

**Cape Light Compact JPE
Executive Committee and Governing Board Meeting**

DATE: October 11, 2017
LOCATION: 261 Whites Path, Unit#4
South Yarmouth, MA 02664
TIME: 2:00 p.m. – 4:30 p.m.

AGENDA

- 2:00 Public Comment
- 2:10 Overview of New Video Conferencing Capabilities, Austin Brandt and Dave Botelho
- 2:30 Approval of August 2, 2017 Minutes
Approval of September 13, 2017 Minutes
Approval of January 11, 2017 Minutes
- 2:45 Chairman's Report
1. New Mailer for Customers on Discount Electric Rate
- 3:00 Overview of Operating and Energy Efficiency Budgets. Peter Cocolis
- 3:15 Discussion and Potential Vote on Providing Notice to Members Regarding Specific Proposed Amendments to JPA Concerning Effective Date of JPA, Operational Transfer Date, Minor Clarifying Edits to JPA and Correction of Scriveners Errors, Audrey Eidelman
- 3:45 Overview of Recent Updates to Massachusetts Open Meeting Law, Discussion and Potential Vote on Proposed Revisions to Compact's Remote Participation Policy, Audrey Eidelman
- 4:00 Board Member Update (Reserved for Updates on Member Activities the Chair Did Not Reasonably Anticipate Would be Discussed – No Voting)

Draft Minutes subject to correction, addition and Committee/Board Approval

**Cape Light Compact JPE
Board of Directors Meeting
Open Session Meeting Minutes
Wednesday, August 2, 2017**

The Cape Light Compact JPE Board of Directors met on Wednesday, August 2, in the Innovation Room, Open Cape Building, Barnstable County Complex, 3195 Main Street, Barnstable, MA 02630 at 2:30pm.

PRESENT WERE:

1. Colin Odell, Chair, Brewster
2. Robert Schofield, Vice-Chair, Bourne
3. Peter Cocolis, Chatham
4. Robert Hannemann, Chilmark Alternate
5. Brad Crowell, Dennis
6. Valerie Bell, Harwich
7. Tom Donegan, Provincetown
8. Sue Hruby, West Tisbury
9. Richard Toole, Oak Bluffs – By Phone
10. Richard Elkin, Wellfleet
11. Fred Fenlon, Eastham
12. Joyce Flynn, Yarmouth
13. Martin Culik, Orleans
14. Jarrod Cabral, Truro
15. Christiane Mason, Wellfleet Alternate
16. David Anthony, Barnstable

ABSENT WERE:

17. Michael Hebert, Aquinnah
18. Paul Pimentel, Edgartown
19. Bud Dunham, Sandwich
20. Dukes County
21. Jay Grande, Tisbury
22. Wayne Taylor, Mashpee

Members/Alternates
physically present: 15
Members present by phone: 1

LEGAL COUNSEL

Audrey Eidelman, Esq., BCK Law, P.C.

STAFF PRESENT

Maggie Downey, Administrator
Joanne Nelson, Comptroller
Austin Brandt, Senior Power Supply Planner
Phil Moffitt, Residential Program Manager
Margaret Song, Commercial and Industrial Program Manager
Briana Kane, Planning and Evaluation Manager
Jacob Wright, Special Projects Coordinator

TREASURER

Tammy Glivinski, Glavinski & Associates, Treasurer

Draft Minutes subject to correction, addition and Committee/Board Approval

PUBLIC COMMENT

There were no members of the public present.

CONSIDERATION OF MEETING MINUTES

The Board considered the June 14, 2017 Meeting Minutes. Peter Cocolis moved the board to accept the amended minutes, seconded by Joyce Flynn and voted by roll call as follows:

- | | |
|--------------------------------|-----|
| 1. David Anthony – Barnstable | abs |
| 2. Robert Schofield - Bourne | yes |
| 3. Colin Odell – Brewster | yes |
| 4. Peter Cocolis – Chatham | yes |
| 5. Robert Hannemann – Chilmark | abs |
| 6. Brad Crowell – Dennis | abs |
| 7. Fred Fenlon – Eastham | yes |
| 8. Ronald Zweig – Falmouth | abs |
| 9. Valerie Bell – Harwich | yes |
| 10. Richard Toole – Oak Bluffs | yes |
| 11. Tom Donegan - Provincetown | yes |
| 12. Jarrod Cabral – Truro | abs |
| 13. Richard Elkin – Wellfleet | yes |
| 14. Sue Hruby – West Tisbury | yes |
| 15. Joyce Flynn – Yarmouth | yes |

Motion carried in the affirmative (10-0-5)

ORGANIZATIONAL ITEMS FOR DISCUSSION AND POTENTIAL VOTE, JULY 2017 – JANUARY 2018 TERM

ELECTION OF TREASURER

Robert Schofield submitted a motion to vote to elect of Tammy Glivinski of Glivinski & Associates as the Treasurer for the Cape Light Compact JPE to serve until the first CLC JPE Board meeting in 2018. Seconded by Peter Cocolis and voted by roll call as follows:

- | | |
|--------------------------------|-----|
| 1. David Anthony – Barnstable | yes |
| 2. Robert. Schofield - Bourne | yes |
| 3. Colin Odell – Brewster | yes |
| 4. Peter Cocolis – Chatham | yes |
| 5. Robert Hannemann – Chilmark | yes |
| 6. Brad Crowell – Dennis | yes |
| 7. Fred Fenlon – Eastham | yes |
| 8. Ronald Zweig – Falmouth | yes |
| 9. Valerie Bell – Harwich | yes |
| 10. Richard Toole – Oak Bluffs | yes |
| 11. Tom Donegan - Provincetown | yes |
| 12. Jarrod Cabral – Truro | yes |
| 13. Richard Elkin – Wellfleet | yes |

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- 14. Sue Hruby – West Tisbury yes
- 15. Joyce Flynn – Yarmouth yes

Motion carried in the affirmative (15-0-0)

ELECTION OF BUSINESS OFFICER

Peter Cocolis submitted a motion to elect Joanne Nelson as the Business Officer for the Cape Light Compact JPE to serve until the first CLC JPE Board meeting in 2018. Seconded by Robert Schofield and voted by roll call as follows:

- 1. David Anthony – Barnstable yes
- 2. Robert Schofield - Bourne yes
- 3. Colin Odell – Brewster yes
- 4. Peter Cocolis – Chatham yes
- 5. Robert Hannemann – Chilmark yes
- 6. Brad Crowell – Dennis yes
- 7. Fred Fenlon – Eastham yes
- 8. Ronald Zweig – Falmouth yes
- 9. Valerie Bell – Harwich yes
- 10. Richard Toole – Oak Bluffs yes
- 11. Tom Donegan - Provincetown yes
- 12. Jarrod Cabral – Truro yes
- 13. Richard Elkin – Wellfleet yes
- 14. Sue Hruby – West Tisbury yes
- 15. Joyce Flynn – Yarmouth yes

Motion carried in the affirmative (15-0-0)

ELECTION OF CHAIR

Peter Cocolis nominated Joyce Flynn to the position of Chair of the Cape Light Compact JPE until the first CLC JPE Board Meeting in 2018. Seconded by Sue Hruby and voted by roll call as follows:

- 1. David Anthony – Barnstable yes
- 2. R. Schofield - Bourne yes
- 3. Colin Odell – Brewster yes
- 4. Peter Cocolis – Chatham yes
- 5. Robert Hannemann – Chilmark yes
- 6. Brad Crowell – Dennis yes
- 7. Fred Fenlon – Eastham yes
- 8. Ronald Zweig – Falmouth yes
- 9. Valerie Bell – Harwich yes
- 10. Richard Toole – Oak Bluffs yes
- 11. Tom Donegan - Provincetown yes
- 12. Jarrod Cabral – Truro yes

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|-------------------------------|-----|
| 13. Richard Elkin – Wellfleet | yes |
| 14. Sue Hruby – West Tisbury | yes |
| 15. Joyce Flynn – Yarmouth | yes |

Motion carried in the affirmative (15-0-0)

ELECTION OF VICE-CHAIR

Robert Schofield nominated Ronald Zweig to the position of Vice-Chair of the Cape Light Compact JPE until the first CLC JPE Board Meeting in 2018. Seconded by David Anthony and voted by roll call as follows:

- | | |
|--------------------------------|-----|
| 1. David Anthony – Barnstable | yes |
| 2. Robert Schofield - Bourne | yes |
| 3. Colin Odell – Brewster | yes |
| 4. Peter Cocolis – Chatham | yes |
| 5. Robert Hannemann – Chilmark | yes |
| 6. Brad Crowell – Dennis | yes |
| 7. Fred Fenlon – Eastham | yes |
| 8. Ronald Zweig – Falmouth | yes |
| 9. Valerie Bell – Harwich | yes |
| 10. Richard Toole – Oak Bluffs | yes |
| 11. Tom Donegan - Provincetown | yes |
| 12. Jarrod Cabral – Truro | yes |
| 13. Richard Elkin – Wellfleet | yes |
| 14. Sue Hruby – West Tisbury | yes |
| 15. Joyce Flynn – Yarmouth | yes |

Motion carried in the affirmative (15-0-0)

ELECTION OF SECRETARY

Martin Culik nominated David Anthony to the position of Secretary of the Cape Light Compact JPE until the first CLC JPE Board Meeting in 2018. Seconded by Peter Cocolis and voted by roll call as follows:

- | | |
|--------------------------------|-----|
| 1. David Anthony – Barnstable | yes |
| 2. Robert Schofield - Bourne | yes |
| 3. Colin Odell – Brewster | yes |
| 4. Peter Cocolis – Chatham | yes |
| 5. Robert Hannemann – Chilmark | yes |
| 6. Brad Crowell – Dennis | yes |
| 7. Fred Fenlon – Eastham | yes |
| 8. Ronald Zweig – Falmouth | yes |
| 9. Valerie Bell – Harwich | yes |
| 10. Richard Toole – Oak Bluffs | yes |
| 11. Tom Donegan - Provincetown | yes |
| 12. Jarrod Cabral – Truro | yes |

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- | | |
|-------------------------------|-----|
| 13. Richard Elkin – Wellfleet | yes |
| 14. Sue Hrubby – West Tisbury | yes |
| 15. Joyce Flynn – Yarmouth | yes |

Motion carried in the affirmative (15-0-0)

POTENTIAL VOTE FOR FORMATION OF EXECUTIVE COMMITTEE AND COMMITTEE MEMBERS

Colin Odell motioned for the formation of a 7 (seven) member Executive Committee of the Cape Light Compact JPE to serve until the first CLC JPE Board meeting in 2018, to be comprised of the Chair, Vice-Chair, Secretary, and four additional municipal members, and that at least one of the 7 members be from a Dukes County municipality. Seconded by Robert Schofield and voted by roll call as follows:

- | | |
|--------------------------------|-----|
| 1. David Anthony – Barnstable | yes |
| 2. Robert Schofield - Bourne | yes |
| 3. Colin Odell – Brewster | yes |
| 4. Peter Cocolis – Chatham | yes |
| 5. Robert Hannemann – Chilmark | yes |
| 6. Brad Crowell – Dennis | yes |
| 7. Fred Fenlon – Eastham | yes |
| 8. Ronald Zweig – Falmouth | yes |
| 9. Valerie Bell – Harwich | yes |
| 10. Richard Toole – Oak Bluffs | yes |
| 11. Tom Donegan - Provincetown | yes |
| 12. Jarrod Cabral – Truro | yes |
| 13. Richard Elkin – Wellfleet | yes |
| 14. Sue Hrubby – West Tisbury | yes |
| 15. Joyce Flynn – Yarmouth | yes |

Motion carried in the affirmative (15-0-0)

Valerie Bell nominated Peter Cocolis to the Executive Committee to serve until the first CLC JPE Board meeting in 2018. Seconded by Robert Schofield and voted by roll call as follows:

- | | |
|--------------------------------|-----|
| 1. David Anthony – Barnstable | yes |
| 2. Robert Schofield - Bourne | yes |
| 3. Colin Odell – Brewster | yes |
| 4. Peter Cocolis – Chatham | yes |
| 5. Robert Hannemann – Chilmark | yes |
| 6. Brad Crowell – Dennis | yes |
| 7. Fred Fenlon – Eastham | yes |
| 8. Ronald Zweig – Falmouth | yes |
| 9. Valerie Bell – Harwich | yes |
| 10. Richard Toole – Oak Bluffs | yes |
| 11. Tom Donegan - Provincetown | yes |

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12. Jarrod Cabral – Truro yes
13. Richard Elkin – Wellfleet yes
14. Sue Hruby – West Tisbury yes
15. Joyce Flynn – Yarmouth yes

Motion carried in the affirmative (15-0-0)

Robert Schofield nominated Richard Toole to the Executive Committee to serve until the first CLC JPE Board meeting in 2018. Seconded by Sue Hruby and voted by roll call as follows:

1. David Anthony – Barnstable yes
2. Robert Schofield - Bourne yes
3. Colin Odell – Brewster yes
4. Peter Cocolis – Chatham yes
5. Robert Hannemann – Chilmark yes
6. Brad Crowell – Dennis yes
7. Fred Fenlon – Eastham yes
8. Ronald Zweig – Falmouth yes
9. Valerie Bell – Harwich yes
10. Richard Toole – Oak Bluffs yes
11. Tom Donegan - Provincetown yes
12. Jarrod Cabral – Truro yes
13. Richard Elkin – Wellfleet yes
14. Sue Hruby – West Tisbury yes
15. Joyce Flynn – Yarmouth yes

Motion carried in the affirmative (15-0-0)

Sue Hruby nominated Tom Donegan to the Executive Committee to serve until the first CLC JPE Board meeting in 2018. Seconded by Ronald Zweig and voted by roll call as follows:

1. David Anthony – Barnstable yes
2. Robert Schofield - Bourne yes
3. Colin Odell – Brewster yes
4. Peter Cocolis – Chatham yes
5. Robert Hannemann – Chilmark yes
6. Brad Crowell – Dennis yes
7. Fred Fenlon – Eastham yes
8. Ronald Zweig – Falmouth yes
9. Valerie Bell – Harwich yes
10. Richard Toole – Oak Bluffs yes
11. Tom Donegan - Provincetown yes
12. Jarrod Cabral – Truro yes
13. Richard Elkin – Wellfleet yes
14. Sue Hruby – West Tisbury yes

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1. David Anthony – Barnstable yes
2. Robert Schofield - Bourne yes
3. Colin Odell – Brewster yes
4. Peter Cocolis – Chatham yes
5. Robert Hannemann – Chilmark yes
6. Fred Fenlon – Eastham yes
7. Ronald Zweig – Falmouth yes
8. Valerie Bell – Harwich yes
9. Richard Toole – Oak Bluffs yes
10. Tom Donegan - Provincetown yes
11. Jarrod Cabral – Truro yes
12. Richard Elkin – Wellfleet yes
13. Sue Hruby – West Tisbury yes
14. Joyce Flynn – Yarmouth abs

Motion carried in the affirmative (13-0-1)

JARROD CABRAL LEFT AT 3:49 PM

VOTE ON CAPE LIGHT COMPACT JPE SEXUAL HARASSMENT POLICY

Peter Cocolis moved that the Board of Directors vote to adopt the Cape Light Compact JPE Sexual Harassment Policy, and that the CLC JPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Seconded by Valerie Bell and voted by roll call as follows:

1. David Anthony – Barnstable yes
2. Robert Schofield - Bourne yes
3. Colin Odell – Brewster yes
4. Peter Cocolis – Chatham yes
5. Robert Hannemann – Chilmark yes
6. Fred Fenlon – Eastham yes
7. Ronald Zweig – Falmouth yes
8. Valerie Bell – Harwich yes
9. Richard Toole – Oak Bluffs yes
10. Tom Donegan - Provincetown yes
11. Richard Elkin – Wellfleet yes
12. Sue Hruby – West Tisbury yes
13. Joyce Flynn – Yarmouth yes

Motion carried in the affirmative (13-0-0)

VOTE ON CAPE LIGHT COMPACT JPE HARASSMENT OF PROTECTED INDIVIDUALS IN PROTECTED CLASSES: POLICIES AND PROCEDURES

Draft Minutes subject to correction, addition and Committee/Board Approval

Peter Cocolis moved that the Board of Directors vote to adopt the Cape Light Compact JPE Harassment of Individuals in Protected Classes: Policies and Procedures, and that the CLC JPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Seconded by Robert Schofield and voted by roll call as follows:

- | | |
|--------------------------------|-----|
| 1. David Anthony – Barnstable | yes |
| 2. Robert Schofield - Bourne | yes |
| 3. Colin Odell – Brewster | yes |
| 4. Peter Cocolis – Chatham | yes |
| 5. Robert Hannemann – Chilmark | yes |
| 6. Fred Fenlon – Eastham | yes |
| 7. Ronald Zweig – Falmouth | yes |
| 8. Valerie Bell – Harwich | yes |
| 9. Richard Toole – Oak Bluffs | yes |
| 10. Tom Donegan - Provincetown | yes |
| 11. Richard Elkin – Wellfleet | yes |
| 12. Sue Hruby – West Tisbury | yes |
| 13. Joyce Flynn – Yarmouth | yes |

Motion carried in the affirmative (13-0-0)

VOTE ON CAPE LIGHT COMPACT JPE AMERICANS WITH DISABILITIES ACT POLICY

Peter Cocolis moved that the Board of Directors vote to adopt the Cape Light Compact JPE Americans With Disabilities Act Policy, and that the CLC JPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Seconded by Colin Odell and voted by roll call as follows:

- | | |
|--------------------------------|-----|
| 1. David Anthony – Barnstable | yes |
| 2. Robert Schofield - Bourne | yes |
| 3. Colin Odell – Brewster | yes |
| 4. Peter Cocolis – Chatham | yes |
| 5. Robert Hannemann – Chilmark | yes |
| 6. Fred Fenlon – Eastham | yes |
| 7. Ronald Zweig – Falmouth | yes |
| 8. Valerie Bell – Harwich | yes |
| 9. Richard Toole – Oak Bluffs | yes |
| 10. Tom Donegan - Provincetown | yes |
| 11. Richard Elkin – Wellfleet | yes |
| 12. Sue Hruby – West Tisbury | yes |
| 13. Joyce Flynn – Yarmouth | yes |

Motion carried in the affirmative (13-0-0)

VOTE TO ADOPT THE CAPE LIGHT COMPACT JPE POLICIES AND PROCEDURES MANUAL

Robert Schofield moved that the Board of Directors vote to adopt the Cape Light Compact JPE Policies and Procedures Manual, and that the JPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Seconded by Colin Odell and voted by roll call as follows:

- | | |
|--------------------------------|-----|
| 1. David Anthony – Barnstable | yes |
| 2. Robert Schofield - Bourne | yes |
| 3. Colin Odell – Brewster | yes |
| 4. Peter Cocolis – Chatham | yes |
| 5. Robert Hannemann – Chilmark | yes |
| 6. Fred Fenlon – Eastham | yes |
| 7. Ronald Zweig – Falmouth | yes |
| 8. Valerie Bell – Harwich | yes |
| 9. Richard Toole – Oak Bluffs | yes |
| 10. Tom Donegan - Provincetown | yes |
| 11. Richard Elkin – Wellfleet | yes |
| 12. Sue Hruby – West Tisbury | yes |
| 13. Joyce Flynn – Yarmouth | yes |

Motion carried in the affirmative (13-0-0)

ADMINISTRATOR’S REPORT:

Maggie Downey reminded the Board that the Department of Public Utilities would be holding a public hearing on the Eversource rate case tonight. Audrey Eidelman, distributed an overview of the rate case and summarized the procedural status of the proceeding and the issues raised by the Compact in the first phase of the proceeding.

