

Proposed Testimony by Joseph J. Strauch in support of House Bill No. 1671

Good morning, Chairman Metcalfe, members of the House State Government Committee, Honorable Representatives, and all others present. Thank you for inviting me to participate in today's hearing. I appreciate the opportunity to meet with you and express my enthusiastic support of House Bill 1671 relating to Executive Sessions.

I am Joseph Strauch, and since 2011 I have been an elected member of the Board of School Directors of Lackawanna Trail School District that spans Lackawanna and Wyoming counties in northeast Pennsylvania. Today I am here to represent my personal opinions and share those of some of my constituents. In NO way should my presence or testimony be interpreted as representing any board or other private or governmental entity.

My board convenes typically twice per month at public meetings that average 45 minutes, and again at lengthy executive sessions before and after each public meeting. The minutes of the public meetings do not mention all the executive sessions nor the reasons for calling them. This has been noticed by the Auditor General Eugene DePasquale. His July audit (exhibit A) reported that my district repeatedly violated the provisions of the Sunshine Act related to Executive Sessions. Those violations continue to this day.

In my role as Director, I have seen firsthand the importance of enforcing the Sunshine Act. This act is essential to reassuring the public that they are ultimately in charge of our school district. They must know that every decision made by the board is open to their review and approval, and that there is no secret organization that governs behind closed doors. The changes proposed by House Bill 1671 will help in this regard.

Before my term began, I attended years of public meetings, often as the only taxpayer in the audience. I felt deprived of witnessing actual deliberations, policy development, and decision-making, and made it my objective to bring transparency to the process. When I tried to encourage my neighbors to join me at meetings to express their interests, the response was typically, "Why bother?" They were convinced it would be a fruitless and frustrating waste of their time. Many of my constituents still believe that decisions are made in secret and then just rubber-stamped in public. Their faith in public government has been eroded. This bill, should help to change those beliefs and validate our rich democratic process.

One of the problems I have observed at executive sessions is a culture of conducting business in private, except that which must be done in public. There is a difficulty in determining whether material is exceptional and allowed at an executive session, or not. I

have often questioned items on an agenda, only to be told that they were allowable. At almost every session it appears that the board diverges from, or extends beyond, an acceptable agenda and enters possible unapproved territory. When I first questioned that practice, I was told to just "sit down, shut up, and learn from those already on the board."

At recent executive sessions the discussions deviated into the effects of general raises for all Act 93 employees, how to manage the school lunch program and the need to post for an employee position. At many other sessions, there were significant discussions about how to grant special tax concessions to a business in an Opportunity Zone. A year ago, the board met on two occasions, in private, to interview and select candidates to fill vacated board positions. That same behavior about appointing board members made the headline in a recent Scranton Times-Tribune article. It said "A Scranton School Board member admits the search for a new director was nothing more than a sham." Well, even that sham was more than I saw at my own school district.

Any discussion with the solicitor for any reason is automatically treated as a valid excuse for a meeting. The list of violations is as extensive as the number of sessions I have attended. One of the most absurd discussions was about which lavatories should be used by employees. But, without any minutes or recordings, none of this can be proven, and no enforcement is possible.

Recently there was a training session for new board members conducted by the Intermediate Unit servicing northeast Pennsylvania school districts. When the topic of executive sessions arose, there was general agreement that "what happens at an executive session, stays at the executive session." Essentially, the position was that all discussions at an executive session are considered confidential and should not be divulged to the public. I found that advice to be offensive, and in my opinion, unsubstantiated.

With the changes proposed by this bill, especially the recording of executive sessions, I hope that these problems would be reduced.

Page 1 of the bill, section 708 (a) (1) addresses the PURPOSE of an executive session.

The clarification of what may be discussed, with an emphasized use of the qualifier specific individual, addresses a weakness of the existing law. When this bill adds language that discussions must pertain to a specific individual, all doubt will be erased. When it clarifies that all other business related to employment, etc. must be conducted at an open meeting, it reinforces the purpose of the Sunshine Act.

Under the current law, it is too easy at meetings to discuss the creation of new jobs, contracts, realigning job duties, schedules, luncheon service, or even the financial impact of employing another teacher, coach, or aid. Those topics will now clearly be mandated for public viewing and participation. There will be no gray area as to the appropriate venue.

One of the most frequently cited reasons for holding executive sessions is for the discussion of personnel issues. Now it will be clear that those discussions can only be of a specific individual, not a class of employees, not a position, not a posting. I thank Representative Saccone and the co-sponsors for this proposed clarification.

Adding point (7) to the exceptions list should be applauded. It is unfortunate that, in this day of increased security needs, we must be so vigilant for the safety of our students. I am not sure that even as a board member I should be privileged to know the inner secrets of the school's security system. In my opinion, only those who must know should know. This subject matter should be both prohibited at public sessions and restricted to only executive sessions or a committee of the board. If possible, it should be more than just another allowable exception.

On page 3 of the bill, section 708 (b) speaks to the PROCEDURE of an executive session

I offer my strongest support to the addition of point (2) on the next page. That point requires recording of executive sessions. The need for this cannot be overemphasized. Currently there is no hard evidence available for a challenge in court. When a board member sees a violation carried out, there is no way to provide evidence to a court. Even with sworn testimony, it becomes a contest of oral arguments. If the majority of a board is of a singular mind to violate the Sunshine Act, nothing the remaining members say would stand up against their testimony. A recording of the meeting would change everything: it would provide indisputable evidence of the background to an alleged violation as well as to the attitudes and actions of those involved.

