

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 340 Session of 2015

INTRODUCED BY SACCONI, MAHONEY, CHRISTIANA, METCALFE AND MCGINNIS, FEBRUARY 5, 2015

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 15, 2016

AN ACT

1 Amending Title 65 (Public Officers) of the Pennsylvania
2 Consolidated Statutes, in open meetings, further providing
3 for definitions, for executive sessions and for penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. The definition of "deliberation" in section 703
7 of Title 65 of the Pennsylvania Consolidated Statutes is amended
8 to read:

9 § 703. Definitions.

10 The following words and phrases when used in this chapter
11 shall have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 \* \* \*

14 "Deliberation." The discussion of agency business held for
15 the purpose of making a decision. The term includes an
16 informational meeting or briefing that is required to be open to <--
17 the public.

18 \* \* \*

1 Section 2. Section 708(a) and (b) of Title 65 are amended to  
2 read:

3 § 708. Executive sessions.

4 (a) Purpose.--An agency may hold an executive session for  
5 one or more of the following reasons:

6 (1) To discuss any matter [involving], as it pertains to  
7 a specific individual WHO IS A prospective, current or former <--  
8 employee, relating to the employment, appointment,  
9 termination of employment, terms and conditions of  
10 employment, evaluation of performance, promotion or  
11 disciplining of [any] the specific individual WHO IS A <--  
12 prospective [public officer or] employee or current [public  
13 officer or] employee employed or appointed by the agency, or  
14 specific individual WHO IS A former [public officer or] <--  
15 employee, provided, however, that the individual employees  
16 [or appointees] whose rights could be adversely affected may  
17 request, in writing, that the matter or matters be discussed  
18 at an open meeting. The agency's decision to discuss such  
19 matters in executive session shall not serve to adversely  
20 affect the due process rights granted by law, including those  
21 granted by Title 2 (relating to administrative law and  
22 procedure). The provisions of this paragraph shall not apply  
23 to any meeting involving the appointment or selection of any  
24 person to fill a vacancy in any elected office. An agency  
25 shall discuss all other agency business relating to the  
26 POLICIES OF employment, appointment, termination of <--  
27 employment, terms and conditions of employment, evaluation of  
28 performance, promotion or disciplining of employees, <--  
29 APPOINTEES OR OFFICIALS OF THE AGENCY, AND OTHER DISCUSSIONS  
30 THAT DO NOT PERTAIN TO THE SPECIFIC INDIVIDUALS WHO ARE

1 PROSPECTIVE, CURRENT OR FORMER EMPLOYEES of the agency at an  
2 open meeting under section 704 (relating to open meetings).

3 (2) To hold information, strategy and negotiation  
4 sessions related to the negotiation or arbitration of a  
5 collective bargaining agreement or, in the absence of a  
6 collective bargaining unit, related to labor relations and  
7 arbitration.

8 (3) To consider the purchase or lease of real property  
9 up to the time an option to purchase or lease the real  
10 property is obtained or up to the time an agreement to  
11 purchase or lease such property is obtained if the agreement  
12 is obtained directly without an option.

13 (4) To consult with its attorney or other professional  
14 advisor regarding information or strategy in connection with  
15 litigation or with issues on which identifiable complaints  
16 are expected to be filed.

17 (5) To review and discuss agency business which, if  
18 conducted in public, would violate a lawful privilege or lead  
19 to the disclosure of information or confidentiality protected  
20 by law, including matters related to the initiation and  
21 conduct of investigations of possible or certain violations  
22 of the law and quasi-judicial deliberations.

23 (6) For duly constituted committees of a board or  
24 council of trustees of a State-owned, State-aided or State-  
25 related college or university or community college or of the  
26 Board of Governors of the State System of Higher Education to  
27 discuss matters of academic admission or standings.

28 (7) To review and discuss plans related to security and  
29 emergency preparedness, including the physical security of  
30 buildings, staff training, communication procedures, plans

1 for evacuation, lock-down or other safety measures,  
2 coordination with police, fire and other safety agencies that  
3 if disclosed would definitely jeopardize or threaten security  
4 or preparedness. The cost of implementing a plan and all  
5 information relating to the equipment to be purchased shall  
6 be discussed at an open meeting under section 704.