Maggie Downey discussed planning efforts for the 2019-2021 Energy Efficiency Plan and asked for a sense of the Board regarding involving stakeholders early in the planning process. The Board supported involving stakeholders early in the planning process.

VOTE TO APPOINT CAPE LIGHT COMPACT JPE REPRESENTATIVES TO THE CAPE COD MUNICIPAL HEALTH GROUP

Peter Cocolis moved that the Board of Directors vote to appoint the CLC JPE Administrator as the Cape Light Compact JPE representative to the Cape Cod Municipal Health Group, and the Cape Light Compact JPE Comptroller to serve as the alternate representative. The CLC JPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Seconded by Valerie Bell and voted by roll call as follows:

Draft Minutes subject to correction, addition and Committee/Board Approval

- | | |
|--------------------------------|-----|
| 1. David Anthony – Barnstable | yes |
| 2. Robert Schofield - Bourne | yes |
| 3. Colin Odell – Brewster | yes |
| 4. Peter Cocolis – Chatham | yes |
| 5. Robert Hannemann – Chilmark | yes |
| 6. Fred Fenlon – Eastham | yes |
| 7. Ronald Zweig – Falmouth | yes |
| 8. Valerie Bell – Harwich | yes |
| 9. Richard Toole – Oak Bluffs | yes |
| 10. Tom Donegan - Provincetown | yes |
| 11. Richard Elkin – Wellfleet | yes |
| 12. Sue Hruby – West Tisbury | yes |
| 13. Joyce Flynn – Yarmouth | yes |

Motion carried in the affirmative (13-0-0)

BOARD MEMBER DISCUSSION:

RICHARD ELKIN INFORMED THE BOARD ABOUT THE SOLARIZE PLUS PROGRAM THAT THE TOWNS OF PROVINCETOWN, TRURO, WELLFLEET, EASTHAM AND ORLEANS ARE PURSUING.

Colin Odell left at 4:28PM

Richard Toole left at 4:35PM

Board adjourned at 4:35PM due to a loss of quorum.

Respectfully submitted,

Jacob Wright

LIST OF DOCUMENTS AND EXHIBITS:

- Meeting Notice / Agenda
- June 14, 2017 Meeting Minutes
- Cape Light Compact JPE Policies and Procedures Manual
- CLCJPE CORI Policy
 - Proposed Amendments from Dick Elkin
- CLCJPE Sexual Harassment Policy
- CLCJPE Harassment of Individuals in Protected Classes: Policies and Procedures
- CLCJPE Americans with Disabilities Act Policy
- CLCJPE Americans with Disabilities Act Reasonable Accommodations Policy: Policy and Procedures
- DPU 17-05 Eversource Rate Case Overview

Draft Minutes subject to correction, addition and Committee/Board Approval

**Cape Light Compact
Governing Board and Executive Committee
Open Session Meeting Minutes
Wednesday, August 2, 2017**

The Cape Light Compact Governing Board and Executive Committee met on Wednesday, August 2, 2017 in the Innovation Room, Open Cape Building, Barnstable County Complex, 3195 Main Street, Barnstable, MA 02630 at 1:51PM.

PRESENT WERE:

1. Joyce Flynn, Chair, Yarmouth
2. Robert Schofield, Vice-Chair, Bourne
3. Peter Cocolis, Treasurer, Chatham
4. David Anthony, Barnstable
5. Colin Odell, Brewster
6. Brad Crowell, Dennis
7. Fred Fenlon, Eastham
8. Paul Pimentel, Edgartown – by phone
9. Ronald Zweig, Falmouth
10. Valerie Bell, Harwich
11. Richard Toole, Executive Committee Member at Large, Oak Bluffs – by phone
12. Thomas Donegan, Provincetown
13. Richard Elkin - Wellfleet
14. Sue Hruby, West Tisbury
15. Jarrod Cabral, Truro
16. Robert Hannemann, Duke's County
17. Martin Culik, Orleans

ABSENT WERE:

18. Michael Hebert, Aquinnah
19. George Dunham - Sandwich
20. Tim Carroll, Chilmark
21. Wayne Taylor, Mashpee
22. Leo Cakounes, Barnstable County
23. John Grande – Tisbury

Members/Alternates
physically present: 15
Members present by phone: 2

LEGAL COUNSEL

Audrey Eidelman, Esq., BCK Law, P.C.

STAFF PRESENT

Maggie Downey, Administrator
Joanne Nelson, Comptroller
Austin Brandt, Senior Power Supply Planner
Phil Moffitt, Residential Program Manager
Lindsay Henderson, Analyst and Marketing
Margaret Song, Commercial and Industrial Program Manager
Briana Kane, Planning and Evaluation Manager
Jacob Wright, Special Projects Coordinator

PUBLIC PRESENT

There were no members of the public present.

Draft Minutes subject to correction, addition and Committee/Board Approval

PUBLIC COMMENT

There were no members of the public present.

APPROVAL OF MINUTES

The Board considered the June 14, 2017 Meeting Minutes. *Robert Schofield moved the board to accept the amended minutes, seconded by Colin Odell and voted by roll call as follows:*

- | | | | |
|--------------------------------|-----|-----------------------------------|-----|
| 1. David Anthony – Barnstable | yes | 10. Valerie Bell – Harwich | yes |
| 2. Robert Schofield – Bourne | yes | 11. Richard Toole – Oak Bluffs | yes |
| 3. Colin Odell – Brewster | yes | 12. Martin Culik – Orleans | abs |
| 4. Peter Cocolis – Chatham | yes | 13. Thomas Donegan – Provincetown | yes |
| 5. Brad Crowell – Dennis | yes | 14. Jarrod Cabral – Truro | abs |
| 6. Robert Hannemann – Chilmark | abs | 15. Richard Elkin – Wellfleet | yes |
| 7. Fred Fenlon – Eastham | yes | 16. Sue Hruby – West Tisbury | yes |
| 8. Paul Pimentel – Edgartown | yes | 17. Joyce Flynn – Yarmouth | yes |
| 9. Ronald Zweig – Falmouth | abs | | |

Motion carried in the affirmative (13-0-4).

TREASURER'S REPORT

Peter reviewed the contracts that have been approved since the June 14, 2017 meeting for the board.

Robert Schofield moved the board vote to ratify the actions of the Compact Treasurer relative to Compact contracts from June 15, 2017 through August 2, 2017. The Compact Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Colin Odell seconded and the board voted by roll call as follows:

- | | | | |
|--------------------------------|-----|-----------------------------------|-----|
| 1. David Anthony – Barnstable | yes | 10. Valerie Bell – Harwich | yes |
| 2. Robert Schofield – Bourne | yes | 11. Richard Toole – Oak Bluffs | yes |
| 3. Colin Odell – Brewster | yes | 12. Martin Culik – Orleans | yes |
| 4. Peter Cocolis – Chatham | yes | 13. Thomas Donegan – Provincetown | yes |
| 5. Brad Crowell – Dennis | yes | 14. Jarrod Cabral – Truro | yes |
| 6. Robert Hannemann – Chilmark | yes | 15. Richard Elkin – Wellfleet | yes |
| 7. Fred Fenlon – Eastham | yes | 16. Sue Hruby – West Tisbury | yes |
| 8. Paul Pimentel – Edgartown | yes | 17. Joyce Flynn – Yarmouth | yes |
| 9. Ronald Zweig – Falmouth | yes | | |

Motion carried in the affirmative (17-0-0).

CHAIRMAN'S REPORT

1. POTENTIAL VOTE TO HAVE THE JOINT POWERS AGREEMENT SUPERSEDE THE INTER-GOVERNMENTAL AGREEMENT

Audrey Eidelman answered multiple questions regarding the vote to have the Joint Powers Agreement supersede the Inter-Governmental Agreement. Audrey Eidelman explained that the vote was consistent with and for the purposes of carrying out the transition contemplated by the Joint Powers Agreement and the Transition Plan that was approved by the Compact and the Cape Light Compact JPE governing boards. Audrey Eidelman noted that the Compact was fully operational as the Cape Light Compact JPE effective as of July 1, 2017 as per the Transition Plan, which was adopted in accordance with the Joint Powers Agreement. All relevant governmental agencies (the Department of Public Utilities, the Office of the Attorney General, the Office of the Inspector General and the Department of Energy Resources) were informed that the Compact would be fully operational as the Cape Light Compact JPE on July 1, 2017 if all of the Compact's municipal members voted to join the Cape Light Compact JPE as of July 1, 2017. Audrey Eidelman also noted that the Compact's counsel informed the Department of Public Utilities (DPU) after July 1, 2017, that the Compact would be appearing before the DPU as the Cape Light Compact JPE on a going forward basis and the Department thanked the Compact for the update. Audrey Eidelman went on to explain that the Joint Powers Agreement will supersede the Intergovernmental Agreement, and that there is no corporate dissolution of the Compact. The Compact is simply reorganizing as a joint powers entity under Massachusetts General Laws. Section 2 of the Transition Plan explains this process.

Colin Odell questioned why the Compact was not dissolving under the Inter-Governmental Agreement and expressed concern that liability to the towns under the Inter-Governmental Agreement may still exist. Audrey Eidelman explained that the vote to be taken by the Compact board would confirm that the Inter-Governmental Agreement is superseded by the Joint Powers Agreement and therefore the Compact will operate in accordance with the Joint Powers Agreement and the limited liability thereunder, as contemplated by the Transition Plan, which was adopted in accordance with the transition provision of the Joint Powers Agreement.

Robert Schofield moved, Consistent with Article 2 of the April 12, 2017 Transition, Asset Transfer and Succession Plan, I move the Board vote that the Cape Light Compact Intergovernmental Agreement as amended to date is superseded and replaced by the Joint Powers Agreement of the Cape Light Compact JPE, and that the CLCJPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Seconded by Martin Culik and voted by roll call as follows:

1. David Anthony – Barnstable	yes	10. Valerie Bell – Harwich	yes
2. Robert Schofield – Bourne	yes	11. Richard Toole – Oak Bluffs	yes
3. Colin Odell – Brewster	yes	12. Martin Culik – Orleans	yes
4. Peter Cocolis – Chatham	yes	13. Thomas Donegan – Provincetown	yes
5. Brad Crowell – Dennis	yes	14. Jarrod Cabral – Truro	yes
6. Robert Hannemann – Chilmark	yes	15. Richard Elkin – Wellfleet	yes
7. Fred Fenlon – Eastham	yes	16. Sue Hruby – West Tisbury	yes
8. Paul Pimentel – Edgartown	yes	17. Joyce Flynn – Yarmouth	yes
9. Ronald Zweig – Falmouth	yes		

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**Cape Light Compact
Executive Committee
Open Session Meeting Minutes
Wednesday, September 13, 2017**

The Cape Light Compact JPE Executive Committee met on Wednesday, September 13, 2017 in the Martha's Vineyard Conference Room at the Cape Light Compact JPE Offices at 261 Whites Path, Yarmouth MA 02664 at 2:00PM.

PRESENT WERE:

1. Joyce Flynn, Chair, Executive Committee, Yarmouth
2. Ronald Zweig, Vice-Chair, Executive Committee, Falmouth
3. David Anthony, Secretary, Executive Committee, Barnstable
4. Robert Schofield, Executive Committee, Bourne
5. Peter Cocolis, Executive Committee, Chatham
6. Richard Toole, Executive Committee Member at Large, Oak Bluffs – by phone
7. Thomas Donegan, Executive Committee, Provincetown
8. Richard Elkin, Wellfleet
9. Sue Hruby, West Tisbury – by phone
10. Martin Culik, Orleans
11. ChristiAne Mason, Wellfleet Alternate
12. Michael Embury, Brewster Alternate
13. Valerie Bell, Harwich

ABSENT WERE:

14. Michael Hebert, Aquinnah
15. Vacant - Sandwich
16. Tim Carroll, Chilmark
17. Wayne Taylor, Mashpee
18. John Grande – Tisbury
19. Jarrod Cabral, Truro
20. Robert Hannemann, Duke's County
21. Brad Crowell, Dennis
22. Fred Fenlon, Eastham
23. Paul Pimentel, Edgartown – by phone

Members (or Alternates
participating on their behalf
physically present: 10
Members present by phone: 2

LEGAL COUNSEL

Jeffrey Bernstein, Esq., BCK Law, P.C.

STAFF PRESENT

Maggie Downey, Administrator
Joanne Nelson, Comptroller
Austin Brandt, Senior Power Supply Planner
Lindsay Henderson, Analyst and Marketing
Briana Kane, Planning and Evaluation Manager
Jacob Wright, Special Projects Coordinator

PUBLIC PRESENT

There were no members of the public present.

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Chair Joyce Flynn opened the meeting at 2:06pm as the Executive Committee due to lack of a physical quorum of the full Governing Board and welcomed everyone to the new Cape Light Compact JPE offices. Chair Flynn recognized Richard Toole from Oak Bluffs, Executive Committee member, participating via phone due to geographic distance, and Sue Hruby, West Tisbury member listening in (since this was an Executive Committee meeting only).

PUBLIC COMMENT

There were no members of the public present.

CHAIRMAN'S REPORT

Chair Flynn recognized Debbie Fitton for her service in Energy Education for the Compact.

Chair Flynn wanted to discuss protocols regarding being recognized to speak at the board meeting. She asked that members stand their nameplates on end and wait to be called on and passed the microphone in order to speak. Chair Flynn requested that questions unrelated to the current agenda, but of pertinent interest to the Executive Committee and others present, be addressed during the 'Board Member Update' portion of the Agenda.

ENERGY EFFICIENCY RESIDENTIAL PROGRAM UPDATES, PHIL MOFFITT AND LINDSAY HENDERSON

Lindsay Henderson reminded everyone that the Summer Sizzler event that has been going on ends next week, which waives the \$4,000 cap for insulation contracts. However, due to the success of the program, the offering will be continued as Fall into Savings through December.

Lindsay also informed the staff that there are two dehumidifier turn in events on September 23 from 10 to 2 at the Living Local Harvest Festival in Martha's Vineyard, and Friday Oct 6 from 9 to 1 at Mid-Cape Home Centers in South Dennis.

ADMINISTRATOR'S REPORT

Maggie informed the Executive Committee and others present that staff is researching equipment options to allow for video for remote members.

1. OVERVIEW OF OPERATING AND ENERGY EFFICIENCY BUDGETS

Peter Cocolis and Maggie Downey are continuing to meet to review Operating and Energy Efficiency Budgets as per direction of the Governing Board. She requested that there be a sense of the board if they wished Peter to continue to do this. The sense of the board indicated that they did indeed wish to have continued reports from Paper.

2. 2016 AUDIT UPDATE

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Maggie Downey stated that the 2016 audit is underway, and a presentation will be provided at the November board meeting. Maggie also requested a sense of those present what the desired interval of reporting from the Treasurer should be. Peter Cocolis stated that the email and report he received from the Treasurer was a good overview and a good compliment to our standard reporting, and his opinion was that quarterly would be appropriate. Richard Elkin indicated he would prefer to see some more reporting from the Treasurer before making a decision on the interval. Maggie Downey stated that she would have the Treasurer be available for the November and December board meetings.

Maggie Downey reminded everyone that the November and December meetings will feature budget discussions for the 2018 year, which will involve employee accruals.

Maggie Downey stated that the design of the stakeholder meetings are moving along. The plan is to have them starting in late October and potentially moving into as late as February of next year to gather input for the next three year plan.

3. FINANCIAL SOFTWARE STATUS

Maggie Downey stated that we are in the process of looking at accounting software. Joanne Nelson stated that the current system, Xero, doesn't adequately address the Compact's needs in terms of reporting and record keeping, and a new system will be selected.

4. LOW-INCOME SOLAR GRANT UPDATE

Austin Brandt updated the Executive Committee on the \$250,000 grant for low income solar projects. Because of net metering regulations, the Compact is seeking single family homes on deed restrictions for low to moderate income families.