An additional benefit to recording meetings would be that everyone would be well aware of the microphone and the permanence of their remarks. Board members would refrain from foul language, insults, threats, bullying, and intimidation, knowing that such actions are being collected as evidence. Frankly, I was shocked and amazed at my first executive session when some members used the most colorful language to insult those who disagreed with their positions. The lack of civility and the unrestricted, inappropriate comments saturated the room. We all know that people behave differently when they are being watched, so let's watch the boards. It would be nice if there were a part of the bill to clarify that these recordings be made available to board members for review, in addition to just being maintained.

Point (3) requires obtaining legal advice prior to an executive session. This is a great step in the right direction. But I have no faith in the advice of an attorney, who has no "skin in the game." All that a board would need to do is ask for advice and their attorney could then provide the requisite approval and the board has an automatic defense to present in court if they are charged with a violation. I've read of many cases that failed to prosecute because of this defense. There must be some way to hold an attorney responsible for an incorrect interpretation of the law thereby issuing the board a "get out of jail free" card.

I have personally observed executive sessions at which an attorney would direct the board into topics that, by a reasonable reading and interpretation of the act, should not have been allowed. The most egregious of these sessions was one at which a solicitor initiated and directed a board discussion that focused on closing down a private citizen's website, LTSD.INFO, that the board felt relayed too much public information about the district. This was never told to the public, probably because the board knew that the public relied on that website and overwhelmingly supported it. But there was no evidence to prove what happened at that executive session.

Section 714 is adding a new subsection (c) under PENALTY for immunity

This could have a profound effect on the willingness of board members to come forth and provide testimony of violations. Without this change, if I were to report a violation to an appropriate authority, I would be incriminating myself, as one of the board guilty for the infraction. That would make me think twice about taking action. This barrier to appropriate reporting would be removed by the proposed change. Together, testimony from a board member, substantiated by a recording of the meeting, would be a worthwhile enhancement to the enforcement of the Sunshine Act.

Unfortunately, the penalty only applies to the intention to violate the act. Wouldn't it be better to also apply the penalty to the actual violation rather than just the intention?

In summary, I fully endorse this bill and encourage its approval. Thank you for your attention and the opportunity to speak. At this time I welcome questions from the committee.

(exhibit A) Auditor General 7/2013 Report

Finding No. 2

The District's Board Violated the Sunshine Act

Criteria relevant to the finding:

Pennsylvania Sunshine Act 65 PA C.S.A. § 703 provides, in part:

“Executive Session” is a meeting from which the public is excluded, although the agency may admit those persons necessary to carry out the purpose of the meeting.”

Section 708 - Executive sessions:

“(c) Limitation. Official action on discussions held pursuant to subsection (a) shall be taken at an open meeting. Nothing in this section or section 700 shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of section 704.”

Section 710.1 - Public participation:

“(c) Objection. Any person has the right to raise an objection at any time to a perceived violation of this act at any meeting of a board or council of a political subdivision or an authority created by a political subdivision.”

Our audit found that the Lackawanna Trail School District's (District) Board of School Directors (Board) repeatedly violated the provisions of the Sunshine Act related to executive session. Section 708 of the Sunshine Act requires executive session to be announced at an open meeting. Furthermore, according to Section 710.1 (c), the reason for the executive session must be announced immediately prior to, or subsequent to, the session.

The General Assembly passed the Sunshine Act to ensure the right of its citizens to have notice of, and the right to attend, all meetings of agencies at which any agency business is discussed or acted upon. The General Assembly determined that the public had the right to be present at all meetings of agencies and to witness the deliberation, policy formulation, and decision-making. In addition, the General Assembly found this access to be vital to the enhancement and proper functioning of the democratic process. Moreover, it found that “secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.”

Our audit found that the meetings scheduled for January 9, 2012, February 13, 2012, March 12, 2012, April 10, 2012, and May 14, 2012, were to start at 7:30 p.m. Auditors compared this information, published in the legal notices in the local newspaper, as required, to the corresponding board meeting minutes. They found that the meetings for the above dates were called to order at 8:14 p.m., 7:53 p.m., 8:22 p.m., 8:04 p.m., and 8:06 p.m., respectively. Also, the board meeting minutes did not note that executive sessions were held, or the reasons for the executive sessions.

According to District personnel, the Board routinely gathered approximately one hour prior to the public meeting for executive session. Meetings then started following the executive session. Discussions with District personnel indicated that this violation was due to a misunderstanding of the Sunshine Act. Furthermore, upon learning of this violation, District personnel immediately took corrective action.

(exhibit A cntd) Auditor General 7/2013 Report

The public has the right to witness its elected officials conduct business. That right includes being notified when those officials or entities enter into executive session, and for what reason. Without this information, the public is denied the ability to appropriately evaluate the performance and fitness of the officials they have elected.

Recommendations

The *Lackawanna Trail School District* should:

1. Announce, at an open public board meeting, the date, time, and reason for executive session, in compliance with the Sunshine Act.
2. Ensure that executive sessions are held during an open meeting, at the conclusion of an open meeting, or announced for a future time.

Management Response

Management provided a response agreeing with the finding and provided no further comment.