

1 HOUSE OF REPRESENTATIVES  
2 COMMONWEALTH OF PENNSYLVANIA

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4 House Bill 2408

5 Amends the Sunshine Act to Require Government  
6 Agencies to Include Hearing Agenda in All Public  
7 Notices Relating to Their Meetings or Hearings

8 \* \* \* \*

9 House State Government Committee

10 Matthew Ryan Office Building  
11 Room 205  
12 Harrisburg, Pennsylvania

13 Tuesday, September 16, 2014 - 8:02 a.m.

14 --oOo--

15 COMMITTEE MEMBERS PRESENT:

16 Honorable Daryl Metcalfe, Majority Chairman  
17 Honorable George Dunbar  
18 Honorable Eli Evankovich  
19 Honorable Garth Everett  
20 Honorable Matt Gabler  
21 Honorable Fred Keller  
22 Honorable Jerry Knowles  
23 Honorable Tim Krieger  
24 Honorable David Maloney  
25 Honorable John McGinnis  
Honorable Brad Roae  
Honorable Rick Saccone  
Honorable Mark Cohen, Minority Chairman  
Honorable Mary Jo Daley  
Honorable Marty Flynn  
Honorable Jordan Harris  
Honorable Dan Miller  
Honorable Michael Schlossberg

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NON-MEMBERS PRESENT:

Honorable Jim Christiana

STAFF MEMBERS PRESENT:

Susan Boyle  
Majority Executive Director

Pam Neugard  
Majority Legislative Administrative Assistant

Karen Penica  
Majority Research Analyst

Kim Hileman  
Minority Executive Director

Linda Huntington  
Minority Legislative Administrative Assistant

Kathy Seidl  
Minority Research Analyst

Matt Hurlburt  
Minority Research Analyst

	INDEX OF TESTIFIERS	
1	TESTIFIERS	PAGE
2		
3	Opening remarks by Majority Chairman Metcalfe.....	4
4		
5	Opening remarks by Rep. Christiana.....	4
6	Shane Fitzgerald, Executive Editor..... Beaver County Times	10
7	Eric Montarti, Senior Policy Analyst..... Allegheny Institute for Public Policy	28
8		
9	Kim de Bourbon, Executive Director..... PA Freedom of Information Coalition	48
10	Pennsylvania NewsMedia Association	
11	Melissa Melewsy, Esquire..... Media Law counsel	66
12	Paula Knudsen, Director of Legal Affairs	80
13	Lancaster Newspapers	
14	Jed Kensinger, Correspondent Coordinator Intelligencer Journal/Lancaster News Era	71
15	Barbara Hough Roda, Executive Editor...	83
16		
17		
18		
19	SUBMITTED WRITTEN TESTIMONY	
20		
21	(See other submitted testimony and handouts online.)	
22		
23		
24		
25		

1 MAJORITY CHAIRMAN METCALFE: Good  
2 morning. Eight o'clock having arrived, this  
3 meeting of the House State Government Committee is  
4 called to order for our hearing.

5 Before we start, I'll ask everyone to  
6 please rise, and Representative Rick Saccone lead  
7 us in the pledge.

8 (Pledge of Allegiance off the record).

9 MAJORITY CHAIRMAN METCALFE: Thank you,  
10 Rick. Before we get started with our official  
11 testimony, I'd like to invite Representative  
12 Christiana to the microphone to give us a few  
13 opening words on his legislation, if he'd like.  
14 After he concludes we'll do the roll call, if  
15 that's okay. Some of the other members will be  
16 coming in.

17 REPRESENTATIVE CHRISTIANA: Thank you,  
18 Mr. Chairman, and good morning.

19 MAJORITY CHAIRMAN METCALFE: Good  
20 morning.

21 REPRESENTATIVE CHRISTIANA: First of  
22 all, thank you for having the meeting and the  
23 hearing on giving us an opportunity to some  
24 impressive testifiers to talk about why they  
25 believe that House Bill 2408 will make Pennsylvania

1 a more transparent commonwealth.

2 Before I begin, I would like to thank  
3 your executive director and your research team for  
4 their continued commitment to help make this bill,  
5 in my opinion, as responsible as possible. There's  
6 no doubt that throughout the day and the upcoming  
7 weeks, we will hear all kinds of claims about what  
8 House Bill 2408 does or does not do. I think by  
9 the end of the day, we will be able -- your  
10 committee and myself will be able to go back and  
11 combat some of those accusations with real facts of  
12 what the intentions of House Bill 2408 does.

13 For quite some time, Pennsylvania has  
14 been trying to add Sunshine, if you would, or  
15 transparency into the government process at all  
16 levels of government within Pennsylvania. I think  
17 that was a goal for the last several decades. I  
18 want to acknowledge that back when Representative  
19 Mark Cohen, Chairman Cohen, came here, they were  
20 talking about the same type of issues. I want to  
21 thank the chairman for his co-sponsorship of the  
22 bill.

23 In the last four years, I think we've  
24 taken steps, your committee, the General Assembly,  
25 many of the members in this room have taken steps

1 to make the state government as transparent as  
2 possible. I think that should be commended, but I  
3 also think we have a tremendous amount of work to  
4 do.

5 Let me also begin by saying, I believe  
6 that almost all elected officials -- the strong  
7 majority of elected officials operate with the  
8 highest intentions and levels of integrity. I  
9 don't want this bill to be misconstrued that the  
10 majority of folks that volunteer to serve their  
11 government or the Commonwealth or their local  
12 township, their school board or their county, that  
13 the majority of them are doing something unethical.  
14 That's not at all what I'm saying.

15 But, there are documentations,  
16 significant documentations of those minority of  
17 folks who have abused the Sunshine Act, in my  
18 opinion, or work within the gray areas of the  
19 Sunshine Act for public participation and to reduce  
20 the information that is provided to their  
21 constituents before a public meeting. That's not  
22 my opinion. That's the facts of many  
23 well-documented cases in all our districts about  
24 the lack of an agenda, a real agenda, and the  
25 timeliness of the agenda, and also the merits of

1 what are on those agendas.

2 My hope is that, House Bill 2408 will  
3 actually take a simple approach. It requires a  
4 24-hour notice prior to a meeting; a 24-hour notice  
5 to post the agenda for that government body's  
6 meeting. I don't think that's too much to ask. I  
7 think that whether we're talking about the fact  
8 that Pennsylvania has 7,100 full-time  
9 administrators in our school system is 7,100  
10 full-time administrators, I think those  
11 administrators would be able to post an agenda 24  
12 hours before a meeting.

13 I also don't think it's too much to ask  
14 that once that agenda is posted, just 24 hours  
15 before a meeting, that they cannot deviate from  
16 that. But, obviously, there's exceptions and  
17 emergencies that happen. There's language in the  
18 bill that if something happens within that 24-hour  
19 window, then they would be able to act on that if  
20 it is an emergency situation.

21 I don't think that asking local  
22 governments, county governments, school districts,  
23 or even the Commonwealth of Pennsylvania to be  
24 prepared at least 24 hours in advance of a public  
25 meeting so that we can ensure that the public has

1 enough information to make a decision whether or  
2 not they want to come out of their home on a winter  
3 night. Or if they want to actually go and sit  
4 through a local government meeting, let's at least  
5 let them make an informed decision on what's on the  
6 agenda, rather than just having to go out and see  
7 what the government is doing when it is time of the  
8 meeting, or even when they walk in and they receive  
9 an agenda, if things aren't on that agenda or a  
10 gray area, that the agenda is being ambiguous for a  
11 reason. I don't think that's appropriate, Mr.  
12 Chairman.

13 I look forward to the testifiers. I  
14 look forward to the continued conversation. I want  
15 to say that while this bill is, you know, we're  
16 hoping to make suggestions and recommendations to  
17 ensure that some of the accusations that will be  
18 made in either written testimony or letters of  
19 opposition going forward, that we can address those  
20 going forward.

21 I don't believe the bill adds much added work at  
22 all to the governing bodies. I think posting an  
23 agenda and sticking to that is no added burden, and  
24 I surely don't think that the language of the bill  
25 mandates that local governments or county



1 governments have to advertise in the newspaper or  
2 have to spend additional taxpayer dollars.

3 There are ways that we can upload a PDF  
4 file to a website. It doesn't mandate that you  
5 have a website. But, if you want to upload your  
6 PDF to a website or you want to post it on the door  
7 of the meeting, those are what, I think, would be  
8 more than appropriate.

9 And if the language is not explicitly  
10 clear to accomplish those goals, Mr. Chairman, I'm  
11 always willing to work with you and some of the  
12 other interest groups to make it better. Once  
13 again, I thank you for your consideration.

14 MAJORITY CHAIRMAN METCALFE: Thank you,  
15 Representative Christiana.

16 Today's public hearing is, as  
17 Representative Christiana mentioned, on House Bill  
18 2408. Before we start with our first testifier,  
19 I'll ask our member secretary to call the roll  
20 call, please.

21 (Roll call off the record).

22 MAJORITY CHAIRMAN METCALFE: Our first  
23 testifier this morning will be Mr. Shane  
24 Fitzgerald, Executive Editor of the Beaver County  
25 Times. Welcome, sir. You can begin when ready.

1 MR. FITZGERALD: Good morning, Chairman  
2 Metcalfe.

3 MAJORITY CHAIRMAN METCALFE: Good  
4 morning.

5 MR. FITZGERALD: Chairman Metcalfe and  
6 committee members, I'd like to thank you for the  
7 opportunity to take a few minutes to talk with you  
8 about House Bill 2408.

9 My name is Shane Fitzgerald. I'm the  
10 Executive Editor of the Beaver County Times. We  
11 are a daily newspaper that serves 33,000 Beaver and  
12 western Allegheny County print readers, and another  
13 16,000 unique visitors daily to our website at  
14 www.timesonline dot com; receive about 1.6 million  
15 page views per month. The paper is in its 140th  
16 year of serving our community, the past 77 under  
17 Calkins Media's leadership.

18 In my 27-year career, I've worked at  
19 small, medium and large newspapers in Livingston,  
20 Montana; Denver, Colorado; Corpus Christi, Texas;  
21 and, for the past 13 months, in Beaver County,  
22 Pennsylvania. I currently serve on the boards of  
23 the Pennsylvania Freedom of Information Coalition  
24 and for the Pennsylvania Associated Press Managers  
25 Editors. For most of my 10 years in Texas, I

1 served on the Freedom of Information Foundation of  
2 Texas, the Legislative Advisory Committee that  
3 provided counsel on media and open  
4 government-related bills, and I'm a past president  
5 of the Texas Associated Press Managing Editors.

6           The first thing I think is pertinent to  
7 point out about this bill is that, 29 states  
8 currently have laws in place that require at least  
9 24 hours' notice of what will be discussed at any  
10 public meeting, and 12 of those states have the  
11 same requirements as this bill proposes, with the  
12 24 hours. Two of my states, Colorado and Texas, do  
13 require published agendas before a meeting and two  
14 do not, Montana and Pennsylvania.

15           I'd like to briefly share some of my  
16 experience in Texas, mostly because of the  
17 similarities in government structure of  
18 Pennsylvania. Texas' first version of the Open  
19 Meetings Act came in 1967 and slowly has morphed  
20 into one of the more progressive laws of its kind.  
21 It requires 72 hours' notice for any public entity  
22 to publish an agenda, and they have to be on very  
23 specific topics. No item can be discussed at that  
24 public meeting if it's not on the agenda.

25           While on the surface that could be

1 perceived as onerous and restrictive, and it  
2 certainly was thought that way in some corners  
3 before that requirement was enacted, it actually  
4 provided government bodies with an aura of  
5 transparency in their communities that doesn't seem  
6 to be present here in Pennsylvania.

7           While in Texas, I recall several  
8 conversations with city council and school board  
9 members, Corpus Christi mayors Joe Adame and Nelda  
10 Martinez, who saw great benefit in having such  
11 clear direction in the law. Often, if an issue  
12 would get heated, particularly during a public  
13 comment session, the elected officials could  
14 politely assure the constituent that their issue  
15 could be addressed at the next meeting, and in the  
16 meantime, work could get done in the interim on it.

