46-8.

33 SECTION 3. Section 45-9-6 of the General Laws in Chapter 45-9 entitled "Budget
34 Commissions" is hereby amended to read as follows:

1 **45-9-6. Composition of budget commission.**

2 (a) If a budget commission is established under §§ 45-9-5 or 45-12-22.7, it shall consist
3 of five (5) members: three (3) of whom shall be designees of the director of revenue; one of
4 whom shall be the elected chief executive officer of the city; and one of whom shall be a council
5 member of the town or city elected to serve on the budget commission as chosen by a majority
6 vote of said town or city council. In cities or towns in which the elected chief executive officer
7 for purposes of this chapter is the president of the city or town council, one member shall be the
8 appointed city or town manager or town administrator (or, if none, the city or town chief financial
9 officer) as the fifth member. For a fire district, it shall consist of five (5) members: three (3) of the
10 members of the budget commission shall be designees of the director of revenue; one shall be the
11 chairperson of the district's governing body; and one shall be the fire chief of the district. The
12 budget commission shall act by a majority vote of all its members. The budget commission shall
13 initiate and ensure the implementation of appropriate measures to secure the financial stability of
14 the city, town, or fire district. The budget commission shall continue in existence until the
15 director of revenue abolishes it.

16 The budget commission shall be subject to chapter 2 of title 36, "Access to Public
17 Records," and chapter 14 of title 36, "Code of Ethics". ~~The budget commission shall be subject to~~
18 ~~chapter 46 of title 42 "Open Meetings" when meeting to take action on the following matters:~~

- 19 (1) ~~Levy and assessment of taxes;~~
- 20 (2) ~~Rulemaking or suspension of rules;~~
- 21 (3) ~~Adoption of a municipal or fire district budget;~~
- 22 (4) ~~Approval of collective bargaining agreements and amendments to collective~~
23 ~~bargaining agreements; and~~
- 24 (5) ~~Making a determination under § 45-9-7 that the powers of the budget commission are~~
25 ~~insufficient to restore fiscal stability to the city, town, or fire district.~~

26 (b) Action by the budget commission under this chapter shall constitute action by the
27 city, town, or fire district for all purposes under the general laws, under any special law, and
28 under the city, town, or fire district charter.

29 (c) Until the budget commission ceases to exist, no appropriation, borrowing
30 authorization, transfer, or other municipal or fire district spending authority, shall take effect until
31 approved by the budget commission. The budget commission shall approve all appropriations,
32 borrowing authorizations, transfers, and other municipal or fire district spending authorizations,
33 in whole or part.

34 (d) In addition to the authority and powers conferred elsewhere in this chapter, and

1 notwithstanding any city, town, or fire district charter provision, or local ordinance, or rule or
2 regulation to the contrary, the budget commission shall have the power to:

3 (1) Amend, formulate, and execute the annual municipal or fire district budget and
4 supplemental municipal or fire district budgets of the city, town, or fire district, including the
5 establishment, increase, or decrease of any appropriations and spending authority for all
6 departments, budget commissions, committees, agencies or other units of the city, town, or fire
7 district; provided, however, that notwithstanding §§ 16-2-9 and 16-2-18, this clause shall fully
8 apply to the school department and all school spending purposes;

9 (2) Implement and maintain uniform budget guidelines and procedures for all
10 departments;

11 (3) Amend, formulate and execute capital budgets, including amending any borrowing
12 authorization, or financing or refinancing of any debt in accordance with the law;

13 (4) Amortize operational deficits in an amount as the director of revenue approves and for
14 a term not longer than five (5) years;

15 (5) Develop and maintain a uniform system for all financial planning and operations in all
16 departments, offices, boards, commissions, committees, agencies, or other units of the city's,
17 town's, or fire district's government;

18 (6) Review and approve or disapprove all proposed contracts for goods or services;

19 (7) Notwithstanding any general or special law to the contrary, establish, increase, or
20 decrease any fee, rate, or charge, for any service, license, permit, or other municipal or fire
21 district activity, otherwise within the authority of the city, town, or fire district;

22 (8) Appoint, remove, supervise, and control all city, town, or fire district employees and
23 have control over all personnel matters other than disciplinary matters; provided, that the budget
24 commission shall hold all existing powers to hire and fire and set the terms and conditions of
25 employment held by other employees or officers of the city, town, or fire district; provided,
26 further, that the budget commission shall have the authority to exercise all powers otherwise
27 available to a municipality or fire district regarding contractual obligations during a fiscal
28 emergency; provided, further, that no city, town, or fire district employee or officer shall hire,
29 fire, transfer, or alter the compensation or benefits of a city, town, or fire district employee except
30 with the written approval of the budget commission; and provided, further, that the budget
31 commission may delegate or otherwise assign these powers with the approval of the director of
32 revenue;

33 (9) Alter or eliminate the compensation and/or benefits of elected officials of the city,
34 town, or fire district to reflect the fiscal emergency and changes in the responsibilities of the

1 officials as provided by this chapter;