EXECUTIVE SESSION

Chair Joyce Flynn moved we enter into Executive Session pursuant to *MGL Chapter 30A 21(a) 3 to discuss strategy with respect to pending regulatory litigation relative to the following DPU Dockets:*

1. *DPU 17-05, EVERSOURCE RATE CASE*
2. *DPU 15-122, EVERSOURCE GRID MODERNIZATION PLAN*
3. *DPU 14-69, ADMINISTRATIVE COMPLIANCE FILING DIRECTIVE*
4. *DPU 16-169, NATIONAL GRID AND THE CAPE LIGHT COMPACT AND THE NATIONAL GRID AGREEMENT FOR NATURAL GAS HEATED HOMES*
5. *DPU 17-84, CAPE LIGHT COMPACT'S MID-TERM MODIFICATION FOR THE 2016-2018 ENERGY EFFICIENCY PLAN.*

Seconded by Robert Schofield and voted by Executive Committee as follows:

- | | |
|------------------------------|-----|
| 1. David Anthony, Barnstable | Yes |
| 2. Robert Schofield, Bourne | Yes |
| 3. Peter Cocolis, Chatham | Yes |
| 4. Ron Zweig, Falmouth | Yes |
| 5. Richard Toole, Oak Bluffs | Yes |

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- | | |
|------------------------------|-----|
| 6. Tom Donegan, Provincetown | Yes |
| 7. Joyce Flynn, Yarmouth | Yes |

Motion carried in the affirmative. (7-0-0)

The Open Session of the Executive Committee resumed at 3:40 PM.

Chair Flynn granted a brief recess at 3:41 PM.

The Executive Committee reconvened in Open Session at 3:46 PM PM.

DISCUSSION AND POTENTIAL VOTE TO JOIN BARNSTABLE COUNTY RETIREMENT SYSTEM

Robert Schofield moved that the Cape Light Compact Joint Powers Entity (CLCJPE) vote to join the Barnstable County Retirement Association and accept the provisions of Massachusetts General Laws Chapter 32, Sections 1-28 inclusive; and that the CLCJPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Seconded by Tom Donegan and voted by roll call of the Executive Committee as follows:

- | | |
|------------------------------|-----|
| 1. David Anthony, Barnstable | Yes |
| 2. Robert Schofield, Bourne | Yes |
| 3. Peter Cocolis, Chatham | Yes |
| 4. Ron Zweig, Falmouth | Yes |
| 5. Richard Toole, Oak Bluffs | Yes |
| 6. Tom Donegan, Provincetown | Yes |
| 7. Joyce Flynn, Yarmouth | Yes |

Motion carried in the affirmative. (7-0-0)

The entirety of the present board present in person or remotely, 13 members, all indicated that they would have voted yes had there been a quorum of the full board.

ADJOURNMENT

Ronald Zweig moved that the Executive Committee adjourn. Seconded by Peter Cocolis and voted by roll call as follows:

- | | |
|------------------------------|-----|
| 1. David Anthony, Barnstable | Yes |
| 2. Robert Schofield, Bourne | Yes |
| 3. Peter Cocolis, Chatham | Yes |
| 4. Ron Zweig, Falmouth | Yes |
| 5. Richard Toole, Oak Bluffs | Yes |
| 6. Tom Donegan, Provincetown | Yes |
| 7. Joyce Flynn, Yarmouth | Yes |

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**Cape Light Compact
Governing Board and Executive Committee
Open Session Meeting Minutes
Wednesday, January 11, 2017**

The Cape Light Compact Governing Board and Executive Committee met on Wednesday, January 11, 2017, in the Innovation Room, Open Cape Building, Barnstable County Complex, 3195 Main Street, Barnstable, MA 02630 at 1:38 p.m.

PRESENT WERE:

1. Joyce Flynn, Chair, Yarmouth
2. Robert Schofield, Vice-Chair, Bourne
3. Ronald Zweig, Secretary, Falmouth
4. Peter Cocolis, Treasurer, Chatham
5. Fred Fenlon, Eastham
6. Valerie Bell, Harwich
7. Thomas Donegan, Provincetown – Until 3:57 PM.
8. Tim Carroll, Chilmark – by phone
9. Richard Elkin, Wellfleet
10. Sue Hruby, West Tisbury - by phone until 4:02 PM.
11. Paul Pimentel, Edgartown –
12. Martin Culik, Orleans Alternate
13. David Anthony, Barnstable
14. Richard Toole, Member at Large, Oak Bluffs

15. Andrew Gottlieb, Mashpee - at 2:12 PM.
16. Leo Cakounes, Barnstable County Commissioner – at 2:39 PM
17. Rob Hannemann, Duke's County
18. Christiane Mason, Wellfleet Alternate
19. Joseph Buteau, Truro
20. Brad Crowell, Dennis
21. Colin Odell, Brewster
22. Joshua Peters, Sandwich

ABSENT WERE:

23. Michael Hebert, Aquinnah
24. Tisbury - Vacant

Members/Alternates physically present: 22
Members present by phone: 2

LEGAL COUNSEL

Jeff Bernstein, Esq., BCK Law, PC
Katy Terrell, Esq., Associate, BCK Law, PC

STAFF PRESENT

Maggie Downey, Administrator
Austin Brandt, Power Supply Planner
Margaret Song, Commercial and Industrial Program Manager
Briana Kane, Planning and Evaluation Manager
Lindsay Henderson, Analyst
Jacob Wright, Special Projects Coordinator

Chr. Flynn opened the meeting at 1:38 PM and recognized Sue Hruby and Tim Carroll who were participating by phone due to geographic distance. Chr. Flynn introduced Christine Mason from Wellfleet, Rob Hannemann from Duke's County, and Colin Odell from Brewster. Jeff Bernstein introduced his associate, Katy Terrell.

2017 EXECUTIVE COMMITTEE NOMINATIONS AND VOTE

Maggie Downey reviewed the slate of candidates nominated to serve on the Cape Light Compact Governing Board Executive Committee on the December 7, 2016 Governing Board meeting.

Richard Elkin nominated Joyce Flynn for the position of Chairman at the December 7, 2016, meeting. With no other nominations, Richard Elkin moved to vote for the position of Chairman, seconded by Bob Schofield and voted by roll call as follows:

- | | | | |
|------------------------------------|-----|-----------------------------------|-----|
| 1. David Anthony – Barnstable | yes | 14. Thomas Donegan – Provincetown | yes |
| 2. Robert Schofield - Bourne | yes | 15. Joshua Peters – Sandwich | yes |
| 3. Colin Odell – Brewster | yes | 16. Joseph Buteau – Truro | yes |
| 4. Peter Cocolis – Chatham | yes | 17. Richard Elkin – Wellfleet | yes |
| 5. Tim Carroll – Chilmark | yes | 18. Sue Hruby – West Tisbury | yes |
| 6. Brad Crowell – Dennis | yes | 19. Joyce Flynn – Yarmouth | yes |
| 7. Robert Hannemann – Dukes County | yes | | |
| 8. Fred Fenlon - Eastham | yes | | |
| 9. Paul Pimentel – Edgartown | yes | | |
| 10. Ronald Zweig – Falmouth | yes | | |
| 11. Valerie Bell – Harwich | yes | | |
| 12. Richard Toole – Oak Bluffs | yes | | |
| 13. Martin Culik – Orleans | yes | | |

Motion carried in the affirmative (19-0-0)

Peter Cocolis nominated Bob Schofield for the position of Vice Chairman at the December 7, 2016, meeting. With no other nominations, Peter Cocolis moved to vote for the position of Chairman, seconded by Ronald Zweig and voted by roll call as follows:

- | | | | |
|------------------------------------|-----|-----------------------------------|-----|
| 1. David Anthony – Barnstable | yes | 14. Thomas Donegan – Provincetown | yes |
| 2. Robert Schofield - Bourne | yes | 15. Joshua Peters – Sandwich | yes |
| 3. Colin Odell – Brewster | yes | 16. Joseph Buteau – Truro | yes |
| 4. Peter Cocolis – Chatham | yes | 17. Richard Elkin – Wellfleet | yes |
| 5. Tim Carroll – Chilmark | yes | 18. Sue Hruby – West Tisbury | yes |
| 6. Brad Crowell – Dennis | yes | 19. Joyce Flynn – Yarmouth | yes |
| 7. Robert Hannemann – Dukes County | yes | | |
| 8. Fred Fenlon - Eastham | yes | | |
| 9. Paul Pimentel – Edgartown | yes | | |
| 10. Ronald Zweig – Falmouth | yes | | |

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Sue Hruby nominated Richard Toole for the position of Member-at-Large at the December 7, 2016, meeting. With no other nominations, Bob Schofield moved to vote for the position of Member-at-Large, seconded by Peter Cocolis and voted by roll call as follows:

1. D. Anthony – Barnstable	yes	14. Thomas Donegan – Provincetown	yes
2. R. Schofield - Bourne	yes	15. Joshua Peters – Sandwich	yes
3. Colin Odell – Brewster	yes	16. Joseph Buteau – Truro	yes
4. Peter Cocolis – Chatham	yes	17. Richard Elkin – Wellfleet	yes
5. Tim Carroll – Chilmark	yes	18. Sue Hruby – West Tisbury	yes
6. Brad Crowell – Dennis	yes	19. Joyce Flynn – Yarmouth	yes
7. Robert Hannemann – Dukes County	yes		
8. Fred Fenlon - Eastham	yes		
9. Paul Pimentel – Edgartown	yes		
10. Ronald Zweig – Falmouth	yes		
11. Valerie Bell – Harwich	yes		
12. Richard Toole – Oak Bluffs	yes		
13. Martin Culik – Orleans	yes		

Motion carried in the affirmative (19-0-0)

PUBLIC COMMENT

There were no members of the public present.

CONSIDERATION OF MEETING MINUTES

The Board considered the Dec 7, 2016, Meeting Minutes. *Chr. Flynn moved the board to accept the amended minutes, seconded by M. Culik and voted by roll call as follows:*

1. D. Anthony – Barnstable	yes	14. Thomas Donegan – Provincetown	yes
2. R. Schofield - Bourne	yes	15. Joshua Peters – Sandwich	abs
3. Colin Odell – Brewster	abs	16. Joseph Buteau – Truro	abs
4. Peter Cocolis – Chatham	yes	17. Richard Elkin – Wellfleet	yes
5. Tim Carroll – Chilmark	abs	18. Sue Hruby – West Tisbury	yes
6. Brad Crowell – Dennis	abs	19. Joyce Flynn – Yarmouth	yes
7. Robert Hannemann – Dukes County	abs		
8. Fred Fenlon - Eastham	yes		
9. Paul Pimentel – Edgartown	yes		
10. Ronald Zweig – Falmouth	yes		
11. Valerie Bell – Harwich	yes		
12. Richard Toole – Oak Bluffs	yes		
13. Martin Culik – Orleans	yes		

Motion carried in the affirmative (13-0-6)

DISCUSSION AND POWERPOINT PRESENTATION ON JOINT POWERS ACT AND ESTABLISHMENT OF A JOINT POWERS ENTITY, COMPACT COUNSEL

Jeff Bernstein, Compact legal counsel, stated that this statute, passed last year, chiefly came from Department of Revenue. It allows for governmental units to enter into a Joint Powers Agreement (JPA) to form a Joint Powers Entity (JPE). This arrangement can potentially address questions revolving around Intergovernmental Agreements (IGA) in terms of member liability. This system also allows two or more entities to enter into a JPA, involving the exercise of powers in a particular region. Jeff Bernstein went on to explain that a major advantage of a Joint Powers Entity is that the member towns would be insulated from liability for the actions of the entity. David Anthony asked if this would create potential conflicts of interest in the event that an employee of a member – like a selectman - was also on the board of directors, and Jeff Bernstein replied that it would function very much the same as the IGA does and should not present an issue. Valerie Bell asked how the transition to this would be accomplished. Jeff Bernstein referred to his slide, explaining that the transition would occur in three phases. He stated that this JPA would replace the IGA, and the Board, as it is currently composed, would eventually be gone. He noted that the current IGA expires in 2022. The JPA would require selection of a Treasurer who would be an independent entity, as well as a business officer. Peter Cocolis asked if we would still operate with a Fiscal Agent, and Jeff Bernstein said that the JPE would function very similarly to the way the Board does right now. Maggie Downey went on to say that this arrangement, with the addition of an independent Business Officer and Treasurer, would function similarly to the way the arrangement with Barnstable County works now. Tom Donegan asked if we could contract with a private organization or do it ourselves. Jeff Bernstein said that both are possible, but it would be advisable to consult with the Department of Revenue on the issue of using a private party. The positions of Business Officer and Treasurer would be accountable to the Board. Any agreement reached between a Joint Powers Entity and a potential fiscal agent would clearly specify responsibilities.

Andrew Gottlieb arrived at 2:12 PM.

Ron Zweig asked if we would lose the Treasurer position on the Board. Jeff Bernstein answered saying that yes, the Treasurer position would be eliminated in lieu of the newly created independent position as part of the Joint Powers Entity, but you could create a new position on the board to carry out the duties that Peter Cocolis has already been performing. Ron Zweig inquired as to what the advantages of moving to this Joint Powers Agreement, versus simply staying the way things currently are.

Jeff Bernstein stated the Joint Powers Entity provides protection against liabilities to the member towns and clarifies the ability to sue and be sued, make and execute contracts and finance agreements, receive and expend funds, and apply for and receive grants. Much of this is either not possible, or very ambiguous under the current arrangement.

The JPE must establish and maintain a budget and perform annual audits, which must be distributed to its members and to the Department of Revenue. Richard Elkin asked how this differs from what we already do, and Maggie Downey replied by saying that while we don't currently send the audit information to the Department of Revenue, the Compact posts its annual audit on its web site.

Jeff Bernstein stated that the Joint Powers Entity offers liability protection for its members, and has a public employer status. It gives the entity independent corporate and politic status. Maggie Downey asked what the situation would be if a Joint Powers Entity was formed and, twenty years down the line, the Compact no longer

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existed - would member towns be responsible for liabilities?. Jeff Bernstein replied that under our current agreement, this could certainly happen; but, under a JPA, we could expressly indemnify the members, and the claim would be extinguished. David Anthony asked how we would be able to secure liabilities to this risk of the potential extinguishing of claims were the Compact to go under. Jeff Bernstein replied by saying that the funds we receive would backstop these liabilities.

Jeff Bernstein referenced his transition slides noting that the transfer of operations would allow a newly formed Joint Powers Entity to serve as the Compact's administrative arm. The Entity would allow for an orderly transition of employees from Barnstable County to the Joint Powers Entity. After this was accomplished, other Compact members could join the Entity. The agreement could provide a trigger that once a majority of Compact members join the Entity, it could achieve operational status. Richard Elkin asked for clarification in terms of what entity the employees would fall under, and Jeff Bernstein replied that the employees would fall under the Joint Powers Entity. Maggie Downey stated that this addresses the issue that some member towns have had about becoming the fiscal agent, in terms of taking on employees.. Richard Elkin stated that the entity would need a human resources person, and Maggie Downey said that the Board could contract for this service..

Fred Fenlon asked, if the Compact entity is created by a new JPA, how long does it take before the entity becomes operational? Jeff Bernstein replied by saying that the Board could decide how that worked, whether it was a simply majority of members, a timeline, or a different threshold.

County Commissioner Leo Cakounes arrived at 2:39 PM.

It was noted that John Giorgio, Esq., Town Counsel for eight of the towns on the Cape and the Town of Tisbury, agrees that the Joint Powers Agreement is the best step for the towns going forward in reference to the Compact. Discussions also will be taking place with Ron Rappaport, Esq., Town Counsel for the other five Vineyard towns. Jeff Bernstein stated that it will be a matter of when the Board decides to send the memo out to town counsels for the other towns not represented by Messrs. Giorgio and Rappaport. Martin Culik stated that sooner rather than later seemed wise, to give people an opportunity to get acquainted with the idea.

Jeff Bernstein stated that the name of the Joint Powers Entity also needs to be decided. Tom Donegan stated that the name 'Cape Light Compact, JPE' seemed good. Ron Zweig asked about the cost implication of the transition. Maggie Downey stated that we already pay Barnstable County for services; the Compact will pay its new fiscal agent for services. Tom Donegan stated that Provincetown wanted to operate as a banking entity, and did not want to be responsible for operational or business functions. Peter Cocolis agreed with Tom.

Jeff Bernstein brought up the subject of how future amendments could be made to the Joint Powers Agreement. There was a discussion as to whether or not major substantive amendments should go back to the members. Minor, ministerial amendments could be handled by the Board of Directors. Richard Elkin asked if the vote would have to be unanimous or merely a simple majority and Jeff Bernstein replied that this is something that could be structured into the Agreement depending on what the members wished. One way to do it is that Boards of Selectmen would have to review and vote on major substantive amendments with weighted voting by population. Under this construct, minor changes could be accomplished by a simple majority of the Board of Directors.

Once the Joint Powers Entity is operationally active, guidance from the Department of Public Utilities would need to be sought to find out if the Aggregation Plan would need to be revised.

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Jeff Bernstein explained that any member municipality that does not wish to join the Entity can either choose to petition to become their own aggregator or relinquish their status as an aggregator, at which point consumers would revert to Basic Service (or could choose another Competitive Supplier) and the town's share of energy efficiency funds would revert to Eversource. Town residents and businesses would not receive energy efficiency services from the Compact, JPE.

David Anthony asked what would happen in terms of the current transition agreement expiring after we've agreed to become a Joint Powers Entity. Maggie Downey continued by saying that it's important for these issues to get on Selectmen's dockets sooner rather than later, in the event we have to petition the county for an extension by April 1. Colin Odell stated that he is concerned that once the transition is completed, the Department of Public Utilities may get involved as banking information changes. Jeff Bernstein stated that the fiscal agent would maintain an account in the name of the Joint Powers Entity. Maggie Downey explained that under the current IGA the towns would have to make a decision prior to the 2022 expiration as to what to do in any event.

County Commissioner Leo Cakounes asked if there would be a separate '04' number for this entity, and Jeff Bernstein replied that there would be because the Joint Powers Entity would be considered a separate employer.

Peter Cocolis stated his concern about the details of what constitutes a major amendment versus a minor amendment. He went on to state that, once a majority is established, a deadline of 12 months for other towns to join would be reasonable. Richard Elkin said an even longer deadline might be advisable given the situation. Jeff Bernstein replied that the entity becomes the Compact's administrative arm once two members join. He continued by saying that once a majority is reached, you could trigger a deadline to join, at which point the present Compact would cease to exist. Paul Pimentel asked what the guidelines for amendments to the IGA were initially. Maggie Downey stated that Town Meeting votes established the aggregation; but, after the agreement was established, amendments were executed by the Board. Paul asked why this new entity couldn't simply do things the same way, and Jeff Bernstein answered by saying that concerns had been raised by member towns. David Anthony stated that there's already a very hard deadline of June 2017, when the transition agreement with the County ends, at which point no checks can be issued until a fiscal agent or some other solution is reached. Maggie Downey stated that, really, March 31 is the first deadline because the Compact has an April 1 deadline to notify the County of plans for an extension beyond June 30. County Commissioner Leo Cakounes stated that the County's major issue is employee liability -- not the fiscal agent status -- and that, once this issue is resolved, he doesn't feel that there would be an issue with the County serving as fiscal agent.