17           Representative Todd Hunter, a Republican  
18 from Corpus Christi, was also the Calendars  
19 Committee Chairman in Texas, with is arguably the  
20 second-most prominent member of the House of  
21 Representatives behind the Speaker of the House,  
22 championed several open government initiatives. He  
23 often told me that he believed good transparency  
24 led to good communication which led to good  
25 government. He didn't want anyone thinking

1 government officials were purposely hiding anything  
2 from the public, and that being up front with the  
3 public was far better. He knew there were enough  
4 other misperceptions out there, that having open  
5 agendas were one major help to being able to talk  
6 about the importance of transparency with  
7 credibility. And it is clear that open agendas  
8 increase public involvement.

9           We have a good example of this recently  
10 in our coverage area. The Moon Area School  
11 District, which is one of the few that willingly  
12 posts public agendas before its meetings, they  
13 showed how what could have been a terrible negative  
14 become more positive. The school district had  
15 listed five proposals to the community that  
16 included closing zero, one or two of the local  
17 elementary schools, and the district gave the  
18 public several months to offer input on those  
19 proposals.

20           The night of the final decision was  
21 supposed to be made, a vocal group of parents came  
22 to the podium for several hours, and that meeting  
23 started 7 p.m., to try to save their school from  
24 being closed. Into the early-morning hours, a  
25 couple of board members decided they had been

1 swayed and suggested an alternative that included  
2 closing a school that wasn't even on the list of  
3 the original five proposals and, perhaps,  
4 consolidating with another local school district; a  
5 smaller one. That obviously pleased the people who  
6 went to the meeting, but it was a complete shock to  
7 those tied to the school now slated for closure.  
8 Cooler heads prevailed, and the board tabled the  
9 vote so it could get public feedback about the  
10 abrupt change in plans.

11           The superintendent the next day gathered  
12 with many parents to talk about what the school  
13 board had wanted to do. One parent made the best  
14 point in terms of the discussion that we're having  
15 about this bill. After the meeting, a mom,  
16 Michelle Carrier, lamented about the switch to  
17 close Hyde Elementary School, saying she never  
18 thought her school was under consideration. We  
19 were never on the chopping block, she said. My  
20 head was never in the guillotine, explaining why  
21 she didn't attend previous school board meetings.  
22 We don't want to be blind-sided. I feel that's  
23 what happened, she said. She is a busy mother who  
24 relied on the agenda to know whether she should  
25 attend those school board meetings. I can only

1 imagine if Moon hadn't been transparent what might  
2 have happened, given the fervor the night on which  
3 the decision was supposed to be voted upon.

4           Where Texas and Pennsylvania have  
5 tremendous similarities are in the sheer number of  
6 municipalities and school districts. Colorado and  
7 Montana are far more streamlined with government  
8 entities largely county based. Texas and  
9 Pennsylvania are far more hyper-localized. Beaver  
10 County has about 175,000 people who live there, and  
11 there are 54 municipalities and 14 school  
12 districts. That's a little more than 3,000 people  
13 per municipality and a little more than 12,000  
14 people per school district.

15           So what happens in one small community  
16 will affect someone in a nearby community or  
17 district. Public agendas aren't just for people  
18 who are served by that one entity. Public agendas  
19 serve the entire surrounding community, including  
20 the business community. It's important to know  
21 about such things as zoning changes, board  
22 appointments, replacement or new business tax  
23 breaks or infrastructure needs that might raise  
24 taxes, to scratch the surface of the possibilities  
25 of what could matter to someone.

1           I'll give you an example from our area  
2 of how a public agenda almost certainly would have  
3 headed off a blatant conflict of interest. Freedom  
4 Borough residents voted out a council member in  
5 November. That council member was back in office  
6 in January, just two months later, as an  
7 appointment for a vacancy.

8           It just happens that three other members  
9 of the seven-member council were relatives and made  
10 that appointment, giving the family a quorum. And  
11 no, the appointment wasn't on a public agenda, or  
12 where anyone could comment on it or where a  
13 watchdog group such as my newspaper could have seen  
14 it. We did a story after the fact, but it was far  
15 too late at that point.

16           Stories like that give Pennsylvania  
17 politics a black eye. Unfortunately, far more  
18 examples exist where too much government is going  
19 on behind the scenes and out of the spotlight.  
20 This bill takes a step toward transparency.

21           In my own county, I would be remiss if I  
22 didn't mention two positive stories. First,  
23 Blackhawk School District, which has had as  
24 contentious debate on a teachers' contract as any  
25 around. But these items are always on their



1 agenda, and it broadcasts via video on their  
2 website so the public can see for itself what is  
3 going on. It might feel messy at times, but the  
4 school board members have expressed to me they have  
5 no regrets at all about being upfront and involving  
6 the community in the discussion, no matter how  
7 difficult it might be on a given evening.

8           The other is our local county  
9 commissioners, who, in the past month started  
10 posting agendas 24 hours in advance of their  
11 meeting. The county commissioners have come under  
12 great fire from our newspaper for open records and  
13 open meetings disputes on a variety of topics,  
14 particularly in the past year. But to their  
15 credit, they do understand the value of trying to  
16 change the perception and trying to show  
17 transparent.

18           The turning point came when one of their  
19 constituents, Chippewas Township Attorney David  
20 Lozier, came to a commissioners' meeting and asked  
21 the commissioners to post agendas 48 hours in  
22 advance. He noted how the commissioners were about  
23 to pass 78 resolutions with a single motion during  
24 the meeting. Commissioners hold workshop meetings  
25 before regular meetings where attorneys often

1 explain key resolutions to officials, but regular  
2 meetings can take less than 10 minutes. The  
3 commissioners saw Mr. Lozier's point and acted.

4 The commissioners did express concern  
5 that they may want to tweak agenda items, but  
6 Commissioner Dennis Nicholas also suggested such  
7 adjustments are rare. But now they are posting  
8 agenda items, and nothing bad has happened, despite  
9 their initial fears.

10 Pennsylvania residents need and deserve  
11 to have such information as far in advance as  
12 possible before elected officials make decisions  
13 with their money. If that means preparing an  
14 agenda a couple days in advance and walking it over  
15 to the meeting place to post it or uploading it to  
16 a website, that seems like a heck of a service and  
17 an inexpensive one, to the people who are paying  
18 the bills. This is a great bill to build trust.  
19 It is inherently transparent, and the requirement  
20 only helps government bodies connect with their  
21 constituents.

22 I urge to you pass House Bill 2408.  
23 Thank you.

24 MAJORITY CHAIRMAN METCALFE: Thank you,  
25 Mr. Fitzgerald. We appreciate your testimony this

1 morning.

2 Members with questions? Representative  
3 Cohen.

4 MINORITY CHAIRMAN COHEN: Thank you.

5 You agree with the prime sponsor of this  
6 bill that there's no requirement in this bill for a  
7 newspaper ad?

8 MR. FITZGERALD: I think that's a little  
9 unclear in this. I didn't anticipate it. There's  
10 some people I know who do agree that it does  
11 require it.

12 MINORITY CHAIRMAN COHEN: Do you have  
13 any objections making it clear it does not require  
14 a newspaper ad?

15 MR. FITZGERALD: I don't personally have  
16 those objections. Of course, I'd love to see it.  
17 I'm not going to lie to you about that. In the  
18 era, really to me, the open government part of it  
19 is much more important.

20 MINORITY CHAIRMAN COHEN: Okay. Thank  
21 you, Mr. Chairman.

22 MAJORITY CHAIRMAN METCALFE: Thank you,  
23 Representative Cohen. Representative Daley.

24 REPRESENTATIVE DALEY: Thank you  
25 Chairman Metcalfe.

1           Thank you for your testimony. So a  
2 question that I have, in the examples that you  
3 outlined, it seemed as though the municipalities  
4 and the school districts were able to resolve the  
5 issues in a way that met transparency needs for the  
6 public. And I agree that sometimes local  
7 government, it can be messy and things come up. I  
8 mean, some of it came because of testimony on an  
9 advertised school district initiative, but the  
10 members were then interested in what testifiers had  
11 to say, but then it involved a potential change.  
12 But they didn't act on it, and they took their time  
13 and they continued to have an open dialogue which  
14 had transparency.

15           I'm wondering if that's often the case  
16 that municipalities, local governments, school  
17 districts actually are interested in transparency,  
18 can't anticipate everything that the public is  
19 going to say, but then take the steps to bring  
20 about a solution or a process that is a good  
21 process for people.

22           So my question would be, then why -- if  
23 that's my observation, at any rate, why would this  
24 bill come around; you know, be necessary if, in  
25 fact, these local elected officials are able to

1       come to a reasonable process with their  
2       constituents?

3               MR. FITZGERALD: A great question.  
4       Representative Christiana is right. In his opening  
5       remarks he said, the lion share of government  
6       officials are good-hearted, good-spirited, mean  
7       well. They're there to serve the public well.

8               Unfortunately, there's far too many  
9       cases where things happen, like, in Freedom Borough  
10      where, are we going to get our quorum back? You  
11      know which family runs Freedom, and that's kind of  
12      the perception in the community.

13              Just having come from Texas and having  
14      that fresh there, and Texas has its own set of  
15      idiosyncrasies and issues in the political realm,  
16      which are often nationally discussed, that's one  
17      area where the politicians even have come around to  
18      just having that open and specified has really made  
19      a difference for them as far as credibility with  
20      their constituents. They even say, I can't put it  
21      on a bill -- I can't discuss it unless it's on an  
22      agenda. So, more people interested in that  
23      particular topic can come and weigh in on it.

24              I think too much gets done here behind  
25      closed doors, in cafes, at breakfast, on fishing

1 trips, on the golf course where these items are  
2 signed, sealed and delivered and run through like  
3 the 78 resolutions in 10 minutes did in my own  
4 county before those had to be posted.

5 I've heard over and over again how well  
6 the constituents don't really care; they're not  
7 involved. It's because they don't know what's  
8 going on.

9 That's why I would urge you to pass this  
10 bill. I think just laying it all out there and  
11 letting the school boards and municipalities;  
12 letting the public know what's going on is a far  
13 greater service, and it's just out front. I think  
14 that's why I really believe this bill is positive.

15 REPRESENTATIVE DALEY: Just have one  
16 quick follow-up. So I'm still troubled by the fact  
17 that we don't see it in most municipalities or most  
18 local governments, but then we still feel that we  
19 need this law. I'm here today to listen to the  
20 testimony about this so -- I try to keep an open  
21 mind and not form an opinion until I know more  
22 about it, but --

23 MR. FITZGERALD: Let me give you -- Can  
24 I interrupt real quick?

25 REPRESENTATIVE DALEY: Sure.

1 MR. FITZGERALD: Those 68 government  
2 entities I spoke about in Beaver County, three of  
3 them have public agenda: Blackhawk School  
4 District, Moon School District and now the County  
5 Commission. I'm sorry, four; the Beaver Borough  
6 also has open agendas.

7 How can anybody see what's going on and  
8 what's being talked about without that? In those  
9 four areas, we, as a newspaper, follow that for a  
10 living. We have to make phone calls and e-mails  
11 and work our sources to know what's going on in  
12 those communities, but we can't get to all 68 of  
13 those entities every time. It's just not -- It's  
14 so spread out. I think it's even more important in  
15 Pennsylvania because it's so hyper-local.

16 REPRESENTATIVE DALEY: Okay. Thanks.

17 MAJORITY CHAIRMAN METCALFE: Thank you,  
18 Representative Daley.

19 We invited Representative Christiana to  
20 join the committee for questions during the  
21 hearing. That is the normal courtesy to a member  
22 who has a bill before us. Representative  
23 Christiana, do you have a question?

24 REPRESENTATIVE CHRISTIANA: Mr.  
25 Fitzgerald, thank you for your testimony. Can you

1 just talk about how -- You mentioned a little bit  
2 of history and some statistics about 29 other  
3 states, but what it sounds like, House Bill 2408,  
4 while it's setting a level of expectation, by no  
5 means is it a national leader in raising that  
6 floor, which I think that's what we're trying to  
7 establish here; what is the minimum that we expect?  
8 The bill, I would say, puts 24-hour notice and you  
9 can't deviate inside that day.

10 Can you talk about -- I think you talked  
11 about Texas, but maybe some of those other states  
12 of the level of transparency that they have.

