

QUASI-PUBLIC AGENCIES AND THE OPEN MEETINGS ACT:

A PRELIMINARY STUDY OF COMPLIANCE IN RHODE ISLAND



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EXECUTIVE SUMMARY

Quasi-public agencies are important, but little understood, institutions with public goals and public purposes. These agencies are government bodies for the purposes of the Access to Public Records Act and the Open Meetings Act. Both of those laws are important components in the assuring public accountability for the public's business.

This study examined 23 quasi-public agencies for compliance with selected provisions of the Open Meetings Act in 2002. It examined whether (and when) the agency filed minutes with the Secretary of State and how the agency handled several issues in connection with closed meetings, known under the law as "executive sessions."

MAJOR FINDINGS INCLUDE:

- Only 36.4% of quasi-public agencies submitted all their 2002 meeting minutes to the Secretary of State. Another 36.4 % submitted incomplete records. The remainder--27.2% of the agencies in this study -- had no minutes on file. (One agency not included in this calculation.)
- No agencies submitted all of their minutes within the statutory deadline. Several agencies were close enough to be considered excellent: the Lottery Commission, the Narragansett Bay Commission, and the Turnpike and Bridge Authority. Many others were routinely and significantly late.
- Twelve of the 23 quasi-public agencies went into executive session at least once in 2002. Three of those went into executive session more than ten times. Overall, agencies were excellent at citing a statutory provision to justify executive sessions. Most were poor (or worse) at providing additional information as required under the Open Meetings Act.
- Disclosure of votes from executive session was extremely rare, although the Airport Corporation and the Industrial Facilities Corporation routinely disclosed votes. The law requires such votes to be disclosed unless it would "jeopardize any strategy, negotiation or investigation." The general pattern of nondisclosure--even after a considerable passage of time--is disturbing.

RECOMMENDATIONS AND CONCLUSIONS:

- Widespread noncompliance and tardiness in filing minutes with the Secretary of State do not bode well for the implementation of the electronic posting of materials in 2004. The need for extensive monitoring and, if necessary, corrective action, is clear. Perhaps the Secretary of State should play a more active role.
- More attention needs to be focussed on the justification for closed meetings and on the obligation to release additional information, particularly about votes, once the need for secrecy has passed.

I. INTRODUCTION

Credit card abuses, inappropriate personnel practices, and general misuse of funds have brought some of Rhode Island's quasi-public agencies under public scrutiny in recent years. The looming 2004 vote on separation of powers brings these organizations into the limelight again. The most significant concerns with quasi-publics, however, remain the same--integrity and public accountability. This study was designed to examine how well certain Rhode Island quasi-public agencies complied with selected provisions of the Open Meetings Act (OMA) in 2002. This report characterizes the practices of quasi-public agencies and evaluates their consistency with both the letter and spirit of the OMA.

A. WHAT IS A QUASI-PUBLIC?

The debate over separation of powers has not only brought attention to the unwieldy number of quasi-public bodies in Rhode Island--429 according to Common Cause of Rhode Island--but it has also raised important questions about how quasi-public bodies will be overseen if and when the separation of powers constitutional amendment passes. Given a history of scandal behind quasi-publics, monitoring their behaviors will be paramount. More surveillance on the General Assembly's part will be essential to ensuring proper functioning of quasi-publics. This report provides an initial step in assessing how well quasi-publics fulfill their legal requirements.

Quasi-public agencies perform a myriad of services that includes managing sewage, providing financial help for post-secondary education, strengthening the economy, and developing the Capital Center, among others. Determining what quasi-publics do, however, is far easier than defining exactly what they are. Even Rhode Island General Laws (R.I.G.L.) do not provide a cogent definition of a quasi-public corporation. In response to this absence, the 2000 Senate Select Commission on Quasi-Public Agencies created an ad hoc definition of a quasi-public corporation:

A 'quasi-public corporation' may be defined as a body corporate and politic acting as a private corporation, which has been organized pursuant to law and granted certain powers, rights, and privileges by the general assembly, while exhibiting a distinct legal existence from the state, and not constituting a department of the state government, in order to perform a governmental function.

This same Senate report also highlighted associated issues with the diffuse legal definition of a quasi-public corporation. They concluded that some organizations should not be considered quasi-public and that other sanctioned quasi-publics did not in fact consider themselves as such. These

“The label ‘quasi-public’ should not be misunderstood; it does not lessen the public importance or public accountability of these organizations.”

kinds of issues threaten the efficacy of such accountability mechanisms as the Open Meetings Act (OMA) and the Access to Public Records Act (APRA)--each of which fully apply to quasi-public agencies. Indeed, quasi-public agencies make decisions that can affect the health and welfare of citizens and some have budgets and/or revenues that are, according to the Auditor General, in the hundreds of millions of dollars. The label "quasi-public" should not be misunderstood; it does not lessen the public importance or public accountability of these organizations.

B. PROVISIONS OF THE OMA EXAMINED IN THIS REPORT

The Attorney General's Office says that the Open Meetings Act is "designed to insure that the peoples' business is conducted in an open manner so that the public may participate in their government and so that government will be accountable to the governed." The OMA is considered to be the minimum degree of openness required by the government; it is not a benchmark for excellence. Fundamentally the OMA establishes that the meetings of public bodies must be open to the public and that meeting records must be maintained. The OMA's compendium of laws assures at least minimal accountability. The OMA balances the public's right to know with other concerns. Specifically, it legitimates the suppression of public information through the use of executive session. These closed sessions may be used to discuss information that, if disclosed, could undermine the public interest.

If a public body violates the OMA, recourse is available through the Attorney General and/or Superior Court. We chose to study several aspects of the Open Meetings Act that play pivotal roles in sustaining organizational accountability. We focussed on three issues: the presence of all minutes at the Secretary of State's Office, the timeliness of submission to the Secretary of State's Office, and various issues concerning executive sessions. The scope of these topics is delineated in the five subsections of the law that appear in italics below:

MINUTES MUST CONTAIN THE FOLLOWING, ACCORDING TO R.I.G.L. §42-46-7(A):

- the date, time, and place of the meeting;
- the members of the public body recorded as either present or absent
- a record by individual member of any vote taken; and any other information relevant to the business of the public body that a member of the public body requests to be included

§42-46-7. Minutes

(a) All public bodies shall keep written minutes of all their meetings. The minutes shall include, but need not be limited to:

- (1) The date, time, and place of the meeting;
- (2) The members of the public body recorded as either present or absent;
- (3) A record by individual members of any vote taken; and
- (4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes.

(b) A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the public at the office of the public body, within two (2) weeks of the date of the vote. The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body by majority vote extends the time period for the filing of the minutes and public states the reason.

