

Township of West Milford

Passaic County, New Jersey

~ Resolution 2013 - 239 ~

RESOLUTION OF THE TOWNSHIP OF WEST MILFORD, COUNTY OF PASSAIC, STATE OF NEW JERSEY PROVIDING A RECAP OF A MEETING WITH PRIMARY SPONSOR SENATOR JOSEPH PENNACCHIO REGARDING AMENDMENTS TO SENATE BILLS 2511 AND 2512

WHEREAS, Senator Joseph Pennacchio of the 26th legislative district in the State of New Jersey did become a primary sponsor of Senate Bills 2511 and 2512 on February 8, 2013; and

WHEREAS, S-2511 would authorize amendments to the Open Public Meetings Act and S-2512 would authorize amendments to the Open Public Records Act; and

WHEREAS, these bills and the provisions contained therein will have a direct impact on all public bodies within the State of New Jersey including municipalities, boards of education, commissions, boards, authorities, and all groups that fall under the definition of a “public body” or “quasi—governmental agency” in the Acts; and

WHEREAS, a multitude of such public bodies have adopted resolutions, written letters, or sent envoys to their legislators expressing specific and grave concerns about the provisions and unfunded State mandates contained in both S-2511 and S-2512; and

WHEREAS, in the 26th legislative district, at a minimum, six of the thirteen municipal governments adopted resolutions in opposition to these bills and three sent envoys to Senator Pennacchio to express opposition on their behalf; and

WHEREAS, Senator Pennacchio did host a meeting on July 30, 2013 to which he had invited all municipal clerks and mayors from the municipalities within his district and at which there was representation from each of the thirteen municipalities in district 26 as well as two aides from the Senator’s office, one aide from Senator Weinberg’s office (as the other primary sponsor) and two representatives from the Office of Legislative Services with whom the Senators are working to craft these bills; and

WHEREAS, at said meeting, it was apparent that the attendees were well educated on the subject matters at hand and all engaged in extensive dialogue about the proposed amendments to OPRA and OPMA; and

WHEREAS, at said meeting Senator Pennacchio did acknowledge concurrence with certain concerns expressed and he committed to endorse certain changes to the proposed legislation and he did ask Senator Weinberg’s aide to seek changes to the May 30, 2013 versions of text for both bills; and

WHEREAS, with regard to S-2511, the Open Public Meetings Act, these changes included but were not limited to the following:

1. Elimination of the opening paragraphs of the bill and begin with the wording “The Legislature declares that it is the understanding and the intention of the Legislature that in order”to eliminate unnecessary depictions of alleged corruption and misconduct within public bodies. References to ‘alleged corruption and misconduct’ is accusatory in nature, casts a negative light on all elected officials, and shall be eliminated