13 MR. FITZGERALD: Absolutely. Hawaii,  
14 for instance, requires five-days' notice. Several  
15 states, I think it was 11, have 72-hour notices,  
16 and then the rest were in the 48-hour window.

17 Arizona is probably regarded as one of  
18 the leaders in the nation as far as public  
19 transparency, and they're a 48-hour state. Again,  
20 all of these states, except two, require the public  
21 agenda. Nothing can be discussed. The other two  
22 do allow for what this bill does in the emergency.

23 REPRESENTATIVE CHRISTIANA: And without  
24 this baseline, the changes of the elected officials  
25 that have went from operating in the gray areas of



1 the Sunshine Act to now being transparent leaders,  
2 could you maybe talk about how many of them have  
3 come under the public scrutiny of the media, or a  
4 resident that has almost embarrassed them into  
5 their transparency that is now a good thing, but  
6 it's not as if it -- And I'm not saying that is  
7 always the case.

8 But, the slim minority, like you had  
9 mentioned, are operating at a level that would be  
10 consistent with 2408, how many of those have you  
11 seen, in your professional experience, have done  
12 that as a response to public criticism for a lack  
13 of transparency?

14 MR. FITZGERALD: Quite a few, honestly.  
15 They don't want to talk about things. I've seen  
16 city councils where a constituent will get up in  
17 front and start talking about a bill, and they kind  
18 of get in that emotional fervor of the constituent  
19 and want to defend their constituent. Half a dozen  
20 times, at least, I've seen where a cooler head will  
21 prevail and say, hey, let's bring this back.

22 We had a particular on some beach  
23 redevelopment in Corpus Christi where it really got  
24 heated. Everybody stepped back and took a deep  
25 breath, and a much better solution came than

1 something off a knee-jerk reaction. There was one  
2 council member who, later on, said, I overreacted.  
3 I'm glad we came back and worked on this.

4 REPRESENTATIVE CHRISTIANA: You haven't  
5 seen many states repeal increased transparency  
6 requirements?

7 MR. FITZGERALD: None has. In fact,  
8 they're adding -- I think there's three others that  
9 are -- And I don't recall which states right now  
10 are in the same state as Pennsylvania now to add  
11 this part to their version of the Sunshine Act.

12 REPRESENTATIVE CHRISTIANA: I think it  
13 speaks to the success and the expectation of our  
14 constituents once they're given the power of  
15 information.

16 So, thank you, Mr. Chairman. Thank you,  
17 Mr. Fitzgerald.

18 MR. FITZGERALD: Thank you.

19 MAJORITY CHAIRMAN METCALFE: Thank you,  
20 Representative Christiana. For our final question,  
21 Representative Cohen.

22 MINORITY CHAIRMAN COHEN: Thank you, Mr.  
23 Chairman.

24 I'm a co-sponsor of this bill, but I'm a  
25 little bit puzzled and perhaps disturbed in how

1 this notice can be used to censor the comments of  
2 local elected officials and citizens. If somebody  
3 says, I'm against doing X, which is on the agenda,  
4 that's okay. Apparently, under this bill, if they  
5 say, I'm against doing X, I'm in favor of doing Y,  
6 then that's not okay. They say, sorry, we cannot  
7 consider Y because Y is not on the agenda.

8 MR. FITZGERALD: I don't think it says  
9 that. They can't vote on it. If there's a  
10 discussion going on, there's just no action that  
11 can be taken if it's not on the agenda. I mean,  
12 certainly seen it kind of waffle a little bit  
13 during a heated debate.

14 Going back to Moon, that example I was  
15 giving you there, it was a good thing they didn't  
16 vote on it that night. I think the constituents  
17 certainly felt better that night when they came  
18 back and -- You know, they didn't get their way,  
19 the Hyde Elementary School, but at least they felt  
20 like they were heard. I think those school board  
21 members who threw that out there, I think they're  
22 glad today in retrospect that they just couldn't  
23 enact that school closure without talking with the  
24 public about it.

25 MINORITY CHAIRMAN COHEN: This doesn't

1 deal with the discussion?

2 MR. FITZGERALD: It does not deal with  
3 it. My understanding of it is, you just can't vote  
4 on anything if it's not on the agenda.

5 MINORITY CHAIRMAN COHEN: Does that  
6 limit amendments to proposals on the agenda?

7 MR. FITZGERALD: If it's a significant  
8 change, it would limit it to the next meeting, yes,  
9 is my take on that bill.

10 MINORITY CHAIRMAN COHEN: Okay. Thank  
11 you, Mr. Chairman.

12 MAJORITY CHAIRMAN METCALFE: Thank you,  
13 Representative Cohen. Thank you, sir, for your  
14 testimony today. We appreciate it.

15 MR. FITZGERALD: Thank you,  
16 Representative.

17 MAJORITY CHAIRMAN METCALFE: Our next  
18 testifier will be Mr. Eric Montarti, Senior Policy  
19 Analyst for the Allegheny Institute for Public  
20 Policy. Eric, you can begin when you're ready,  
21 sir.

22 MR. MONTARTI: Good morning. Thanks for  
23 having me here. Can everybody hear me okay?

24 (No response).

25 MR. MONTARTI: Good morning, Mr.

1 Chairman, and members of the committee. Thank you  
2 for inviting me here to speak on the proposed  
3 changes to Pennsylvania's Sunshine Law.

4 My name is Eric Montarti. I'm a senior  
5 policy analyst with Allegheny Institute for Public  
6 Policy. We're a nonprofit, nonpartisan research  
7 and education organization that has been promoting  
8 the ideas of limited government and free enterprise  
9 and defending the interests of taxpayers since  
10 1995. Our organization is focused on issues  
11 related to southwestern Pennsylvania, but the  
12 topics we research are both influenced by and have  
13 an influence on the Commonwealth as a whole.

14 The proposed changes set forth in the  
15 legislation affect every component agency in  
16 Pennsylvania, including political subdivisions such  
17 as counties, municipalities, authorities, and  
18 school districts. These are all at the level of  
19 government on which our organization devotes almost  
20 all of our time and research effort.

21 The Allegheny Institute supports citizen  
22 access to government proceedings, within reason and  
23 so long as certain safeguards for the privacy and  
24 legal rights of citizens are observed, so the  
25 maximum of transparency for citizens and taxpayers

1 regarding the operations of government can be  
2 insured. Transparency and openness in the conduct  
3 of public business are key to fostering trust  
4 between citizens and their elected and appointed  
5 officials.

6 The legislation before the committee  
7 would change sections of the Sunshine Act dealing  
8 with public notice and agenda business as outlined  
9 below.

10 Public notice. Currently, notice of a  
11 governing body's regular schedule of meetings must  
12 be given once a year by advertising in a newspaper  
13 of general circulation at least three days prior to  
14 the first meeting, and posting a notice of the  
15 meeting at the place where the governing body  
16 conducts its operations and business.

17 Pennsylvania is not too far out of line  
18 with the notice requirements of other states and  
19 what they stipulate for the bodies or entities that  
20 constitute what they would consider conducting  
21 public business. The Digital Media Law Project has  
22 a rather comprehensive, boiler-plate summary of  
23 sunshine and open meeting requirements for states,  
24 including the neighboring states of Ohio, New York,  
25 New Jersey, and those requirements typically

1     involve setting an annual meeting schedule prior to  
2     the first annual meeting; transmitting the notice  
3     to newspapers of general circulation, and posting  
4     the notice of meetings at the place where the  
5     business is conducted.

6             Only Ohio leaves the decision up to the  
7     public body itself without specificity, noting that  
8     there should be, quote, a reasonable method,  
9     whereby, any person may determine the time and  
10    place of all regularly-scheduled meetings, end  
11    quote.

12            The amendment proposed for public notice  
13    would require an additional notice for subsequent  
14    regular meetings throughout the year at least 24  
15    hours before the meeting is to take place. That is  
16    to say, an agency would make a public notice of its  
17    regularly-scheduled meetings for 2015 by  
18    advertising in a newspaper, but then would have to  
19    make a public notice for meetings taking place  
20    after January.

21            While this gesture seems to do a lot to  
22    keep citizens informed, assuming they missed the  
23    notice of the meeting schedule when it was made  
24    public prior to the start of 2015 has not checked  
25    the agency's website, or have not reached out to an

1 official of the agency, it may be a bit burdensome,  
2 both logistically and financially, to submit a  
3 notice up to 11 more times in print. The posting  
4 of the notice at the municipal building does not  
5 seem as burdensome.

6 It seems that a possible solution would  
7 be to expand the definition of public notice, at  
8 least for regularly-scheduled meetings of an  
9 agency, with the exception of the first scheduled  
10 meeting of the calendar or fiscal year, to include  
11 electronic communication, including Internet,  
12 e-mail and texting capabilities. This would allow  
13 for an agency to submit its public notice for its  
14 annual meeting schedule to a newspaper of general  
15 circulation prior to the first meeting.

16 But, in addition to last-minute  
17 newspaper notifications that might not reach  
18 interested parties in time, would provide  
19 information to people who wish to avail themselves  
20 of the Internet and phone options as well as  
21 website postings. If a meeting is taking up  
22 extraordinarily important items, it might be a good  
23 idea to look at a radio notice as well.

24 Taken together, all of these methods  
25 should ensure that interested citizens will have



1 ample notice. That would allow for citizens to be  
2 reminded that there is a regularly-scheduled  
3 meeting coming up and would allow for the agency to  
4 disseminate the remainder rather quickly. Of  
5 course, this approach may not work well for all  
6 agencies, especially political subdivisions that  
7 are not up to speed with technological  
8 capabilities.

9 Finally, I would suggest that the bill  
10 contain a definition section that updates what  
11 notification means. Then, too, except in the case  
12 of need for a hurry-up emergency meeting, the bill  
13 might specific a 48-hour advance notice requirement  
14 for notification.

15 Agenda requirements. The second aspect  
16 of the changes to the Sunshine Act before the  
17 committee involves the publication and adherence to  
18 an agenda for a public meeting. The section on,  
19 quote, notification of agency business to be  
20 considered, end quote, requires that an agenda be  
21 included in the public notice that announces the  
22 agency's regularly-scheduled meetings, with the  
23 exception of the notice announcing the schedule of  
24 meetings for the year. Language after that section  
25 allows for the publication of the agenda on the

1 agency's, quote, publicly available Internet  
2 website, end quote, along with the location of the  
3 meeting and to the public in attendance.

4 Then there is the last section that  
5 deals with, quote, notification of agency business  
6 required, end quote, and that agency may only  
7 conduct action on business stated on the agenda.  
8 There are exceptions to what would be defined as  
9 emergency business, but clearly the intent is to  
10 ensure that an item not on the agenda for that  
11 month cannot be considered until it appears on the  
12 agenda, likely the following month.

13 This does prevent the insertion of  
14 surprise, last-minute items that could involve  
15 major policy issues that did not appear on the  
16 agenda. A clear agenda that is adhered to can let  
17 a citizen know if he or she needs to appear at a  
18 public meeting to their say on an issue, or if they  
19 should choose not to attend that month's meeting.

20 Reaction from local officials. In order  
21 to ascertain the possible effects of the proposed  
22 changes on local governments in our part of the  
23 state, I attempted to contact officials charged  
24 with clerk functions, or those that are board  
25 secretaries, or Right to Know officers, and

1 sometimes a combination of each, at local governing  
2 bodies in Allegheny County. Mind you, this was not  
3 an exhaustive, randomly sampled, statistical  
4 survey, but an inquiry to get reaction on changes  
5 from officials who would have to comply with the  
6 requirements.

7 Reactions to the public notice portion  
8 of the changes included lukewarm reception to  
9 having to run a newspaper ad to make a notification  
10 that a subsequent meeting during the year was going  
11 to take place. Cost certainly could be an issue,  
12 but also the required action of arranging a notice  
13 once a month after the annual notice has been made.

14 There was also some trepidation on the  
15 issue of agenda business and taking official action  
16 on items that might not appear on the agenda that  
17 month. Consider that a political subdivision may  
18 have written up an agenda with items A through F to  
19 be considered, published the agenda along with the  
20 public notice, and then an item crops up that does  
21 not constitute an emergency but has to be dealt  
22 with. Under the proposed changes, the item would  
23 have to be put off until the following month when  
24 it can be put onto an agenda.

