

Township of West Milford

Passaic County, New Jersey

~ Resolution 2012 - 139 ~

RESOLUTION OF THE TOWNSHIP OF WEST MILFORD, COUNTY OF PASSAIC, STATE OF NEW JERSEY REQUESTING THAT THE MEMBERS OF THE STATE SENATE REJECT S-1451 IN ITS CURRENT FORM AND ALLOW FOR CONSTRUCTIVE COMMENT AND DIALOGUE FROM MUNICIPAL ELECTED AND APPOINTED OFFICIALS BEFORE CONSIDERING AMENDMENTS TO THE OPEN PUBLIC MEETINGS ACT

WHEREAS, local government in the State of New Jersey is directly affected by the provisions of the Open Public Meetings Act; and

WHEREAS, local elected and appointed officials must conduct business within the confines of such existing legislation and compelled to any amendments thereto; and

WHEREAS, on March 5, 2012 S-1451 was released from committee for consideration by the State Senate; and

WHEREAS, local elected and appointed officials serving a multitude of municipal governmental bodies adhere to the provisions of the Open Public Meetings Act; and

WHEREAS, as a general rule, these local officials hold the principles and concepts of open government in the highest regard, not only at public meetings but on a daily basis while serving their constituents; and

WHEREAS, we, the elected officials of the Township Council of the Township of West Milford conduct all municipal business in accordance with the provisions of the Open Public Meetings Act and often provide for greater transparency than that provided in the Act; and

WHEREAS, we, the elected officials of the Township Council of the Township of West Milford respectfully request that the elected members of the State Senate display the courtesies and respect owing those in municipally-elected office by allowing our voices to be heard before changes are made to the Open Public Meetings Act which may infringe upon our abilities to serve our constituents with efficiency, diligence and dedication; and

WHEREAS, we, the elected officials of the Township Council of the Township of West Milford do hereby provide the following comments with regard to S-1451 with the expectation that the members of the State Senate will receive these comments in the spirit of cooperation and transparency in which they are offered:

- 1) **Position:** We oppose any provision in any legislation, most specifically the Open Public Meetings Act, that precludes the Legislature from adherence.
 - a) **Comment:** Until the sponsors and those voting on these amendments subject themselves to the same confines as those being imposed on local officials, this public body will emphatically state objections. Specifically, the Legislature seeks to exempt itself, and no other public body, from the following provisions contained in S-1451:
 - i) to add items to an agenda without adhering to the conditions being legislated for other public bodies.
 - ii) to exempt subcommittees of its body from the definitions that apply to subcommittees of any and all other public bodies.
 - iii) to exclude itself from provisions whereby individual members of a public body are prohibited from communicating amongst themselves or others during a meeting about matters on the agenda by any means of communicating including electronic mail, instant messaging or similar technologies.
 - iv) to exclude itself from provisions whereby individual members of a public body are prohibited from communicating privately with anyone other than staff about matters on an agenda.