(c) *The minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to §§42-46-4 and 42-46-5.*

(d) *All public bodies within the executive branch of the state government and all state public and quasi-public boards, agencies, and corporations shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to the public bodies whose responsibilities are solely advisory in nature.*

§42-46-5(a) Subsection Citation, Statement of Proposed Business, & Disclosure of Executive Session Votes

§42-46-4 Closed Meetings

"By open call, a public body may hold a meeting closed to the public upon an affirmative vote of the majority of its members. A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings by §42-46-5. *The vote of each member on the question of holding a meeting closed to the public and the reason for holding a closed meeting, by a citation to a subdivision of §42-46-5(a), and a statement specifying the nature of the business to be discussed, shall be recorded and entered into the minutes of the meeting.* No public body shall discuss in closed session any public matter which does not fall within the citations to §42-46-5(a) referred to by the public body in voting to close the meeting, even if these discussions could otherwise be closed to the public under this chapter.

All votes taken in closed session shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to the discussions conducted under § 42-46-5(a)."

II. METHODOLOGY

This study sets out to examine how well quasi-publics in Rhode Island complied with the previously discussed provisions of the Open Meetings Act in 2002. Although there is a plethora of quasi-public entities, we chose to investigate the twenty-three (23) quasi-public agencies that are included in the Governor's FY 2004 budget; inclusion in this list signifies that these corporations are both active and financially supported by the State of Rhode Island. The list comprises the following agencies:

1. *Rhode Island Airport Corporation (RIAC)*
2. *Capital Center Commission*
3. *Rhode Island Children's Crusade for Higher Education*
4. *Rhode Island Clean Water Finance Agency*
5. *Rhode Island Convention Center Authority*
6. *Rhode Island Depositors Economic Protection Corporation (DEPCO)*
7. *Rhode Island Economic Development Corporation (RIEDC)*
8. *Rhode Island Economic Policy Council*
9. *Rhode Island Health and Educational Building Corporation*
10. *Rhode Island Housing and Mortgage Finance Corporation (RIHMFC)*
11. *Housing Resources Commission (HRC)*
12. *Rhode Island Industrial Facilities Corporation*
13. *Rhode Island Industrial-Recreational Building Authority*
14. *Rhode Island Lottery Commission*
15. *Narragansett Bay Commission (NBC)*
16. *Rhode Island Partnership for Science and Technology*
17. *Rhode Island Public Transit Authority (RIPTA)*
18. *Rhode Island Refunding Bond Authority*
19. *Rhode Island Resource Recovery Corporation (RIRRC)*
20. *Rhode Island Student Loan Authority (RISLA)*
21. *Rhode Island Turnpike and Bridge Authority*
22. *Rhode Island Underground Storage Tank Financial Responsibility Review Board (UST)*
23. *Rhode Island Water Resources Board Corporate*

The methodology for this study was designed in the fall of 2002, and intensive field work for the project was conducted in June and July of 2003. Final research checks were performed up until August 8, 2003. In order to get a comprehensive picture of legal compliance for these 23 organizations, we chose to study all of the 2002 meeting minutes that were available at the Secretary of State's Office. Although these organizations are also required by R.I.G.L. §42-46-7 to maintain meeting minutes at their offices, we considered only what was available at the Secretary of State's office. That office is supposed to be the central repository for such documents, where citizens should be able to go for such information.

A. BASIC STUDY DESIGN

1. MINUTES

For each of the 23 organizations studied, we documented the number of 2002 meeting minutes in the Secretary of State's possession. From the record compiled, we ascertained whether the Secretary of State's Office had received minutes from all the meetings conducted in 2002. In order to do this, we referred to another OMA provision, §42-46-6, which concerns notice of public meetings. There are two requirements of this section that helped us determine the number of meetings conducted for the year. First, this section requires that all public bodies give written notice of the dates and times of regularly scheduled meetings at the beginning of each year. Second, this section also requires that public bodies give supplemental meeting notice a minimum of forty-eight (48) hours before the meeting occurs. These notices must contain, among other things, the date of the meeting and the date the supplemental notice was posted. These notices must be maintained by organizations for a minimum of one year. In cases where it appeared that meeting minutes might be missing, we requested these notices from the organizations directly. We used this information as one tool in determining the number of meetings conducted.

We were also able to deduce meeting sequences by tracking the approval of minutes. If an organization appeared to have failed to send in the minutes for a certain month, we might evaluate the next available meeting minutes to see if those minutes supported the theory that a meeting was skipped or cancelled. For example, if an organization that meets monthly (and regularly approves the previous meeting's minutes) didn't have October minutes present at the Secretary of State's Office, we would evaluate the November minutes to see what month's minutes were approved, if any. If the November minutes accepted the September minutes, we would assume that no October meeting had occurred. In the reverse situation, if we found that the November minutes approved the October minutes, we then would conclude that a meeting had occurred and, consequently, minutes should be available. Although these methods for discovering missing meeting minutes are not error-proof, they are valid in the sense that we used the information any member of the public would be entitled to if they were asking the same questions.

Finally, although we do not present formal findings on this subject, we also ventured to assess the comprehensiveness of minutes by recording the page lengths for meeting minutes and by noting whether addendums were included. Perhaps due to the OMA's modest requirements for the actual content of minutes, we found great variation in the form and content of meeting minutes across different organizations. Some organizations consistently filled less than one page of meeting minutes while oth-

ers, like the Narragansett Bay Commission's Monthly Board Meetings, reached up to 48 pages in length. For the latter, a court reporter was hired to transcribe each meeting verbatim. We also found that some organizations routinely submitted addendums that were hundreds of pages long, while others never sent addendums. Most addendums were, or included, expository documents or budgets.

2. TIMELINESS OF MINUTES

The law requires that meeting minutes be deposited at the Secretary of State's Office within thirty-five (35) days of the meeting. We assessed each organization's compliance with this law by recording the meeting date and the receipt date at the Secretary of State's Office. The latter date was considered to be the date that was stamped on the minutes or appended document by the Secretary of State's Office or the State Library. (If the State Library and the Secretary of State had both stamped a document, the earlier date was used. In cases where multiple copies of the same meeting minutes were sent, the earliest date was used.)

3. CITING THE LAW BEFORE GOING INTO EXECUTIVE SESSION

For the organizations that conducted executive sessions, we noted if the appropriate statute and subsection(s) were cited and if they were cited properly. Specifically, the law requires that an organization cite a subdivision of 42-46-5(a). We considered that requirement as met if an organization cited a subdivision numerically and referred to its subject, such as §42-46-5(a)(1) (Personnel) or just numerically, as 42-46-5(a)(1). However, if the law and the subdivision were not cited we did not consider the provision to be satisfied, and if the law was cited incorrectly, such as 42-56-5(a), we also did not consider the provision to be satisfied.