25 One other municipality that has very

1 capable technology felt that any new requirements  
2 via changes to the Sunshine Law would not be  
3 problematic and that they are already practicing a  
4 very open form of government.

5 In conclusion, in the Internet age,  
6 citizens with e-mail or who are able to receive  
7 texts could certainly be sent a notice of an agenda  
8 addendum after a 24-hour notice has gone out  
9 without a whole lot of effort. This would require  
10 that interested citizens have their contact info  
11 registered with the agencies that they are  
12 interested in, especially school boards and  
13 municipal government bodies.

14 With some minor adjustments,  
15 specifically to the notices that don't come at the  
16 beginning of the year, the changes proposed in the  
17 legislation seem to be fairly responsible to  
18 keeping the citizenry informed of the ongoing  
19 proceedings of their government.

20 Thank you again for the opportunity to  
21 testify here today, and that concludes my prepared  
22 remarks.

23 MAJORITY CHAIRMAN METCALFE: Thank you  
24 for your testimony. Representative Miller has the  
25 first question it appears.

1           REPRESENTATIVE MILLER: Thank you, Mr.  
2 Chairman. And I know you're from Mount Lebanon.

3           MR. MONTARTI: I live in Dormont, but  
4 our offices are in Mount Lebanon.

5           REPRESENTATIVE MILLER: Either way, it's  
6 good to see you out here. I'm your representative.  
7 I do know your institute. Real quick, and thank  
8 you, Mr. Chairman, for the time.

9           It's safe to say, then, 709 just deals  
10 with the scheduling notice; the public notice.  
11 It's just scheduled, right? And we had a debate  
12 earlier about what would have to be printed in the  
13 newspaper. It seems that 709, by adding the  
14 24-hour requirement or -- I'm sorry. Yeah, 24-hour  
15 requirement, would mean that 11 times you have to  
16 print a new schedule -- the date of the meeting in  
17 the newspaper, correct?

18           MR. MONTARTI: That's the way I  
19 understand it, correct.

20           REPRESENTATIVE MILLER: That was my  
21 feeling, too. Obviously, it's not just the agenda.  
22 It's just the date, and location of the meeting  
23 would, arguably, not be that big, correct?

24           MR. MONTARTI: If it's just saying that,  
25 for instance, for example, the Allegheny County

1 Airport Authority is meeting on the first Tuesday  
2 of the month, and we already know that from the  
3 beginning of the year. And it would say, just a  
4 reminder, the Allegheny County Airport Authority is  
5 conducting its board meeting Tuesday morning at  
6 10 a.m. at the Allegheny County Airport.

7 REPRESENTATIVE MILLER: Further it seems  
8 to say that the agenda specifically would not be  
9 required in the public notice, if I'm reading it  
10 right. The printing of the agenda itself for the  
11 meeting would not have to go into the newspaper, or  
12 at least in line with 709 public notice. Is that  
13 your reading?

14 MR. MONTARTI: That sounds right. It  
15 would have to be posted at the place of business  
16 and then available to everybody who attends the  
17 meeting, like, would have to be there.

18 REPRESENTATIVE MILLER: The agenda, and  
19 we know that agendas -- I know you know Mount  
20 Lebanon. We sometimes have lengthy agendas there.  
21 The agendas, just posting it up either at the place  
22 of the meeting or, perhaps, on the website or  
23 making them available, that's all in the realm of  
24 reasonable; would you agree?

25 MR. MONTARTI: I would say so. I know

1 that the municipality where I reside, they almost  
2 have two forms of their agendas where there's  
3 something where they call -- I don't know what the  
4 term they use, but it's almost an abbreviated  
5 agenda.

6 Then there's something behind it  
7 regularly a 50-page document that will go through  
8 the report of every department head; meaning,  
9 here's how many calls the police department had  
10 this month, and here's what they are about data.

11 We are all for data, believe me. In our  
12 organization we love it. But I think, yes, for the  
13 purposes of what's going to be conducted in terms  
14 of business, I'm thinking more along the lines of  
15 what you see with Allegheny County Council or  
16 Pittsburgh City Council, where, in an electronic  
17 document you see what committee is taking up the  
18 business, and then you have the hyperlink somewhere  
19 in there that may take to you a piece of  
20 legislation.

21 REPRESENTATIVE MILLER: I've got to be  
22 quick. That all seems reasonable. That I don't  
23 have an issue. You had mentioned, perhaps, a  
24 definition of public notice.

25 I wonder, though, in your reading of

1 712.1 where it says agency business required, some  
2 of it here seems -- I wonder -- and maybe it's my  
3 lack of familiarity that you can help me with,  
4 official action as a definition.

5 To me, we know there could be  
6 free-flowing conversations without -- In my mind,  
7 official action tends to be a vote or direction by  
8 the body to its staff or on the item to do  
9 something. I wonder if some of the questions or  
10 issues that have been raised, if there's a free-  
11 flowing discussion on an item, I'm not quite sure  
12 that would fit into what I would think an official  
13 action would be. I wonder if you have any thoughts  
14 on what official action means?

15 MR. MONTARTI: In my opinion, I mean,  
16 official action means that, yes, somebody's asking  
17 for a motion on something and a vote is to be  
18 taken. I think there's a lot of mundane issues  
19 that probably a municipality deals with that they  
20 don't bring up at a public meeting and say, oh,  
21 yes, we need to pay a vendor.

22 Again, that's a recurring action that is  
23 not going to come out at a council meeting where  
24 somebody is saying, we want the director of public  
25 works do this, and now we're letting the public



1 know that we're telling the public works director  
2 to do this. That's doing official action.

3 But I think in terms of what my opinion  
4 would be as an official action is not, okay, let's  
5 discuss closing a public building but we're not  
6 voting on it tonight. It may be brought up and it  
7 may not be on the agenda, but the actual action of,  
8 let's take a vote on it would have to be on the  
9 agenda officially.

10 REPRESENTATIVE MILLER: My last point  
11 here, and I know we've got to move, is that, the  
12 gentleman who spoke introducing the bill, seemed  
13 to, I think very flexible and I appreciate his work  
14 on this topic, but we seem to have a debate as to  
15 what's mandated and what's not maybe with some of  
16 the word choices here.

17 Why I bring that up is in a broader  
18 sense. The bill references a website. It says and  
19 on a website. Some should read that to say you  
20 should have a website, therefore, to comply with  
21 that. Some would maybe say that's not the  
22 intention of the word. Either way, I wonder,  
23 though -- And I know we're always -- People are  
24 afraid to mention mandates.

25 But I also wonder, at what time perhaps

1 is it for our body or the state or Harrisburg, in  
2 general, to actually say to local governments, it's  
3 time for your website. That is how the majority of  
4 people will be communicating. That is how  
5 transparency is being defined today. We should be  
6 saying to everybody, now's the time. We don't say  
7 how it has to be done, how big it has to be, but  
8 put something on the web.

9 My question to you is, do you believe  
10 that it is appropriate for the state to say to  
11 local governments, get to the 21st Century and have  
12 a website to post your schedules?

13 MR. MONTARTI: Well, since they are  
14 creators of this state, I don't think that that  
15 would be too much of a problem. But, again, it  
16 would be open to the flexibility of what the  
17 website needs to look at; what it needs to look at;  
18 how it's detailed.

19 Yes, frankly, I think there is the  
20 ability to say, for people that are interested, to  
21 have some type of mode where they could communicate  
22 and say, I want to know when the school board is  
23 meeting. I want a monthly reminder; there's the  
24 capability.

25 Like I said, we're talking about the

1 City of Pittsburgh, they told me that they've  
2 invested in some type of software; it's very  
3 detailed. This would not be a burden to them.  
4 But, certainly, there could be very, very small  
5 communities, or I'm thinking even the small  
6 municipal authorities that may be running a sewer  
7 system somewhere that they might not be up to date.

8 So, nobody likes to -- Because when you  
9 say the word mandate, it always comes with a  
10 unfunded attached to it. That always seem  
11 problematic.

12 I think if the definition of the public  
13 notice is changed to include electronic and/or  
14 Internet communication, that may be an  
15 encouragement to do so.

16 REPRESENTATIVE MILLER: Thank you, Mr.  
17 Fitzgerald. Thank you, Mr. Chairman, for the time.

18 MAJORITY CHAIRMAN METCALFE: Thank you,  
19 Representative Miller. Representative Cohen.

20 MINORITY CHAIRMAN COHEN: Thank you.

21 A former leadership staffer once told me  
22 that he didn't really care what the rules of the  
23 House were. He'd figure out some way around them.

24 I wonder if there is an obvious way  
25 around this. Let's say, hypothetically, local

1 governmental agency gets 10 powers of things that  
2 it has to deal with. Could it just itemize its 10  
3 powers on every meeting notice and, therefore, give  
4 itself complete flexibility to do whatever it  
5 wanted at the meeting?

6 MR. MONTARTI: Sure. They could put an  
7 item G on there that says, any other agency  
8 business that needs to come up; accommodations.

9 I think from the people that I talk to,  
10 and again, in deference to the gentleman that  
11 testified from Allegheny County, we have 128  
12 municipalities and 43 school districts. There's  
13 some -- The trepidation was that, okay, there might  
14 be -- The municipal building's roof starts to leak.  
15 Okay, that's an emergency. Nobody is going to mind  
16 if they have to hold an emergency meeting, and we  
17 have to get a vendor in here or contractor and get  
18 this fixed.

19 Could there be boiler-plate language  
20 that starts to appear on agendas that just say, any  
21 agency business that may come before us this month  
22 and it's open-ended, then that's that delicate  
23 between the openness of the governing body or the  
24 agency and then the vigilance of the citizen to  
25 say, I want to keep informed as to what's going on.

1           So, yeah, there's always a possibility  
2           that someone might try to do something that might  
3           be wide open.

4           MINORITY CHAIRMAN COHEN: Let me ask the  
5           question. Not just there's a possibility that  
6           somebody might do something. The question is  
7           whether that's within this law that somebody would  
8           just list -- have a generic description of their  
9           powers, and then itemize their powers and say we're  
10          going to do things within these powers.

11          MR. MONTARTI: Sort of like unnecessary  
12          and improper type, you know, local government  
13          clause or something like that. You mean anything  
14          that could be discussed. Yeah. Then we're in the  
15          enforcement part of the Sunshine law; you know,  
16          citizens actually gathering up and people showing  
17          up at a meeting or taking it to the Court of Common  
18          Pleas.

19          MINORITY CHAIRMAN COHEN: Then,  
20          similarly, like the House of Representatives and  
21          the Senate do this. We have a huge numbers of  
22          bills that accumulate from day to day, week to  
23          week, month to month, and you stick them all in the  
24          calendar, and the people don't really know what is  
25          actually going to be voted on, but there's a big

1 calendar with huge numbers of bills.

2 Is there anything in this legislation to  
3 stop local government from doing the same thing?

4 MR. MONTARTI: I would think just that  
5 the local government is probably not dealing with  
6 as many issues that the state is probably dealing  
7 with, and that might be just a natural prevention,  
8 I'm thinking. Allegheny County Council, City of  
9 Pittsburgh, even larger municipalities or school  
10 districts, they sort of have their regular schedule  
11 of business. They know when the budget is due.  
12 They know when there's personnel issues that come  
13 up that they need to discuss in executive session.

14 I mean, frankly, until, I guess, till we  
15 see it happen, then, yeah, I guess it could go  
16 either way.

17 MINORITY CHAIRMAN COHEN: Okay. Thank  
18 you, Mr. Chairman.

19 MAJORITY CHAIRMAN METCALFE: Thank you,  
20 Representative Cohen. Final question from  
21 Representative Saccone. We have a short amount of  
22 time, so if we could --

23 REPRESENTATIVE SACCONE: Sorry. All  
24 right.

25 MAJORITY CHAIRMAN METCALFE: -- Repr-

1       sentative.  If we can get to the answer it would be  
2       great.

3                   MR. MONTARTI:  Got it.  Thank you.

4                   REPRESENTATIVE SACCONI:  I'm not sure --  
5       I think that the concern about whether you can put  
6       any agency business at the end in item G, I think  
7       it's addressed in here that it has to -- the agenda  
8       has to include a listing of each matter of agency  
9       business that will be or may be the subject of  
10      deliberation or official action, so you can't just  
11      put any business on there.  I think the law covers  
12      that.  Do you agree or disagree?