Tom Donegan asked about the notification of potential amendments and who makes the changes, stating that the middle ground of a notification to the Selectmen, rather than having to schedule a vote. He went on to say that the operating structure, in terms of concurrent meetings and such, would need to be explained.

Maggie Downey stated selecting a specific date is important, and planning will be necessary on the part of the members. Jeff Bernstein asked what the sense of the Board was as to when the entity would become fully operational, whether by a date or a specific threshold of members. Martin Culik stated that because the situation works to the towns' advantage, convincing them to join shouldn't be an issue. County Commissioner Leo Cakounes stated that Phase III makes the most sense to have as the hard deadline, to force member towns to act, as the legal name changes, in how the organization signs contracts.

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Peter Cocolis stated that we should potentially look to get something done in the next two years, prior to the next three-year Energy Efficiency plan to start in 2019; but he expressed doubt it would be doable in time. Brad Crowell stated that urgency should be an asset and used here or else member towns will simply procrastinate.

David Anthony said he didn't understand how operational budgets that pay employees could be transferred to two member entities in a potential Phase I of this Joint Powers Agreement. Jeff Bernstein stated that the entity would only be operating in an administrative capacity. Maggie Downey went on to explain that Compact employees would operate as Joint Powers Entity employees and the members could contract out for services for (or serve as) fiscal agent.

Ron Zweig asked if there's past experience or precedent with an organization transitioning to a Joint Powers Entity. Jeff Bernstein agreed that this is new ground in Massachusetts, although many other states such as California have considerable experience with joint powers entities. Ron asked if there's a downside for members in using the Joint Powers Agreement construct. Jeff Bernstein expressed that he didn't see a downside. Maggie Downey stipulated that the only real downside is that the member towns have an opportunity to leave if they don't like the Compact – which was inevitable anyway when the present agreement expires.

Valerie Bell stated that she believes Phase III should be decided sooner rather than later, to provide a sense of urgency. Tom Donegan stated that he believes this needs to move quickly, in both securing a new space for the Compact and a new fiscal agent.

Tom Donegan left at 3:57 PM.

Maggie Downey asked Valerie if she implied a year in terms of a deadline of December 31st, 2017? Valerie agreed, stating that there's not a lot of difference in terms of services provided for the towns in terms of energy efficiency and ratepayers. Jeff Bernstein stated that the towns will have stronger protections against liability because of the built-in protections that the Joint Powers Agreement provides to the members.

Sue Hruby left the call at 4:02 PM.

Brad stated that there may be a need for additional pressure on certain towns in order for them to get on board. Maggie Downey said that December 31, 2017 would be sufficient time to get the next three year plan ready in terms of planning for members' potential departures.

David Anthony asked what the procedure could be going forward, to avoid debating and rehashing the same arguments among a board of this size. Maggie Downey stated that she believes a document will be ready for review, following review by all town counsels at the February meeting. Richard Elkin asked when it would be appropriate to visit the Selectmen. Jeff Bernstein stated that the towns will hear from their attorneys regarding the JPA soon thereafter, along with much simpler Powerpoints, to assist in dealing with this.

County Commissioner Leo Cakounes stated that he feels concerned about appointed representatives voting on major amendments without direct input from the Selectmen. Jeff Bernstein stated, for clarification purposes, that he was referring to major amendments, and County Commissioner Leo Cakounes agreed, stating he trusted legal counsel's reasoning. He indicated that minor, ministerial amendments should indeed be acted upon by the board, with larger amendments being brought to the boards of selectmen for their input.

County Commissioner Leo Cakounes left at 4:14 PM.

OVERVIEW OF DPU 16-177: PRESENTATION AND POTENTIAL VOTE ON CAPE LIGHT COMPACT DEMAND RESPONSE OFFERING AND POTENTIAL MID-TERM MODIFICATION: AUSTIN BRANDT

Austin Brandt provided a presentation on Demand Response Program as part of its 2016-2018 Energy Efficiency Plan. A filing to reallocate funds from Behavior Initiative to Demand Response was denied by the Department of Public Utilities, stating that a mid-term modification ("MTM") would be necessary. In the summer of 2016, there were 9 demand response events with 39 participants with 56 thermostats. There was a very low opt-out rate, and the concept was well received. Challenges involved a low number of central a/c homes due to the overwhelming use of ductless mini splits, vendors' concerns, and lack of smart metering. 2017 improvements involved a revised platform, expanding participation, and reducing costs by eliminating the energy monitoring equipment. The Compact staff is discussing the implementation of thermal storage for commercial and industrial projects. The advantages of this technology are that it's safe, easily paired, and very easy to repair. Expanding a demand response program would provide a demand response offering to commercial and industrial customers while diverting funds away from a Behavior Initiative program that has costs that haven't weighted out the benefits.

Richard Toole left at 4:31 PM.

Colin Odell asked first if Wi-Fi thermostats are available at the commercial level. Austin replied that the Honeywell Lyric will be the one that is used next summer. Colin asked whether the Ice Bear technology would be able to work with split systems, and Austin said, yes, that there are several different systems available up to 20-ton units. Ron Zweig asked if dehumidifiers could be used for this, and Austin replied saying that he isn't confident that dehumidifiers have the same technology.

Joyce Flynn asked Austin what his recommendation was. Austin stated that he felt excited about the potential, more specifically on the residential side, but storage is important. The sense of the Board was that it supported requesting an MTM: the Board also asked for a budget presentation at the next meeting.

Brad Crowell left at 4:40 PM.

EXECUTIVE SESSION

Robert Schofield moved we enter into Executive Session, pursuant to MGL Chapter 30A §21(a) 3 to discuss strategy with respect to pending regulatory litigation relative to National Grid and the Cape Light Compact and the National Grid Agreement for Natural Gas Heated Homes (DPU 16-169), and pending regulatory litigation strategy regarding the 2017 Eversource rate case.

Joyce Flynn as Compact Chair declared that than open session may have a detrimental effect on the Cape Light Compact's litigating position. The board would not return to Open Session at the conclusion of Executive Session.

Peter Cocolis seconded the motion, voted by roll call as follows:

- | | | | |
|----------------------------|-----|-------------------------------|-----|
| 1. D. Anthony – Barnstable | yes | | |
| 2. R. Schofield - Bourne | yes | 11. Joshua Peters – Sandwich | yes |
| 3. Colin Odell – Brewster | yes | 12. Joseph Buteau – Truro | yes |
| 4. Peter Cocolis – Chatham | yes | 13. Richard Elkin – Wellfleet | yes |
| 5. Tim Carroll – Chilmark | yes | 1. Joyce Flynn – Yarmouth | yes |

Draft Minutes subject to correction, addition and Committee/Board Approval

- | | |
|------------------------------|-----|
| 6. Fred Fenlon - Eastham | yes |
| 7. Ronald Zweig – Falmouth | yes |
| 8. Valerie Bell – Harwich | yes |
| 9. Andrew Gottlieb – Mashpee | yes |
| 10. Martin Culik – Orleans | yes |

Motion carried in the affirmative (19-0-0)

Respectfully submitted,
Jacob Wright

LIST OF DOCUMENTS & EXHIBITS

- Meeting Notice/Agenda
- December 7, 2016, Meeting Minutes - Draft
- 8074 CLC Operating Fund Budget dated 12/10/2017
- 2016 CLC Energy Efficiency Fund Projected and Actual Budgets through December 3016
- Power Supply Price Comparison Informational Sheet
- Residential Rebates 2017 Pamphlet
- Demand Response Demonstration Offering Presentation
- Joint Powers Statute and Formation of a Joint Powers Entity Powerpoint Presentation

GOTTIRED OLD APPLIANCES?

You may qualify for a new refrigerator
or other appliance upgrade at no cost!

HAC Energy offers **NO COST** home energy assessments and efficiency upgrades to income-eligible homeowners and renters through the Cape Light Compact's Enhanced Energy Efficiency Program.

HERE'S HOW IT WORKS:

- 1) **If you receive Fuel Assistance or a discount utility rate**, you can request your no cost income-eligible energy assessment by calling Cape Light Compact at **800-797-6699**.
- 2) **An Energy Specialist from HAC will meet with you**, assess and analyze your home's performance, install energy-efficient lighting and develop energy saving recommendations that help reduce energy costs and increase the year-round efficiency and comfort of your home.

WANT TO LEARN MORE?

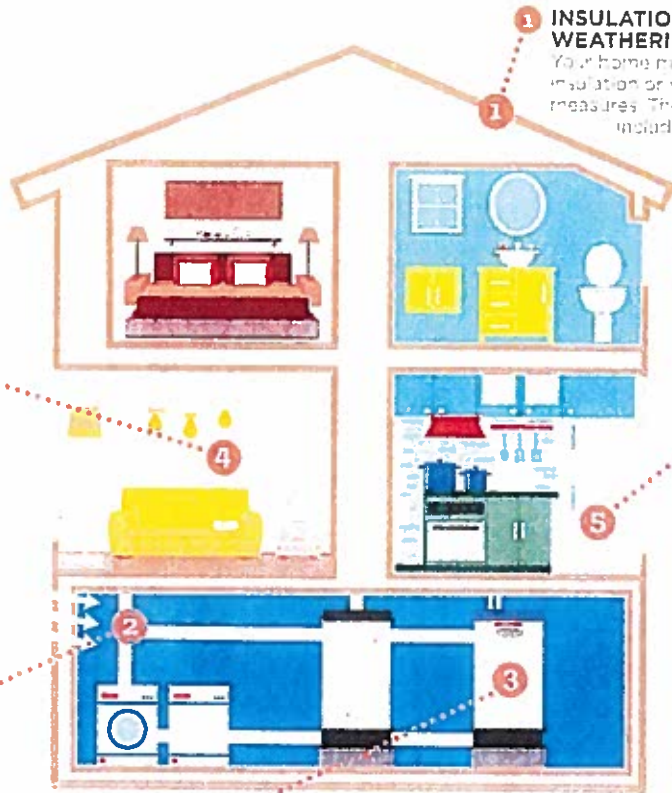
Call Cape Light Compact at **800-797-6699** for more information.

Eligibility for the program is based on income and other factors. For more information, visit www.capeenergy.com or call 800-797-6699.



Nonprofit Org.
U.S. Postage
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Hyannis, MA
Permit #84

WHAT DOES A HOME ENERGY ASSESSMENT OFFER?



1 INSULATION AND WEATHERIZATION

Your home may need additional insulation or weatherization measures. These measures may include weather stripping on doors and insulation in attics, basement spaces and walls to make your home more efficient and comfortable. Once identified, certified local contractors will complete all authorized work at no cost to you.

4

LED LIGHTING

ENERGY STAR® certified LEDs provide beautiful light while using 80%-90% less energy than old incandescent bulbs. We'll swap out old inefficient light bulbs and replace them with LEDs at no cost.

5

APPLIANCE UPGRADES

Old appliances can be energy hogs. An Energy Specialist from HAC will assess the efficiency of select appliances to determine if they qualify for replacement. If your refrigerator, window AC, dehumidifier or clothes washer is deemed inefficient, you may qualify for a free upgrade to a new ENERGY STAR certified model.

2

AIR SEALING

Poor air sealing can create drafts, increase energy costs and make your home less comfortable. We use diagnostic tools to seal air leaks, increase efficiency, and create optimum air exchanges for a healthy home.

3

HEATING SYSTEM UPGRADE

Heating can comprise as much as 40% of home energy consumption. An Energy Specialist from HAC will perform a combustion test to determine the overall efficiency of your existing system. If it performs below a certain standard of efficiency, you may qualify for a no-cost heating system upgrade.



PEACE OF MIND AND SAVINGS FOR YOU AND YOUR FAMILY.



CALL 800-797-6699 TO SCHEDULE YOUR NO COST HOME ENERGY ASSESSMENT TODAY!

Cape Light Compact JPE
 Operating Fund 001 (7/1/17-12/31/17)
 Budget Report for Expenses
 July 1, 2017 to September 30, 2017

<u>EXPENSES</u>	<u>Budget Amount</u>	<u>Expended Amount</u>	<u>Remaining Amount</u>	<u>Remaining %</u>
OPERATING FUND FY18-ADVERTISING (POWER SUPPLY)	39,000.00	3,386.75	35,613.25	91.32%
OPERATING FUND FY18-AUDIT FEES	20,000.00	4,000.00	16,000.00	80.00%
OPERATING FUND FY18-BANK FEES	500.00	0.00	500.00	100.00%
OPERATING FUND FY18-BUILDING RENOVATIONS	5,000.00	0.00	5,000.00	100.00%
OPERATING FUND FY18-CLOSE-OUT EXP WITH COUNTY	5,000.00	0.00	5,000.00	100.00%
OPERATING FUND FY18-COMPUTER EQUIPMENT	5,000.00	2,516.50	2,483.50	49.67%
OPERATING FUND FY18-CONTRACTUAL	36,413.00	5,434.74	30,978.26	85.07%
OPERATING FUND FY18-CUSTODIAL SERVICES	4,375.00	453.55	3,921.45	89.63%
OPERATING FUND FY18-FINANCIAL SOFTWARE SYSTEM	2,500.00	0.00	2,500.00	100.00%
OPERATING FUND FY18-FOOD SUPPLIES	1,500.00	411.52	1,088.48	72.57%
OPERATING FUND FY18-GROUP INSURANCE	20,000.00	4,901.77	15,098.23	75.49%
OPERATING FUND FY18-IN STATE TRAVEL	8,000.00	663.96	7,336.04	91.70%
OPERATING FUND FY18-INSURANCE	16,550.00	16,550.00	0.00	0.00%
OPERATING FUND FY18-INTERNET	4,000.00	102.30	3,897.70	97.44%
OPERATING FUND FY18-IT SERVICES	8,000.00	2.00	7,998.00	99.98%
OPERATING FUND FY18-LEGAL SERVICES	299,625.00	186,521.45	113,103.55	37.75%
OPERATING FUND FY18-MEDICARE	2,000.00	527.72	1,472.28	73.61%
OPERATING FUND FY18-MISC EQUIPMENT	845.00	845.00	0.00	0.00%
OPERATING FUND FY18-MISC FRINGES	1,800.00	0.00	1,800.00	100.00%
OPERATING FUND FY18-MISC RENTALS	5,000.00	0.00	5,000.00	100.00%
OPERATING FUND FY18-OUT OF STATE TRAVEL	3,000.00	0.00	3,000.00	100.00%
OPERATING FUND FY18-OUTREACH/MARKETING SERV	10,000.00	414.58	9,585.42	95.85%
OPERATING FUND FY18-PAYROLL SERVICES	1,692.00	782.26	909.74	53.77%
OPERATING FUND FY18-POSTAGE	7,000.00	61.08	6,938.92	99.13%
OPERATING FUND FY18-PRINTING	7,500.00	1,925.61	5,574.39	74.33%
OPERATING FUND FY18-PROFESSIONAL DEVELOPMENT	2,500.00	60.00	2,440.00	97.60%
OPERATING FUND FY18-RENT	11,250.00	5,625.00	5,625.00	50.00%
OPERATING FUND FY18-RETIREMENT	45,000.00	0.00	45,000.00	100.00%
OPERATING FUND FY18-SALARIES	108,422.00	36,394.44	72,027.56	66.43%
OPERATING FUND FY18-SALARY RESERVE	6,000.00	0.00	6,000.00	100.00%
OPERATING FUND FY18-SHIPPING/FREIGHT	500.00	60.00	440.00	88.00%
OPERATING FUND FY18-SOFTWARE LICENSES	2,500.00	0.00	2,500.00	100.00%
OPERATING FUND FY18-SPONSORSHIPS	28,145.00	15,285.00	12,860.00	45.69%
OPERATING FUND FY18-SUBSCRIPTIONS	6,855.00	6,854.25	0.75	0.01%
OPERATING FUND FY18-SUPPLIES	1,000.00	224.14	775.86	77.59%
OPERATING FUND FY18-TELEPHONES	2,000.00	989.97	1,010.03	50.50%
OPERATING FUND FY18-TREASURY SERVICES	4,375.00	3,858.75	516.25	11.80%
OPERATING FUND FY18-UNPAID BILLS	1,000.00	0.00	1,000.00	100.00%
TOTAL EXPENSES	733,847.00	298,852.34	434,994.66	59.28%