4. PROVIDING A STATEMENT BEFORE GOING INTO EXECUTIVE SESSION

Section 42-46-4 of R.I.G.L. requires that a "statement specifying the nature of the business to be discussed" accompany the citation to a subdivision of §42-46-5(a). Unfortunately, this area of the law is particularly murky. It was hard to determine whether an organization had properly fulfilled this requirement in part because there are exceptions to it. The Rhode Island Attorney General's Office issued an advisory opinion on the Graziano v. Lottery case (OM 98-0606, 98-0632) that details the exceptions under which this requirement does not apply. Essentially, they determined that if the discussion issue is "one of public record" then the issue should be referenced in detail. However, if the issue is "not yet public" the minutes do not need to add a statement about the business to be discussed. Significantly, the Attorney General's Office advised that "public bodies are encouraged to be as specific as possible without jeopardizing the public interest." For the purposes of this study, we attempted to

determine if any additional information was given about the subject of the executive session in the minutes. We did not attempt to judge whether an organization was in compliance with this section of the law.

5. DISCLOSING VOTES FROM EXECUTIVE SESSION

Even though executive session minutes may remain confidential, the votes taken in executive session are required to be disclosed upon reentry into open session, according to §42-46-4 of R.I.G.L. There are exceptions to this rule that are similar to the reasons that a disclosure of the subject of executive session may be omitted. If an organization's disclosure of an executive session vote would jeopardize the public interest in some way, they are permitted to sequester the votes from executive session until that immediate jeopardy passes. Inherently, states of jeopardy must eventually pass and the votes from executive session must eventually be disclosed. For the purposes of this study, we did not evaluate an organization's reasoning in failing to disclose votes, we simply recorded whether votes were disclosed or not, and at what frequency.

6. VOTING ON THE DISCLOSURE OF EXECUTIVE SESSION MINUTES

Unless a vote is taken to seal executive session minutes, legally those minutes remain open. We assessed whether organizations that conducted meetings with executive sessions took a vote to seal the minutes, submitted opened executive session meeting minutes to the Secretary of State's Office, or took a vote at all, and how often each of these things happened.

B. LIMITATIONS OF THIS STUDY

This study is limited by our source of data. We used what was available at the Secretary of State's Office. Unfortunately, our experience was not always consistent. At the Public Information Office, the Secretary of State's employees deliver information from storage to inquiring patrons; the public cannot access the files directly. This procedure of storage and retrieval introduced the possibility of errors. For example, during the research phase there were several instances in which files that were previously given to us were missing when we requested them a second time to double-check our work. On one occasion, fourteen files that were previously given to us were not present upon the second request. We also observed clerical errors. Some minutes were misfiled in a different year, some minutes were appended to the back of another meeting's minutes and put into the wrong folder, and others were in a different organization's folder altogether. Two distinct boards were mixed together in a single file folder. We encountered other problems, like duplicated and misla-

beled files, that could also affect the comprehensiveness of data presented in this report. Therefore, we cannot claim to have a complete record of what exists at the Secretary of State's Office; however we can say that our results reflect what a public citizen making a similar request is likely to receive.

Second, as will be explained further, some subjective decision making was required in assessing compliance with certain provisions of the OMA. Certain provisions were easy to evaluate, like the presence and timeliness of minutes and proper citation of executive session subsections. Other sections, like compliance in giving a statement of business to be discussed upon executive session, were hard to evaluate and thus demanded a certain amount of subjective decision making--leaving ample room for disagreement. Finally, the generalizability of these results to all quasi-public boards and commissions is limited. Additional studies will be needed to assess compliance by other organizations.

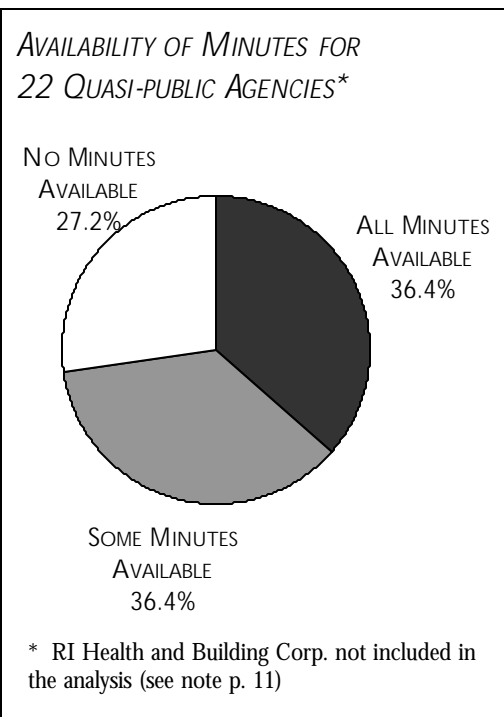
III. FINDINGS

A. OVERALL COMPLIANCE

As a starting point, we sought to determine whether the 23 quasi-public agencies we studied sent a complete record of their 2002 meeting minutes to the Secretary of State's Office. We found that eight organizations appeared to have sent all of their 2002 meeting minutes. We had substantial reasons to believe that eight other organizations had not sent in the minutes of at least one meeting, although these organizations did have some minutes available for inspection. After detailed examination, we concluded that the organizations in this category were missing at least one and perhaps up to seven meeting minutes.

Of particular concern was the Convention Center Authority. Our findings with regard to this organization's minutes illustrate the challenges in discovering meeting frequencies--and how we addressed those challenges. To begin, the Convention Center Authority sent in four 2002 meeting minutes. The "247th Meeting of the Board of Commissioners" that took place on September 26, 2002, was the earliest meeting date of those minutes on file. To resolve suspicions about the truncated number of meetings for this prominent organization, we inspected the Convention Center Authority's 2001 files; the last meeting minutes sent in for that year were for the October 18, 2001, meeting--the 237th meeting, according to the Convention Center Authority's internal numbering system. This numbering leaves a deficit of nine meetings between 2001 and 2002, all of which were unaccounted for at the Secretary of State's Office. It is very plausible that the lion's share of those minutes were from 2002 meetings. Thus, for this organization we concluded that a sizeable number of minutes were missing from the Secretary of State's holdings. However, we could not rule out the possibility that the minutes were misfiled at the Secretary of State's.

Six organizations did not have any 2002 minutes on file at the Secretary of State's Office. Those without minutes were the Housing Resources Commission, Rhode Island Housing and Mortgage Finance Corporation, Rhode Island Industrial-Recreational Building Authority, Economic Policy Council, Rhode Island Partnership for Science and Technology, and Rhode Island Children's Crusade for Higher Education. In fact, the Secretary of State's Office has never received any meeting minutes for these organizations, with the exception of the Industrial Recreational Building Authority; this organization last sent minutes in 2001. We did not determine the reasons that these organizations did not have 2002 meeting minutes available at the Secretary of State's Office. However, we were able to gather additional information on the status of these organizations to shed light on the matter.