2. Eliminate any inclusion in the Act that a subcommittee of a public body be subject to the provisions of the adequate notice and record of meetings requirements to ensure that public bodies are not saddled with additional unfunded State mandates.
3. Removal of any and all language that exempts the legislature from complying with the provisions of the act and every component thereof so that all public servants are held accountable to the same standards.
4. Change language in the definition of a public body to include any group or organization that receives government funding with the exception of non-profit organizations so that all lobbying groups are treated equally.
5. Eliminate language for any advertising or notice requirements that excludes weekends and State holidays from being part of the 48-hour notice provisions so that public bodies can operate efficiently and in a timely fashion.
6. Drastically rewrite language pertaining to the public comment period of meetings so that designating the times at which the public can speak at public meetings shall be at the discretion of the public entity so that members of the public can effectively participate in discussion, deliberation and debate with their local officials. The provision that a public entity shall provide a public comment period for agenda items shall be removed from the Act so that the public is not limited and there is greater transparency in government operations.
7. Eliminate language that makes it illegal for members of a public body to communicate during public meetings so that public officials and their constituents can conduct public business without fear of reprisals for innocent attempts to help ensure efficiency in the process.
8. Provide clarification as to the Legislature's intent with regard to the submission of written comments at public meetings to avoid confusion and disruption at public meetings.
9. Remove language with regard to "Rice" notices that references "any adversely affected individual or individuals" to ensure efficiency and guarantee that the rights of individual employees are protected.
10. Repeal any language that provides conflicting standards for the production of minutes whereby the legislature is subject to standards different to that of any other public entity to ensure that all public servants are held to the same standards of transparency.
11. Amend language with regard to the production of minutes within 60 days to read "minutes or recordings of meetings shall be made available to the public as soon as possible but not later than 60 days after the meeting" so that all public bodies are provided equal ability to keep the public apprised of all business conducted at a public meeting.
12. There currently exists language in the bill that reads "Any party other than a public body, that prevails in an action brought pursuant to this section may be awarded the amount of reasonable attorney fees....." That language shall be changed to eliminate the language "other than a public body" and therefore read, "Any party that prevails in an action brought pursuant to this section may be awarded the amount of reasonable attorney fees....." Additionally, the ensuing sentence shall be changed to read, "The cost of any attorney's fee awarded by the court shall be paid by the non-prevailing party whether that party be the plaintiff or defendant, a public body or a private citizen, group or organization" so that all parties to such actions are held equally accountable in the expenditure of public funds and use of public resources.
13. Changes shall be made to the Act so that the attorney general or county prosecutor shall have standing to bring an action in Superior Court. The reference to "any member of the public" shall be removed so that public bodies or individual members thereof shall not be unfairly targeted.
14. The procedure regarding quarterly review of executive session minutes shall be eliminated from the Act to facilitate timely release of executive session minutes to the public.
15. Remove language in the Act that says "an appointed member of a public body may be removed from the public body by the appointing authority because of two or more violations of P.:. 1975, c231" so that public bodies shall not be subjected to violations of employment practices and individual appointees shall not be targeted by disgruntled persons. and;

WHEREAS, with regard to S-2512, the Open Public Records Act, changes included but were not limited to the following:

1. The Act shall be amended to eliminate the following language; ‘A government record shall not include the following information; information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit; any memorandum correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member’s official duties, except that the provision shall not apply to otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members...’ thereby subjecting the legislature to the same provisions of the Open Public Records Act as all other public bodies.
2. Any and all additional exemptions included in the past versions or laws, in the current language or in future reprints which exempt the legislature from compliance with the Act shall be removed and deemed void so that all public servants are held accountable to the same standards for transparency and open government.
3. Explicit clarification shall be included and provided in the legislation with regard to the release of names, addresses, telephone numbers and email addresses so that the custodian of records, the GRC and the courts shall not have to interpret the intent of the legislature.
4. Insert language in the definition of a “public body” to include any group or organization that receives government funding and has authority to legislate with the exception of non-profit organizations so that all lobbying groups are treated equally and remove the language that lists certain groups.
5. The Act shall eliminate any language that provides an exemption to the legislature or any entity thereof in its definition of “Quasi-governmental agency” so that all public bodies and branches thereof are held to the same standards of transparency.
6. The language in the Act shall eliminate any requirement that the custodian of records shall provide an affidavit regarding redacted records as the custodian is already legislated to provide detailed explanations of all redactions made to a public record.
7. The Act shall eliminate any requirement that the custodian of records shall provide information regarding the originator or author of the record, the number of redacted words and/or lines in the redacted record for the reasons stated above in item #5 and because the reality of document retrieval is that oftentimes the originator or author of such records are unknown. This may require significant research when OPRA clearly provides that the custodian shall not conduct research for a requester.
8. The Act shall be amended so that if a request requires the custodian to expend time in excess of one (1) hour on an OPRA request, or multiple requests in the aggregate from the same party, the custodian of records may assess a special service charge because the consensus of all in attendance at the Senator’s meeting was that a standard request should not take more than one hour of the custodian’s time.
9. Should the requester of a public record wish to receive an explanation of the special service charge assessed or an affidavit thereof, it is incumbent upon the requester to ask for same in writing within seven days of receiving notice of the special service charge.
10. Any and all references to the time requests were received whether it be by noon or after 12 p.m. shall be removed from the Act and any and all proposed requirements thereto legislated shall be removed from the Act for the purposes of consistency and practicality.
11. The Act shall be amended to define and impose specific language regarding frivolous causes of action and no causes of action or actions with meaningless outcomes. It shall not be sufficient for the bill to reference the rules of court regarding frivolous causes of action. Such clarification should be spelled out in S-2512 and all future versions to avoid confusion and disruption.
12. Neither the public entity nor the custodian of records shall be held liable or accountable for records that do not exist within the public body’s jurisdiction regardless of whether or not such record meets the definition of a “government record” because simply stated, if a record does not exist, it does not exist.
13. The following language shall be removed from the Act so that the legislature shall be held accountable to the Government Records Council and the courts to the same extent all public entities are held accountable thereto: [“The council shall not have jurisdiction over the Judicial or

