



July 9, 2022

The Honorable Karen Spilka, Senate President
The Honorable Ron Mariano, Speaker of the House

The Honorable Michael Rodrigues, Chair, Senate Committee on Ways and Means
The Honorable Aaron Michlewitz, Chair, House Committee on Ways and Means

Re: Adopting permanent reforms for remote access to Open Meetings

Dear Senate President Spilka, Speaker Mariano, and Chairs Rodrigues & Michlewitz,

Thank you for working to ensure that remote access to public meetings will continue past July 15, when pandemic provisions expire. We ask you to seize the moment and adopt – in the final version of *An Act relative to extending certain state of emergency accommodations – permanent reforms to require municipal and executive branch agencies subject to the Open Meeting Law (OML) to conduct meetings in a way that allows the public to observe and participate either in person or via remote access.* This is a critical step to make government more transparent, improve equitable access, and strengthen civic engagement.

Our organizations came together during the COVID pandemic when we saw how, for the first time ever, many people who had previously been excluded from participation in local government because they could not attend meetings in person were suddenly able to engage via remote means in conversations that directly impacted their lives. Across the Commonwealth, remote access to public meetings has significantly increased public participation in state and local government, and has lowered longstanding barriers for people with disabilities, people with limited access to transportation, and people with work and family obligations.

It's time to adopt permanent reforms to enable members of the public to attend Open Meetings either in person or remotely. We are grateful to Sen. Jason Lewis and Rep. Denise Garlick for filing *An Act to modernize participation in public meetings*, and to Chairs Cabral and Pacheco for their hard work and engagement with these issues in committee. We are gratified to see the core concepts of that legislation in the House version of *An Act relative to extending certain state of emergency accommodations*. We also appreciate that the Senate recently allocated \$20M in the general bond authorization to support municipal IT infrastructure for public meetings. The need for these advances is universally recognized.

H.4991 would:

- 1) Require public bodies subject to the OML to allow members of the public to attend in person and via remote access.
- 2) Ensure that remote access is available on an equal basis for people with disabilities.
- 3) Allow greater flexibility for members of the public body to participate remotely.

We strongly urge the two chambers to ensure that the final version of the pending legislation includes these critical reforms.

In addition, our organizations hope you will consider some recommendations to strengthen the relevant language in H.4991 – especially to ensure that disability rights are thoroughly protected. We offer this additional input with deep appreciation and an eye toward ensuring that the final bill most clearly reflects our shared values of transparency and equity. Please see below for details.

Thank you for your consideration, and please let us know if you have any questions. We are at your service to help in any way to get these important reforms across the finish line.

Sincerely,

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

An Act relative to extending certain state of emergency accommodations (H.4991)
Recommendations on provisions re permanent hybrid access to Open Meetings

1. Maintain existing exemptions from Open Meeting Law strictures for Disability Commissions.

Under the Open Meeting Law today, Disability Commissions are permitted to conduct their meetings entirely remotely, without having a quorum at a physical location.

See G.L. c. 30A sec. 20 (e):

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

SECTION 17C of H.4991 strikes all of Section 20 of chapter 30A, including subsection (e). We suspect this is unintentional. It would have serious and detrimental effects on the operation of local disability commissions, which are frequently composed of members who face mobility and transportation related challenges. **For this reason, the language of the existing subsection (e) should be added back into Section 20.**

2. Make minor adjustments to language regarding equitable access for persons with disabilities.

- a. We believe the language appropriately addresses the importance of disability-related accommodations without getting into the weeds too much on technical issues. However, there are a few minor revisions we would suggest to SECTION 17C of H.4991, paragraphs (d)(4) and (5) as indicated by the language underscored below. (The language "effective communication" is the commonly used term for communication obligations of state and local entities under Title II of the ADA.)

(4) Remote access allowing the public to view or participate in the deliberations of a public body or state public body shall be available without any paid subscription, toll, or similar charge. All public bodies and state public bodies shall ensure remote access to meetings is accessible to persons with disabilities and provided in such a manner as to ensure effective communication and an equal opportunity to participate to such persons. Public bodies and state public bodies shall include accurate captioning, which may be

provided through automatic speech recognition technology, or other reasonable accommodations if needed, consistent with the Americans with Disabilities Act and G.L. chapter 151B to persons with disabilities remotely accessing the meeting.

(5) All public bodies and state public bodies shall ensure that remote participation by members is accessible to members with disabilities and provided in such a manner as to ensure effective communication and an equal opportunity to participate to such members. Public bodies and state public bodies shall include accurate captioning, which may be provided through automatic speech recognition technology, or other reasonable accommodations if needed, consistent with the Americans with Disabilities Act and G.L. chapter 151B to persons with disabilities remotely accessing the meeting.

3. Enable members of the public body who need to participate remotely as a reasonable accommodation to count toward the in-person attendance requirement.

Attending meetings in person may not be possible for all people with disabilities, and we want to encourage people with disabilities to serve in government. For that reason we suggest that members who are given an accommodation to participate for disability reasons should count toward the required in-person quorum. We would not want to inadvertently create a disincentive for public bodies to bring on people with disabilities because doing so makes it more difficult to meet the in-person attendance requirement.

Adding this language into Section 20 (d)(2) would address this concern: *“Members of a public body or state public body permitted to participate remotely as a reasonable accommodation shall count towards the quorum necessary for members of such body who must be physically present.”*

4. Clarify that “Remote access” includes the opportunity, when members of the public are permitted to offer input to a meeting of a public body, for people attending the meeting remotely to do the same.

The Open Meeting Law does not require public bodies to provide members of the public an opportunity to offer public comment. If, however, a body does invite members of the public to speak, the same opportunity should be made available to individuals who attend the meeting via remote means. We believe this is the intention of the definition of “Remote access” in H.4991, and we would suggest the following tweaks to eliminate any ambiguity:

“Remote access,” access through the internet, video conferencing or other video technology that allows the public to view a meeting of a public body and, any time the public is permitted or required to participate in such a meeting, to participate remotely from a location other than the meeting location.

5. Maintain 50% in-person requirement for members of the public body.

H.4991 would require $\frac{1}{3}$ of the members of the public body to be physically present in person. While we appreciate that it is important, as an equity matter, to enable some members of the public body to occasionally or even routinely attend meetings remotely, we would prefer for the law to maintain the expectation that at least half of the body's members would be physically present at the meeting location to enable the most robust possible interactions among the body's members and between members of the body and members of the public who attend in person.

6. Require notice to be posted both online and in a physical location.

Under current law, notice of open meetings must be posted at a physical location near the clerk's office, but posting the official notice online is optional. The proposed subsection (c) would reverse this, requiring notice online and making it optional to post notice at a physical location. To maximize notice to the public, we would encourage the legislature to require notice both online and at a physical location.