2 (10) Employ, retain, and supervise such managerial, professional, and clerical staff as are
3 necessary to carry out its responsibilities; provided, however, that such employment, retention
4 and supervisory decisions are subject to the approval of the director of revenue; provided, further,
5 that the budget commission shall not be subject to chapter 2 of title 37 or chapter 55 of title 45 in
6 employing such staff; provided, further, that the budget commission, with the approval of the
7 director of revenue, shall have authority to set the compensation, terms, and conditions of
8 employment of its own staff; provided, further, that the city, town, or fire district shall annually
9 appropriate amounts sufficient for the compensation of personnel hired under this clause as
10 determined and fixed by the budget commission; provided, further, that, if the city, town, or fire
11 district fails to appropriate such amounts, the director of revenue shall direct the general treasurer
12 to deduct the necessary funds from the city's, town's, or fire district's distribution of state aid and
13 shall expend those funds directly for the benefit of the budget commission;

14 (11) Reorganize, consolidate, or abolish departments, commissions, authorities, boards,
15 offices, or functions of the city, town, or fire district, in whole or in part, and to establish such
16 new departments, commissions, authorities, boards, offices, or functions as it deems necessary,
17 and to transfer the duties, powers, functions and appropriations of one department, commission,
18 board, office, or other unit to another department, commission, authority, board, or office, and in
19 connection therewith, remove and appoint new members for any such commission, authority,
20 board, or department which appointees shall serve the remainder of any unexpired term of their
21 predecessor;

22 (12) Appoint, in consultation with the director of revenue, persons to fill vacancies on
23 any authority, board, committee, department, or office;

24 (13) Sell, lease, or otherwise transfer, real property and other assets of the city, town, or
25 fire district with the approval of the director of revenue;

26 (14) Purchase, lease, or otherwise acquire, property or other assets on behalf of the city,
27 town, or fire district with the approval of the director of revenue;

28 (15) Enter into contracts, including, but not limited to, contracts with other governmental
29 entities, and such other governmental entities are hereby authorized to enter into such contracts;

30 (16) Adopt rules and regulations governing the operation and administration of the city,
31 town, or fire district that permit the budget commission to effectively carry out this chapter under
32 § 42-35-3(b);

33 (17) Alter or rescind any action or decision of any municipal or fire district officer,
34 employee, board, authority, or commission within fourteen (14) days after receipt of notice of

1 such action or decision;

2 (18) Suspend, in consultation with the director of revenue, any rules and regulations of
3 the city, town, or fire district;

4 (19) Notwithstanding any other general law, special act, charter provision, or ordinance,
5 and in conformity with the reserved powers of the general assembly pursuant to Article XIII,
6 section 5 of the constitution of the state, a budget commission is authorized to issue bonds, notes,
7 or certificates of indebtedness to fund the deficit of a city, town, or fire district without regard to §
8 45-12-22.4, to fund cash flow and to finance capital projects. Bonds, notes, or certificates of
9 indebtedness issued under authority of this chapter shall be general obligation bonds backed by
10 the full faith and credit and taxing power of the city, town, or fire district; provided, however, that
11 the budget commission may pledge future distributions of state aid for the purpose of retiring
12 such bonds, notes, or certificates of indebtedness. If any state aid is so pledged, the budget
13 commission shall execute on behalf of the city, town, or fire district a trust agreement with a
14 corporate trustee, which may be any bank or trust company having the powers of a trust company
15 within the state, and any state aid so pledged shall be paid by the general treasurer directly to the
16 trustee to be held in trust and applied to the payment of principal and interest on such bonds,
17 notes, or certificates of indebtedness; any earnings derived from the investment of such pledged
18 aid shall be applied as needed to the payment of that principal and interest and for trustee's fees
19 and related expenses, with any excess to be paid to the city, town, or fire district. Bonds, notes, or
20 certificates of indebtedness authorized under authority of this chapter shall be executed on behalf
21 of the city, town, or fire district by a member of the commission and, except as provided for in
22 this chapter, may be subject to the provisions of chapter 12 of title 45 so far as apt, or may be
23 subject to the provisions of any special bond act enacted authorizing the issuance of bonds of a
24 city, town, or fire district so far as apt; provided, however, that any bonds or notes issued for
25 school purposes must be approved by the general assembly in order to qualify for school housing
26 aid as set forth in chapter 7 of title 16; and

27 (20) Exercise all powers under the general laws and this chapter, or any special act, any
28 charter provision or ordinance that any elected official of the city, town, or fire district may
29 exercise, acting separately or jointly; provided, however, that with respect to any such exercise of
30 powers by the budget commission, the elected officials shall not rescind nor take any action
31 contrary to such action by the budget commission so long as the budget commission continues to
32 exist.

33 (21) Certify to the Rhode Island department of revenue the need to advance payments of
34 the state's basic education program under chapter 7 of title 16 in the amount determined by the

1 budget commission. Said amount shall be advanced, subject to approval of the director of the
2 department of revenue, notwithstanding any general or public law to the contrary. The director of
3 the department of revenue shall provide notice of any advance payments to the fiscal advisors of
4 the house and senate finance committees. The state general treasurer shall deduct the estimated
5 cost to the state's general fund resulting from any advance payments.

6 SECTION 4. This act shall take effect upon passage.

=====
LC002182
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - OPEN MEETINGS

1 This act would amend multiple sections relating to "open meetings" including utilizing
2 advances in technology for observing meetings, how quorums are calculated, procedures for
3 closed meetings and notice requirements.

4 This act would take effect upon passage.

=====
LC002182
=====