2017 Budgeted (Based on 2017 Energy Efficiency Surcharge)

Program	PA Costs					EMV	Total PA Costs
	PP&A	Marketing	Incentives	STAT	EMV		
A - Residential	\$ 1,171,579	\$ 480,933	\$ 15,335,147	\$ 4,801,294	\$ 749,284	\$ 22,558,347	
A1 - Residential Whole House	\$ 750,918	\$ 123,161	\$ 11,279,444	\$ 4,014,474	\$ 622,974	\$ 16,840,971	
A1a - Residential New Construction	\$ 20,064	\$ 6,861	\$ 3,111,251	\$ 95,158	\$ 15,631	\$ 448,964	
A1b - Residential Multi-Family Retrofit	\$ 33,558	\$ 18,739	\$ 399,808	\$ 272,710	\$ 26,144	\$ 750,923	
A1c - Residential Home Energy Services - Measures	\$ 609,310	\$ 94,125	\$ 10,399,771	\$ 1,956,940	\$ 509,659	\$ 13,569,983	
A1d - Residential Home Energy Services - RCS	\$ 77,987	\$ 37,275	\$ -	\$ 1,569,049	\$ 60,758	\$ 1,745,069	
A1e - Residential Behavior/Feedback Program	\$ 9,920	\$ 6,111	\$ 168,614	\$ 120,638	\$ 10,781	\$ 326,115	
A2 - Residential Products	\$ 187,941	\$ 146,193	\$ 3,130,794	\$ 594,227	\$ 146,420	\$ 4,205,485	
A2a - Residential Heating & Cooling Equipment	\$ 85,959	\$ 28,579	\$ 1,535,440	\$ 206,522	\$ 66,948	\$ 1,931,467	
A2b - Residential Consumer Products	\$ 17,269	\$ 34,674	\$ 159,788	\$ 161,337	\$ 13,454	\$ 386,422	
A2c - Residential Lighting	\$ 84,713	\$ 82,940	\$ 1,435,476	\$ 226,469	\$ 65,998	\$ 1,895,596	
A3 - Residential Hard-to-Measure	\$ 232,220	\$ 161,579	\$ 923,000	\$ 192,992	\$ -	\$ 1,511,892	
A3a - Residential Statewide Marketing	\$ -	\$ 112,017	\$ -	\$ -	\$ -	\$ 112,017	
A3b - Residential Statewide Database	\$ 13,353	\$ -	\$ -	\$ -	\$ -	\$ 13,353	
A3c - Residential DOER Assessment	\$ 145,089	\$ -	\$ -	\$ -	\$ -	\$ 145,089	
A3d - Residential EAC Consultants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
A3e - Residential Sponsorships & Subscriptions	\$ 25,662	\$ 10,633	\$ -	\$ -	\$ -	\$ 36,296	
A3f - Residential HEAT Loan	\$ 48,716	\$ 7,428	\$ 892,500	\$ 103,492	\$ -	\$ 1,052,136	
A3g - Residential Workforce Development	\$ -	\$ -	\$ -	\$ 19,600	\$ -	\$ 19,600	
A3h - Residential R&D and Demonstration	\$ -	\$ 4,500	\$ 31,501	\$ 69,500	\$ -	\$ 108,500	
A3i - Residential Education	\$ -	\$ 25,000	\$ -	\$ -	\$ -	\$ 25,000	
B - Low-Income	\$ 264,628	\$ 55,051	\$ 3,201,910	\$ 783,640	\$ 155,687	\$ 4,446,916	
B1 - Low-Income Whole House	\$ 182,616	\$ 30,212	\$ 3,201,910	\$ 783,640	\$ 155,687	\$ 4,354,065	
B1a - Low-Income Single Family Retrofit	\$ 124,014	\$ 23,084	\$ 2,119,850	\$ 584,166	\$ 105,727	\$ 2,956,841	
B1b - Low-Income Multi-Family Retrofit	\$ 58,602	\$ 7,128	\$ 1,082,060	\$ 199,474	\$ 49,960	\$ 1,397,224	
B2 - Low-Income Hard-to-Measure	\$ 82,012	\$ 34,838	\$ -	\$ -	\$ -	\$ 106,850	
B2a - Low-Income Statewide Marketing	\$ -	\$ 21,684	\$ -	\$ -	\$ -	\$ 22,684	
B2b - Low-Income Statewide Database	\$ 2,684	\$ -	\$ -	\$ -	\$ -	\$ 2,684	
B2c - Low-Income DOER Assessment	\$ 29,381	\$ -	\$ -	\$ -	\$ -	\$ 29,381	
B2d - Low-Income Energy Affordability Network	\$ 40,275	\$ -	\$ -	\$ -	\$ -	\$ 40,275	
B2e - Low-Income Sponsorships & Subscriptions	\$ 9,672	\$ 2,155	\$ -	\$ -	\$ -	\$ 11,827	
C - Commercial & Industrial	\$ 840,154	\$ 223,154	\$ 11,456,472	\$ 1,980,424	\$ 516,737	\$ 15,216,941	
C1 - CAI New Construction	\$ 64,380	\$ 8,773	\$ 968,340	\$ 279,030	\$ 47,492	\$ 1,368,025	
C1a - CAI New Buildings & Major Renovations	\$ 49,556	\$ 5,213	\$ 725,100	\$ 226,440	\$ 36,530	\$ 1,057,858	
C1b - CAI Initial Purchase & End of Useful Life	\$ 14,824	\$ 3,560	\$ 243,240	\$ 42,591	\$ 10,961	\$ 315,167	
C2 - CAI Retrofit	\$ 636,212	\$ 126,920	\$ 10,618,132	\$ 1,664,393	\$ 469,246	\$ 13,516,904	
C2a - CAI Existing Building Retrofit	\$ 173,728	\$ 43,274	\$ 2,936,305	\$ 409,571	\$ 128,135	\$ 3,691,013	
C2b - CAI Small Business	\$ 348,714	\$ 56,680	\$ 5,096,199	\$ 849,956	\$ 257,198	\$ 7,408,747	
C2c - CAI Multifamily Retrofit	\$ 35,311	\$ 18,714	\$ 399,808	\$ 270,339	\$ 26,044	\$ 750,216	
C2d - CAI Upstream Lighting	\$ 78,459	\$ 8,251	\$ 1,385,820	\$ 136,527	\$ 57,868	\$ 1,666,927	
C3 - CAI Hard-to-Measure	\$ 139,552	\$ 87,461	\$ 70,000	\$ 35,000	\$ -	\$ 332,013	
C3a - CAI Statewide Marketing	\$ -	\$ 75,299	\$ -	\$ -	\$ -	\$ 75,299	
C3b - CAI Statewide Database	\$ 8,909	\$ -	\$ -	\$ -	\$ -	\$ 8,909	
C3c - CAI DOER Assessment	\$ 97,530	\$ -	\$ -	\$ -	\$ -	\$ 97,530	
C3d - CAI EAC Consultants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
C3e - CAI Sponsorships & Subscriptions	\$ 33,113	\$ 7,162	\$ -	\$ -	\$ -	\$ 40,275	
C3f - CAI Workforce Development	\$ -	\$ 5,000	\$ -	\$ 20,000	\$ -	\$ 25,000	
C3g - CAI R&D and Demonstration	\$ -	\$ -	\$ 70,000	\$ 15,000	\$ -	\$ 85,000	
GRAND TOTAL	\$ 2,376,360	\$ 759,138	\$ 30,193,530	\$ 7,565,358	\$ 1,441,817	\$ 42,336,284	

2017 Actuals through Aug 2017

Program	PA Costs					EMV	Total PA Costs	PA Costs %
	PP&A	Marketing	Incentives	STAT	EMV			
A - Residential	\$ 777,821	\$ 212,392	\$ 7,857,150	\$ 2,167,655	\$ 359,260	\$ 11,374,277	50.4%	
A1 - Residential Whole House	\$ 496,832	\$ 44,559	\$ 5,154,164	\$ 1,982,832	\$ 195,428	\$ 7,773,815	46.2%	
A1a - Residential New Construction	\$ 13,275	\$ 1,007	\$ 156,075	\$ 58,608	\$ 9,680	\$ 230,641	51.2%	
A1b - Residential Multi-Family Retrofit	\$ 22,203	\$ 1,684	\$ 129,328	\$ 59,120	\$ 17,725	\$ 371,286	30.6%	
A1c - Residential Home Energy Services - Measures	\$ 403,159	\$ 3,406	\$ 4,826,539	\$ 925,117	\$ 146,519	\$ 6,315,462	46.7%	
A1d - Residential Home Energy Services - RCS	\$ 51,599	\$ 7,300	\$ -	\$ 813,217	\$ 18,315	\$ 890,931	51.1%	
A1e - Residential Behavior/Feedback Program	\$ 6,397	\$ 500	\$ 42,161	\$ 26,269	\$ 3,189	\$ 78,716	24.1%	
A2 - Residential Products	\$ 124,348	\$ 67,482	\$ 2,032,436	\$ 224,519	\$ 163,932	\$ 2,612,618	62.1%	
A2a - Residential Heating & Cooling Equipment	\$ 56,873	\$ 12,722	\$ 441,898	\$ 84,953	\$ 26,669	\$ 631,116	31.4%	
A2b - Residential Consumer Products	\$ 11,426	\$ 15,658	\$ 259,026	\$ 68,607	\$ 16,569	\$ 371,286	96.1%	
A2c - Residential Lighting	\$ 56,049	\$ 39,102	\$ 1,331,512	\$ 70,959	\$ 120,594	\$ 1,618,216	85.4%	
A3 - Residential Hard-to-Measure	\$ 156,640	\$ 100,351	\$ 670,550	\$ 60,303	\$ -	\$ 987,844	65.3%	
A3a - Residential Statewide Marketing	\$ -	\$ 80,870	\$ -	\$ -	\$ -	\$ 80,870	72.2%	
A3b - Residential Statewide Database	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
A3c - Residential DOER Assessment	\$ 124,409	\$ -	\$ -	\$ -	\$ -	\$ 124,409	85.7%	
A3d - Residential EAC Consultants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
A3e - Residential Sponsorships & Subscriptions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
A3f - Residential HEAT Loan	\$ 12,132	\$ 4,077	\$ 670,550	\$ 51,747	\$ -	\$ 759,606	72.2%	
A3g - Residential Workforce Development	\$ -	\$ -	\$ -	\$ 7,556	\$ -	\$ 7,556	18.5%	
A3h - Residential R&D and Demonstration	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
A3i - Residential Education	\$ 152,887	\$ 15,403	\$ -	\$ -	\$ 15,403	\$ 15,403	61.6%	
B - Low-Income	\$ 123,045	\$ 13,728	\$ 860,821	\$ 134,508	\$ 54,501	\$ 1,234,316	22.7%	
B1 - Low-Income Whole House	\$ 81,560	\$ 10,528	\$ 641,969	\$ 87,981	\$ 37,031	\$ 861,068	29.1%	
B1a - Low-Income Single Family Retrofit	\$ 39,485	\$ 3,210	\$ 218,852	\$ 46,527	\$ 17,470	\$ 335,544	22.3%	
B1b - Low-Income Multi-Family Retrofit	\$ 29,041	\$ 18,662	\$ -	\$ -	\$ -	\$ 47,704	44.6%	
B2 - Low-Income Hard-to-Measure	\$ -	\$ 18,662	\$ -	\$ -	\$ -	\$ 18,662	81.3%	
B2a - Low-Income Statewide Marketing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
B2b - Low-Income Statewide Database	\$ 29,041	\$ -	\$ -	\$ -	\$ -	\$ 29,041	98.8%	
B2c - Low-Income DOER Assessment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
B2d - Low-Income Energy Affordability Network	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
B2e - Low-Income Sponsorships & Subscriptions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
C - Commercial & Industrial	\$ 567,862	\$ 89,177	\$ 2,890,631	\$ 457,124	\$ 212,053	\$ 4,216,846	27.7%	
C1 - CAI New Construction	\$ 49,899	\$ 3,050	\$ 344,546	\$ 88,325	\$ 27,092	\$ 512,912	37.5%	
C1a - CAI New Buildings & Major Renovations	\$ 38,395	\$ 2,348	\$ 210,217	\$ 71,549	\$ 17,559	\$ 340,068	32.3%	
C1b - CAI Initial Purchase & End of Useful Life	\$ 11,504	\$ 703	\$ 134,329	\$ 16,776	\$ 9,534	\$ 172,845	54.8%	
C2 - CAI Retrofit	\$ 438,380	\$ 30,140	\$ 2,546,085	\$ 366,411	\$ 184,960	\$ 3,565,977	26.4%	
C2a - CAI Existing Building Retrofit	\$ 134,935	\$ 6,230	\$ 1,282,746	\$ 116,733	\$ 36,622	\$ 1,579,266	42.8%	
C2b - CAI Small Business	\$ 228,950	\$ 16,520	\$ 1,119,790	\$ 196,094	\$ 75,914	\$ 1,637,269	22.1%	
C2c - CAI Multifamily Retrofit	\$ 23,121	\$ 1,673	\$ -	\$ 11,652	\$ 8,084	\$ 44,530	5.9%	
C2d - CAI Upstream Lighting	\$ 51,374	\$ 3,717	\$ 143,549	\$ 41,932	\$ 64,341	\$ 304,912	18.3%	
C3 - CAI Hard-to-Measure	\$ 79,582	\$ 55,987	\$ -	\$ 2,388	\$ -	\$ 137,958	41.6%	
C3a - CAI Statewide Marketing	\$ -	\$ 55,987	\$ -	\$ -	\$ -	\$ 55,987	74.4%	
C3b - CAI Statewide Database	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
C3c - CAI DOER Assessment	\$ 79,582	\$ -	\$ -	\$ -	\$ -	\$ 79,582	81.0%	
C3d - CAI EAC Consultants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
C3e - CAI Sponsorships & Subscriptions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
C3f - CAI Workforce Development	\$ -	\$ -	\$ -	\$ 2,388	\$ -	\$ 2,388	9.6%	
C3g - CAI R&D and Demonstration	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%	
GRAND TOTAL	\$ 1,497,769	\$ 333,969	\$ 11,606,601	\$ 2,759,286	\$ 625,814	\$ 16,825,439	39.8%	

as Percent

Agenda Action Request Cape Light Compact JPE Governing Board Meeting Date: 10/11/17

**Vote to Provide Notice to Members Regarding Specific Amendments
to the Joint Powers Agreement**

- Aquinnah*
- Barnstable*
- Bourne*
- Brewster*
- Chatham*
- Chilmark*
- Dennis*
- Dukes County*
- Eastham*
- Edgartown*
- Falmouth*
- Harwich*
- Mashpee*
- Oak Bluffs*
- Orleans*
- Provincetown*
- Sandwich*
- Tisbury*
- Truro*
- Wellfleet*
- West Tisbury*
- Yarmouth*

Proposed Motion(s)

- 1) *I move that the Governing Board vote, consistent with Article XV of the Joint Powers Agreement, notify the Cape Light Compact JPE members of the proposed amendments to the Joint Powers Agreement as set forth in the redlined JPA distributed to the Governing Board at this meeting; and that CLCJPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.*

A redlined version of the Joint Powers Agreement is attached. Consistent with previous Board discussion and vote, the proposed amendments relate to the following: effective date of the JPA, operational transfer date, minor clarifying edits, and scriveners errors.

Record of Governing Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition



ATTORNEYS AT LAW

The firm has attorneys also admitted
to practice in District of Columbia,
Idaho, New York and Vermont

271 WAVERLEY OAKS ROAD, SUITE 203
WALTHAM, MASSACHUSETTS 02452
617.244.9500

FACSIMILE: 802.419.8283
E-MAIL: bckboston@bck.com
WEBSITE: www.bck.com

MEMORANDUM

TO: Cape Light Compact JPE Governing Board
FROM: BCK Law, P.C./EMO
DATE: September 8, 2017
RE: Amendments to the JPA

I. BACKGROUND

At its April 12, 2017 meeting, the Governing Board of the Cape Light Compact JPE (the "Compact") voted that at a future meeting date, the Governing Board would vote to amend its original Joint Powers Agreement (the "JPA"). More specifically, the Governing Board voted that the amendments would change the effective date of the joint power entity's legal existence, to insert July 1, 2017 as the operational transfer date of the JPA as established by the Governing Board, and would correct scrivener's errors. This memorandum discusses the process for effectuating the proposed amendments. This memorandum also recommends including a new subsection in the JPA in the Article dealing with transition matters as it does not accurately reflect how the transition has been implemented due to the operational transfer date being moved up to July 1, 2017.

II. LEGAL ANALYSIS

A. Power to Amend.

As a general matter, the JPA provides that the power to amend the JPA lies with the Governing Board, with certain exceptions.

Article XV of the JPA dealing with amendments reads as follows in pertinent part:

ARTICLE XV: AMENDMENT; REVISION OF EXHIBITS

Except as set forth below in the following paragraph, this Agreement may be altered, amended, or repealed, in whole or in part, by the affirmative vote of Directors of Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE. Notice of proposed amendments shall be sent to Members at least thirty

VERMONT OFFICE:
P.O. Box 205
Woodstock, Vermont 05091
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Facsimile: 802.419.8283
E-Mail: bckvt@bck.com

MOUNTAIN STATES OFFICE:
P.O. Box 1527
Ketchum, Idaho 83340
Telephone: 617.584.8338
Facsimile: 802.419.8283
E-Mail: bckidaho@bck.com

(30) days before any Governing Board vote on such amendments in accordance with Article XIX(D) (Notices).

Certain amendments to this Agreement and certain actions of the Cape Light Compact JPE shall require the affirmative approval of the Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE: (i) Article I(B) (Eligibility for Membership; Addition of Members); and (ii) Article I(D) (Liability of Members).

The amendments that are currently being proposed clearly are within the Governing Board's power to amend the JPA. As discussed below, there are limited circumstances in which the Municipal Members may amend the JPA. None of the amendments being contemplated falls into the narrow exceptions.

B. Rights of Municipal Members with Respect to Certain Amendments.

As set forth above, the JPA provides that “[c]ertain amendments to this Agreement and certain actions of the Cape Light Compact JPE shall require the affirmative approval of the Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE: (i) Article I(B) (Eligibility for Membership; Addition of Members); and (ii) Article I(D) (Liability of Members).”

The cross-referenced provisions provide as follows:

Article I(B) Eligibility for Membership; Addition of Members.

Municipal members of the Compact are eligible for full membership in the Cape Light Compact JPE. Municipal members of the Compact who become members of the Cape Light Compact JPE shall be referred to as “Municipal Members.” Barnstable County and Dukes County may participate as limited members as set forth in Article I(E) (County Members) below. This subsection may not be amended unless such amendment obtains the affirmative approval of the Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE. Subject to the deadlines set forth in Article XVIII(C) (Transfer of Operations), a municipal member of the Compact may become a member of the Cape Light Compact JPE by duly executing this Agreement in accordance with the Joint Powers Statute and delivering an executed copy of this Agreement and a copy of the authorization, vote or resolution as required by the Joint Powers Statute to the Cape Light Compact JPE. The Members acknowledge that membership in the Cape Light Compact JPE may change by the addition and/or withdrawal of Members. The Members agree to participate with such other Members as may later be added. The Members also agree that the withdrawal by a Member shall

not affect this Agreement or the remaining Members' continuing obligations under this Agreement.

Article I(D) Liability of Members

Members shall not be liable for the acts or omissions of other Members or the region or the Cape Light Compact JPE created by this Agreement, unless the Member has agreed otherwise in this Agreement, or as may be provided for in a separate contract between the Member and the Cape Light Compact JPE. This subsection may not be amended unless such amendment obtains the affirmative approval of the Municipal Members whose population is at least equal to fifty percent (50%) of the combined population of all of the Municipal Members of the Cape Light Compact JPE.