Legislative Branches of State Government or agency, officer, or employee of those branches.”] Language should be inserted to exempt the Judicial branches of government.

14. The following language shall be stricken from the Open Public Records Act “A requestor who prevails in any proceeding [shall] may be entitled to a reasonable attorney’s fee award.” and said language shall be replaced with the following text: “The prevailing party in any proceeding, whether that party be the plaintiff or defendant, a public body or private citizen, group or organization may be entitled to a reasonable attorney’s fee award” so that all parties to such actions are held equally accountable in the expenditure of public funds and use of public resources.

WHEREAS there may be additional amendments agreed to at the July 30, 2013 meeting with Senator Pennacchio, representatives from the municipalities in his district, his aides, the aide from Senator Weinberg’s office and representatives from the Office of Legislative Services which do not appear herein but which are in absentia included in this resolution; and

WHEREAS, the Township Council of the Township of West Milford does hereby recognize that the Primary Sponsor of Senate and Assembly bills does have the authority to effectuate changes in the bills to achieve the best legislation possible.

NOW THEREFORE BE IT RESOLVED that the Township Council of the Township of West Milford hereby expresses appreciation to Senator Joseph Pennacchio for hosting the July 30, 2013 meeting with representatives from the thirteen municipalities within his legislative district to discuss concerns about the amendments to OPRA and OPMA as contained in S-2511 and S-2512; and

BE IT FURTHER RESOLVED that the Township Council of the Township of West Milford in the County of Passaic and the 26th Legislative District of the State of New Jersey hereby supports the proposed amendments to S-2511 and S-2512 as described herein and discussed at the July 30, 2013 meeting of the municipalities in the 26th District but the governing body still opposes the legislation; and

BE IT FURTHER RESOLVED that the Township Council of the Township of West Milford does hereby urge Senator Joseph Pennacchio, as Primary Sponsor of S-2511 and S-2512 to demand the amendments as outlined herein and agreed to in concept at the July 30, 2013 meeting be incorporated into the Acts and a new version of the text be drafted and distributed for comment, discussion and input to those who attended said meeting; and

BE IT FURTHER RESOLVED that the Township Council of the Township of West Milford recognizes that Senator Pennacchio has agreed that those who participated in his July 30, 2013 meeting shall receive copies of a new draft of S-2511 and S-2512 when the amendments have been made along with a report of the amendments and that those attendees shall be provided additional opportunities to review and discuss the amended versions at a date and time to be determined by the Senator but prior to the legislation being presented to the full Senate for a vote; and;

BE IT FURTHER RESOLVED that the Township Council of the Township of West Milford does respectfully request that Senator Pennacchio will withdraw his sponsorship of S-2511 and S-2512 unless said amendments are incorporated therein and his sponsorship shall be summarily withdrawn.

Adopted: September 4, 2013

Adopted this 4th day of September, 2013
and certified as a true copy of an original.

Antoinette Battaglia, Township Clerk