- QUASI-PUBLIC AGENCIES WITH NO 2002 MEETING MINUTES ON FILE AT SECRETARY OF STATE'S OFFICE:*
- Housing Resources Commission
 - Rhode Island Housing and Mortgage Finance Corporation
 - Rhode Island Industrial-Recreational Facilities Corporation
 - Economic Policy Council
 - Rhode Island Partnership for Science and Technology
 - Rhode Island Children's Crusade for Higher Education

- The Rhode Island Partnership for Science and Technology was abolished November 1, 2002 and has been defunct since that date. Based on its inclusion in the FY 2004 budget however, it is likely that this organization will be reestablished.
- The Economic Policy Council has been active since 1996 and is currently active, according to the Secretary of State's Corporations Division database, available at http://www2.corps.state.ri.us/corporations/corp_search/. Unfortunately we were unable to reach anyone at this agency to ask if meetings were held in 2002.
- The Rhode Island Children's Crusade for Higher Education has been active since 1989. When we contacted this agency, an employee told us that the Crusade did not have meetings on a regular basis and those that are conducted are usually held in conjunction with school department meetings. This employee also denied that the Children's Crusade is a quasi-public organization and indicated that it is actually a non-profit corporation. This response corroborated what the 2000 Select Senate Committee on Quasi-Publics concluded about the Rhode Island Children's Crusade: the organization does not consider itself to be quasi-public, despite its official status as quasi-public and the funding it receives from the State of Rhode Island.
- We contacted the Housing Resources Commission (HRC), which maintains a website at <http://www.hrc.state.ri.us/>, to find out if the commission was currently holding meetings. Our contact confirmed that the HRC was holding meetings in 2003 and also did so in 2002.
- The Rhode Island Housing and Mortgage Finance Corporation's (RIHMFC) absence of minutes was particularly perplexing. Not only has this organization been in existence since 1973, it is infamous for a 1980s scandal that resulted in the conviction and jailing of the organization's executive director. When we contacted RIHMFC, we received a confirmation that the organization was holding meetings and that it operates under the assumption that it is a quasi-public organization.
- Unfortunately, we were unable to find more information on the Industrial-Recreational Building Authority. This organization does not have a website and we were unable to reach anyone who could give us more information about 2002 meetings.
- * During our research phase, we discovered that the Rhode Island Health and Educational Building Corporation did not have any minutes on file with the Secretary of State's Office. However, after our field research phase ended, we became aware that this organization had finally submitted all five of its 2002 meeting minutes on July 31, 2003; most were nearly an entire year late. Because of the tardiness of these files, we were not able to analyze them. Therefore, this organization is not represented in the chart above or in any other section of this report.

B. TIMELINESS OF MINUTES

Minutes must be sent to the Secretary of State's Office within 35 days of a meeting. We evaluated whether organizations complied with this law on its face. We also determined how many days had elapsed between the meeting date and the receipt date at the Secretary of State's Office. This allowed us to determine if the minutes were on time and if not, how late they were. If minutes are not available in a timely manner it compromises the public's ability to track issues as they are in progress and as decisions are being made. It also affects the time for filing complaints. The Attorney General can file a complaint about an OMA violation up to one hundred eighty (180) days from the date that the minutes were approved at the meeting in question.

Our findings on the timeliness of submission are presented below, with the quasi-public organizations listed in descending order of compliance with the statutory time limits:

| <i>TIMELINESS OF FILING MINUTES WITH THE SECRETARY OF STATE, 16 QUASI-PUBLIC AGENCIES*</i> | | | | |
|--|--------------------------------------|---------------------|---------------------|-----------------|
| <i>AGENCY (# OF 2002 MEETING MINUTES AVAILABLE)</i> | <i>% OF TIMES MINUTES ARRIVED IN</i> | | | |
| | <i><=35days</i> | <i>36 - 70 days</i> | <i>71 - 140days</i> | <i>141days+</i> |
| Rhode Island Lottery (9) | 78 | 22 | 0 | 0 |
| Narragansett Bay Commission (32) | 69 | 28 | 3 | 0 |
| Rhode Island Turnpike and Bridge Authority (9) | 67 | 33 | 0 | 0 |
| Rhode Island Water Resources Board Corporate Emergency Management (12) | 50 | 50 | 0 | 0 |
| Rhode Island Resource Recovery Corporation (11) | 45 | 55 | 0 | 0 |
| Rhode Island Economic Development Corporation (24) | 33 | 50 | 17 | 0 |
| Rhode Island Depositor's Economic Protection Corp. (4) | 25 | 0 | 50 | 25 |
| Rhode Island Public Transit Authority (4) | 25 | 50 | 25 | 0 |
| Rhode Island Clean Water Finance Agency (4) | 10 | 60 | 30 | 0 |
| Rhode Island Airport Corporation (29) | 10 | 59 | 31 | 0 |
| Capital Center Commission (6) | 0 | 17 | 50 | 33 |
| Convention Center Authority (4) | 0 | 0 | 25 | 75 |
| Rhode Island Industrial Facilities Corporation (4) | 0 | 80 | 20 | 0 |
| Rhode Island Refunding Bond Authority (1) | 0 | 0 | 0 | 0 |
| Rhode Island Student Loan Authority(8) | 0 | 12.5 | 75 | 12.5 |
| Rhode Island Underground Storage Tank Financial Responsibility Fund Review Board(3) | 0 | 67 | 33 | 0 |

*Agencies without minutes on file not included; RI Health and Building Corp. not included in the analysis (see note p. 11)

“...most organizations do not send most of their minutes in on time; in fact seven organizations never sent any minutes in on time.”

“...33% of the Capital Center Commission's meetings and 75% of the Convention Center Authority's minutes were over 141 days late.”

The findings reveal that most organizations do not send most of their minutes in on time; in fact seven organizations never sent any minutes in on time. For the remaining organizations that did send some minutes on time, with the exception of three agencies, the percentage of times that happened never exceeded 50%. The most outstanding exceptions to this rule were the Rhode Island Lottery and Narragansett Bay Commission; they sent in their minutes on time 78% and 69% of the time, respectively. The Turnpike and Bridge Authority also deserves recognition; 67% of the time minutes from this organization arrived within 35 days of the meeting. The minutes that fell outside this category were generally one or two days late and at most fourteen days late. Generally, this organization's minutes arrived at the Secretary of State's Office within 16-29 days of the meeting. The Water Resources Board was also nearly compliant in many instances. Four of the Board's meetings were one to three days late. The maximum amount of time elapsed between meeting and receipt date was 44 days. Although most organizations sent in their minutes within 140 days of the meeting, there were a few cases of extreme lateness: 33% of the Capital Center Commission's meetings and 75% of the Convention Center Authority's minutes were over 141 days late. The minutes for the Refunding Bond Authority's only 2002 meeting came in 342 days late. And a reference to the Rhode Island Health and Educational Building Corporation is also appropriate--all of their 2002 minutes arrived in mid-2003. Significantly, five organizations sent in more than 10% of their minutes in over four times the amount of days allotted under the law.