7 (b) Procedure.--

8 (1) The executive session may be held during an open  
9 meeting or at the conclusion of an open meeting or may be  
10 announced for a future time. The reason for holding the  
11 executive session must be announced at the open meeting  
12 occurring immediately prior or subsequent to the executive  
13 session. If the executive session is not announced for a  
14 future specific time, members of the agency shall be notified  
15 24 hours in advance of the time of the convening of the  
16 meeting specifying the date, time, location and purpose of  
17 the executive session.

18 (2) An agency holding an executive session under this  
19 subsection, EXCEPT FOR AN EXECUTIVE SESSION HELD FOR A <--  
20 PURPOSE UNDER SUBSECTION (A) (4), shall make a AN OFFICIAL <--  
21 verbatim audio or video recording of the complete executive  
22 session and retain the recording for a period of one year.  
23 Such PRIOR TO THE COMMENCEMENT OF THE EXECUTIVE SESSION, THE <--  
24 AGENCY SHALL MAKE AN ANNOUNCEMENT THAT THE EXECUTIVE SESSION  
25 WILL BE RECORDED. THE recordings are not SHALL NOT BE subject <--  
26 to public inspection and copying under the act of February  
27 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law,  
28 except by court order. AN AGENCY MEMBER WHO WOULD HAVE BEEN <--  
29 PERMITTED TO ATTEND AN EXECUTIVE SESSION, WHETHER OR NOT THAT  
30 MEMBER WAS ACTUALLY IN ATTENDANCE, SHALL BE PERMITTED ACCESS

1 TO THE OFFICIAL RECORDING, SUBJECT TO REASONABLE RULES AND  
2 REGULATIONS OF THE AGENCY TO PROTECT ACCESS TO THE RECORDING.

3 (3) Prior to holding an executive session on any matter,  
4 the agency shall EITHER obtain advice from a solicitor or <--  
5 legal counsel as to whether or not the matter may be  
6 discussed at an executive session under the provisions of  
7 this section. <--

8 ~~(4) In the absence of a solicitor, the person in charge~~  
9 ~~of running the meeting shall determine on the record whether~~  
10 ~~the information on the agenda needs to be discussed in an~~  
11 ~~executive session.~~ OR, IF THE AGENCY MAKES THE DECISION TO <--  
12 NOT CONSULT A SOLICITOR OR LEGAL COUNSEL, THE ELECTED  
13 OFFICIAL IN CHARGE SHALL DETERMINE WHETHER THE INFORMATION ON  
14 THE AGENDA NEEDS TO BE DISCUSSED IN AN EXECUTIVE SESSION. IN  
15 EITHER CASE, IT SHALL BE PUBLICLY STATED ON THE RECORD AT THE  
16 CURRENT PUBLIC MEETING OR NEXT PUBLIC MEETING WHETHER THE  
17 SOURCE OF THE OPINION IS:

18 (I) THE SOLICITOR OR LEGAL COUNSEL; OR

19 (II) THE ELECTED OFFICIAL IN CHARGE WHO MADE THE  
20 DETERMINATION.

21 \* \* \*

22 Section 3. Section 714 of Title 65 is amended to read:

23 § 714. Penalty.

24 (a) Fines and costs.--Any member of any agency who  
25 participates in a meeting with the intent and purpose by that  
26 member of violating this chapter commits a summary offense for a  
27 first offense and a misdemeanor of the third degree for a second  
28 or subsequent offense and shall, upon conviction, be sentenced  
29 to pay:

30 (1) For a first offense, in addition to any other

1 penalty authorized by law, the costs of prosecution plus a  
2 fine of at least \$100 and, in the discretion of the  
3 sentencing authority, of not more than \$1,000.

4 (2) For a second or subsequent offense, the costs of  
5 prosecution plus a fine of at least \$500 and, in the  
6 discretion of the sentencing authority, of not more than  
7 \$2,000.

8 (b) Payment.--An agency shall not make a payment on behalf  
9 of or reimburse a member of an agency for a fine or cost  
10 resulting from the member's violation of this section.

11 (c) Immunity.--Any member of an agency shall be immune from  
12 civil and criminal liability, costs and fees for violations of  
13 this chapter if the member makes a good faith report, verbally  
14 or in writing, to the appropriate authority of a violation of  
15 this chapter.

16 Section 4. This act shall take effect in 60 days.