

[First Reprint]
SENATE, No. 2611

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 25, 2020

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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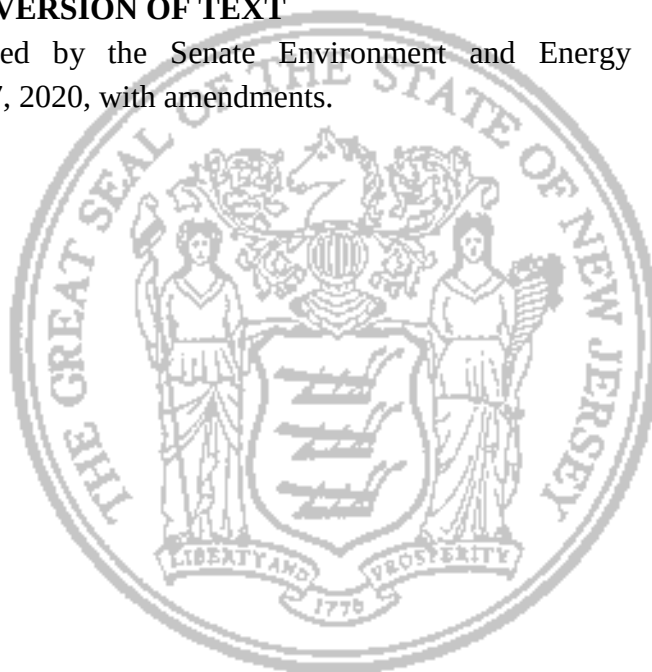
Senators Singleton, Pou and Greenstein

SYNOPSIS

Requires BPU to establish and maintain electronic public document search system on its website; requires BPU to provide certain notice of its meetings and hold quarterly public comment meetings.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on September 17, 2020, with amendments.



(Sponsorship Updated As Of: 3/25/2021)

1 AN ACT concerning certain functions and duties of the Board of
 2 Public Utilities and supplementing Title 48 of the Revised
 3 Statutes and amending R.S.48:2-40.

4
 5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*

7
 8 1. (New section) As used in sections 1 ¹**[and 2]** through 4¹ of
 9 P.L. , c. (C.) (pending before the Legislature as this bill):

10 ¹**“Access service”** means the electronic public records access
 11 service established, maintained, and updated, as appropriate, by the
 12 board, through the board’s Internet website, pursuant to section 2 of
 13 P.L. , c. (C.) (pending before the Legislature as this bill).¹

14 “Board” means the Board of Public Utilities or any successor
 15 agency.

16 ¹“Contested case” shall have the same meaning as provided in
 17 section 2 of P.L.1968, c.410 (C.52:14B-2).¹

18 “Emergency” means a period of time during which the Governor
 19 has declared the existence of a public health emergency, pursuant to
 20 section 3 of P.L.2005, c.222 (C.26:13-3), or a state of emergency,
 21 pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.).

22 ¹“Policy matter” means a matter:

23 a. where the board conducts quasi-legislative proceedings that are
 24 informational, intended to provide a forum for the expression of public
 25 sentiment on a proposed agency action, or to examine broad policy
 26 issues affecting entire industries or large, undefined classes of people;

27 b. where the board has not established a proceeding; or

28 c. that is not the subject of a pending or impending contested
 29 case.

30 “Public document search system” or “search system” means the
 31 electronic public document search system established, maintained, and
 32 updated, as appropriate, by the board, through the board’s Internet
 33 website, pursuant to section 2 of P.L. , c. (C.) (pending before
 34 the Legislature as this bill).¹

35
 36 2. (New section) a. No later than 90 days after the effective date
 37 of P.L. , c. (C.) (pending before the Legislature as this bill),
 38 the board shall establish, maintain, and update, as appropriate, ¹**[an**
 39 **access service)]** an electronic public document search system¹,
 40 through the board’s Internet website, that shall allow users to obtain
 41 board proceeding documents and docket information online. The
 42 ¹**[access service]** search system¹ shall ¹**[allow users to submit]**
 43 reflect¹ all filings and comments ¹made to the board¹, in electronic or
 44 in printed form, ¹**[to the board]**¹ and shall provide for the managing

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted September 17, 2020.

