



# **Massachusetts Municipal Lawyers Association**

*"Dedicated to Effective Local Government Through the Advancement of Municipal Law"*

July 26, 2023

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**VIA EMAIL ONLY**

The Honorable Nick Collins, Senate Chair, Joint Committee on State Administration and Regulatory Oversight

The Honorable Antonio F.D. Cabral, House Chair, Joint Committee on State Administration and Regulatory Oversight

Dear Senator Collins and Representative Cabral:

On behalf of the Massachusetts Municipal Lawyers Association (MMLA), the state's oldest municipal bar association, I am submitting the following comments, including both support and concerns, on the various bills that would make permanent changes to the state's Open Meeting Law, G.L. c. 30A, §§18 through 25, inclusive, as amended, which are being heard by your Committee.

Before beginning, we wish to commend the Committee and your colleagues for supporting legislation earlier this session, becoming Chapter 2 of the Acts of 2023, to further extend certain pandemic relief including relative to remote participation of public bodies subject to the Open Meeting Law. The remote meeting process allows for more access and flexibility for public bodies, for persons appearing before those bodies, and for citizens and the public at large. The benefits of remote participation include reduction in absenteeism/cancelled meetings, no need for transit or transport, equitable access to participate effectively in and to become engaged in public governance for diverse groups of participants in local government, and makes it easier for a public body to be flexible and to meet quickly (within the requirements of law), to address emergency or other complex situations.

**Support For Permanent Codification Of Remote Options For Municipal Public Bodies**

In that light, we support permanent codification of the temporary changes to the Open Meeting Law that have been allowed since the beginning of the COVID-19 pandemic. Those changes are most closely mirrored in H. 3025, S. 2011, and S. 2043. These bills allow the communities themselves to make the decision as to whether to allow remote participation, or whether to hold hybrid meetings, and for which public bodies within a municipality – so long as there is adequate, alternative means for public access to the meetings and so long as the citizens and members of the public body can hear each other. MMLA believes it is important to authorize public bodies to make these decisions for themselves, as they best understand the needs and capacities of their communities, and the individuals within their communities. MMLA also appreciates the provisions which would require the Attorney General to promulgate regulations helping to ensure that adequate, alternative means to access public meetings is fair and even handed.

**Support for State Grants to Improve Hybrid Meeting Technology/Consistent Treatment**

MMLA further believes that additional state funding to support the development of hybrid technology can only benefit the municipalities of the Commonwealth. As noted below, permitting hybrid meetings of all public bodies will require significant resources. However, MMLA is concerned that the grant funding is limited to non-elected public bodies. The concerns about funding for remote access impacts all public bodies, and impacts other elected bodies in cities, towns and districts, such as planning boards, boards of assessors, light boards, and library trustees, as much as unelected public bodies.

**Concerns About Mandates & Lack Of Flexibility For Municipalities**

MMLA has consistently taken the position that local mandates should be avoided entirely and, in this context and for that reason, we respectfully oppose any legislation that would require all meetings of any public bodies to be provided



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in a hybrid format only. Many public bodies do not operate in rooms fully equipped with video technology and with access to staff. The costs associated with complying with such a mandate -- such as technology, equipment, staff and necessary space to run all of these public meetings -- is overwhelming and presents an untenable burden for many municipalities and districts.

Having the access to hardship waivers for non-elected boards is not a sufficient solution to mandated hybrid meetings for all public bodies. First, as noted above, elected public bodies may have the same access and budget issues as non-elected public bodies. Second, there is no guarantee that waivers will be granted. Third, the waiver process places an additional burden on the Office of the Attorney General.

Provisions which require remote access but eliminate the use of phone calls rather than video access may also have a chilling effect on remote participation. Similarly, several bills have language which requires that "[a] public body shall provide remote access without any paid subscription, toll, or similar charge." While this language is helpful, it is also remiss in that many of the residents of the Commonwealth cannot afford to connect to otherwise toll-free meetings due to limited access to broadband or other video connections, but may have a land line for access via a phone.

Provisions of these bills which require public bodies to have at least one-third of its members physically present at all meetings reduces the effectiveness of allowing remote or hybrid meetings, and puts public bodies back in a similar situation as prior to the COVID-19 temporary changes.

### **Civil Fines**

MMLA strongly opposes any attempt in the bills before the Committee to fine individual members of public bodies for even a third violation of the Open Meeting Law. Assessing fines on volunteer members of public bodies will be detrimental to local government's ability to recruit volunteers to serve in local government. All communities, especially smaller communities, already struggle to appoint members to its volunteer public bodies, and elected positions go uncontested and even unfilled. This provision could have a significant chilling effect, and could encourage individuals to bring frivolous and harassing complaints against public bodies and their members. To that latter point, MMLA strongly encourages the Committee to support language to penalize or safeguard public bodies against frivolous or harassing complaints as was proposed in prior Open Meeting Law reform measures.

Finally, and as alluded to previously, remote meeting access has brought a new level of participation and engagement with local government. However, the path to achieving this goal is not simple. An unfunded mandate that is one-sized fits all, is not the right solution at this time, potentially resulting in unintended consequences that would undermine the thoughtful work by municipalities to foster government transparency and public access. Instead, MMLA offers to work collaboratively with House and Senate leadership to ensure that the permanent revisions to the Open Meeting Law are well-crafted, and both protect public access, while recognizing the many physical and fiscal constraints on municipalities and districts.

MMLA appreciates your consideration of these comments and wishes to offer our resources as the Committee considers these legislative proposals. To that end, please feel free to contact me to discuss these comments further. I can be reached via email at [knorth@mhtl.com](mailto:knorth@mhtl.com), or via phone on 617.479.5000.

Sincerely,



Karis L. North, President

cc: The Honorable Karen E. Spilka, Senate President  
The Honorable Ronald J. Mariano, House Speaker