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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 37 Session of  
2017

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INTRODUCED BY SACCONI, JANUARY 23, 2017

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 23, 2017

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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.

17 \* \* \*

18 Section 2. Sections 708(a) and (b) and 714 of Title 65 are  
19 amended to read:

1 § 708. Executive sessions.

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

4 (1) To discuss any matter [involving], as it pertains to  
5 a specific individual who is a prospective, current or former  
6 employee, relating to the employment, appointment,  
7 termination of employment, terms and conditions of  
8 employment, evaluation of performance, promotion or  
9 disciplining of [any] the specific individual who is a  
10 prospective [public officer or] employee or current [public  
11 officer or] employee employed or appointed by the agency, or  
12 specific individual who is a former [public officer or]  
13 employee, provided, however, that the individual employees  
14 [or appointees] whose rights could be adversely affected may  
15 request, in writing, that the matter or matters be discussed  
16 at an open meeting. The agency's decision to discuss such  
17 matters in executive session shall not serve to adversely  
18 affect the due process rights granted by law, including those  
19 granted by Title 2 (relating to administrative law and  
20 procedure). The provisions of this paragraph shall not apply  
21 to any meeting involving the appointment or selection of any  
22 person to fill a vacancy in any elected office. An agency  
23 shall discuss all other agency business relating to the  
24 policies of employment, appointment, termination of  
25 employment, terms and conditions of employment, evaluation of  
26 performance, promotion or disciplining of employees,  
27 appointees or officials of the agency and other discussions  
28 that do not pertain to the specific individuals who are  
29 prospective, current or former employees of the agency at an  
30 open meeting under section 704 (relating to open meetings).

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

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

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

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

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

26           (7) To review and discuss plans related to security and  
27 emergency preparedness, including the following:

28           (i) Physical security of buildings.

29           (ii) Staff training.

30           (iii) Communication procedures.

1           (iv) Plans for evacuation.

2           (v) Lockdown or other safety measures.

3           (vi) Coordination with police, fire and other safety  
4 agencies that if disclosed would definitely jeopardize or  
5 threaten security or preparedness.

6           (vii) The cost of implementing a plan and all  
7 information relating to the equipment to be purchased  
8 shall be discussed at an open meeting under section 704.

9       (b) Procedure.--

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

20       (2) An agency holding an executive session under this  
21 section, except for an executive session held for a purpose  
22 under subsection (a)(4), shall make an official verbatim  
23 audio or video recording of the complete executive session  
24 and retain the recording for a period of one year. Prior to  
25 the commencement of the executive session, the agency shall  
26 make an announcement that the executive session will be  
27 recorded. The recordings shall not be subject to public  
28 inspection and copying under the act of February 14, 2008  
29 (P.L.6, No.3), known as the Right-to-Know Law, except by  
30 court order. An agency member who would have been permitted

1 to attend an executive session, whether or not that member  
2 was actually in attendance, shall be permitted access to the  
3 official recording, subject to reasonable rules and  
4 regulations of the agency to protect access to the recording.

5 (3) Prior to holding an executive session on any matter,  
6 the agency shall:

7 (i) obtain advice from a solicitor or legal counsel  
8 as to whether or not the matter may be discussed at an  
9 executive session under the provisions of this section;  
10 or

11 (ii) if the agency makes the decision to not consult  
12 a solicitor or legal counsel, the elected official in  
13 charge shall determine whether the information on the  
14 agenda needs to be discussed in an executive session.

15 (4) In either case under paragraph (3), the agency shall  
16 publicly state on the record at the current public meeting or  
17 next public meeting whether the 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 § 714. Penalty.

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

29 (1) For a first offense, in addition to any other  
30 penalty authorized by law, the costs of prosecution plus a

1 fine of at least \$100 and, in the discretion of the  
2 sentencing authority, of not more than \$1,000.

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

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

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

15 Section 3. This act shall take effect in 60 days.