This Agreement is not intended to impose any independent financial liabilities on the Members. Each Member shall remain responsible for its own debts and other financial liabilities, except as specifically provided herein, or as may be provided for in a separate contract between a Member and the Cape Light Compact JPE.

Attached to this memorandum as Exhibit A is a blackline of the proposed amendments to the JPA. Neither of the foregoing subsections is being amended.

C. Notice Provisions.

As noted above, while the power to amend the JPA generally lies with the Governing Board, the Governing Board is required to provide advance notice to the Members at least thirty (30) days prior to taking such vote. See Article XV of the JPA quoted in Section A above. Note that the Municipal Members do not have a right to veto or override the amendments, but the thirty (30) day period does provide them with an opportunity to review the proposed amendments with municipal counsel if necessary.

III. RECOMMENDATIONS

BCK Law, P.C. ("BCK") recommends that at the September Governing Board meeting, a vote be taken to provide notice to the Members of the proposed amendments as follows:

1. Article I(A) of the JPA will be amended to change the Effective Date to April 12, 2017. More specifically:

In the first and second sentences, the following words will be deleted:

"such date as this Agreement is executed by at least two (2) municipal members of the Compact after authorization by each municipal member's Board of Selectmen or

other governing body as set forth in G.L. c. 40, §4A½ (as may be amended from time to time, the "Joint Powers Statute"). Such date shall be referred to herein as"

The words "April 12, 2017" will be inserted in its place.

2. Article XVIII of the JPA will be amended through insertion of a new subsection to clarify that certain provisions in such Article have no future operational effect as the transition has been completed and to state that the operational transfer date was July 1, 2017.¹ More specifically, the following subsection (E) will be inserted:

E. Completion of Transition and Reorganization

The foregoing subsections (A) – (D) have no future operational effect as of [November 8, 2017] the effective date of this Agreement. They remain in this Agreement as a placeholder and for historical context. The operational transfer date was July 1, 2017^{FN}. On that date, the Cape Light Compact JPE became the legal and operational successor to the Compact.

¹ On April 12, 2017, the Governing Board voted to establish the operational transfer date as July 1, 2017.

3. Certain scrivener's/typographical errors in the JPA will be corrected and other clarifying edits will be made. More specifically:
 - (i) After the reference to G.L. c. 40, § 4A½ in the last recital, the following words "(as may be amended from time to time, the "Joint Powers Statute")" will be inserted.
 - (ii) In last sentence of Article I(E), the word "Municipal" will be deleted and replaced with "County."
 - (iii) In the third sentence of Article V(C), the words "Board of Directors" will be deleted and replaced with "Governing Board."
 - (iv) In the third sentence of the second paragraph of Article V(G)(2), the word "Board" will be inserted after the word "Governing."
 - (v) In the third sentence of Article VI(E), the words "or County Representative" will be inserted after the word "Directors."
 - (vi) In the second sentence of the second paragraph of Article XI, the words "the Members"" will be replaced with the words "each Member's."
 - (vii) In Article XIX(D), the Compact's mailing address will be changed to 261 Whites Path, Unit 4, South Yarmouth, MA 02664.
 - (viii) In the third sentence of Article XIX(E), the punctuation error in the word "shall" will be corrected.
 - (ix) In the first sentence of Article XIX(I), the word "more" will be inserted after the words "which may be one or."

¹ BCK notes that the JPA does not need to be formally amended in order for the operational transfer date to be effective as of July 1, 2017 as the original language in the JPA vested the power in the Governing Board to establish the date. However, going forward, for administrative convenience and clarity, it makes sense to officially amend the JPA to incorporate the Governing Board vote. To be clear, the operational transfer date was established as of July 1, 2017 effective as of the April 12, 2017 Governing Board vote on the matter.

4. In order to effectuate the foregoing amendments, the JPA will be replaced with the First Amended and Restated dated as of [November 8, 2017] and the recitals will be amended to reflect the second iteration of the JPA.

[Red text denotes proposed new language; strikethrough text denotes proposed deletions.]

**FIRST AMENDED AND RESTATED
JOINT POWERS AGREEMENT
OF THE
CAPE LIGHT COMPACT JPE**

(December 13, 2017)

[Note: The JPA date will be the first Governing Board meeting date following the thirty day notice to member period as which the vote on amendments will be taken. November 8, 2017 is the current anticipated date.]

This **First Amended and Restated** Joint Powers Agreement (“Agreement”) is effective as of ~~the date set forth in Article I(A) (Effective Date; Formation) below~~ **December 13, 2017**, and is entered into by and among the municipalities and counties listed on Exhibit A hereto (the “Members”), pursuant to the authority of Massachusetts General Laws Chapter 40, §4A ½ and G.L. c. 164, §134.

WHEREAS, the Massachusetts Restructuring Act of 1997 (the “Act”) was enacted during a period where Federal Law allowed for the restructuring of existing electric utilities into separate generation, transmission and distribution companies and, accordingly, the Act set forth a framework for the competitive supply of electric generation service to Massachusetts electric customers and allowed electric customers to choose their electric power supplier; and

WHEREAS, the Cape Light Compact (“Compact”) was entered into with the County of Barnstable, County of Dukes County and the municipalities legally joining therein, pursuant to the authority of Massachusetts General Laws Chapter 40, §4A, through an original Inter-Governmental Agreement effective as of October, 1997 which has been amended from time to time (most recently in November of 2015) and is due to expire in October of 2022 (the “IGA”); and

WHEREAS, under the authority of G.L. c. 164, §134, G.L. c. 25A, §6 and pursuant to the original Inter-Governmental Agreement, adopted October, 1997, as amended, the Compact developed a municipal aggregation plan, setting forth the structure, operations, services, funding and policies of the Compact, approved in D.T.E. 00-47 (August 10, 2000) and approved as updated in D.P.U. 14-69 (May 1, 2015; May 18, 2015); and

WHEREAS, the Compact currently operates a municipal aggregation competitive supply program pursuant to a municipal aggregation plan, setting forth the structure, operations, services, funding and policies of the Compact as most recently approved and updated in D.P.U. 14-69 (May 1, 2015; May 18, 2015) which provides electric power supply on an opt-out basis to

customers across all customer classes located on Cape Cod and Martha's Vineyard and the Compact also provides comprehensive energy efficiency services to Cape Cod and Martha's Vineyard through the Cape Light Compact Energy Efficiency Plan; and

WHEREAS, it is in the best interests of the Compact's members to transfer its administrative, fiscal and operational functions to a new independent legal entity, a joint powers entity, prior to expiration of the IGA; and

WHEREAS, members of joint powers entities are afforded express liability protection from the acts and omissions of the entity and the other participating members; and

WHEREAS, joint powers entities are conferred many express powers by law that are not available to the Compact, including the ability to employ staff; and

NOW THEREFORE, the Members hereby enter into this Agreement and, pursuant to G.L. c. 40, § 4A½ (as may be amended from time to time, the "Joint Powers Statute"), hereby form a body politic and corporate.

ARTICLE I: EFFECTIVE DATE; FORMATION; MEMBERSHIP; LIABILITY OF MEMBERS

A. Effective Date; Formation.

This Agreement shall become effective and the joint powers entity shall exist as a separate public entity on such date as this Agreement is executed by at least two (2) municipal members of the Compact after authorization by each municipal member's Board of Selectmen or other governing body as set forth in G.L. c. 40, § 4A½ (as may be amended from time to time, the "Joint Powers Statute"). Such date shall be referred to herein as **April 12, 2017** (the "Effective Date.") Each Municipal Member shall provide a duly authorized signature page for attachment hereto. There is formed as of the Effective Date a separate public entity named the Cape Light Compact JPE. The Cape Light Compact JPE shall provide notice to the Members of the Effective Date. The Cape Light Compact JPE shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated or expires in accordance with Article XVI (Term; Termination; Withdrawal), subject to the rights of the Members to withdraw from the Cape Light Compact JPE.

B. Eligibility for Membership; Addition of Members.

Municipal members of the Compact are eligible for full membership in the Cape Light Compact JPE. Municipal members of the Compact who become members of the Cape Light Compact JPE shall be referred to as "Municipal Members." Barnstable County and Dukes County may participate as limited members as set forth in Article I(E) (County Members) below. This subsection may not be amended unless such amendment obtains the affirmative approval of the Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE. Subject to the deadlines set forth

in Article XVIII(C) (Transfer of Operations), a municipal member of the Compact may become a member of the Cape Light Compact JPE by duly executing this Agreement in accordance with the Joint Powers Statute and delivering an executed copy of this Agreement and a copy of the authorization, vote or resolution as required by the Joint Powers Statute to the Cape Light Compact JPE. The Members acknowledge that membership in the Cape Light Compact JPE may change by the addition and/or withdrawal of Members. The Members agree to participate with such other Members as may later be added. The Members also agree that the withdrawal by a Member shall not affect this Agreement or the remaining Members' continuing obligations under this Agreement.

C. Region.

The region within which the powers and duties provided in this Agreement shall be exercised is Barnstable County and Dukes County. The foregoing sentence shall not be construed as a limitation on the Cape Light Compact JPE's powers in any way, including, but not limited to, its power to offer statewide programs or participate in statewide proceedings (as such programs or proceedings may affect the region), or its power to contract with persons or entities outside the Commonwealth of Massachusetts.

D. Liability of Members.

Members shall not be liable for the acts or omissions of other Members or the region or the Cape Light Compact JPE created by this Agreement, unless the Member has agreed otherwise in this Agreement, or as may be provided for in a separate contract between the Member and the Cape Light Compact JPE. This subsection may not be amended unless such amendment obtains the affirmative approval of the Municipal Members whose population is at least equal to fifty percent (50%) of the combined population of all of the Municipal Members of the Cape Light Compact JPE.

This Agreement is not intended to impose any independent financial liabilities on the Members. Each Member shall remain responsible for its own debts and other financial liabilities, except as specifically provided herein, or as may be provided for in a separate contract between a Member and the Cape Light Compact JPE.

E. County Members.

Barnstable County and Dukes County may participate as limited members of the Cape Light Compact JPE and shall be referred to herein as the "County Members," or collectively with the Municipal Members as the "Members." The County Members shall not be permitted to vote on matters concerning aggregated power supply, energy efficiency plans and programs or other such matters committed to municipal aggregators pursuant to any provision of the Massachusetts General Laws. Other limitations on the participation rights of County Members are set forth elsewhere in this Agreement.

A county member of the Compact may become a member of the Cape Light Compact JPE by duly executing this Agreement in accordance with the Joint Powers Statute. Each County ~~Municipal~~ Member shall provide a duly authorized signature page for attachment hereto.

ARTICLE II: GOALS; POLICIES; PURPOSES

The Cape Light Compact JPE's goals, policies and purposes include, without limitation, the following:

- a) providing the basis for aggregation of all consumers on a non-discriminatory basis;
- b) negotiating the best terms and conditions for electricity supply and transparent pricing;
- c) exploring all available options for negotiating the best terms and conditions for electricity supply and the development of renewable energy resources, including, without limitation, the formation of and/or membership in a co-operative organization to purchase or produce energy or renewable energy certificates ("RECs") or both, on a long-term basis;
- d) providing equal sharing of economic savings based on current electric rates and/or cost-of-service ratemaking approved by the Department of Public Utilities or its successor ("DPU");
- e) providing and enhancing consumer protection and options for service under contract provisions and to allow those consumers who choose not to participate to opt-out;
- f) improving quality of service and reliability;
- g) encouraging environmental protection through contract provisions;
- h) utilizing and encouraging renewable energy development to the extent practicable through contract provisions, demonstration projects and state mandated system benefit charges for renewable energy;
- i) administering an energy efficiency plan that advances consumer awareness and the adoption of a wide variety of energy efficiency measures and that also utilizes and encourages demand side management, all through contract provisions, demonstration projects and the use of state mandated system benefit charges for energy efficiency and other related charges and funds;
- j) advancing specific community goals that may be selected from time to time, such as placing utility wires underground;
- k) providing full public accountability to consumers; and

l) utilizing municipal and other powers and authorities that constitute basic consumer protection to achieve these goals.

The Cape Light Compact JPE shall accomplish the foregoing purposes through the following: (i) operation of energy efficiency programs; (ii) developing or promoting the development of renewable energy resources and projects; (iii) procuring competitive electric supply for its customers; (iv) procuring RECs; (v) participating in regulatory and legislative proceedings; and (vi) consumer advocacy.

ARTICLE III: POWERS OF THE CAPE LIGHT COMPACT JPE

The Cape Light Compact JPE is a body politic and corporate with power to:

- a) sue and be sued;
- b) make, negotiate and execute contracts and other instruments necessary for the exercise of the powers of the region, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct or individual financial obligations on any Member until approved by such individual Member, as the case may be;
- c) make, amend and repeal policies and procedures relative to the operation of the region in accordance with the Joint Powers Statute and other limitations as may be applicable under state law;
- d) receive and expend funds, including funds derived from the state mandated system benefit charges and to use such funds in accordance with state law;
- e) apply for and receive grants from the commonwealth, the federal government and other public and private grantors;
- f) submit an annual report to each Member, which shall contain a detailed audited financial statement and a statement showing the method by which the annual charges assessed against each governmental unit (if any) were computed;
- g) borrow money, enter into long or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purposes of the Cape Light Compact JPE, provided, however, that such borrowing, loans or mortgages shall be consistent with this Agreement, standard lending practices and G.L. c. 44, §§16-28;
- h) subject to G.L. c. 30B (or other applicable procurement laws), enter into contracts for the purchase of supplies, materials and services and for the purchase or lease of land, buildings and equipment, as considered necessary by the Governing Board;

- i) as a public employer, to hire staff;
- j) to plan projects;
- k) to implement projects and/or conduct research;
- l) adopt an annual budget and to direct the expenditure of funds made available to the Cape Light Compact JPE by grant or contribution from public and private sector entities, or on account of any contract negotiated or administered by the Cape Light Compact JPE;
- m) to acquire property by gift, purchase or lease;
- n) to construct equipment and facilities;
- o) to apply for and receive contributions and other such financial assistance from public and private sector entities or to receive amounts derived as a portion of the savings on, or as a surcharge, dedicated mills/kilowatt hour fee or other such charge as part of any electric energy purchase or similar contract negotiated and/or administered by the Cape Light Compact JPE and, to the extent required herein, agreed to by each Member to be financially bound thereby;
- p) to engage consultants, attorneys, technical advisors and independent contractors;
- q) to adopt bylaws to govern its internal affairs;
- r) to reimburse persons who have advanced funds;
- s) to enforce agreements or otherwise prosecute claims on behalf of Members and coordinate their defense in any claim made against them relating to any agreement or other matter related to the Cape Light Compact JPE;
- t) to invest funds;
- u) to procure insurance;
- v) to obtain project-related financing through any mechanism such as the federal Clean Renewable Energy Bond program or similar or successor programs, and other financing options;
- w) to contract with an agent, including, without limitation, a regional government or a Member, to manage or accomplish any of its functions or objectives;
- x) to enter into agreements with state, quasi-state, county and municipal agencies, cooperatives, investor-owned utilities and other private entities, all as is convenient or necessary to manage or accomplish any of the Cape Light Compact JPE's functions or objectives; and

y) any such other powers as are necessary to properly carry out its powers as a body politic and corporate.

ARTICLE IV: SERVICES; ACTIVITIES; UNDERTAKINGS

The services, activities or undertakings to be jointly performed within the region are as follows: (i) power supply procurement; (ii) offering of energy efficiency programs; (iii) participation in regulatory and legislative proceedings; (iv) education of the public and government regarding energy issues; and (v) such other services, activities, and undertakings as set forth in Article II (Goals, Policies; Purposes).

ARTICLE V: GOVERNING BOARD

A. Powers of the Governing Board.

In accordance with the Joint Powers Statute, the Cape Light Compact JPE shall be governed by a board of directors consisting of the Directors from the Municipal Members (the "Governing Board"). The Governing Board shall be responsible for the general management and supervision of the business and affairs of the Cape Light Compact JPE, except with respect to those powers reserved to the Members by law or this Agreement. The Governing Board shall coordinate the activities of the Cape Light Compact JPE and may establish any policies and procedures necessary to do so. The Governing Board may from time to time, to the extent permitted by law, delegate any of its powers to committees, subject to such limitations as the Governing Board may impose. The Governing Board may delegate to the Executive Committee (as set forth below in Article V(C) (Executive Committee) the powers to act for the Governing Board between regular or special meetings of the Governing Board. The Governing Board may designate persons or groups of persons as sponsors, benefactors, contributors, advisors or friends of the Cape Light Compact JPE or such other title as they may deem appropriate and as is consistent with applicable law.

The Governing Board shall establish and manage a fund or funds to which all monies contributed by the Members, and all grants and gifts from the federal or state government or any other source shall be deposited.

The Governing Board may borrow money, enter into long or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purposes of the Cape Light Compact JPE. The borrowing, loans or mortgages shall be consistent with this Agreement, standard lending practices and G.L. c. 44, §§ 16-28. The Governing Board may, subject to G.L. c. 30B (or other applicable procurement laws), enter into contracts for the purchase of supplies, materials and services and for the purchase or lease of land, buildings and equipment, as considered necessary by the Governing Board.

B. Number, Qualifications and Term of Office.

The Governing Board shall consist of one Director for each Municipal Member. In the absence of a Director, his or her alternate shall be entitled to vote and otherwise exercise all of the powers of such Director. The Directors, and alternate directors, shall be selected by each Municipal Member in accordance with its municipal appointment rules and procedures and for such term as may be established by their respective appointing authorities. Except as hereinafter provided, the Directors (and alternates) shall hold office until the next selection of Directors (and alternates) by each such Member and until his or her successor is selected. Directors shall be subject to any limitations or direction established by their appointing authorities. The Cape Light Compact JPE shall not be responsible for interpreting or enforcing any such limitations that may be established by the appointing authorities. Further, any action on the part of the Cape Light Compact JPE shall not be rendered void or invalid as a result of a Director's failure to abide by any such limitations. The sole remedy of an appointing authority in such instance is to remove and replace such Director.