13                  MR. MONTARTI:  I think that -- Yeah, if  
14      you had an agenda that was written out, and then  
15      there was an issue brought up, I guess what this  
16      bill would be saying is, you could not vote on it  
17      until the next month.

18                  Let's say you have item A through F on  
19      the agenda and somebody says, well, okay, there's  
20      nothing on A through F that concerns me this month,  
21      I don't want to see it.  But then, let's say,  
22      there's a long-heated discussion about an issue; no  
23      official action taken on a separate item, then it  
24      would come up the next month.  Well, I guess the  
25      citizen would miss the long-heated discussion but

1 may not miss what happened the following month when  
2 it's actually on the agenda. Brief enough?

3 MAJORITY CHAIRMAN METCALFE: Thank you,  
4 sir. Thank you for your testimony today.

5 MR. MONTARTI: Thank you.

6 MAJORITY CHAIRMAN METCALFE: Our next  
7 testifier is Kim de Bourbon, Executive Director,  
8 Pennsylvania Freedom of Information Coalition.  
9 Thank you for joining us today.

10 MS. de BOURBON: Thank you for having  
11 me. I'll explain a little bit about the  
12 Pennsylvania Freedom of Information Coalition.  
13 We're a nonprofit group. Our sole purpose is to  
14 help people understand and use the state's open  
15 records and open meeting laws. That's why we  
16 exist. And, of course, we work to improve  
17 transparency at all levels of state and local  
18 government.

19 Basically, we promote good citizenship.  
20 We try to help people stay informed about what  
21 their government is doing, although we believe that  
22 government can do a job better at itself, and  
23 that's what we work towards.

24 One of the things that we do is actively  
25 answer questions about the Sunshine Act and Right



1 to Know Law on our open government forum that's  
2 online. People can get on and post questions.  
3 Usually it's me who answers; trying to guide them  
4 through the laws. Since the site was launched in  
5 2007, we've handled more than 3,000 posts. Many of  
6 them questions from citizens frustrated by  
7 shortcomings in the open meeting laws.

8 H.B. 2408 does address some of the major  
9 shortcomings; one of them being, the fact that the  
10 boards are not now required to even have an agenda,  
11 which surprises many people. It also addresses the  
12 loophole that even if an agency does prepare an  
13 agenda in advance of a public meeting, which many  
14 do, the agency does not have to make that agenda  
15 public in time for it to be useful to them. In  
16 other words, they can have an agenda, but there's  
17 no law that requires they make it public in time  
18 for the meeting.

19 Of course, the Right to Know Law does  
20 make agendas. You know, it's public record, of  
21 course. But, the Right to Know Law has nothing to  
22 do with the timeliness of records. There's nothing  
23 in the Right to Know Law that says an agenda has to  
24 be provided to citizens in time for the meeting.

25 In fact, right now, if an agency

1 prepares an agenda, say, two or three days before  
2 the meeting, and somebody wants a copy of that  
3 agenda before the meeting, the agency can require  
4 citizens to submit a formal written Right to Know  
5 request in order to obtain it. Then the Right to  
6 Know Law says, well, the agency can take five  
7 business days to respond to that request, which is,  
8 obviously, a huge loophole.

9           Then taking it further, the Right to  
10 Know Law also says, an agency can take another 30  
11 days, if it wants to, really, to respond with the  
12 records if it claims something like staffing  
13 limitations that prevent it from making copies or  
14 whatever. Certainly, this is the letter of the  
15 law; this is the Right to Know Law, but I think we  
16 can all agree that this is not in the spirit of  
17 government transparency, by any means, and this  
18 loophole definitely needs to be closed.

19           2408 would do this by requiring agencies  
20 to record on agenda all business to be considered  
21 at a public meeting, and to include the agenda in  
22 the notice published at least 24 hours in advance  
23 of the meeting.

24           I think there's some confusion, at least  
25 the way I read the proposed law, I believe it says

1 an agenda has to be part of a public notice. The  
2 Sunshine Act has a definition for public notice.  
3 That public notice is that it be published in a  
4 newspaper of general circulation. I think we need  
5 to look at that and see how we really want to write  
6 that. But as it's written, it does require  
7 publication of the agenda at least 24 hours in  
8 advance of the meeting, at least how I read it.

9 We, at PaFOIC, like this provision.  
10 However, it's kind of been mentioned, we don't  
11 think 24 hours is quite enough time. Forty-eight  
12 or even a 72-hour period is more reasonable to make  
13 sure that the public has an opportunity to see the  
14 agenda, prepare comments on it in advance of the  
15 meeting, should they wish to do so.

16 Once all those with business -- I know  
17 there's some reluctance about this, thinking, well,  
18 that's two or three days, we're not used to working  
19 that far ahead, but we don't see, once those who do  
20 business with the agency; for instance, you have  
21 business with your town council or school board;  
22 once you understand that you have a 48- or 72-hour  
23 window to get on the agenda, we think this should  
24 be able to be easily met.

25 I can't imagine too many things that

1     come up just two or three days before a meeting  
2     as -- that isn't truly an emergency. Again, just a  
3     matter of what you're used to. In Pennsylvania,  
4     agencies aren't used to even having to come up with  
5     an agenda sometimes. I think this could easily be  
6     met.

7                     It would actually improve the meeting  
8     process, I feel, because it would curtail any  
9     rushed or last-minute additions. People would have  
10    to actually prepare and plan. It's a good concept  
11    for a meeting.

12                    We also rejoice in the provision in this  
13    amendment that would require posting the agenda on  
14    an agency's website. As an aside, and it has been  
15    mentioned, we think more should be done in the  
16    Sunshine Act and the Right to Know Law to require  
17    the posting of public documents online. There are  
18    a lot of small municipalities who are understaffed,  
19    under budget, underfunded, who, quite frankly,  
20    their websites are put up by somebody's  
21    college-aged student three years ago. They may not  
22    have been updated since that kid graduated from  
23    college. I mean, there are situations like that.

24                    Again, I think in this day and age,  
25    there is room to mandate that, yeah, get with it;

1 get with the program, and certainly anybody can  
2 post a website. It's not difficult. There ought  
3 to be a way to do it. Anyway, that's outside of  
4 the purview of this amendment, but I thought I'd  
5 mention it.

6 It does greatly, however, if you have a  
7 website, lighten the burden that we often hear  
8 about about agencies having to provide these copies  
9 and having to respond to requests. If it's online,  
10 it makes it much easier.

11 Another provision we feel needs to be  
12 addressed in this amendment, the time frame in the  
13 last notification provision which says, it only  
14 says now that the agenda shall be posted at the  
15 meeting location and on the agency website, but not  
16 specifically saying when that should take place.  
17 Posting it on the website and in the meeting  
18 location at the same time the agenda is submitted  
19 for publication should be required.

20 So, in other words, as soon as the  
21 agenda is finalized -- And, again, we're  
22 interpreting the law, as written, that it needs to  
23 be sent to a newspaper of record for publication.  
24 But as soon as that's done, it should be also  
25 posted online and at the meeting site.

1           Consider this. It wouldn't really serve  
2 the public too well if you have a 7 o'clock meeting  
3 on Wednesday night; if you post it online or on the  
4 bulletin board at 7 p.m. the night before, well,  
5 that's going to meet your 24-hour notification  
6 requirement, but it's not too useful. That's 24  
7 hours between 7 p.m. and 7 p.m., but that requires  
8 somebody to look at the website late at night, or  
9 the first thing before they go to work in the  
10 morning. It's really not enough time. So we think  
11 48 or 72 hours is more appropriate.

12           We also think the language requiring the  
13 agenda to be made available to individuals in  
14 attendance at the meeting must be clarified.  
15 Certainly, we agree that it should be. But does  
16 this require paper copies to be made for everyone  
17 or a projected electronic version on the wall  
18 suffice to allow people to follow along at the  
19 meeting? Just a little more clarity there. These  
20 gray areas is where we run into problems when we're  
21 trying to explain to citizens how the law should  
22 work.

23           We feel that the most essential  
24 provision in 2408 is the requirement that no  
25 official action or, deliberation is what it

1 actually says in the law, be taken on the item of  
2 business unless it's included on the agenda  
3 published before the meeting; thus, not allowing an  
4 agency to take the public by surprise with  
5 unadvertised business.

6 And we're sure that some agencies may  
7 consider this provision limiting, but we feel the  
8 government cannot be considered transparent and  
9 accountable if it's permitted to add items to an  
10 agenda after it's published. It kind of defeats  
11 the purpose of telling people what's going on.

12 As the law now stands, it's easy for an  
13 agency to keep quiet about controversial decisions  
14 that are about to be made or to try to hide  
15 upcoming action from the public. Often this is  
16 done in an attempt to stifle or reduce public  
17 comment during the meeting, which leads to another  
18 argument in favor of this essential provision, that  
19 there be no action or deliberation on stuff that's  
20 not on the agenda.

21 If you mandate that all action items be  
22 placed on the publicly-available agenda in advance  
23 of the meeting, it ensures the public has a voice  
24 on the issue. If you read the Sunshine Act, as it  
25 clearly is written right now, there's a public

1 participation provision which says, the residents  
2 and taxpayers shall be given, and I quote,  
3 reasonable opportunity to comment on matters of  
4 concern, official action or deliberation which are  
5 or may be before the board or a council prior to  
6 taking official action. That's what is in the  
7 Sunshine Act right now. The public participation  
8 provision gives citizens the right to comment on  
9 anything that comes before a board before it takes  
10 action.

11 Obviously, it is not possible if a board  
12 brings up stuff that the public is not aware about  
13 in advance. Some, maybe many agencies, set aside  
14 time only at the beginning of their meetings before  
15 it really starts for public comment. This is  
16 clearly permissible under the existing Sunshine  
17 Act. But, if all matters before the board are not  
18 made public in advance of the meeting, an agency is  
19 free to take up business without giving the public  
20 a chance to comment on it, which directly violates  
21 the important public participation provision in the  
22 law.

23 Anyone is concerned with this no  
24 deliberation or action unless it's on the agenda,  
25 part of 2408, should note that the bill makes it



1 clear an agency is still empowered to act quickly  
2 outside of this provision in case of emergencies.  
3 As I said, I can't think of too much business that  
4 would come up in between the time an agenda is  
5 published a day or two ahead of a meeting. It  
6 just, you know -- It bends credulity, really, if an  
7 organization is organized as they should be.

8 I'll mention just quickly, there are  
9 other parts of the Sunshine Act that need  
10 addressing, and we hope other amendments and  
11 revisions will be considered, especially H.B. 1671,  
12 the bill we testified on earlier this year, which  
13 would require all executive sessions be recorded.  
14 In my written testimony, I mention some other  
15 things we feel passionate about in the Sunshine  
16 Act.

17 But the bottom line is, our organization  
18 exists for citizens. That's why we're here; trying  
19 to help people understand the government, use the  
20 government, be involved with their government. So,  
21 please take that in mind.

22 MAJORITY CHAIRMAN METCALFE: Thank you.  
23 Representative Roae.

24 REPRESENTATIVE ROAE: Thank you, Mr.  
25 Chairman. And thank you for your testimony.

1 I was wondering if I could get your  
2 opinion on something. The committee has received  
3 written notification from the Pennsylvania School  
4 Board Association, the Pennsylvania State  
5 Association of Township Supervisors, the  
6 Pennsylvania State Association of Boroughs, and the  
7 County Commissioners Association of Pennsylvania.  
8 All those organizations are opposed to this  
9 legislation. I was wondering --

10 MS. de BOURBON: That does not surprise  
11 me.

12 REPRESENTATIVE ROAE: Yeah. I was  
13 wondering what your opinion is as far as, none of  
14 these organizations have any money until they get  
15 it in the form of taxes from the citizens. So all  
16 of these organizations are using tax money to lobby  
17 this committee to not give the taxpayers more  
18 access to what these boards are going to be doing.  
19 I'm wondering what your thoughts are on that as far  
20 as tax money being used by these organizations  
21 urging us not to let the taxpayers have more  
22 information.