1 and facilitating of public access to all filings, orders, notices,
2 rulemakings, comments, or other board proceeding documents ¹, as
3 well as allow parties to electronically file these documents¹. The
4 ¹~~["access service"]~~ search system¹ shall be subject to all of the
5 following requirements:

6 (1) as soon as practicable, and not later than seven calendar days
7 after a document is ¹electronically¹ filed with the board, the document
8 shall be publicly accessible on the ¹~~["access service"]~~ search system¹,
9 unless a longer period of time is needed, as determined by the board,
10 ¹~~["during"]~~ due to¹ an emergency ¹or to address confidentiality, other
11 privacy claims, or digitization of non-electronic records¹;

12 (2) all documents on the ¹~~["access service"]~~ search system¹ shall be
13 available to the public ¹~~["and to parties before the board"]~~¹ free of
14 charge;

15 (3) any information within a document that is prohibited from
16 public disclosure by law or board order shall be ¹~~["redacted"]~~ exempt
17 from inclusion in the search system¹;

18 (4) all ¹board-initiated¹ documents shall be text-searchable and
19 ¹in a¹ machine-readable ¹format and the board shall encourage the
20 filing of documents in text-searchable and machine-readable formats,
21 which capabilities shall be preserved in the search system¹;

22 (5) to the extent practicable, external websites shall be able to link
23 documents to the ¹~~["access service"]~~ search system¹;

24 (6) the ¹~~["access service"]~~ board¹ shall ¹~~["include"]~~ provide access
25 to all¹ digital audio and visual files of board recordings when those
26 files become available ¹on its website, and shall explore the technical
27 and financial practicality of including its recordings in the search
28 system¹; and

29 (7) the ¹~~["access service"]~~ search system¹ shall provide a search
30 function for public use.

31 b. In developing the ¹~~["access service"]~~ search system¹, the board
32 ¹~~["~~:

33 (1) shall not impose, to the extent practicable, a disproportionate
34 impact on pro se litigants; and

35 (2) ¹~~"]~~ shall implement technology in order to improve security, data
36 accessibility, affordability, and performance, and to minimize the
37 burden on pro se litigants.

38
39 3. (New section) a. Notwithstanding the provision of written
40 advance notice of at least 48 hours, but otherwise in conformity with
41 the other provisions of the "Senator Byron M. Baer Open Public
42 Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), the Board of Public
43 Utilities shall make available to the public on its ¹~~["electronic public~~
44 records access service"] public document search system¹, established
45 pursuant to section 2 of P.L. , c. (C.) (pending before the

1 Legislature as this bill), advance notice of every public meeting ¹["and
2 hearing"]¹ conducted by the board ¹["seven"] five¹ calendar days prior
3 to the day of the meeting ¹["or hearing"]¹, unless a longer period of
4 advance notice is required by law, ¹["or a shorter period of advance
5 notice is required, as determined by the board, during an emergency"]
6 pursuant to the "Senator Byron M. Baer Open Public Meetings Act,"
7 P.L.1975, c.231 (C.10:4-6 et seq.); provided, however, that nothing in
8 this subsection shall prohibit the board from updating any meeting
9 agenda or adding an agenda item or removing an agenda item, as well
10 as providing an updated agenda within the five calendar day period,
11 consistent with public transparency¹. The provision of this subsection
12 shall apply to every public board meeting ¹["or hearing"] , including
13 any public comment meeting, as described in section 4 of
14 P.L. , c. (C.)(pending before the Legislature as this bill),¹
15 regardless of the number of board members present at the meeting ¹["or
16 hearing"]¹.

17 b. For every public meeting ¹["or hearing"]¹ conducted by the
18 Board of Public Utilities, as authorized by law, the board shall ¹[":

19 (1)]¹ provide, in the advance notice of that public meeting ¹["or
20 hearing"]¹ , pursuant to subsection a. of this section, a description of
21 any action that may be taken by the board under each listed agenda
22 item in the notice ¹["; and

23 (2) set aside a portion of the meeting or hearing to allow members
24 of the public to comment on the subject matter of the action described
25 in the written advance notice.