C. EXECUTIVE SESSION:

CITATION OF SUBDIVISIONS UNDER §42-46-5(A)

R.I.G.L. §42-46-5(a) provides nine circumstances in which it is permissible to enter into executive session. When executive session is entered into, a citation for each applicable reason should be referenced with a citation to a subdivision of §42-46-5(a). If two subjects fall under the same subsection, the subsection citation should be duplicated for each subject discussed. We did not evaluate, however, if organizations that were required to do this, did so or not.

Eleven of the quasi-publics in this study apparently did not enter into executive session in 2002. The other twelve quasi-publics entered into executive session a total of seventy-seven (77) times. The law was cited properly 91% of the time. Organizations that always cited the law correctly were: the Rhode Island Turnpike and Bridge Authority, Rhode Island Convention Center Authority, Rhode Island Industrial Facilities Corporation, Rhode Island Clean Water Finance Agency, Rhode Island Resource Recovery Corporation, Rhode Island Lottery Commission, Rhode Island Student Loan Authority, Rhode Island Economic Development Corporation, and Rhode Island Depositors Economic

Protection Corporation. The Airport Corporation, the Rhode Island Public Transit Authority, and the Capital Center Commission were the only organizations that made mistakes in citations of the law. Overall, the Airport Corporation did exceptionally well in citing the law; it entered into executive session sixteen (16) times in 2002 and cited the law correctly fourteen (14) times. In the remaining two instances, there was no mention of §42-46-5(a) or a subsection of it. The Rhode Island Public Transit Authority appeared to have good intentions when it entered into its four (4) executive sessions in 2002. However, its minutes incorrectly cited the law as "42-56-5A(2)" in three sessions and "42-56-5(a)(2) & (5)" in another one of their sessions. The Capital Center Commission made the same mistake, citing the law in its singular executive session as "42-56-5." Overall, quasi-public organizations seem to be doing quite well in satisfying this particular section of the law.

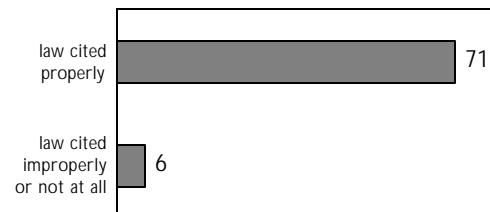
We were concerned about what appeared to be the over citation of §42-46-5(a) subsections, primarily by the Directors of the Rhode Island Economic Development Corporation. In one Meeting of Directors it was noted that "The Board adjourned to the Executive Session to consider and take appropriate action on such matters as are permitted by subsection (1) Personnel, (2) Litigation, (5) Acquisition, Disposition of Leasing of Public Land, (6) Location of Prospective Businesses and (7) Investment of Public Funds, of R.I. Gen. Laws § 42-46-5(a), the Open Meetings Law." This same pattern of citation happened in ten of eleven Meeting of Directors' minutes. One set of minutes was missing a page, so we were unable to determine how many subsections they cited, although we know they cited at least two in this meeting. Although it seems unlikely that so many subjects were discussed in executive session, we do not have any proof that they were incorrect in citing this many subsections of the law. But this issue highlights the importance of the piece of information that is supposed to accompany citation of a subsection: a statement of the nature of business to be discussed. Incidentally, for the RIEDC's Meeting of Directors, the meeting minutes do not detail a statement for each of these subsections cited, as they are supposed to. If this information were available it would be easier to assess if RIEDC was justified in citing this many subsections of the law.

*DETAILS ON EXECUTIVE SESSIONS, BY QUASI-PUBLIC AGENCY**

| AGENCY | Number of 2002 Executive Sessions |
|---|-----------------------------------|
| RIEDC | 20 |
| Airport Corporation | 16 |
| Resource Recovery Corporation | 11 |
| Turnpike and Bridge Authority | 5 |
| Lottery Commission | 4 |
| Clean Water Finance | 4 |
| RIPTA | 4 |
| Industrial Facilities | 4 |
| Convention Center Authority | 3 |
| Depositor's Economic Protection Corporation | 3 |
| Capital Commission | 1 |
| Student Loan Authority | 1 |

*Based on available minutes, none of the remaining agencies in this study went into Executive Session in 2002.

CITATION OF THE LAW



n = 77 executive sessions in 2002

D. EXECUTIVE SESSION: STATEMENT OF BUSINESS TO BE DISCUSSED

The *Attorney General's Guide to Open Government in Rhode Island* (4th Edition) cautions that "merely citing the statutory citation for a closed session meeting is not sufficient to apprise the public of the nature of business to be discussed." Clearly this provision is critical to preventing abuses of executive session. But, as previously discussed, there are exceptions to this rule. This area of the law is particularly complex, which made evaluating compliance difficult, if not impossible, in some cases. We did have some concrete guidelines upon which to evaluate these statements and we also found examples from certain organizations that are good models for compliance.

The Attorney General offers some basic guidance on this issue. The Attorney General presented the following example as an appropriate way to fulfill the requirement of citing a subsection and a statement of business: "...pursuant to R.I. Gen. Laws §42-46-5(a)(5), that this public body convene in executive session to discuss acquiring Greenacre for the purpose of building softball fields." In this example both the subject of the business and the issue associated with that subject are discussed. Also in this example the reason for the business is presented in the open call before the execution of executive session commences; the law only requires, however, that a public body present in the open call and record the statement of business to be discussed somewhere in the open session minutes. Again, executive session also requires a statement for each subject that will be discussed, even if those subjects fall under the same subsection. For example, if two personnel issues were to be discussed, there would need to be a citation for each of the issues and a separate statement for each of the issues. The Attorney General gave the following example of this at the 2003 Open Government Summit:

II. Executive Session

(pursuant to R.I. Gen. Laws §42-46-5)

1. R.I. Gen. Laws §42-46-5(a)(1)
(Town Manager Performance review)
2. R.I. Gen. Laws §42-46-5(a)(1)
(Personnel)
3. R.I. Gen. Laws §42-46-5(a)(2)
(Police Union Negotiations)

We encountered a type of backdoor compliance in many cases. These organizations did not specifically state at the outset what the nature of business to be discussed was, but they did reveal information about the contents of executive session in their disclosure of votes, in minutes of the executive session, or in other agenda item commentary. We counted that as compliant, although there are certainly arguments to the contrary.