Each County Member may appoint a representative to attend Governing Board meetings (the "County Representative"). County Representatives may participate in Governing Board discussions and nonbinding Governing Board votes.

C. Executive Committee.

At such time as there are more than five (5) Municipal Members, there shall be an Executive Committee composed of no less than five (5) Directors elected by the Governing Board from among the Directors appointed by the Municipal Members. The Executive Committee shall be selected by majority vote of all of the Directors of the Municipal Members. In addition to the delegation of powers set forth in Article V(A) (Powers of Governing Board), the powers of the ~~Board of Directors~~ Governing Board shall be delegated to the Executive Committee in the following circumstances: (i) when a quorum of the full Governing Board is not present for a regularly scheduled meeting; and (ii) exigent circumstances require Governing Board action, and there is insufficient time to convene a regular meeting of the Governing Board.

The Executive Committee shall conduct its business so far as possible in the same manner as is provided by this Agreement by the Governing Board. A majority of the Executive Committee shall constitute a quorum. The Executive Committee shall keep records of its meetings in form and substance as may be directed by the Governing Board and in accordance with the Open Meeting Law, G.L. c. 30A, §§18-25, and other applicable law.

Any Director who is not a member of the Executive Committee may attend and participate in Executive Committee meetings, but may not vote. Attendance may be in-person or by telephone.

From time to time upon request and at each meeting of the Governing Board ~~of Directors~~, the Executive Committee shall make a full report of its actions and activities since the last meeting of the Governing Board.

If two (2) members of the Executive Committee object to the affirmative action taken by

the Executive Committee, they may appeal such decision within forty-eight (48) hours of such action or vote by requesting a special meeting of the Governing Board in accordance with Article VI(C) (Special Meetings) which must occur as soon as possible but no later fourteen (14) days after the Executive Committee action if the original Executive Committee action was necessitated by exigent circumstances. At such special meeting, the Governing Board may overturn the action or vote of the Executive Committee by a two-thirds vote of the Directors. A vote by the Executive Committee to take no action cannot be appealed.

D. Manner of Acting and Quorum.

The Governing Board shall act by vote of a majority of the Directors of the Municipal Members present and voting at the time of the vote. Unless altered by the Governing Board in accordance with this Agreement, each Municipal Member shall be entitled to select one (1) Director whose vote shall be equal in weight to the Director of any other Municipal Member, except as expressly set forth in the succeeding paragraphs. Directors may participate in meetings remotely in accordance with the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. In accordance with 940 C.M.R. 29.10 and the Open Meeting Law, G.L. c. 30A, §§18-25, a simple majority of the Directors of the Municipal Members must be physically present to attain a quorum. County Representatives shall not count towards a quorum as they have limited participation rights. Directors abstaining from voting shall be counted for meeting quorum purposes, but their votes shall not count with respect to the matters they abstain from voting on. By way of example, if ten (10) Directors from the Municipal Members are present and four (4) abstain from voting, and the remaining Directors split their votes four (4) in favor, two (2) against, the motion would pass.

While a quorum is present, unless another provision is made by law, this Agreement or by the Cape Light Compact JPE's own rules, all business shall be determined by a majority vote of the Directors of the Municipal Members then present and voting. Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could bear in a direct and material fashion on the financial interests of the Municipal Members shall be taken by a weighted vote in which the vote of each Director shall be weighted in the same proportion as the population of the Municipal Member such Director represents bears to the whole population of the Municipal Members of the Cape Light Compact JPE, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and, in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission. In case of a dispute as to whether a vote shall be taken on a weighted basis as set forth in this paragraph or on a one (1) town, one (1) vote basis as set forth in the preceding paragraph of this subsection, the determination shall be made by weighted vote as set forth herein. Exhibit B sets forth the population for each Municipal Member, and provides an example of a vote taken in accordance with weighted voting procedures.

E. Rules and Minutes; Meeting Announcements.

The Governing Board shall determine its own rules and order of business, unless otherwise provided by law or this Agreement. The Governing Board shall also provide for the

keeping of minutes of its proceedings in accordance with the Open Meeting Law. All regular and Executive Committee meeting announcements shall be sent to all Directors and County Representatives.

F. Voting.

If requested by any Director and as may be required by law, a vote of the body shall be taken by a roll call and the vote of each Director shall be recorded in the minutes, provided, however, if any vote is unanimous only that fact need be recorded. Pursuant to the Open Meeting Law, roll call votes are required for the following: (i) a vote to go into executive session; (ii) votes taken in executive session; and (iii) votes taken in open session when one or more Directors is participating remotely.

G. Resignation and Removal.

1. Resignation.

Any Director or County Representatives (or their alternates) may resign at any time upon written notice to the remaining Governing Board. A Director may resign from the Executive Committee and still keep his or her position as a Director. The resignation of any Director (or alternate) or resignation from the Executive Committee shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

2. Removal.

Any Director (or alternate) may be removed at any time with or without cause by his or her appointing authority. The Governing Board may send a notice to an appointing authority requesting removal of a Director for cause as specified in such notice. For cause removal shall include, but not be limited to, disclosure of documents exempt from disclosure under the Massachusetts Public Records Law in violation of G.L. c. 268A, §23(c)(2), or disclosure of matters discussed during executive session prior to release of executive session minutes.

A Director from a Municipal Member who fails to attend at least half of the Directors' meetings annually shall be automatically removed, unless such Director has requested an exemption from this requirement due to special circumstances (i.e., prolonged illness, conflicting work/personal commitments). Annual attendance shall be calculated on a calendar year basis. The secretary (or other officer of as may be designated by the Governing Board) shall report on the annual attendance of Directors as requested by the Governing Board. In each vote implementing the removal of a Director, the Governing Board shall state an official removal date, which shall generally take place within ninety (90) to one hundred and eighty days (180) in order to give the Municipal Member who appointed such Director an opportunity to replace such Director. A Municipal Member whose Director is removed shall be given immediate notice of such removal. A Director who has been removed or a Municipal Member whose Director has been removed may petition the Governing Board for reinstatement and he or she shall be given

notice and an opportunity to be heard before the Governing Board on such matter within ninety (90) days of such request.

H. Vacancies.

1. Vacancies on the Governing Board.

The remaining Directors may act despite a vacancy in the Governing Board. A vacancy in the Governing Board of a Director from a Municipal Member shall be promptly filled, but in no case more than sixty (60) days thereafter, by the appointing authority of the Municipal Member which originally selected such Director. Each Director chosen to fill a vacancy on the Governing Board shall hold office until his or her successor shall be appointed and qualified by his or her appointing authority. Insofar as there is no Director then in office representing a Municipal Member, the alternate shall act in his or her stead. If a Municipal Member has not appointed an alternate, the Director position shall be considered vacant for that particular Municipal Member and it shall not be counted for quorum purposes under Article V(D) (Manner of Acting and Quorum) or for the purposes of the Open Meeting Law until the Municipal Member fills the vacancy and/or appoints an alternate.

2. Vacancies on the Executive Committee.

Vacancies on the Executive Committee shall be filled in the same manner as the position was originally filled.

3. No Right to Compensation.

No Director shall receive an additional salary or stipend for his or her service as a Governing Board member. Directors are not eligible for health insurance or other benefits provided to employees of the Cape Light Compact JPE.

ARTICLE VI: MEETINGS OF THE GOVERNING BOARD

A. Place.

Meetings of the Governing Board, including meetings of the Executive Committee, shall be held at such place within Barnstable County or Dukes County, or at such other place as may be named in the notice of such meeting.

B. Regular Meetings.

Regular meetings may be held at such times as the Governing Board may fix but no less frequently than quarterly.

C. Special Meetings.

Special meetings of the Governing Board may be called by the chairman or any other officer or Director at other times throughout the year.

D. Notice.

In addition to the personal notice to Directors and County Representatives set forth in Article V(E) (Rules and Minutes; Meeting Announcements), public notice of any regular meeting shall be made in compliance with the Open Meeting Law and other applicable law. Forty-eight (48) hours' notice to Directors and County Representatives by mail, electronic mail, telegraph, telephone or word of mouth shall be given for a special meeting unless shorter notice is adequate under the circumstances, provided, however, that public notice of such special meeting has been made in compliance with applicable law. A notice or waiver of notice need not specify the purpose of any special meeting. Personal notice of a meeting need not be given to any Director or County Representative if a written waiver of notice, executed by him or her before or after the meeting, is filed with the records of the meeting, or to any Director or County Representative who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her.

E. Vote of Interested Directors.

A Director or County Representative who is a member, stockholder, trustee, director, officer or employee of any firm, corporation or association with which the Cape Light Compact JPE contemplates contracting or transacting business shall disclose his or her relationship or interest to Governing Board. No Director or County Representative so interested shall deliberate or vote on such contract or transaction. The affirmative vote of a majority of the disinterested Directors or County Representative present and voting hereof shall be required before the Cape Light Compact JPE may enter into such contract or transaction.

In case the Cape Light Compact JPE enters into a contract or transacts business with any firm, corporation or association of which one or more of its Directors is a member, stockholder, trustee, director, officer, or employee, such contract or transaction shall not be invalidated or in any way affected by the fact that such Director or County Representative have or may have interests therein which are or might be adverse to the interests of the Cape Light Compact JPE. No Director or County Representative having disclosed such adverse interest shall be liable to the Cape Light Compact JPE or to any creditor of the Cape Light Compact JPE or to any other person for any loss incurred by it under or by reason of any such contract or transaction, nor shall any such Director or County Representative be accountable for any gains or profits to be realized thereon.

Nothing contained herein shall affect the compliance of any Director or County Representative or the Governing Board or the Cape Light Compact JPE with G.L. c. 268A, as set forth in Article VIII (G.L. c. 268A), below.

ARTICLE VII: OPEN MEETING LAW; EXECUTIVE SESSIONS

The meetings of the Governing Board are subject to the Massachusetts law governing open meetings of governmental bodies and governmental boards and commissions, including the Open Meeting Law. The Governing Board is therefore required to maintain accurate records of its meetings, setting forth the date, time, place, Directors present or absent and action taken at each meeting, including executive sessions.

In accordance with the Open Meeting Law, the Governing Board may hold an executive session after an open meeting has been convened and a recorded roll call vote has been taken to hold an executive session. Executive sessions may be held only for the purposes specifically enumerated in the Open Meeting Law, including, but not limited to, to discuss energy-related trade secrets or confidential information, or litigation strategy.

Matters discussed in executive sessions of the Governing Board must be treated as confidential, and disclosure of such matters is a violation of G.L. c. 268A, §23(c)(2). A violation of confidentiality may lead to disciplinary action as established by the Governing Board, including a request for removal of a Director in accordance with Article V(G)(2) (Removal).

ARTICLE VIII: G.L. c. 268A

Directors, County Representatives, officers and employees of the Cape Light Compact JPE are subject to the provisions of the Massachusetts Conflict of Interest Law, G.L. c. 268A, and shall act at all times in conformity therewith. Public employees who work for two (2) or more public entities may find that each agency has an interest in a particular matter. Any employee, officer, County Representative or Director may request free legal advice from the State Ethics Commission about how the Conflict of Interest Law applies to them in a particular situation. This process is explained at <http://www.mass.gov/ethics/commission-services/request-advice.html>. Directors may also request a formal conflict of interest opinion from town counsel pursuant to G.L. c. 268A, §22.

In accordance with G.L. c. 268A, §23(c)(2), Directors, County Representatives, officers and employees of the JPE are prohibited from improperly disclosing materials or data that are exempt from disclosure under the Public Records Law, and were acquired by him or her in the course of his or her official duties, and may not use such information to further his or her personal interest.

ARTICLE IX: OFFICERS; STAFF; SERVICE PROVIDERS

A. Election.

At its first meeting of the calendar year, the Governing Board shall elect a chairman, vice chairman, treasurer, secretary and business officer and such other officers as the Governing Board shall determine. The term of office for those so elected shall be one (1) year and until their respective successors are elected and qualified. Other than the treasurer and business officer, all officers must be a Director and, upon selection of a successor Director by such officer's appointing Member, such officer shall immediately tender notice thereof to the Cape

Light Compact JPE and the Governing Board shall select a replacement among the various Directors from the Municipal Members for the remaining term of such officer.

B. Qualifications.

Two (2) or more offices may be held by the same person, except the offices of chairman, secretary or treasurer.

C. Vacancies.

Any vacancy occurring among the officers, however caused, may be filled by the Directors from the Municipal Members for the unexpired portion of the term.

D. Removal and Resignation of Officers.

1. Removal.

Any officer of the Cape Light Compact JPE may be removed from his or her respective offices with or without cause by resolution adopted by a majority of the Directors present and voting at any regular or special meeting of the Governing Board.

2. Resignation.

Any officer may resign at any time by giving his or her resignation in writing to the chairman, treasurer, secretary, the Cape Light Compact JPE Administrator, or Director of the Cape Light Compact JPE. An officer may resign as officer without resigning from other positions in the Cape Light Compact JPE, including positions on the Executive Committee or as Director.

E. Sponsors, Benefactors, Contributors, Advisors, Friends of the Cape Light Compact JPE.

Persons or groups of persons designated by the Governing Board as sponsors, benefactors, contributors, advisors or friends of the Cape Light Compact JPE or such other title as the Governing Board deems appropriate shall, except as the Governing Board shall otherwise determine, serve in an honorary capacity. In such capacity they shall have no right to notice of or to vote at any meeting, shall not be considered for purposes of establishing a quorum and shall have no other rights or responsibilities.

F. Chairman.

The chairman shall preside at all meetings at which he or she is present. Unless otherwise directed by the Governing Board, all other officers shall be subject to the authority and supervision of the chairman. The chairman also shall have such other powers and duties as customarily belong to the office of chairman or as may be designated from time to time by the

Governing Board.

G. Vice Chairman.

The vice chairman shall assist the chairman and preside at meetings at which the chairman is not present. The vice chairman also shall have such other powers and duties as customarily belong to the office of vice chairman or as may be designated from time to time by the Governing Board.

H. Treasurer and Business Officer.

The Governing Board shall appoint a treasurer who may be a treasurer of one of the Municipal Members. No Director or other employee of the Cape Light Compact JPE shall be eligible to serve concurrently as treasurer. The treasurer, subject to the direction and approval of the Governing Board, shall be authorized to receive, invest and disburse all funds of the Cape Light Compact JPE without further appropriation. The treasurer shall give bond for the faithful performance of his or her duties in a form and amount as fixed by the Governing Board. The treasurer may make appropriate investments of the funds of the Cape Light Compact JPE consistent with G.L. c. 44, §55B.

The Governing Board shall appoint a business officer who may be a city auditor, town accountant or officer with similar duties, of one of the Municipal Members. The business officer shall have the duties and responsibilities of an auditor or accountant pursuant to G.L. c. 41, §§52 and 56 and shall not be eligible to hold the office of treasurer.

If the Cape Light Compact JPE is using a service provider pursuant to Article IX(M) (Service Providers) to handle Cape Light Compact JPE funds, the Governing Board shall consider using one or more employees of such service provider to serve as treasurer or business officer.

I. Secretary.

The secretary shall arrange for the recording, consistent with applicable law, of all proceedings of the Governing Board, Executive Committee and any other such committee in a book or books to be kept therefor, and have such powers and duties as customarily belong to the office of clerk or secretary or as may be designated from time to time by the chairman or the Governing Board.

J. Other Officers.

The Governing Board shall retain legal counsel for the Cape Light Compact JPE. The Cape Light Compact JPE's legal counsel may jointly represent the Cape Light Compact JPE's Municipal Members or other parties in accordance with this Article XIX(I) (Shared Legal Representation) of this Agreement.

The Cape Light Compact JPE shall designate a Chief Procurement Officer, whose role, in accordance with G.L. c. 30B (or other applicable procurement laws) and other applicable provisions of law, shall be to select proposals for and facilitate the award of contracts on behalf of the Cape Light Compact JPE, with input from Directors, the Cape Light Compact JPE staff, counsel and others, as such Chief Procurement Officer sees fit. Notwithstanding the foregoing, the Governing Board may determine that the Cape Light Compact JPE, as long as consistent with applicable law, will select proposals and award contracts in another manner.

Other officers shall have such powers as may be designated from time to time by the Governing Board.

K. The Cape Light Compact JPE Administrator.

The Governing Board shall appoint a JPE Administrator who shall be an employee of the Cape Light Compact JPE. In general, the Cape Light Compact JPE Administrator shall serve as the chief administrative and operating officer and supervise, direct and be responsible for the efficient administration of the business of the Cape Light Compact JPE.

More specifically, the Cape Light Compact JPE Administrator shall be responsible for:

- (i) Implementing the goals and carrying out the policies of the Cape Light Compact JPE Governing Board;
- (ii) Maintaining the complete and full records, reports and filings associated with the financial and administrative activity of the Cape Light Compact JPE;
- (iii) Planning and directing all administrative and operational functions of the Cape Light Compact JPE consistent with budgets approved by the Governing Board;
- (iv) Managing the hiring process, supervising and directing the work of all staff consistent with budgets and strategic goals approved by the Governing Board;
- (v) Consulting and advising the Governing Board as to the business, operational and strategic concerns of the Cape Light Compact JPE including fiscal affairs, legal and operational issues, and major program initiatives;
- (vi) Regularly attending all Governing Board meetings and answering all questions addressed to him or her;
- (vii) Managing the Cape Light Compact JPE's legal affairs, including directing the Cape Light Compact JPE's participation in regulatory and judicial proceedings, consistent with relevant budgets approved by the Governing Board;

- (viii) Managing the Cape Light Compact JPE's energy efficiency program in accordance with all applicable laws and the rules and regulations of the DPU, or any successor entity;
- (ix) Negotiating and executing contracts for power supply procurement, renewable energy certificates, energy efficiency contracts, contracts for professional services and legal services in order to achieve the strategic goals and business purposes of the governing board; and
- (x) Perform such other duties as may be directed by the Governing Board from time to time, or as may be necessary or advisable to fulfill the Cape Light Compact JPE's objectives.