26 c. As used in this subsection, "emergency" means a period of time
27 during which the Governor has declared the existence of a public
28 health emergency, pursuant to section 3 of P.L.2005, c.222 (C.26:13-
29 3), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-
30 33 et seq.), within this State]¹.

31
32 ¹4. (New section) a. Members of the Board of Public Utilities may
33 engage in a discussion with interested parties on policy matters, which
34 discussions shall not be considered prohibited ex parte
35 communications; provided that nothing in this section shall alter the
36 prohibition on ex parte communications between members and
37 interested parties with regard to a contested case.

38 b. In order to increase transparency and accountability to the
39 public, the board shall hold a public comment meeting at least once
40 every three months in order to hear from the public and interested
41 stakeholders on policy matters before the board, and such matters as
42 the Legislature may from time to time designate. The public comment
43 meeting shall meet all requirements of the "Senator Byron M. Baer
44 Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.) and
45 shall allow for oral or written statements by:

1 (1) any member of the public who is not a party pursuant to
2 paragraph (2) of this subsection, on any topic germane to the interests
3 of the board; and

4 (2) any party to a proceeding or party represented by counsel or a
5 government affairs agent, on specific topics noticed by the board.

6 c. The board shall adopt, within 30 days of the effective date of
7 P.L. , c. (C.)(pending before the Legislature as this bill),
8 written policies to govern the conduct of public comment meetings
9 that shall maximize public engagement, provide annual notice of the
10 scheduled dates for public comment meetings in accord with the
11 “Senator Byron M. Baer Open Public Meetings Act,” P.L.1975, c.231
12 (C.10:4-6 et seq.), allow for post-meeting written comments, and
13 reasonably minimize the inadvertent discussion of pending or
14 impending contested matters.¹

15
16 ¹**[4.] 5.**¹ R.S.48:2-40 is amended to read as follows:

17 48:2-40. a. A majority vote of the board shall be necessary to the
18 issuance of an order.

19 b. (1) After the effective date of P.L.2011, c.63, the board shall
20 issue every order in written form. ¹**[After the effective date of**
21 **P.L. , c. (C.)(pending before the Legislature as this bill), if a**
22 **written order, whether in draft or final form, is prepared for**
23 **consideration by the board prior to a meeting, the board shall make**
24 **available to the public on its electronic public records access service,**
25 **established pursuant to section 2 of P.L. , c. (C.)(pending**
26 **before the Legislature as this bill), the text of the written order seven**
27 **calendar days prior to the day of that meeting.]**¹

28 (2) If a matter is an emergency that affects public health and
29 safety, the board may issue a temporary order on the matter orally, but
30 shall within 14 days thereafter issue the order as a written order that
31 does not differ substantively from the oral order. Any board order
32 issued orally may be made effective immediately, but, regardless of its
33 effective date, if that order is not issued in written form within 14
34 calendar days thereafter, or the written order is substantively different
35 from the oral order, the oral order shall be void and of no effect as of
36 the 15th calendar day after its issuance.

37 c. The board shall issue any written order by filing a copy thereof
38 with the board secretary. Every written order issued by the board shall
39 be:

40 (1) served upon the person or public utility affected thereby within
41 **[ten] seven calendar** days from its filing by personally delivering or
42 by mailing a certified copy thereof in a sealed package with postage
43 prepaid to the person affected or to an officer or agent of the public
44 utility upon whom a summons may be served; and

45 (2) posted **[upon the Internet website of the board]** on its
46 ¹**[electronic public records access service]** public document search
47 system¹ , established pursuant to section 2 of P.L. , c. (C.)

1 (pending before the Legislature as this bill), within seven calendar
2 days from its filing.

3 d. All written orders of the board shall become effective upon
4 service thereof or upon such dates after the service thereof as may be
5 specified therein.

6 e. The board at any time may order a rehearing and extend,
7 revoke, or modify an order made by it.
8 (cf: P.L.2011, c.63, s.1)

9

10 **'[5.] 6.'** This act shall take effect on the 90th day after the
11 date of enactment and the Board of Public Utilities may take any
12 anticipatory administrative action in advance thereof as shall be
13 necessary for the timely implementation of P.L. , c. (C.)
14 (pending before the Legislature as this bill).