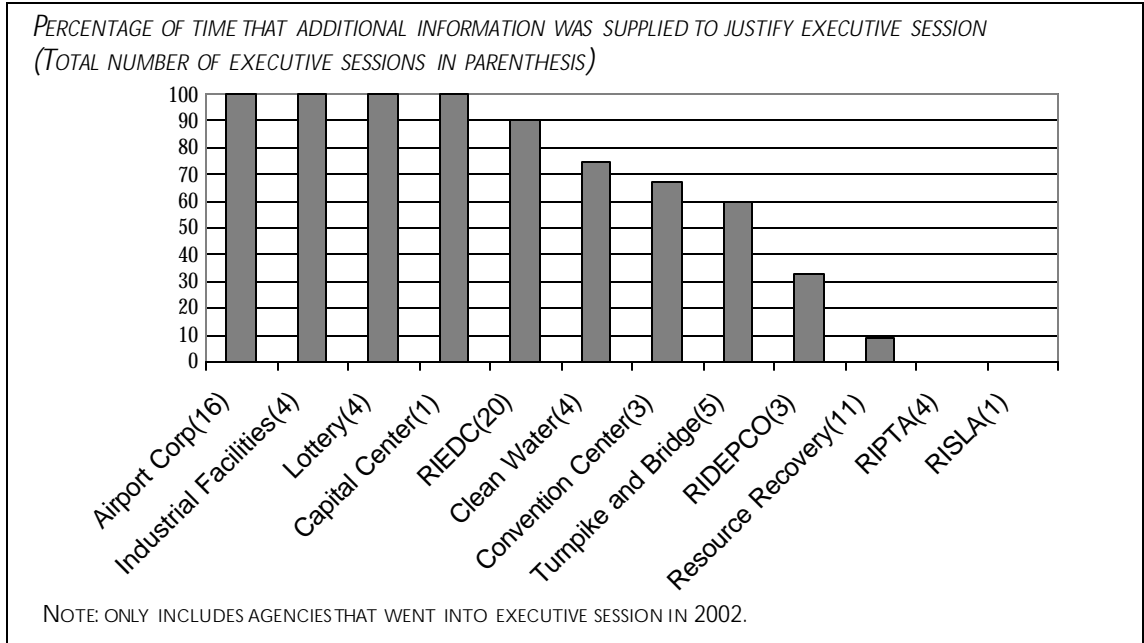
One example of indirect compliance is the Rhode Island Economic Development Corporation (RIEDC) Small Business Loan Fund Board of Directors. In their March 1, 2002, meeting they moved into executive session "pursuant to Rhode Island Open Meetings Law 42-46-5(a)(6) of the General Laws of the State of RI 1956..." They gave no additional information about the nature of business to be discussed before they moved into executive session. However, when they came out of executive session they convened with the following: "the next item to come before the Board was the ratification of voting held during the Executive Session. The vote to be ratified is the funding of \$200,000 to The Corporate Market Place, Inc..." Because this organization's vote revealed the subject of subsection 6, we considered this organization to have given "additional information" on the nature of business discussed.

But these situations can also be ambiguous. Take for example another meeting of the RIEDC Directors conducted on February 25, 2002. In this meeting five subsections of the law were cited: "subsection (1) Personnel, (2) Litigation, (5) Acquisition, Disposition of Leasing of Public Land, (6) Location of Prospective Businesses and (7) Investment of Public Funds." The later disclosure that "The Vice Chairman reported that action was taken on the following items during the Executive Session: 1. Approval of sale of land to Swarovski," inadvertently informs the public of the subject of subsection 5 and possibly subsection 6. But what about the personnel issue and the investment of public funds issue? Are they connected to the Swarovski transaction or did the Directors purposefully omit statements about these issues? It's simply impossible to tell. This example epitomizes the issue with indirect compliance with the law--it complicates things even more.

Another example of indirect compliance was exhibited by the Rhode Island Depositors Economic Protection Corporation (DEPCO). In a May 7, 2002, meeting it was voted to meet in executive session "under subsection (2) (litigation) of the Rhode Island General Law Section 42-46-5(a) the Open Meetings Law." No further information was volunteered, but after the meeting reconvened to public session and additional discussion occurred it was recorded that "The Board advised representatives of the Attorney General's Office that the Board did not have a recommendation at this point with respect to the pending litigation involving the Department of Environmental Management but that the Board was prepared to reconvene at any time and to work together with the Attorney General's Office for purposes of further exploring appropriate responses to the pending litigation." We could not be sure that the litigation discussed here was the same as discussed in the executive session, but this seems a safe assumption.

The most outstanding example of providing information after-the-fact is the Airport Corporation. The Corporation's Board of Directors entered into executive session during their January 16, 2002, meeting citing a "discussion related to security-R.I.G.L. §42-46-5(a)(3)" and a "discussion related to investment of public funds-R.I.G.L. §42-46-5(a)(7)" before they entered into the session. There was no other statement of purpose. However, the Corporation released "Minutes of the Executive Session," which explained that they had been updated "...on security issues at the airport" and that their session "included a discussion of new industry technology". It was also noted that they had "discussed the policies and procedures for RIAC's sound insulation program, and specifically if there were other resources available to fund this program if federal monies were not available."

The Clean Water Finance Agency practices a method that eliminates the types of ambiguity seen in some other quasi-public agencies. The Agency consistently adopted a method for entering into executive session that followed the pattern practiced in the May 20, 2002, meeting: "Item #12 on the Agenda was the closed session in regard to the Executive Director's Annual Performance Review and personnel issues. The Agency Chairman stated that upon the affirmative vote of the majority of the members of the Agency Board, the meeting shall be closed to the public pursuant to the R.I. General Laws §42-46-5(a)(1) with respect to this portion of the meeting which relates to discussions of the job performance of the Executive Director of the Agency." Here the agency has stated both an applicable subsection and the subject and issue of the executive session before the session actually commenced. This strategy not only gives the public information they are entitled to, but it also makes evaluating compliance with the law easier. This, in turn, strengthens avenues for assessing the accountability of quasi-public organizations.



Overall, this study finds that 83% of organizations utilizing executive sessions provided some kind of information about the subject of that executive session in some or all cases. Although this statistic seems promising, it must be stressed that the presence of additional information does not imply full compliance with the law. For example, if an organization cited five subsections of §42-46-5(a) but only gave one statement about the nature of business to be discussed, we considered that to be "additional information" although the organization clearly did not do as much as the law requires--barring all exceptions to the rule.

On the other hand, it should be kept in mind that the 17% of organizations that did not provide more information than a reference to the specific subsection were not necessarily in violation of the law. The Rhode Island Student Loan Authority, for example, simply noted "that the meeting enter into Executive Session for the purpose of discussing a Personnel Matter in accordance with the General Laws 42-46-5, subsection (a)(1)" in its July 11, 2002 meeting. RISLA had the right to restrict its statement to the subsection only, under certain circumstances. However, the fact that organizations cite only a subsection of the law does not necessarily mean that this was one of those cases.