23 MS. de BOURBON: As I said, I'm not  
24 surprised, but it kind of bends credulity. I don't  
25 know what their argument is. I don't see how you

1 can really argue -- You can argue in some of the  
2 fine points.

3 But, to me it's very hard to justify not  
4 publishing an agenda so that people attending your  
5 meeting can know what's -- following -- What is the  
6 downside to that, other than some excuse about,  
7 well, we don't have time; we don't have the staff?  
8 I mean, you know, it's --

9 I belong to a couple clubs of hobbies  
10 and things, they all have agendas for meetings. I  
11 don't know why a government organization can't.  
12 So, I would like to know what their rationale is so  
13 we could argue with, but I don't know what that  
14 could possibly be that would be legitimate, quite  
15 frankly.

16 REPRESENTATIVE ROAE: All right. Thank  
17 you.

18 MAJORITY CHAIRMAN METCALFE: We have  
19 several members who would like to ask questions.  
20 I'd ask the members to limit their question to one,  
21 and then we'll circle back around for a second if  
22 they would like. Representative Miller would be  
23 our next question.

24 REPRESENTATIVE MILLER: Thank you, Mr.  
25 Chairman.

1           Ma'am, in hoping that we get something  
2 passed, let me ask your opinion on one aspect of  
3 what I read from the testimonies that were  
4 referenced. I think we've got to find a can-do  
5 attitude on this thing here.

6           But let me ask you this. Often, you'll  
7 have situations where local governments -- Let's  
8 assume your reading is correct about agendas have  
9 to be published with the -- the public notice for  
10 the schedule. If the agendas have to be published,  
11 and we know, of course, certain municipalities,  
12 large perhaps, or small with lots -- can have a  
13 lot.

14           MS. de BOURBON: Yep.

15           REPRESENTATIVE MILLER: Let's also  
16 assume you have a municipality or so, like my home,  
17 which has a dozen boards, so let's take the broad  
18 view and go with your reading, which I understand  
19 why you get there with it, your reading that  
20 everything has to be published.

21           MS. De BOURBON: And it's written out,  
22 yes.

23           REPRESENTATIVE MILLER: Yes. Would you  
24 see that to be a problem for certain municipalities  
25 who would fit those lengthy government agendas and

1 bodies? And if so, I'm wondering if you can -- if  
2 you do agree that it is a problem, come back to  
3 say, maybe some comments of what can be done online  
4 instead of printing.

5 Thank you, Mr. Chairman.

6 MS. de BOURBON: Frankly, I spent 30  
7 years in the newspaper business, so it's hard for  
8 me not to defend that. I will let the NewsMedia  
9 Association address that specifically because they  
10 represent newspapers.

11 But, from my perspective now, as long as  
12 the agenda gets out there somehow, and if you're  
13 not going to publish it in a newspaper of record as  
14 part of a public notice, as now written in the law,  
15 then I think you definitely need to have more than  
16 24 hours to get the agenda out there, whether it's  
17 on a website or posted.

18 I mean, you could hang it on the wall of  
19 the meeting 24 hours at 7 o'clock at night, who the  
20 heck is going to see that. So, the web is an  
21 answer. But for those people who want to come into  
22 their school office or wherever to get a copy, then  
23 you have to provide more. I think that's the  
24 compromise. That would be my suggestion, anyway.

25 MAJORITY CHAIRMAN METCALFE: Thank you,

1 Representative Miller. Representative Saccone.

2 REPRESENTATIVE SACCONO: Yeah. I think  
3 what compounds the problem--see if you agree with  
4 this--is, when they don't publish an agenda, many  
5 of the municipalities require citizens who want to  
6 speak to sign up before the meeting.

7 MS. de BOURBON: Right.

8 REPRESENTATIVE SACCONO: The complaint  
9 that I get most often from around the state,  
10 because people contact me from all over the state  
11 because they know I'm involved in this, they say, I  
12 don't know what I want to ask until I hear what's  
13 gonna be discussed, and I'm required to sign up for  
14 questions. Then if I develop a question during the  
15 meeting, I can't do it. So at least with an  
16 agenda, you have an idea of what you might want to  
17 have a question about and you can sign up for that.

18 MS. De BOURBON: Right. I agree with  
19 that. Totally, it's another good point.

20 MAJORITY CHAIRMAN METCALFE: Thank you,  
21 Representative Saccone. Representative Christiana.

22 REPRESENTATIVE CHRISTIANA: Thank you.  
23 And thank you for your testimony. I appreciate  
24 your passion for more and -- even a whole loaf as  
25 opposed to a half loaf.

1           I just want to comment and ask you, your  
2 group is an advocate for these types of measures  
3 without having Harrisburg to pass these types of  
4 laws. But, I believe this bill's attempt is to set  
5 a floor. I don't disagree that rather than just  
6 posting it on the door, posting it inside a  
7 building may be not enough.

8           But I do believe that once we start to  
9 change the agenda and what is available prior to a  
10 meeting, then concerned citizens and groups like  
11 yours can then go to these boards and demand an  
12 easier way to access that. We don't have to say  
13 that every municipality has to have a website or  
14 every board has to have a website. But I do  
15 believe that once we raise the floor, then people  
16 are going to demand more and easier access.

17           Can you maybe just comment on whether or  
18 not you think that is a solution to, one, if we  
19 were to implement a 24-hour notice, and then  
20 getting the information on a website could be done  
21 on a local level without Harrisburg involved?

22           MS. de BOURBON: Right. I'm not saying  
23 this amendment is the time to mandate a website at  
24 all. But, I think I'm pretty insistent that if  
25 you're gonna offer it -- If you're not going to

1 publish it in a newspaper the agenda of general  
2 record, and you're not going to mandate it be on a  
3 website; if the only other way for somebody to get  
4 the agenda is to go physically into the municipal  
5 building or school district to actually see it  
6 hanging on a wall, or maybe they'll make copies for  
7 you, then it's got to be more than 24 hours.

8 Because, again, 7 o'clock meeting, you're going to  
9 put that on  
10 your --

11 Well, first of all, the municipal office  
12 is going to be closed at 7 o'clock at night and so  
13 is the school district office, so nobody is going  
14 to see it at night. That means they have to come  
15 in during the day when they're working between 9  
16 and 5, or whenever it's opened, to see the agenda;  
17 or else, they have to come in right after work two  
18 hours before the meeting to see it, and that's just  
19 not enough time.

20 REPRESENTATIVE CHRISTIANA: Isn't that a  
21 thousand miles further than where we are today?

22 MS. de BOURBON: Well, yes, it is.

23 REPRESENTATIVE CHRISTIANA: Okay.

24 MS. de BOURBON: At least there's an  
25 agenda, I agree. I think, under those



1 circumstances, at least 48 hours is not at all  
2 unreasonable.

3 REPRESENTATIVE CHRISTIANA: I want to  
4 thank you for your comment about the things that  
5 come up inside the 24 hours after the agenda. We  
6 could create a hundred thousand crazy hypothetical  
7 scenarios.

8 MS. De BOURBON: Those are the  
9 exceptions; not the rule.

10 REPRESENTATIVE CHRISTIANA: I agree with  
11 you. Thank you for your comments on that.

12 MAJORITY CHAIRMAN METCALFE: Thank you,  
13 Representative Christiana.

14 Thank you, ma'am, for your testimony  
15 today. Have a great day.

16 Our next testifiers will be Melissa  
17 Melewsy and Jed Kensinger. Jed is the  
18 correspondent coordinator with the Intelligencer  
19 Journal/Lancaster New Era. Melissa Melewsy is the  
20 Media Law Counsel with the Pennsylvania NewsMedia  
21 Association. You also each have one other person  
22 with you. Please introduce yourselves and the two  
23 additional individuals, please.

24 MS. KNUDSEN: Good morning, Mr.  
25 Chairman. I'm Paula Knudsen, Director of Legal

1 Affairs at the Pennsylvania NewsMedia Association.

2 MAJORITY CHAIRMAN METCALFE: Good  
3 morning.

4 MS. HOUGH RODA: I'm Barbara Hough Roda.  
5 I'm the Executive Editor with Lancaster Newspapers.

6 MAJORITY CHAIRMAN METCALFE: Welcome.  
7 Good morning. Whoever would like to start, we have  
8 about 10 minutes for testimony time and about 10  
9 minutes for Q and A.

10 MS. MELEWSKY: We think we've narrowed  
11 it down to an even five minutes split each.

12 MAJORITY CHAIRMAN METCALFE: Great.

13 MS. MELEWSKY: I'm going to start.

14 MAJORITY CHAIRMAN METCALFE: Thank you.

15 MS. MELEWSKY: Good morning, Mr.  
16 Chairman. Thank you for the opportunity to appear  
17 and offer testimony before the House State  
18 Government Committee.

19 As you know, my name is Melissa  
20 Melewsky. I'm Media Law Counsel with the  
21 Pennsylvania NewsMedia Association. PNA is a  
22 statewide trade association for newspapers and  
23 digital publications in the state, and we count  
24 more than 300 print, digital and other related  
25 media organizations as members.

1           We had the opportunity to address this  
2 committee on the Sunshine Act in March related to  
3 House Bill 1671, and it is encouraging to see this  
4 community continue its efforts to address the  
5 shortcomings of the Sunshine Act. So thank you  
6 again.

7           As we noted in earlier testimony, one of  
8 our functions is to offer a legal hotline to our  
9 members, and it's my primary job responsibility to  
10 answer those questions that come in from editors  
11 and reporters. On a daily basis, I hear from  
12 journalists throughout the state about problems  
13 with access.

14           Our hotline receives approximately 2,000  
15 each year; a solid half of those deal with public  
16 access issues. And my time at the PNA, which is a  
17 little over eight years now, calls about Sunshine  
18 Act and Right to Know Law and public access issues  
19 have not decreased. They have remained steady or  
20 increased each year, which we believe highlights  
21 some of the significant issues with public access  
22 in this state.

23           Some of the most common questions I  
24 receive on the hotline relate to meeting agendas,  
25 and most have to do with whether agendas are

1 required to be produced, which we know they are  
2 not; and if they are produced, whether they are  
3 public record. As you know, there is no statewide  
4 law that require agendas to be produced, and many  
5 local agencies do not produce one at all.

6 When agendas are produced, the Right to  
7 Know Law says they are public records, but the  
8 press and the public still struggle to obtain  
9 copies before and during meetings. In some cases  
10 I've spoken to journalists and members of the  
11 public who have been instructed by their local  
12 agencies to file a formal Right to Know Law request  
13 the next day, once the office is open, to obtain a  
14 copy of the agenda for preceding meeting, which  
15 makes no sense.

16 But it happens; it happens on a regular  
17 basis, and I hear about examples from every level  
18 of agencies in every part of the state. So it is a  
19 problem because we have these two laws that provide  
20 access and require access in order to participate,  
21 but they're not consistent with each other.

22 If you follow the Right to Know Law's  
23 example or process and file the request the next  
24 day, you don't get access until the agenda is  
25 basically useless. So, the public should be

1 well-informed about local government's proposed  
2 actions, and agendas are a critical and essential  
3 tool to keeping the public informed and involved  
4 during the public meeting.

5 It's also important to consider the fact  
6 that 19 other states and the District of Columbia  
7 have implemented laws requiring the agenda to be  
8 part of the public notice published in advance of  
9 public meetings. Given this background, PNA  
10 supports Representative Christiana's proposal to  
11 reform the Sunshine Act, and we welcome this  
12 opportunity to address specific provisions in more  
13 detail.

14 First, Section 709(a), as you know, this  
15 proposal would require, in our opinion, agencies to  
16 publish notice of the time of the regular meeting  
17 at least 24 hours in advance, in addition to the  
18 general public notice that's required at the  
19 beginning of each calendar year. PNA supports this  
20 provision because it provides an additional method  
21 of public notice, one that is temporarily closer to  
22 the actual meeting date than the general public  
23 notice required to be published in January.

24 The PNA suggests that in addition to  
25 requiring the meeting time, that the committee also

1 consider requiring the date and the location of the  
2 meeting to appear as part of this public notice as  
3 well. When an agency announces more information  
4 about public meetings, there's less opportunity for  
5 confusion and an increased likelihood for public  
6 attendance and participation. We have included  
7 some suggested language or alternative language as  
8 part of our written testimony.

