

June 2, 2021

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

SUPPORT H.3152/S.2082
An Act to Modernize Participation in Public Meetings

Chair Cabral, Chair Pacheco, and members of the Joint Committee on State Administration and Regulatory Oversight:

The ACLU of Massachusetts offers our strongest support for H.3152/S.2082, *An Act to Modernize Participation in Public Meetings*, which would amend the Open Meeting Law to ensure members of the public can continue to participate in public meetings by remote means going forward. Rapid adoption of online communication tools during the COVID-19 pandemic has substantially increased and improved public participation in civic life throughout the Commonwealth. We cannot turn back the clock on our democracy now.

In March 2020, in response to the COVID-19 pandemic, Governor Baker issued an Executive Order suspending certain provisions of the Open Meeting Law to enable public bodies to carry out their responsibilities safely and to provide remote access to the public. In many communities across the state, the ability to participate in public meetings remotely has significantly increased public engagement in our democratic process. Remote access removes longstanding barriers to participation in policymaking for residents with disabilities, seniors, people with limited access to transportation, and people with work and family obligations that otherwise prevent them from spending hours at municipal buildings.

While public health imperatives may no longer require public bodies to conduct their business remotely, in the wake of the pandemic the animating principles behind the Open Meeting Law demand that we update its provisions to maintain remote public access.

Remote Public Participation Increases Civic Engagement

Pre-pandemic, many of the people most acutely impacted by local policymaking were left out of the process if they could not physically get to a public meeting or wait hours on end for an opportunity to testify. With remote access options, the physical and temporal barriers to attending public meetings were eliminated and as a result many towns and cities have seen a dramatic increase in civic participation.

According to Salem Mayor Kim Driscoll, her city has seen a 700% increase in public attendance at city council meetings during the pandemic.¹ And Salem is not alone. Over the last several months, we've spoken with municipal officials from large cities and small towns across the Commonwealth who tout

¹ <https://www.bostonglobe.com/2021/03/29/opinion/legislature-should-not-be-exempt-open-meeting-law>

the benefits of remote participation. Towns and cities that adopted fully remote meetings, and more recently hybrid ones, have seen an increase in the number of people tuning into public meetings, and more constituents offering public comment to inform important decisions.

As pandemic restrictions lift, some communities have already begun holding hybrid public meetings – where elected officials and some members of the public are in the room and meetings are simultaneously streamed online. H.3152/S.2082 would require municipalities to continue holding hybrid meetings, allowing *the public* to participate remotely.² Hybrid meetings would be a new endeavor for many public bodies, but we’ve seen municipalities rise to the challenge of remote meeting participation and most have done it very well. However, like the governor’s executive order, this legislation acknowledges that public bodies may face technological or other barriers to adopting a hybrid meeting model, and so the bill provides an exception for those public bodies that do not currently have the means or capability of providing remote access to meetings.

Remote Public Participation Promotes Equity

For some of us, virtual participation is a matter of convenience, but for too many, remote participation options have opened the door to meaningful civic engagement for the first time. More parents are able to participate in school board meetings without having to find childcare; elderly residents are able to participate in evening meetings without having to drive in the dark; MBTA riders are able to participate in MBTA meetings without having to plan extra time to commute to and from downtown; constituents are able to participate in municipal disability commission meetings from home.

If the Open Meeting Law is not amended to explicitly provide for remote public participation, many members of the public will again be shut out of democratic process as soon as the executive order is rescinded on June 15.

The disability community is one of the communities that will benefit most obviously from extending remote participation options into the future. With that in mind, there may be room for the bill to go further to specifically ensure meaningful access. As the committee moves forward with considering the best policy, we urge you to center accessibility by requiring that the technology used for remote participation be accessible to persons with disabilities.

² Note that the ACLU does not support legislation to allow public bodies to simply switch from in-person public meetings to fully virtual affairs. Members of the public who do not have reliable or fast internet would not be able to participate in virtual meetings, and it’s important for government transparency and accountability that members of the public and the press be able to interact with elected officials face to face. We recognize that some of the same equity issues that impact members of the public may also impact who can serve on public bodies, and we know more diversity of experience is needed among government decision-makers. However, the Open Meeting Law already contemplates the need for accommodations for officials to sometimes participate remotely and those provisions could be adjusted to address specific concerns. By contrast, entirely removing the in-person quorum requirement would represent a significant departure from the principles of sunlight, accountability, and community that undergird the Open Meeting Law, and we strongly caution the Committee against major changes on this front.

Now that we've experienced the benefits of remote access to public meetings, we cannot go back. Access to the democratic process should never again hinge on a person's physical mobility or their ability to afford a car, get time off work, or find a care provider. We urge the legislature to swiftly adopt permanent changes to the Open Meeting Law to ensure that all members of the public can continue to participate in public meetings.