Overall, the data indicate that a significant problem exists with regard to clear, comprehensive notation of the nature of discussions had in executive session. Although many organizations either explicitly or implicitly gave some information about the subjects discussed in executive session, a large margin for improvement exists. Operating from a citizen's point of view, it would be not only laborious but nearly impossible to determine whether organizations are in fact meeting the minimum informational requirements imposed by the OMA. Indeed, complexity characterizes this subsection of the law, and compliance can only be determined on a case-by-case basis with a good deal of supplemental information not usually contained in the minutes. Only the Clean Water Finance Agency and the Capital Center Commission clearly followed the Attorney General's example of providing a true statement of the nature of discussion to be had in executive session before the session commenced. Most of the information we gleaned about executive session subjects came from other forms of disclosure.

"...the data indicate that a significant problem exists with regard to clear, comprehensive notation of the nature of discussions had in executive session."

E. DISCLOSURE OF EXECUTIVE SESSION VOTES IN OPEN SESSION

The OMA requires votes taken in executive session to be disclosed when open session resumes. As can be expected, there is an exception to this rule. The Attorney General's *Guide to Open Government in Rhode Island* (4th edition) explains: "A vote taken in executive session need not be disclosed for the period of time during which its disclosure would

jeopardize any strategy, negotiation or investigation undertaken pursuant to a properly closed meeting.” R.I. Gen. Laws §46-42-4. In short, although the votes from executive session may be suppressed for a period of time, they must be disclosed eventually. Since jeopardy is considered a state that will pass eventually, for the purposes of the law votes from executive session should be regarded as public information even if delayed in their release.

In our review of all reported executive sessions in 2002 (in the 12 quasi-public agencies that had executive sessions), we discovered that disclosing votes outside of executive session was not a routine practice. There were several organizations that *did* consistently disclose votes from executive session. The Airport Corporation routinely submitted minutes of its executive session to the Secretary of State's Office; these minutes included votes taken in executive session. Selected meetings of the Rhode Island Economic Development Corporation and all the meetings of the Industrial Facilities Corporation had ratification of votes taken in executive session. The Convention Center Authority read lengthy resolutions into the record from executive session in two of its three meetings with executive sessions. The Lottery Commission, in half of its meetings, revealed votes that were taken in executive session. It is impossible to know how to interpret the lack of any mention of votes in executive session. It is quite possible that no votes were taken in executive session; it is also possible that no votes were disclosed.

F. EXECUTIVE SESSION: SEALING MINUTES OF EXECUTIVE SESSION

| <i>TRENDS IN VOTING TO SEAL MINUTES FROM EXECUTIVE SESSION</i> | | | |
|--|---------------------------------|-----------------------------------|--------------------|
| <i>AGENCY</i> | <i>ALWAYS VOTES TO SEAL</i> | <i>VOTE TO SEAL SOMETIMES</i> | <i>NEVER VOTES</i> |
| Lottery Commission | X | | |
| Turnpike & Bridge Authority | X | | |
| Student Loan Authority | X | | |
| Resource Recovery Corporation | X | | |
| RIPTA | X | | |
| Industrial Facilities | X | | |
| Airport Corporation | | X | |
| Convention Center Authority | | X | |
| Depositor's Economic Protection Corporation | | | X |
| Capital Center Commission | | | X |
| RIEDC | | X | |
| Clean Water Finance | | | X |

R.I.G.L. §42-46-7(c) enables organizations to seal the minutes of executive session after the session is closed, if the majority of members publicly vote to do so. If minutes are not sealed, they remain open and should be available to the public at the next meeting or within 35 days of the meeting, whichever is earlier. Thus, if the minutes of executive session are not sealed immediately following the meeting, this creates logistical problems in terms of the availability of minutes. It also may constitute an OMA violation, punishable by fines up to \$5,000. Beyond this basic requirement, the OMA provides little direction on sealing minutes. Under the OMA, minutes may be sealed indefinitely, but the OMA does not say anything about unsealing minutes.

In evaluating quasi-public agencies with regard to sealing minutes, two questions emerge. First, are they always rendering a decision about sealing or opening executive session minutes when open session resumes? This is a procedural question. Second, are they being fair and deliberate in their decisions about the fate of minutes from executive session? This is more a question of integrity--and it is generally beyond the reach of this study. Both questions, however, are relevant to the degree to which accountability is preserved and can be assessed. Clues about the answers to the second question can be discerned from overall patterns. The Airport Corporation, for example, appears to deliberate about these issues and strive for openness. The Corporation opened and produced minutes of fifteen executive sessions, choosing to seal only one.

The other agencies in the same category as the Airport Corporation--those voting "to seal sometimes"--were classified this way (in the Table on page 19) because sometimes they voted to seal minutes and other times they failed to vote on the matter, thereby leaving the minutes effectively closed.

The issue at the other extreme--always voting to seal--raises questions as well. With agencies like the Resource Recovery Corporation, one wonders if it was necessary to seal eleven of the eleven minutes of executive session. Was there always a compelling reason to withhold this information from the public? We may never know.

IV. CONCLUSIONS

These are the major findings in this study:

- Only 36.4% of quasi-public organizations submitted all their 2002 meeting minutes. Twenty-seven percent of the quasi-public agencies we studied had no minutes available at all and the remaining 36.4% had not submitted a complete record of 2002 meeting minutes.
- Compliance in submitting minutes to the Secretary of State's Office on time is low and the extent of non-compliance is significant. The highest percentage of compliance was 78%. Seven organizations did not have a single instance of compliance. The degree of tardiness was staggering in some cases, with organizations sending in minutes over two hundred days late and others more than a year. Five organizations took four times as many days as allotted by the law to send in more than 10% of their minutes.
- Executive Session citations of §42-46-5(a) are consistently well done. The non-compliance rate was only 9% (and those errors appear to be from sloppiness). These results indicate that there is a high level of awareness and understanding of this legal requirement.
- Almost none of the quasi-public agencies gave clear statements about the nature of business to be discussed in executive session. Although a majority of organizations gave some information, directly or indirectly, about the subject matter of executive session, considerable room for improvement exists to comprehensively fulfill the law's purpose. The Airport Corporation was a notable exception to the contrary.
- Disclosure of executive session votes is rare, even when the reasons that justify short-term secrecy have undoubtedly passed. Only a select few organizations regularly disclose votes upon resumption of public session.
- Voting to seal executive session minutes was characterized by procedural problems in five agencies; in each of these five there were incidences in which votes were not taken. Only one agency from the entire study (the Airport Corporation) opened its executive session minutes and submitted them to the Secretary of State's Office. Six organizations voted to seal minutes of every executive session.