9 Section 709(c.1), PNA supports this  
10 section as well, which provides notice to the  
11 public of matters to be deliberated or decided at a  
12 public meeting in advance of that meeting. The  
13 Sunshine Act requires agencies to provide a  
14 reasonable opportunity for public comment on these  
15 items, but that requirement is meaningless when the  
16 public has no way of knowing which matters will be  
17 deliberated or decided by an agency in advance.

18 Advance notice of these agenda items  
19 will greatly improve government transparency and  
20 accountability, as well as participation and  
21 confidence in government. Any increased cost to  
22 government, which could be minimized by listing  
23 specific items for deliberation, is minimal in  
24 comparison to the benefits to the public and the  
25 agencies that this requirement would provide.

1           By way of example, the second-class township  
2 code already requires townships to provide notice  
3 of the business to be conducted at any special  
4 meeting. This bill would extend that requirement  
5 to regular meetings as well. So we have already  
6 seen examples in other state law to require  
7 something very similar to what we're seeing here in  
8 House Bill 2408.

9           Section 712.1, again PNA supports this  
10 provision and believes it makes appropriate  
11 exceptions for emergency situations.

12           Below I have addressed additional issues  
13 with the Sunshine Act that we believe require  
14 legislative attention, and many of these issues  
15 were covered by PNA in our prior testimony, so I'm  
16 not going to rehash them today.

17           I'm now going to turn the microphone  
18 over to Barb Hough Roda and Jed Kensinger from  
19 Lancaster Newspapers. And after their testimony,  
20 we'll be happy to answer any questions the  
21 committee members might have. I'll turn it to Jed.

22           MR. KENSINGER: Good morning. Thank you  
23 for allowing me the opportunity to appear and offer  
24 testimony before the House State Government  
25 Committee, all on House Bill 2408. My name is Jed

1       Kensinger, and I am a 25-year newsroom employee at  
2       Lancaster Newspapers in Lancaster County, where I  
3       coordinate the work of about 120 freelance  
4       correspondents, many of whom report on school  
5       district and municipal meetings.

6                 Local news correspondents frequently  
7       share with me their difficulties gaining access to  
8       the most rudimentary information at public  
9       meetings, and I have also attended many of these  
10      meetings. Much to my dismay, I have seen official  
11      run roughshod over the citizens who elected them to  
12      conduct the public's business. In some cases, free  
13      exchange of information between citizens and their  
14      government simply does not exist.

15                Imagine how difficult it would be for  
16      citizens and news reporters to understand issues  
17      that elected officials discuss and/or take action  
18      on during a public meeting without an agenda; or an  
19      agenda with too little public notice and is  
20      available for the first time when you arrive at the  
21      meeting; or, perhaps, one that is so cryptic it  
22      contains little more than Pledge of Allegiance, old  
23      business, new business and public comments?

24                I have seen these unfocused meetings run  
25      until midnight as public officials digress from the



1 job of doing the people's business. They speak in  
2 hushed tones with no sound systems and allow for  
3 public comment only after people are exhausted and  
4 everyone just wants to go home to bed. The  
5 agencies offer no documents to help residents  
6 understand what their elected officials are doing.  
7 Public notice of future meetings merely states they  
8 will be held as needed.

9           Such blatant disregard for open and  
10 honest government really happens at some agencies  
11 across the Commonwealth of Pennsylvania, which is  
12 why we need a stronger open meetings law.  
13 Officials in some places spend hundreds of  
14 thousands of taxpayer dollars unbeknownst to those  
15 in the audience. It happens partly because  
16 agencies lack detailed meeting agendas and  
17 supporting records that hold both citizens and  
18 public officials accountable. Pennsylvania  
19 citizens have been left in the dark for too long,  
20 and it's time for a little more sunshine, which  
21 House Bill 2408 provides.

22           Take, for example, East Earl Township of  
23 Lancaster County, with a population of 6,507  
24 residents according to the 2010 census. There's  
25 currently plans to replace a 1.2-million-dollar

1 bridge, with funds mostly from the federal  
2 government, which is the reason citizens outside of  
3 East Earl have a vested interest. The bridge is on  
4 a lightly-traveled road that carries about 15  
5 vehicles per day.

6 Although the bridge project has been on  
7 the books for more than a decade and would take  
8 four residents' properties by eminent domain, East  
9 Earl residents had no idea the bridge project was  
10 underway until recently. Why? Part of the problem  
11 is that there was little information available at  
12 public meetings because cryptic agendas were used,  
13 and those cryptic agendas were not available until  
14 the start of the meeting.

15 On at least one of East Earl's meeting  
16 agendas, a land development plan appeared as East  
17 Earl LLC, with no other details, so residents did  
18 not understand the scope of the project. In fact,  
19 the East Earl project allowed for 350 homes, stores  
20 and restaurants and infrastructure, such as a  
21 private water system, to be turned over to the  
22 township. There was a public hearing, but by the  
23 time residents learned of the project during the  
24 hearing, it was too late to adequately scrutinize  
25 the plans and hold their officials accountable for

1 addressing the impacts on the community because the  
2 process was so far along.

3 A few months later, East Earl officials  
4 called a meeting on 24-hours' notice to meet with  
5 East Earl LLC to discuss their proposed  
6 development. The problem was that, when the public  
7 showed up for the weekday morning meeting,  
8 residents were locked out of the process. A  
9 resident asserted there was no meeting agenda  
10 available. Officials retreated to an executive  
11 session behind closed doors to meet with the  
12 developer's lawyer who threatened to sue the  
13 township.

14 While there is a litigation exception to  
15 the Sunshine Act, it exists to preserve the  
16 information and trial strategy from the litigating  
17 party; not from the public. The East Earl Township  
18 solicitor later admitted in a published letter to  
19 the editor that the executive session was improper.

20 Pressure from a citizens group and the  
21 reporting by Lancaster Newspapers seems to have  
22 changed the way East Earl conducts the public's  
23 business. Now at some meetings, East Earl provides  
24 the public with agendas and board packets, which  
25 are detailed records that support an agenda. Board

1 packets are records elected officials have during  
2 the meeting, and now the public and news media can  
3 follow along.

4           In the past, supervisors held meetings  
5 at 7 a.m., the Thursday after the first Tuesday on  
6 an as-needed basis. East Earl's neighbor, Earl  
7 Township, also used the vague language every  
8 Thursday at 7 a.m., as needed, in its public  
9 notices of meetings until Lancaster Newspapers  
10 challenged them. The as-needed language left  
11 residents wondering whether a meeting would  
12 actually occur, which it did not on many occasions.  
13 Earl Township refers to its morning meetings as  
14 work sessions.

15           I'd like to share my observations about  
16 meetings that some officials call work sessions. A  
17 so-called work session must meet the open meetings  
18 requirement under the Sunshine Act, because a  
19 quorum of officials discusses and sometimes takes  
20 action on agency business. They frequently don't  
21 use meeting agendas and don't follow accepted  
22 meeting protocol such as Robert's Rules of Order.

23           I've also observed that a large number  
24 of agencies never prepare agendas for planning  
25 commission meetings and other committees that fall

1 under the main governing board. Most of Lancaster  
2 County's agencies maintain websites; yet, many  
3 still do not post agendas on their websites.  
4 Meeting agendas at some agencies are not available  
5 until the start of the meeting, so people have no  
6 way to know whether an issue is of interest to them  
7 unless they attend.

8           House Bill 2408 remedies many of the  
9 problems stated above. I look forward to the  
10 remedy of the public notice of meetings  
11 requirement, as amended under Section 709(a) that  
12 states, quote: For each regular meeting subsequent  
13 to the first regular meeting, the agency shall give  
14 additional public notice at least 24 hours in  
15 advance of the time of the convening meeting, end  
16 quote.

17           I'm asking the State Government  
18 Committee to bring clarity as to whether the 24  
19 hours' notice requirement applies not only to the  
20 meeting notice, but also to the requirements for  
21 posting the agenda.

22           I like the amendment requiring agencies  
23 to provide advance public notice of the agenda, as  
24 these measures would help residents know prior to a  
25 meeting what their officials are planning to do

1 with their elected positions and how they are  
2 planning to spend taxpayers' money.

3 Finally, I am especially interested in  
4 the amendment requiring a listing of each matter of  
5 agency business that will be or may be the subject  
6 of deliberation or official action at the meeting.  
7 The specificity of meeting agenda topics is  
8 important in remedying a cryptic agenda that  
9 mentions merely standby terms such as old business  
10 and new business.

11 However, the remedy doesn't go far  
12 enough. The Sunshine Act is silent on the openness  
13 of board packets at a public meeting. Thus, some  
14 agencies argue they need not provide the public  
15 records that support an agenda during a public  
16 meeting. Board packet documents are public as soon  
17 as they are created. So, if officials have them in  
18 their hands, why not residents?

19 In practice, board packets are not  
20 available at all agency meetings, although my  
21 survey showed that a large majority of school  
22 districts in Lancaster County do provide board  
23 packets at meetings, while about half of the  
24 borough councils and about a third of township  
25 boards of supervisors also make board packets

1 available.

2 I urge the committee to link the  
3 Sunshine Act on this matter to the Right to Know  
4 Law, which presumes that records that are presented  
5 to a quorum of an agency for deliberation at a  
6 public meeting; that is board packets, are public,  
7 with limited exceptions. As you contemplate the  
8 idea of an amendment, I ask, is a meeting truly  
9 open if a quorum of an agency discusses documents  
10 that haven't been made available to the public at  
11 the time of the meeting?

12 I urge the State Government Committee to  
13 address the board packet problem by expressly  
14 addressing it in the Sunshine Act. If that cannot  
15 be done at the present time, then please consider  
16 doing so in the near future, because I wouldn't  
17 want this issue to stand in the way of passing  
18 otherwise good legislation.

19 I'll conclude by saying, Pennsylvania's  
20 Sunshine Act is not about protecting journalists'  
21 rights. The law is about the rights of all  
22 citizens to know what their government is doing and  
23 why. Therefore, I support House Bill 2408, which  
24 will give citizens greater transparency. And I  
25 courage you to work with the public to bring

1 further positive changes for the good of all.

2 Thank you for your time and  
3 consideration.

4 MAJORITY CHAIRMAN METCALFE: Thank you.  
5 Representative Cohen.

6 MINORITY CHAIRMAN COHEN: Thank you, Mr.  
7 Chairman. Earlier we discussed whether there was  
8 requirements of advertising in newspapers, and  
9 there's some ambiguity on that point. I'd like to  
10 know in terms of sorting out the ambiguity that  
11 exists in this point, how many daily newspapers  
12 there are now in this Commonwealth and what their  
13 total circulation is?

14 MS. KNUDSEN: Good morning,  
15 Representative Cohen.

16 There are 79 daily newspapers in the  
17 State of Pennsylvania. Pennsylvania has one of the  
18 strongest markets in the company for newspaper  
19 readership. In fact, almost 85 percent of adult  
20 Pennsylvania citizens read a newspaper every week  
21 whether that is imprint or online. You heard  
22 earlier from Beaver County Times and some of the  
23 astonishing figures they have for their leadership.

24 We are an extremely strong state, and we  
25 have some of the best individual markets as well as



1 overall. I don't have the specific numbers for  
2 you. I can look for those.

3           However, I do want to point out, there's  
4 been a lot of discussion about public notices. The  
5 Pennsylvania newspaper industry, more than a decade  
6 ago, took it upon themselves to work with the  
7 growing field of technology, and they put up a  
8 process, whereby, citizens throughout the  
9 Commonwealth, at no cost to the government, can  
10 look up notices online. That was called my public  
11 notices dot com. It is now public notice PA dot  
12 com.

13           If you go onto that website right now,  
14 you can search for public notices across the state.  
15 You can target it by keyword. Again, that's a  
16 private enterprise that was created by the  
17 newspaper industry at no cost to citizens. So  
18 there is --

19           REPRESENTATIVE COHEN: Is there a cost  
20 to local governments for getting their public  
21 notices on public notice dot com?

22           MS. KNUDSEN: No. It's a value-added  
23 service that is at no cost to the local government.  
24 So right now, many of you, for those 79 newspapers  
25 I mentioned, you can look up different topics and

1 it will be available. That's extremely useful.

