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TESTIMONY ON HB 1671

PRESENTED TO THE
HOUSE STATE GOVERNMENT COMMITTEE

BY

DOUGLAS E. HILL
EXECUTIVE DIRECTOR

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Harrisburg, PA

On behalf of the County Commissioners Association of Pennsylvania (CCAP), I want to thank Chairman Metcalfe, Chairman Cohen and members of the House State Government for the opportunity to submit comments regarding HB 1671, which would amend Title 65 regarding open meetings. The CCAP is a non-profit, non-partisan association providing legislative and regulatory representation, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties.

The Pennsylvania Sunshine Act took effect in 1987, and requires all public agencies, including counties, to take all official actions and conduct deliberations leading up to official actions at public meetings. Counties agree with the importance of openness, transparency, and accountability while maintaining an appropriate balance between access to information and privacy and security concerns.

To assist in striking this balance, the current Sunshine Act provides for a number of instances for which a public body may enter into executive session to discuss matters of a sensitive nature, focusing where the public interest in confidentiality outweighs the public interest in openness. House Bill 1671 makes a number of changes to the current law on executive sessions, and our comments on each of these changes follow.

The bill makes two material changes to section 708(a)(1). First, the option to hold executive sessions for employment-related discussions is maintained for employees but deleted for public officers and appointees. Given the nature of county government, in which row office relationships and conduct may need to be discussed, we believe the ability to review matters relating to public officers and appointees should be preserved.

Second, the changes in 708(a)(1) are intended to further narrow its scope relating to matters of employment of a specific individual. In this respect, we believe the changes may be too restrictive. There are valid circumstances where the public interest in balance rests with capacity to hold some global personnel issue discussions in a private setting – for example, evaluation of some personnel rules or practices that do not fall explicitly in a collective bargaining setting. Relatedly, while likely not intended, the language added at the end seems to conflict in some ways with the scope and nature of the exemption.

Counties support the addition of the executive session option, the new section 708(a)(7), for the purpose of developing and reviewing plans related to security and emergency preparedness. Safety and security at public meetings, public facilities, and public events is an important priority and recent events have illustrated the need to keep certain information out of the hands of those who intend to do harm. However, we believe the language regarding cost disclosure and equipment specifications in open meetings may compromise the nature of counties' security systems, contrary to the intent. Reworking this language to instead address the matters of public award of contracts would be a better balance.

We do not support the new section 708(b)(2), language requiring recording, and maintenance of the recording, of an executive session. We presume the intent is to assist a court in making a determination on a complainant's assertion that the meeting was held improperly. However, a recording reveals not only the intent, but also the substance of the discussion, and in that context could compromise the entity's legal rights. Moreover, there are only limited circumstances in Pennsylvania law where recordings are required as an evidentiary matter, and the language in the bill establishes a new and unwarranted precedent given the nature of the meetings. We believe existing rules of evidence and testimony are adequate to address issues raised by complainants.

Similarly, we oppose the inclusion of the new 708(b)(3), requiring agencies to consult with a solicitor prior to holding an executive session, as unnecessary statutory micromanagement. Agencies have the capacity to determine when a solicitor should be consulted, and this language would simply serve as a method to overturn an agency action on unrelated procedural grounds.

Finally, the immunity provision added at section 714(c), while understandable and not objectionable per se, could inadvertently excuse some criminal conduct in its overly broad language. We suggest further review of this language.

We look forward to working with you on these and other recommendations affecting executive sessions and related responsibilities. I would be happy to discuss these comments further and answer any questions you may have at your convenience.