



Massachusetts Municipal Lawyers Association

July 11, 2022

PRESIDENT
Matthew G. Feher

To: Senate President Karen E. Spilka
Speaker of the House Ronald J. Mariano

VICE PRESIDENT
Karis L. North

Re: H.4991 – An amendment, recommended by the committee on Ways and Means (H.4989), to the Senate Bill relative to extending certain state of emergency accommodations (S.2985), as amended by the House. July 7, 2022.

EXECUTIVE DIRECTOR
James B. Lampke

IMMEDIATE PAST PRESIDENT
Brandon H. Moss

Dear Madam President and Mister Speaker:

I am writing to you in my capacity as the Executive Director of the Massachusetts Municipal Lawyers Association (MMLA), the state's municipal bar association, to express some concerns associated with H.4991, which, like the Senate bill, extends certain relief previously granted in connection with the Commonwealth's Open Meeting Law.

PAST PRESIDENT
Ellen Callahan Doucette

EXECUTIVE BOARD
Christopher L. Brown

In our letter dated July 6, 2022, MMLA already noted its support of Sections 4 and 5 of S.2985, as well as, Sections 125A and 133 of S.2915, the Senate engrossed Fiscal 2023 Budget Bill, which extend the local option to remotely participate at meetings of public bodies and Town Meetings, as well as a reduced Town Meeting quorum requirement, until December 15, 2023.

Ivria Glass Fried

Christine M. Griffin

Donna MacNichol

Recognizing the realities still faced by municipalities across the Commonwealth due to the COVID-19 pandemic, these provisions would, like the House bill, extend the relief previously granted until next year, which would afford all parties an opportunity to develop a permanent, mutually agreeable solution.

Susan C. Murphy

Brian C. O'Donnell

David Shapiro

While the extension of the remote participation option until March 31, 2023 that is included in H.4991, is necessary and appreciated, for the reasons set forth below, the provisions included in Section 17A-17J, which would take effect April 1, 2023, present serious concerns.

Shawn A. Williams

All meetings of a public body:

Section 17C mandates that "all meetings of a public body shall be physically open, and remotely accessible, to the public." Communities have dozens of boards, councils, commissions, and committees, which hold numerous public meetings a year. While certain public bodies – like school committees and select boards – may operate in rooms fully equipped with video technology and with access to a large staff, that is not the case for all public bodies. The costs of technology, equipment, staff and necessary space to run all of these public meetings, some of which may occur at the concurrently, in a hybrid fashion is simply untenable.

Remote Access:

Section 17B defines remote access as “access through the internet, video conferencing or other video technology that allows the public to view, and when permitted, participate in a meeting of a public body.” Notably, telephone conferencing, which is currently permitted under the Open Meeting Law’s remote access provision, would no longer satisfy the public body’s obligation. Mandating internet and video remote access could compromise access for the elderly and those without internet.

There is also a real risk that this amendment could actually impede public access. As a general rule, a public body must allow the public to speak if there is statute, bylaw, or ordinance mandating participation. Absent such a requirement, it is left to the Chair to permit public participation. The proposed legislation states that the technology must allow for public participation where such participation is permitted by the body. Public bodies that typically permit and encourage public participation, may now elect to forgo public comment or otherwise refrain from engaging in public discussion in order to utilize an easier form of video access – i.e., live stream or local access TV.

One-Third of Members Physically Present:

The amendment mandates public bodies to “have at least one-third of its members physically present at all meetings.” If municipal governments need to invest heavily in technology to allow for remote access and participation, public bodies should have the ability to meet remotely.

Minutes:

The amendment mandates that public bodies post their minutes on their city or town’s municipal website within 10 business days of approval. However, public bodies generally do not have the ability to upload minutes, as that authority belongs to the city or town clerk. The obligation should extend to production of the minutes to the city or town clerk within 10 business days only, otherwise, the clerk’s failure to upload the minutes could be imparted onto the public body.

Civil Fine:

The ability to fine individual members for a third unintentional violation is detrimental to local government’s ability to find volunteers for its public bodies. Communities, especially smaller communities, already struggle to appoint members to its volunteer public bodies. This provision could have a chilling effect.

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, the legislature should work collaboratively with key stakeholders to ensure that well-crafted legislation is proposed, protecting public access, while recognizing the current constraints on cities and towns.

Please feel free to contact me to discuss the MMLA’s comments set forth herein.

Sincerely,



James B. Lampke, Esq.
Executive Director, MMLA

CC: Sen. Michael J. Rodrigues, Chair, Senate Committee on Ways & Means
Rep. Aaron M. Michlewitz, Chair, House Committee on Ways & Means
Sen. Marc R. Pacheco, Chair, Joint Committee on State Administration & Regulatory Oversight
Rep. Antonio F.D. Cabral, Chair, Joint Committee on State Administration & Regulatory Oversight