2 As was mentioned in Mr. Kensinger's  
3 testimony, when there's federal dollars at work,  
4 citizens might want to know about what's going on  
5 in their municipality, but also in neighboring  
6 municipalities. How is their federal and state  
7 money being used? So, I do want to point that out.

8 MINORITY CHAIRMAN COHEN: I'd just like  
9 to remind you, there are various authorities for --  
10 of the belief that when the time of governmental  
11 employees is used, that's a cost. Whether the  
12 government employees are salaried or not, that is a  
13 cost. If you use an hour of a public employee's  
14 time, 12 months a year, that's 12 hours' worth of  
15 governmental revenues that's being spent for a  
16 given purpose.

17 That's the belief of various agencies,  
18 including the County Commissioners Association  
19 which worries about unnecessary and unfunded  
20 mandates in public bodies; the Pennsylvania State  
21 Borough Association which worries about escalating  
22 the costs of public notices; and the Pennsylvania  
23 State Association of Township Supervisors, which  
24 warns that many local governments may not have  
25 websites, and under this proposal will be forced to

1 create one, and they're all concerned about cost.  
2 We say, obviously, who's including the cost to the  
3 taxpayers are paying for the salaries of the people  
4 who are otherwise employed.

5 MS. HOUGH RODA: May I respond to that  
6 just in a very -- I'm here really to respond just  
7 from a very human perspective. I have a staff of  
8 very capable reporters and correspondents. But  
9 when I heard what was happening in East Earl  
10 Township in our county, I had to go see it for  
11 myself.

12 I've been in this business for over 30  
13 years, and I've never seen quite the abominations  
14 that I saw in that community. What I just want to  
15 tell you is, I saw people at an evening meeting  
16 come in out of their farm fields. We had plain and  
17 English people there. I saw retirees who had come  
18 to these meetings to meet their friends and to find  
19 out what was going on in their community. I saw  
20 young couples who had left their children probably  
21 with a neighbor or someone to come in and find out  
22 what their government was doing.

23 They sat in this meeting, and they could  
24 not hear. There was no agenda. They had no idea  
25 what was going on. They looked incredulously at

1 each other; that, in 2014, this could be happening  
2 in the United States of America. What I would say  
3 to you, if we can't do better than this for a  
4 democracy and for the good people of this state,  
5 then we really, really are in trouble.

6 This is about these individuals. If you  
7 would have seen the looks on their faces and the  
8 disbelief that their government was treating them  
9 this way, it was abomination, and it's something  
10 that we really, really should not tolerate as a  
11 citizenry.

12 MS. KNUDSEN: There certainly are costs  
13 associated with additional public notice  
14 advertisements, but we believe that's money well  
15 spent.

16 MAJORITY CHAIRMAN METCALFE: Thank you.  
17 Representative Cohen, were you concluded with your  
18 questions?

19 MINORITY CHAIRMAN COHEN: Yes, I think  
20 I've concluded. Thank you, Mr. Chairman.

21 MAJORITY CHAIRMAN METCALFE:  
22 Representative Saccone.

23 REPRESENTATIVE SACCONE: Thank you, Mr.  
24 Chairman. It's more of a comment than a question.  
25 I'd like to get your response to it.

1           Basically, I see three complaints from  
2 citizens about government; three major complaints,  
3 and that is unreasonable time limits on public  
4 comment, deliberations conducted behind closed  
5 doors and no agendas. This bill solves at least  
6 one of those. We have other bills out there to  
7 address the other ones.

8           I think as you said, it is a legitimate  
9 cost of government to keep the public informed. So  
10 I'm astonished that anyone would even make the  
11 argument that the employee's time for making a  
12 public notice or whatever, it's increasing our cost  
13 of government. That's a legitimate cost of  
14 government. That's what they're supposed to do.  
15 That's what they're employed to do.

16           I think we have to look at this  
17 realistically, what is government here for and are  
18 we doing it most effectively, and this bill and  
19 several of the other bills, I think, are designed  
20 to make government more accountable, and that's  
21 something we need to be pursuing. Thanks.

22           MAJORITY CHAIRMAN METCALFE:  
23 Representative Saccone is looking for a short  
24 response to that, I think.

25           MS. KNUDSEN: I've got a very short one.

1           Representative Saccone, thank you so  
2 much for acknowledging the rights of the people to  
3 know what's going on in the government. I just  
4 want to thank this body.

5           We have three really good bills out  
6 there that address those concerns. Representative  
7 Krieger has a bill that's been pending now for two  
8 sessions that would deal with the issue of citizens  
9 required to sign up in advance. We support that  
10 bill. You yourself have a bill dealing with  
11 executive sessions. We support that bill. And  
12 thank you, Representative Christiana, for the bill  
13 we have here today.

14           We applaud all the representatives who  
15 are working toward improving transparency and  
16 making meetings more accessible, and we really  
17 would love to see some of these bills move further  
18 in the process. Thank you.

19           MAJORITY CHAIRMAN METCALFE: Thank you.  
20 Representative Miller.

21           REPRESENTATIVE MILLER: Thank you, once  
22 again, Mr. Chairman.

23           Sir, director, real quick to you. In  
24 your testimony you mentioned East Earl, which I  
25 don't know, but I'm sure is a fantastic community.

1 I did take a quick look on my phone just to check  
2 it out. I know it has about a thousand people in  
3 it. I know there are some fantastically well-run,  
4 smaller communities throughout our Commonwealth;  
5 fantastic.

6 But it also seems to me that I -- I  
7 often find examples where people are bringing up  
8 issues along these lines with smaller communities,  
9 in particular; not to say the bigger ones are  
10 perfect, but these seem to be examples I keep  
11 coming across.

12 I do agree with certain points of your  
13 logic regarding trying out some specificity. But I  
14 wanted to bring you back to one point I raised to  
15 the last speaker I believe it was. In my mind, and  
16 again, I know there's some language we have to play  
17 here is that, with all due respect to the idea of  
18 doing a statewide or looking at the statewide  
19 system, I just don't believe the average citizen is  
20 going to go there. I think the average citizen  
21 lives at home; wants to look to see what their home  
22 is doing, and will go to their home first before  
23 ever trying to find some state website with all the  
24 notices.

25 So my question to you is that, in

1 recognizing how aspects -- I guess the bill said  
2 something like, you either put it in newspaper  
3 print, that's an option, or you publish it on  
4 either a static website, which I believe actually  
5 are not as -- where a lot of people are going for  
6 their information, at least in my area, or to a  
7 social media site; something along those lines.

8 Do you believe that that is appropriate  
9 to mandate; to bring that thing to say, no matter  
10 your size, so even a community like 1,100 -- I'm  
11 sure -- East Earl may have it, for all I know. But  
12 a community of 2,000 can have a free Facebook site  
13 and still list every aspect of its agenda in the  
14 time limit. Is that appropriate in your mind to  
15 mandate from the state?

16 MR. KENSINGER: I think in 2014, yes.  
17 I'm not aware of a municipality in Lancaster County  
18 that does not have its own website or would not  
19 have the ability to use social media.

20 Actually, East Earl's population is a  
21 little more than you said there. It's about 6,500  
22 residents.

23 I know of one municipality that has  
24 probably 3,000 residents, and they provide board  
25 packets ahead of time. Many of them -- Somebody



1 else said hyperlink. They have the board packet --  
2 They have the agendas on the website, and they have  
3 them hyperlinked to the documents; to the  
4 supporting documents during the meeting. I don't  
5 think the size of the website of the municipality  
6 seems to make much difference in my experience.

7 MAJORITY CHAIRMAN METCALFE: Thank you,  
8 Representative Miller. Representative Christiana.

9 REPRESENTATIVE CHRISTIANA: Thank you,  
10 Mr. Chairman.

11 Krieger, Saccone, Christiana, those are  
12 not three names that, typically, I would think of  
13 when the words mandate are getting thrown around  
14 and people saying that Harrisburg is getting  
15 involved in local matters.

16 But I think the three of us would agree  
17 that we are in the business in Harrisburg of  
18 setting a baseline of expectations for our  
19 municipalities; whether it's a thousand members or  
20 whether it's 3 million people. We have a  
21 responsibility to set a baseline of expectations.  
22 And then, if our local governments then choose to  
23 raise the bar, then God bless them. We're going to  
24 continue to support their actions.

25 But, I think that's important when we're

1 debating this. I'm not trying to find the perfect  
2 bullet that will work in Philadelphia but will work  
3 in very rural areas of Washington County. What I  
4 think desires a level of expectation that every  
5 person, 12 and a half million people deserve, and  
6 that's what I'm trying to accomplish in this bill.

7 This idea that we're going to use an  
8 unfunded mandate or the cost associated with this  
9 bill as a reason to not give the people a fairly  
10 low level of transparency, I just want to point out  
11 a few things.

12 Harrisburg, we spend about \$28 billion  
13 of taxpayer money, and at a minimum, it takes six  
14 days to make a legislative action become in effect.  
15 Oftentimes, it's probably 10 days because we're not  
16 usually here six days in a row. School districts  
17 spend \$26 billion of taxpayer money every single  
18 year. Local and county governments spend  
19 \$36 billion of taxpayer money.

20 So, if we are going to use that the  
21 public doesn't deserve notice of a meeting to spend  
22 billions of their dollars, I think that's a shame  
23 to those organizations that folks are representing  
24 in Harrisburg. I think it's a shame to the 12 and  
25 a half million people from all 67 counties that

1 they don't deserve a low level, a low bar of  
2 transparency. I hope that county --

3           And we have some great examples we heard  
4 today of municipalities that are going above and  
5 beyond the threshold. That's not going to stop,  
6 because the public is going to continue to ask for  
7 more and more transparency. But to not have an  
8 agenda or to not have an agenda in place 24 hours  
9 before you spend taxpayer money, I think is  
10 unacceptable.

11           I want to thank the chairman for his  
12 indulgence today for such an important topic. I  
13 want to thank my colleague, who is here today, too,  
14 for his work on a similar matter who's been a true  
15 champion back home and here. I thank you for your  
16 time, Mr. Chairman.

17           MAJORITY CHAIRMAN METCALFE: Thank you,  
18 Representative Christiana. Representative Cohen,  
19 do you have any final thought?

20           MINORITY CHAIRMAN COHEN: No.

21           MAJORITY CHAIRMAN METCALFE: Thank you  
22 all for your testimony today. We appreciate it.

23           For the members, I think this  
24 legislation we were discussing today, I think we  
25 could find bipartisan support for it seeing from

1 some of the questions and comments that have been  
2 made to move forward. I think, certainly,  
3 Representative Christiana has done a lot of great  
4 work on this issue with this bill. I certainly  
5 recognize that we could move forward with some  
6 amendments to clarify some of the things that were  
7 brought up during testimony today.

8 But I think it's just common sense that  
9 you would think that this is already in place.  
10 Probably a lot of citizens expect it's already in  
11 place. The majority of citizens never go to a  
12 public meeting. And when they go to their first  
13 public meeting and find out there's no agenda; and  
14 when they're coming from the marketplace where you  
15 can't operate without an agenda, how are you  
16 operating?

17 To say this is an unfunded mandate to  
18 require you to be organized enough to conduct a  
19 meeting in the public with an agenda is outrageous.  
20 I mean, how much money are they wasting just by not  
21 setting a proper agenda; by doing things that are  
22 -- is on the fly. It's outrageous to claim that  
23 this would cost money. I think this would save a  
24 lot of money; you save a lot of wasted time and  
25 protect the taxpayers in the process as many of the

1 members brought up in their comments today.

2 Thank you to all of our testifiers.

3 Thank you to Representative Christiana for  
4 requesting the hearing on this legislation and  
5 introducing it. I look forward to working with him  
6 and others to move forward on this issue.

7 Everyone have a great day. Motion to  
8 adjourn? Representative Saccone, seconded by  
9 Representative Knowles.

10 This meeting is adjourned. Everyone  
11 have a great day now.

12 (At 9:41 a.m., the public hearing  
13 concluded).

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C E R T I F I C A T E

I, Karen J. Meister, Reporter, Notary Public, duly commissioned and qualified in and for the County of York, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript, to the best of my ability, of a public hearing taken from a videotape recording and reduced to computer printout under my supervision.

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