- v) to exclude subcommittees of its body from producing minutes of subcommittee meetings while compelling all subcommittees of all other public bodies to such provisions.
 - vi) to exclude itself from provisions whereby public bodies will be required to have two public portions at every public meeting to allow for comment on all action items before such action is taken.
 - vii) to exclude itself from proposed revisions that would require public bodies to provide recordings of meetings.
 - viii) by virtue of the repeated exclusions and exemptions for the Legislature contained in the proposed amendments to the Open Public Meetings Act the Legislature also exempts itself from challenges filed in court and the associated limitless costs that may foist upon public bodies.
 - ix) the State Senate proposes to exclude itself from provisions whereby individual members of a public body are prohibited from communicating amongst themselves or others during a meeting about matters on the agenda by any means of communicating including electronic mail, instant messaging or similar technologies
- 2) **Position:** The Legislature defines quasi-governmental bodies to include those local groups comprised of volunteers who are already burdened with certification processes and whose purpose is to provide for the well-being of those in need whether it be by serving as volunteer firefighters or first aid members.
- a) **Comment:** These volunteers provide services to the local communities that save the taxpayers incalculable sums not to mention the lives and property they protect. The legislature fails to provide a funding source for financially strapped volunteer organizations to fund the administrative costs to comply with these unfunded mandates.
- 3) **Position:** We object to the proposed changes to the Open Public Meetings Act that includes a subcommittee of a public body as a quorum.
- a) **Comment:** The legislature propose that public bodies fund the administrative costs associated that compel subcommittees to the provisions being proposed even though subcommittees may not take action to effectuate Government business. This legislation will interfere and disrupt the government's ability to function and will result in additional, unfunded costs to the taxpayers.
- 4) **Position:** Proposed amendments to the Open Public Meetings Act as penned in S-1451 would prohibit members of public bodies from communicating with any other person about any matter on the agenda for that meeting.
- a) **Comment:** This provision constitutes a gross injustice to the principles of democracy and statutorily violates the oath of office taken by elected and appointed officials throughout the State of New Jersey. Under these proposed limitations, elected officials would be precluded from conducting due diligence on local issues and would be prohibited from speaking intelligently with the benefit of research & homework on matters listed on an agenda where ultimately those officials may be required to take action that could have lasting effects on residents, constituents and taxpayers alike. Additionally, such limitations would hinder public discourse, community involvement, and public participation in the democratic process.
- 5) **Position:** We object to provisions in the proposed amendments to the Open Public Meetings Act that require the production of comprehensive minutes of all public bodies and subcommittees thereof within 45 days.
- a) **Comment:** Existing legislation provides checks & balances for the production of minutes and access thereto for members of the public. This proposed revision to the Open Public Meetings Act does not recognize the established practices and laws that have effectively provided for transparency and production of minutes, access to recordings, as well as preservation and destruction of records in New Jersey for many years. Failure to fully recognize that one law should not compete with the entire body of legislation governing such administrative efforts places unwarranted burdens on public officials and public bodies. This proposed amendment further constitutes an unfunded mandate and potentially subjects public bodies to liability without any deference to the practicalities of the administrative process. Additionally, the Legislature would impose a requirement utilizing a subjective term for the production of minutes further allowing for the potential of de minimus challenges to the administrative functions of local government.
- 6) **Position:** Provisions in the proposed amendments to the Open Public Meetings Act pertaining to the availability of recordings of meetings are simply impossible to enforce.
- a) **Comment:** The proposed revisions do not show any deference to the records retention schedule of the Division of Archives & Records Management thereby creating a burden to the

public body. The proposed revisions, as written, make recordings a permanent record with no deference to the ability of a public body to maintain such recordings or to the technological advances that may make such recordings obsolete while requiring public bodies to maintain them.

- 7) **Position:** We oppose provisions in the proposed legislation that require brief descriptions of all items on the agenda.
 - a) **Comment:** This action may subject the agenda to editorialization not intended in the legislation. Members of the public and elected officials who take action in the best interest of their constituents should not be subjected to potential influences based on commentary provided to an agenda.
- 8) **Position:** We do not support provisions in the proposed amendments to the Open Public Meetings Act pertaining to second or subsequent violations filed in Superior Court against a public agency as written.
 - a) **Comment:** The proposed amendments seek to void an act of a public agency for failure to comply with the provisions of the Act but it does not contain specific time limitations. The amendments as written could subject a public body to unwarranted prejudice from the courts and potentially interferes with the right of the court to use discretion in these matters. It is the opinion of this public body that the Judiciary does not look kindly on any violations of OPMA and furthermore the Judiciary has not proven incapable of rendering unbiased opinions without being dictated to by the State Legislature.
- 9) **Position:** We strongly, vehemently and loudly proclaim our objections to the proposed provisions in S-1451 that provides that “any party, other than a public body, that prevails in an action brought pursuant to this section, and demonstrates a pattern of violations by a public body, shall be awarded the amount of reasonable attorney’s fees incurred in bringing the action. The cost of any attorney’s fee awarded by the court shall be paid by the public body.”
 - a) **Comment:** The bases for these objections are so numerous as to prohibit us from addressing each objection herein. However, the objections include but are not limited to the following:
 - i) The legislation drafted and submitted for consideration as S-1451 contains such provisions as to make public bodies targets for de minimus challenges with no allowances for common sense, practical conduct of a meeting, and ability to address matters that come before such a body on a regular basis.
 - ii) The State Senate proposes in S-1451 to compel all public bodies, except the State Senate which is exempted from each provision of the Act, to defend themselves against all claims with no recourse to recoup costs in cases in which they prevail.
 - iii) The State Senate further proposes to legislate that public bodies use public funds to pay legal costs if the challenger prevails in such matters even on the most minor deviation.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of West Milford that we do hereby request that the members of the State Senate reject the amendments to the Open Public Meetings Act as proposed in S-1451; and

BE IT FURTHER RESOLVED that the Township Council of the Township of West Milford respectfully requests that the members of the State Senate insist, demand and commit that there be a means of constructive dialogue and comment provided to local elected and appointed officials from every public body within the State before amendments to this crucial legislation be considered at any future date.

Adopted: April 18, 2012

Adopted this 18th day of April, 2012
and certified as a true copy of an original

Antoinette Battaglia, Township Clerk