A. GENERAL RECOMMENDATIONS

The enforcement agency for the OMA, the Attorney General's Office, should not have to rely on university studies to assess lack of basic compliance by public bodies, nor should it require a complaint to address systematic failures in OMA compliance. Perhaps there is a need for the Secretary of State's Office to play a stronger role in ensuring compliance to the OMA. Currently, the Secretary of State's Office serves only as a repository for information. The office does not have responsibility for enforcement of the law. However, it would be fairly simple for the Secretary of State's Office to keep track of this kind of information with an eye towards ensuring public access, in part because they already do some of this work. The Secretary of State's Office keeps an electronic record of the following information:

- The date of the meeting for which minutes were received
- The date the minutes were received
- The date the minutes were filed in the public information office
- The name of the subcommission that the minutes were from

This information is sufficient to ascertain some of the most basic failures to comply with the law. Finally, training and public education are also important. The Attorney General's office has taken the lead in this regard. The results in this report suggest, however, that the need is ongoing.

B. RECOMMENDATIONS BY SECTION

1. MINUTES

As 63% of organizations in this study either failed to send in some or any minutes, this is clearly an area for improvement. Secretary of State Matt Brown has already succeeded in effecting one change. A 2003 amendment to the OMA that takes effect on July 16, 2004, will require meeting notices and minutes to be electronically filed with the Secretary of State's Office. This provision should make it much easier for people to access information; without any enforcement power in the Secretary of State, however, it is not clear what will happen if agencies do not send electronic files or do so late.

The quasi-publics (and other public agencies) can also assume responsibility for ensuring public access. The Water Resources Board Corporate provides a database of agendas and minutes, including archives, on its website at <http://www.wrb.state.ri.us/corp/index.html>. The Underground Storage Tank Financial Responsibility Review Board also provides access to its scheduled meetings at

“Perhaps there is a need for the Secretary of State's Office to play a stronger role in ensuring compliance to the OMA.”

“...without any enforcement power in the Secretary of State, however, it is not clear what will happen if agencies do not send electronic files or do so late.”

<http://www.riustreviewboard.org/site/>. Maintaining this type of information on the Internet provides innovative avenues to disseminate information to the public as well as giving organizations an opportunity to demonstrate their willingness to exceed the expectations of the OMA.

2. TIMELINESS OF MINUTES

As timeliness of minutes is essential to enabling civic participation among other things, changes need to be made in order to prompt organizations to consistently comply with the law. Based on our review of meeting minutes, we suspect that delayed approval of minutes may play a role in what can sometimes be gross tardiness in submitting minutes. To this end, it is important that organizations are aware that they must always send in minutes to the Secretary of State's office within 35 days, regardless of whether these minutes are approved or unapproved. (When minutes are approved, they can be forwarded to the Secretary of State's Office.) As the Secretary of State's Office keeps an electronic database of what it receives from organizations, it could assuage at least the extreme tardiness of minutes by writing letters to these organizations to inquire about the status of minutes. The Secretary of State's Office could also publicize agency performance, highlighting organizations that are doing well in complying with the law.

3. EXECUTIVE SESSION

A. CITATION OF THE LAW

We generally encountered excellent results in organizational compliance with this aspect of the law. The instances of non-compliance were most likely the result of carelessness. Successfully utilizing the oft-practiced approval of minutes would help reduce the number of gaffes in this area, especially when the mistake repeats every session, as it did in all RIPTA's 2002 meetings.

B. CITING A REASON FOR ENTERING INTO EXECUTIVE SESSION

“The Clean Water Finance Agency, for example, consistently noted in their reason for entering into executive session both the subject and the issue associated with the subject.”

This area of the law is murkier, but some quasi-public agencies have adopted practices that set an excellent example. The Clean Water Finance Agency, for example, consistently noted in their reason for entering into executive session both the subject and the issue associated with the subject. Organizations should strive to give information about both of these subjects when entering into executive session. If it is not appropriate for an organization to make these kinds of disclosures, then alternative information should be given. The quasi-publics examined in this study would often just disclose the subsection and the main idea of the subsection, like personnel or litigation. Of course, this is not necessarily a violation of the law. But the possibility remains that the requirement

was neglected. A simple change in how minutes are kept could dispel this type of ambiguity. For example, an organization could say, "no statement regarding the nature of business to be discussed shall be disclosed in order to protect personal privacy" or "no statement regarding the nature of business to be discussed shall be disclosed at this time due to the subject's status as non-public." Such statements would indicate an organization's intention to comply with the law and also show that the organization has contemplated the interests of public access.

C. DISCLOSURE OF VOTES

This report shows that votes from executive session are not consistently being disclosed. The solution to this problem is clear: organizations should dutifully disclose their votes after the executive session adjourns. The Industrial Facilities Corporation, among other organizations, has a good procedural way to ensure that this is done: votes from executive session are ratified immediately after executive session adjourns. There are provisions in the law that insulate organizations from disclosing these votes. Therefore, if executive session votes are not disclosed, the prevailing assumption is that they were withheld because of some imminent danger or risk from disclosure. However, this cannot always be true. Certainly there are executive sessions in which no votes were taken. And certainly there are other times when organizations did not disclose votes because they were unaware of their obligation to do so or because they failed to note it in the minutes. The obvious solution again appears to be overtly stating the status of the votes. For example, an organization could state that "no votes from executive session shall be released at this time due to an imminent danger from disclosure." And if only a discussion was had in executive session, the minutes could specify: "no votes taken in executive session."

Even if an organization clearly notes that it will not immediately disclose the votes of executive session, there will inevitably come a time when those votes should be disclosed. In our study, we did not encounter a single instance where votes from elapsed executive sessions were disclosed. The onus should be put on quasi-publics to continually review these votes in a timely matter and release them when appropriate. Most organizations already have systems to review meeting minutes and approve them at certain meetings. This system would surely work with reviewing votes. For example, every three months an organization could review the status of votes in executive sessions and make determinations at a regular intervals to see if they are appropriate for disclosure. Otherwise, it is possible that this public information will never actually become public.

"...organizations should dutifully disclose their votes after the executive session adjourns..."

"...we did not encounter a single instance where votes from elapsed executive sessions were disclosed. The onus should be put on quasi-publics to continually review these votes in a timely matter and release them when appropriate."

D. VOTES TO SEAL

“...there should never be an instance where no votes were taken on the matter of sealing minutes. Yet this was observed seventeen times in this study.”

With regard to this section of the law, our findings indicate a problem. Theoretically, there should never be an instance where no votes were taken on the matter of sealing minutes. Yet this was observed seventeen times in this study. This would be less troublesome if executive session minutes were released in these cases. However not a single organization ever opened the minutes when no votes were taken on the matter. Our hope in illuminating this issue is not to encourage organizations to routinely seal minutes to comply with the letter of the law. We point this out to underline the technical problems that can result when minutes are not sealed properly, i.e., they should be available if they are not sealed. In light of the limited guidance the OMA gives on this subject, this could become a serious problem. It would be prudent for organizations to make decisions about sealing executive sessions in a timely manner, as well as being sure to review the minutes of the executive sessions past to determine whether they should remain sealed. Another option is to open executive minutes selectively, or to keep certain parts sealed and release other parts.

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