

Open Meeting Law Legislative Update - Practical Considerations July 13, 2022

We have received several questions about the status of the Open Meeting Law, as modified by Chapter 22 of the Acts of 2022, allowing for remote meetings and participation, set to expire at midnight on Thursday, July 15, 2022. We understand two bills are pending in the Legislature that would address a further extension, whether and how remote meetings may be held, and further that the two bills are not consistent. Action to reconcile those bills is needed for any type of solution to happen before, or even after, the current Open Meeting Law relief expires.

In short, the current House bill, as amended, would mandate hybrid meetings beginning April 1, 2023. It also imposes several changes to the requirements for notice, conduct, and holding of meetings as well as to production and approval of meeting minutes. Importantly, the House bill also proposes a penalty to be levied against individual members of a public body in the event of an Open Meeting Law violation. The Senate bill simply continues the existing pandemic-related Open Meeting Law relief through December 15, 2023.

As we closely monitor this legislative activity, we are aware of the difficulty, especially during the summer, in scheduling hearings and meetings. Some have asked, therefore, whether they can hold already scheduled fully remote meetings. With the law in a state of flux, when scheduling or holding meetings over the next week or so, we have outlined practical issues that may merit consideration at this time.

1. Hold Fully Remote Meetings - We cannot guarantee the content or the passage of the final Open Meeting Law legislation, although it appears reasonable to anticipate a bill will be approved in the upcoming days. That bill could have a ratification provision for acts taken after the expiration of the earlier legislation and before the effective date of the new legislation.

If this approach is considered, a public body may wish to add something similar to the following to its meeting notice:

This remote meeting was posted prior to the anticipated expiration, Thursday, July 15th at midnight, of the pandemic-related Open Meeting Law relief. Although it was anticipated that the General Court would take action to resolve the current ambiguity in the application of the law and any further extensions, at this time no conclusion has been reached. This meeting, already posted in accordance with the provisions of the Open Meeting Law, will be held as scheduled to avoid interruption of vital government services the public has come to expect and to avoid excluding members of the public who planned to attend remotely.

2. Continue Non-time Sensitive Public Hearings or Cancel Meetings – Provided that there are no statutory or other applicable deadlines, it would be reasonable, in our opinion, to continue such hearings or meetings until the end of next week, by which time, we are hopeful, clarification will have been provided by the state.

If this approach is selected, a public body may wish to add something similar to its meeting notice:

This remote [meeting] [hearing] was posted prior to the anticipated expiration, Thursday, July 15th at midnight, of the pandemic-related Open Meeting Law relief. Although it was anticipated that the General Court would take action to resolve the current ambiguity in the application of the law and any further extensions, at this time no conclusion has been reached. This [meeting] [hearing] has therefore been continued to ensure that no person who intended to attend remotely is excluded from the meeting. The rescheduled date, time and location of the meeting will be provided in accordance with the Open Meeting Law's posting requirements.

3. Remote Participation under 940 CMR 29.10 (pre-pandemic rules) - The remote participation process in place before the pandemic remains available for boards and committees where the chief executive of the municipality has previously adopted remote participation. [See Attorney General's Open Meeting Law Guide, at p. 15.](#) Note that, at a minimum, this would require a quorum of such multiple member body be physically present at the meeting location. Be advised that if this is the approach taken, that the meeting notice should be updated as soon as possible to include a physical location.

We understand that this situation is difficult to navigate, and we have been, and will continue, to monitor these quickly evolving legislative developments and provide you with timely updates. Should you need additional guidance as to how to manage a particular meeting, please reach out to your KP Law attorney.

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