



December 20, 2021

Joint Committee on State Administration and Regulatory Oversight
Sen. Mark Pacheco & Rep. Antonio Cabral, Chairs

Re: H.3152/S.2082, An Act to Modernize Participation in Public Meetings

Dear Chairs Cabral and Pacheco,

Our organizations testified in strong support of *An Act to Modernize Participation in Public Meetings*. We now write to offer a few suggestions to strengthen it, and to ask that you advance this important legislation early in the new year.

As the COVID-19 pandemic stretches on, it is clear that remote and hybrid public meetings are here to stay — and that’s a good thing. Using videoconferencing has increased democratic participation in open meetings overall and especially improved equitable access by people with disabilities, seniors, people with limited access to transportation, and parents of young children.

We appreciate that the legislature extended until April 1, 2022 the temporary suspension of the in-person requirements of the Open Meeting Law (OML). Nonetheless, even though it remains unclear when it may be wise to hold public meetings in person again, we are mindful that suspending the law is not a long-term solution. We need to reform the OML to make meaningful remote access central to its operation on a permanent basis.

An Act to Modernize Participation in Public Meetings would require that meetings subject to the OML be conducted in a hybrid form, with both in-person and remote participation options, unless a public body obtains a hardship waiver from the Attorney General’s Office.

The attached suggested revisions to the legislation would do the following:

1. Require that remote meeting participation options be maximally accessible to people with disabilities.
2. Remove audio-only access from the definition of adequate, alternative means of public access. In a video world, audio-only access is sub-standard and inadequate, particularly for individuals who are deaf or hard of hearing.
3. Flesh out the procedure for public bodies to seek a hardship waiver, requiring an opportunity for public comment and an annual renewal of any waiver.
4. In the event that a public body obtains a hardship waiver, require them to maintain remote access rather than perpetuate inequity by reverting to in-person meetings.

We acknowledge that this last suggestion represents a paradigm shift from the current open meeting law, because it makes remote access, rather than in-person meetings, the fallback when a public body cannot conduct hybrid meetings. We do not propose this shift lightly, but believe it ensures the most robust access to the workings of government bodies subject to the open meeting law. However, we want to make sure this proposal is not mistaken for endorsing a comprehensive revision to the OML's in-person quorum requirement. Categorically removing that requirement would represent a significant departure from the principles of sunlight, accountability, and community that undergird the Open Meeting Law, and we strongly oppose broad changes on this front.

As we round the corner into the new year, we are concerned that time is short to make the reforms to the Open Meeting Law we know are necessary. For this reason, we hope you will act swiftly, and we ask for the opportunity to meet with you as soon as possible to discuss this legislation.

Sincerely,

ACLU of Massachusetts
Boston Center for Independent Living
Common Cause Massachusetts
Disability Law Center
Massachusetts Newspaper Publishers Association
MASSPIRG
New England First Amendment Coalition

HOUSE No. 3152

The Commonwealth of Massachusetts

PRESENTED BY:

Denise C. Garlick

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to modernize participation in public meetings.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>2/18/2021</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>2/23/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/23/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/23/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/23/2021</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>	<i>2/23/2021</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>2/24/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/24/2021</i>
<i>Steven C. Owens</i>	<i>29th Middlesex</i>	<i>2/24/2021</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>2/24/2021</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/24/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/24/2021</i>
<i>Adam J. Scanlon</i>	<i>14th Bristol</i>	<i>2/25/2021</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/25/2021</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/25/2021</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>2/26/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/26/2021</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>2/26/2021</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>2/26/2021</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>	<i>2/26/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>2/26/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/26/2021</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/26/2021</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/26/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/26/2021</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>	<i>2/26/2021</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>2/26/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/26/2021</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>2/26/2021</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/26/2021</i>

<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/26/2021</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>	<i>2/26/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/26/2021</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>3/2/2021</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>3/3/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/8/2021</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>	<i>3/8/2021</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>3/8/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>3/8/2021</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>3/9/2021</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>3/15/2021</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>	<i>3/15/2021</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>3/19/2021</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>3/19/2021</i>
<i>Daniel R. Carey</i>	<i>2nd Hampshire</i>	<i>3/19/2021</i>
<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>3/22/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>3/23/2021</i>
<i>Jacob R. Oliveira</i>	<i>7th Hampden</i>	<i>3/23/2021</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>3/25/2021</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>3/30/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>4/4/2021</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>4/5/2021</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>4/8/2021</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>4/9/2021</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>4/9/2021</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>5/12/2021</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>5/12/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>5/28/2021</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>6/1/2021</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>6/3/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>6/14/2021</i>

HOUSE No. 3152

By Ms. Garlick of Needham, a petition (accompanied by bill, House, No. 3152) of Denise C. Garlick and others for legislation to further regulate the participation in public meetings. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act to modernize participation in public meetings.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to extend certain COVID-19 measures adopted during the state of emergency, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 20 of Chapter 20 of the Acts of 2021 is hereby repealed.

SECTION 2. Section 18 of chapter 30A of the General Laws is hereby amended by inserting after the first paragraph the following paragraph:-

“Adequate, alternative means of public access”, measures or means that provide transparency and permit timely and effective remote public access to the deliberations of a public body; provided, however, such means include but are not limited to providing public access through internet, or satellite-enabled video conferencing or any other technology that enables the public to clearly follow and participate in the proceedings of the public body as they are occurring, and must be available without any subscription, toll, or similar charge; provided, further, where allowance for active, real-time participation by members of the

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public is a specific requirement of a general or special law or regulation, or a local ordinance or by-law, pursuant to which the proceeding is conducted, any alternative means of public access must provide

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for such participation: and provided further, that technology employed for remote participation through adequate, alternative means of public access shall be accessible to persons with disabilities and shall be used in such a manner as to provide equal opportunity to such persons.

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SECTION 2. Section 20 of said chapter 30A, as so appearing, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) Except as provided in section 21, all meetings of a public body shall be open to the public in a public place that is open and physically accessible to the public, and provide adequate, alternative means of public access.

SECTION 3. Section 20 of said chapter 30A, as so appearing, is hereby further amended by inserting at the end thereof the following paragraph:-

(i) A municipal public body that for reasons of economic hardship and despite best efforts is unable to provide, simultaneously with such in-person public proceedings, an alternative means of public access that will enable the public to follow the proceedings of the municipal public body as those activities are occurring in real time may, on an annual basis, request a hardship waiver from the attorney general's office.

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The attorney general's office shall provide public notice and an opportunity for public comment following the receipt of such requests. If such waiver is granted, the municipal public body shall conduct such proceedings only on a remote basis, using an adequate alternative means of public access. The municipal public body shall post on its municipal website a full and complete transcript, recording, or other comprehensive record of the proceedings as soon as practicable upon conclusion of the proceedings, and in any event within 10 business

days. This paragraph shall not waive any liability as may exist, under Title II of the Americans with Disabilities Act, or any other federal law, and shall not apply to proceedings that are conducted pursuant to a general or

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special law or regulation, or a local ordinance or by-law, that requires allowance for active participation by members of the public.

SECTION 4. Section 22 of said chapter 30A, as so appearing, is hereby amended by inserting at the end of the first paragraph the following sentence:-

The minutes shall note the adequate, alternative means of public access to the meeting, pursuant to paragraph (a) of section 20.