The Governing Board may elect to expand, limit or otherwise amend the foregoing responsibilities by replacing this Article IX(K) with a list of responsibilities set forth in Exhibit C.

L. Cape Light Compact JPE Staff.

The Cape Light Compact JPE shall be a public employer. The Governing Board may employ personnel to carry out the purposes of this Agreement and establish the duties, compensation and other terms and conditions of employment of personnel. The Governing Board shall take all necessary steps to provide for continuation of membership in a valid and existing public employee retirement system.

M. Service Providers.

The Governing Board may appoint or engage one or more service providers to serve as the Cape Light Compact JPE's administrative, fiscal or operational agent in accordance with the provisions of a written agreement between the Cape Light Compact JPE and the service provider. A Municipal Member may contract with the Cape Light Compact JPE to be a service provider. The service provider agreement shall set forth the terms and conditions by which the service provider shall perform or cause to be performed the requested services. This subsection (M) shall not in any way be construed to limit the discretion of the Cape Light Compact JPE to hire its own employees to perform such functions.

ARTICLE X: BUDGET; FINANCING; BORROWING; AND RELATED MATTERS

A. Budget; Segregation of Funds; Expenditures.

Prior to the beginning of each fiscal year, the Cape Light Compact JPE staff shall work with the Governing Board to prepare a proposed operating budget. The Cape Light Compact JPE shall adopt an operating budget for each fiscal year and direct the expenditure of funds in accordance with applicable law. The operating budget and any amendments thereto shall be approved by a weighted vote of the Governing Board in accordance with Article V(D) (Manner

of Acting and Quorum).

All funds of the Cape Light Compact JPE shall be held in separate accounts in the name of the Cape Light Compact JPE and not commingled with funds of any other person or entity. All funds of the Cape Light Compact JPE shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements. The Governing Board shall contract with a certified public accountant to make an annual audit of the accounts and records of the Cape Light Compact JPE. All expenditures shall be made in accordance with the approved budget and in accordance with any applicable procedures or controls as may be authorized by the Governing Board.

B. Financing.

The Cape Light Compact JPE shall finance the joint services, activities or undertakings within the region in the manner set forth in this Article X. Upon the transfer of operations as set forth in Article XVIII(C) (Transfer of Operations), the Cape Light Compact JPE may collect a kilowatt hour charge or equivalent of up to a mil per kilowatt hour, from consumers participating in the municipal aggregation power supply program. The amount collected may be up to 1 mil (\$.001), or such lower amount as the Cape Light Compact JPE Administrator may determine, for every kilowatt hour sold to consumers for the duration of service under a competitive electric supply agreement (this charge is referred to as an "Operational Adder"). The Cape Light Compact JPE will primarily use the Operational Adder funds to support the municipal aggregation power supply program budget and other costs associated with implementing the powers and purposes of the Cape Light Compact JPE. The level of the Operational Adder shall be determined during the annual operating budget process based upon the projected expenses of the Cape Light Compact JPE. All uses of the Operational Adder shall follow the Cape Light Compact JPE budget appropriation process.

Upon the transfer of operations as set forth in Article XVIII(C) (Transfer of Operations), funding for the Cape Light Compact JPE's energy efficiency activities shall come in part from the mandatory system benefits charges imposed on consumers in accordance with G.L. c. 25, §19(a), which funds energy efficiency programs administered by municipal aggregators with energy plans certified by the DPU under G.L. c. 164, §134(b). In addition, in accordance with G.L. c. 25, §19(a), the Cape Light Compact JPE's energy efficiency activities may also be funded by revenues from the forward capacity market administered by ISO New England Inc., revenues from cap and trade pollution control programs (e.g., Regional Greenhouse Gas Initiative), other funding sources and an energy efficiency surcharge, as approved by the DPU or a successor thereto. In addition, the Cape Light Compact JPE shall finance the joint services, activities or undertakings within the region with grants from the commonwealth, the federal government and other public and private grantors;

C. Borrowing.

The Cape Light Compact JPE is authorized to incur borrowing pursuant to the Joint Powers Statute. There are no limitations on the purposes, terms and amounts of debt the Cape

Light Compact JPE may incur to perform such services, activities or undertakings, except as may established by law.

ARTICLE XI: COOPERATION; AUTHORITY DOCUMENTS

The Members agree to act in good faith and use their best efforts to effectuate the intent and purpose of this Agreement. All parties to this Agreement shall cooperate to the fullest extent possible.

The Members acknowledge and agree that the authority of the Cape Light Compact JPE will be evidenced and effectuated through this Agreement and through Governing Board votes, resolutions and various documents duly adopted by the Governing Board. The Members agree to abide by and comply with the terms and conditions of all such votes, resolutions and documents that may be adopted by the Governing Board, subject to ~~the Members'~~ each Member's right to withdraw from the Cape Light Compact JPE as described in Article XVI (Term; Termination; Withdrawal).

ARTICLE XII: ELECTRICITY AND OTHER AGREEMENTS

Pursuant to this Agreement, the Members and private consumers may enter into contracts for the distribution, transmission and/or supply of electricity, for the purchase of energy and RECs, and for project financing in support thereof, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct or individual financial obligations on any Members until approved by such individual Member, as the case may be, and further, that any contract shall indemnify and hold harmless the Cape Light Compact JPE and its Members from any financial liability or provide commercially reasonable indemnification with respect to the provision of such products or services.

ARTICLE XIII: OTHER APPLICABLE LAWS

Nothing in this Agreement or in any negotiated contract for the supply of electricity shall be construed to supersede, alter or otherwise impair any obligation imposed on any Member by otherwise applicable law.

ARTICLE XIV: INDEMNIFICATION OF DIRECTORS; LIABILITY OF DIRECTOR AND OFFICERS; INSURANCE; INDEMNIFICATION OF MEMBERS

A. Indemnification of Directors.

The Cape Light Compact JPE shall, to the extent legally permissible, indemnify the Directors, County Representatives, officers and Members. All contracts negotiated or undertaken by the Cape Light Compact JPE shall also include, to the maximum extent feasible, indemnification of the Directors, County Representatives, officers and the Members.

B. Liability of Directors, Officers, and Employees.

The Directors, County Representative, officers, and employees of the Cape Light Compact JPE shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, County Representative, officer, or employee.

C. Insurance.

The Cape Light Compact JPE shall acquire such insurance coverage as the Governing Board deems necessary to protect the interests of the Cape Light Compact JPE, the Members, the Directors and officers, employees and the public. If possible, such insurance coverage shall name the Members as additional insureds. If the Cape Light Compact JPE has employees, it shall obtain worker's compensation insurance.

D. Indemnification of Members.

The Cape Light Compact JPE shall defend, indemnify and hold harmless the Members from any and all claims, losses, damages, costs, injuries and liabilities of every kind to the extent arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Cape Light Compact JPE under this Agreement, and not arising directly or indirectly from the negligent or intentional actions of any Member. In addition, the Cape Light Compact JPE shall not be responsible for indemnifying any Member for any claims, losses, damages, costs or injuries arising from any duties that such Member has agreed to assume in a contract with the Cape Light Compact JPE.

ARTICLE XV: AMENDMENT; REVISION OF EXHIBITS

Except as set forth below in the following paragraph, this Agreement may be altered, amended, or repealed, in whole or in part, by the affirmative vote of Directors of Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE. Notice of proposed amendments shall be sent to Members at least thirty (30) days before any Governing Board vote on such amendments in accordance with Article XIX(D) (Notices).

Certain amendments to this Agreement and certain actions of the Cape Light Compact JPE shall require the affirmative approval of the Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE: (i) Article I(B) (Eligibility for Membership; Addition of Members); and (ii) Article I(D) (Liability of Members).

In addition, termination of the Cape Light Compact JPE shall require the approval of all Municipal Members.

The Municipal Members agree that Exhibits A (List of Members), B (Weighted Voting) and C (JPE Administrator Responsibilities) to this Agreement set forth certain administrative matters that may be revised by the Cape Light Compact JPE Administrator in accordance with Governing Board authorization without such revision constituting an amendment to this Agreement. The Cape Light Compact JPE shall provide written notice to the Members of the revision to such exhibits.

ARTICLE XVI: TERM; TERMINATION; WITHDRAWAL

This Agreement shall continue in effect for a term not to exceed twenty-five (25) years. At the conclusion of the term, taking into account any changed circumstances, the Municipal Members shall in good faith negotiate a replacement agreement.

Any Member may voluntarily withdraw from the Cape Light Compact JPE at the end of each calendar quarter upon at least ninety (90) days prior written notice. Withdrawal of such Member shall not affect any obligations entered into prior to the date of withdrawal which are binding by their terms on such member, including, without limitation, contracts directly entered into by such Member and financial contributions to the Cape Light Compact JPE made or agreed to be made by such member.

This Agreement may be terminated by collective agreement of all the Municipal Members; provided, however, the foregoing shall not be construed as limiting the rights of a Municipal Member to withdraw its membership in the Cape Light Compact JPE, and thus terminate this Agreement only with respect to such withdrawing Municipal Member.

Upon termination of this Agreement, any surplus money or assets in possession of the Cape Light Compact JPE for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement shall be returned to the then-existing Members in proportion to the contributions made by each, if applicable; if no contributions were made, surplus assets shall be distributed based on the relative populations of each Municipal Member. Payment of liabilities and disbursement of surplus money or assets shall also be in accordance with any rules, regulations and policies adopted by governmental authorities having jurisdiction over the Cape Light Compact JPE.

ARTICLE XVII: CONSTRUCTION AND SEVERABILITY

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the constitution of the Commonwealth of Massachusetts or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution or the Massachusetts General Laws, the Cape Light Compact JPE shall remain in full force and effect as to all severable matters.

ARTICLE XVIII: THE CAPE LIGHT COMPACT JPE AS SUCCESSOR TO THE COMPACT; TRANSFER OF COMPACT'S ADMINISTRATIVE AND OPERATIONAL FUNCTIONS

A. The Cape Light Compact JPE's Status as Successor Entity to the Compact.

It is the intent of the Members that the Cape Light Compact JPE eventually serve as the successor entity to the Compact.

In order to provide for an orderly transition, the Cape Light Compact JPE and the Compact will coordinate transfer and succession plans in accordance with this Article XVIII.

B. Transfer of Administrative and Financial Functions.

Upon transfer of the Compact's operations as set forth in Article XVIII(D) (Transfer of Operations) below, and in accordance with applicable transfer and succession plans, the Cape Light Compact JPE shall assume all benefits, obligations and liabilities of the Compact.

Upon the Effective Date, the Cape Light Compact JPE will serve as the administrative and fiscal arm of the Compact. As soon as practicable, Compact staff will become employees of the Cape Light Compact JPE. At such time, the Cape Light Compact JPE shall assume responsibility for any and all loss, injury, damage, liability, claim, demand, tort or worker's compensation incidents that occur on or after the date personnel are transferred to the Cape Light Compact JPE. The Cape Light Compact JPE will also perform certain financial services for the Compact as set forth in a written agreement between the Compact and the Cape Light Compact JPE. The Cape Light Compact JPE may elect to delegate performance of such functions to service providers as set forth in Article IX(M) (Service Providers).

B. Transfer of Operations.

Unless such other date is established by the Governing Board, when the majority of the municipal members of the Compact join the Cape Light Compact JPE, the Compact and the Cape Light Compact JPE will develop an asset transfer and succession plan. and, in consultation with DPU (and other governmental authorities if necessary or convenient), will establish an operational transfer date ~~(no later than January 31, 2018, unless otherwise directed by DPU).~~ Once such date is established, the Cape Light Compact JPE will notify the members of the Compact of the deadline for joining the Cape Light Compact JPE in order to participate in its aggregation plan. On or before the operational transfer date, the Cape Light Compact JPE will execute all documents and perform all acts necessary to transfer all programs, operational functions, tangible and intangible assets (including intellectual property), contracts and records of the Compact to the Cape Light Compact JPE so that the Cape Light Compact JPE is the legal successor to the Compact.

C. Meetings and Board Membership During Transition Period.

During the transition period, meetings of the Cape Light Compact JPE will occur immediately before or after scheduled meetings of the Compact. In order to provide for an orderly transition or for any other reason that a Municipal Member deems appropriate, a Municipal Member may appoint the same person to serve on the Cape Light Compact JPE's and Compact's Governing Boards.

E. Completion of Transition and Reorganization

The foregoing subsections (A) – (D) have no future operational effect as of [December 13, 2017] the effective date of this Agreement. They remain in this Agreement as a placeholder and for historical context. The operational transfer date was July 1, 2017¹. On that date, the Cape Light Compact JPE became the legal and operational successor to the Compact.

[Note to readers: This Article cannot be wiped out entirely. There is a cross-reference to it in Article I which cannot be amended unless the majority of Municipal Members approve.]

ARTICLE XIX: MISCELLANEOUS

A. Principal Office.

The principal office of the Cape Light Compact JPE shall be located at such places as the Governing Board may establish from time to time.

B. The Cape Light Compact JPE Records.

The original, or attested copies, of this Agreement and records of all meetings of the Governing Board shall be kept in Massachusetts at the principal office of the Cape Light Compact JPE. Said copies and records need not all be kept in the same office. They shall be available at all reasonable times for the inspection of any Municipal Member or Director for any proper purpose and as required by law. The records of the Cape Light Compact JPE shall be subject to the Massachusetts Public Records Act, G.L. c. 66, and shall be deemed public records, unless such records fall within the exemptions set forth in G.L. c. 4, §7, including exemptions for development of inter-agency policy and trade secrets or commercial or financial information.

C. Fiscal Year.

The fiscal year of the Cape Light Compact JPE shall begin on January 1st and end on December 31st.

D. Notices.

All notices, waivers, demands, requests, consents or other communications required

¹ On April 12, 2017, the Governing Board voted to establish the operational transfer date as July 1, 2017.

or permitted to be given or made under this Agreement shall be in writing and if addressed to the Cape Light Compact JPE shall be sent to:

JPE Administrator
Cape Light Compact JPE
~~3195 Main Street~~
~~Open Cape Building~~
~~Barnstable, MA 02630~~
261 Whites Path, Unit 4
South Yarmouth, MA 02664

The Cape Light Compact JPE may change its address by sending a notice of change of address to all Members.

Members shall be required to send the Cape Light Compact JPE a notice each January setting forth the name, address and other contact information for its Director and alternate director, and the contact name and address for all notices to be sent to Members under this Agreement. If no address has been provided for notices, the Cape Light Compact JPE may use the Town Clerk's address for a Member as provided on its website.

A Member may change its address by sending a notice of change of address to the Cape Light Compact JPE.

Except for any notice required by law to be given in another manner, all notices, waivers, demands, requests, consents, or other communications required or permitted by this Agreement to be effective shall be in writing, properly addressed, and shall be given by: (i) personal delivery; (ii) established overnight commercial courier delivery service with charges prepaid or duly charged by the sender; or (iii) registered or certified mail, return receipt requested, first class, postage prepaid. Notices given hereunder shall be deemed sufficiently given on: (i) the date of personal delivery if so delivered; (ii) the day after sending if sent by established overnight commercial courier delivery service; or (iii) the fifth day after sending if sent by registered or certified mail. The Cape Light Compact JPE and the Members may additionally provide notice by electronic mail, facsimile, or telephone communication, but this shall not relieve the notifying party of the obligation to provide notice as specified above.

E. Reports.

The Cape Light Compact JPE shall submit an annual report to each Member which shall contain a detailed audited financial statement and a statement in accordance with the Joint Powers Statute.

The Cape Light Compact JPE shall prepare a written annual report, in the format required by the DPU regarding the expenditure of energy efficiency funds for the previous calendar year. Such reports shall be filed with the DPU no later than August 1, unless filing or reporting requirements established by the DPU necessitate a different date, and posted to the Cape Light

Compact JPE's web site within thirty (30) days of submission to the DPU. In addition, the Cape Light Compact JPE shall periodically prepare written overviews of the Cape Light Compact JPE's program activities for each Municipal Member for inclusion in its individual town annual reports.

Upon the transfer of operations as set forth in Article XVIII(C) (Transfer of Operations), for so long as is required by the DPU, the Cape Light Compact JPE shall submit an annual report to the DPU on December 1st of each year regarding its municipal aggregation power supply program. The annual report will, at a minimum, provide: (1) a list of the program's competitive suppliers over the past year; (2) the term of each power supply contract; (3) the aggregation's monthly enrollment statistics by customer class; (4) a brief description of any renewable energy supply options; and (5) a discussion and documentation regarding the implementation of the municipal aggregation's alternative information disclosure strategy. As approved by the DPU, the Cape Light Compact JPE may submit this report on a fiscal year basis.

F. Dispute Resolution.

The Members and the Cape Light Compact JPE shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Member and the Cape Light Compact JPE shall engage in nonbinding mediation in the manner agreed upon by the participating Member and the Cape Light Compact JPE. The Cape Light Compact JPE and Members agree that each Municipal Member may specifically enforce this Article XIX(F). In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within sixty (60) days after the demand for mediation or is made, any Municipal Member and the Cape Light Compact JPE may pursue any remedies provided by law.

G. Multiple Originals.

This Agreement shall be executed in accordance with the requirements of the Joint Powers Statute. Amendments to this Agreement requiring approval of Directors shall be executed by the Directors approving such amendments. Amendments to this Agreement requiring approval of the Municipal Members shall be executed in the manner set forth in the Joint Powers Statute.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and all of such signature pages shall be read as though one and shall have the same force and effect as though all of the parties had executed a single signature page.

H. No Partnership or Joint Venture in Contracts with Third Parties; Limitation of Responsibility.

In carrying out its purposes as described herein, and in entry into any third party contract

for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, neither the Cape Light Compact JPE nor any of its Members shall be a partner or joint venturer with any third party. The relationship between the Cape Light Compact JPE (and/or its Members) on the one hand and the other party(ies) to such contract on the other hand shall be that of buyer and seller or agent for the buyer and seller, as the case may be. Nothing therein contained shall be deemed to constitute the Cape Light Compact JPE (and/or its Members) as a partner, agent or legal representative of any third party or to create a joint venture, agency or any relationship between the Cape Light Compact JPE (and/or its Members) and any third party other than that of buyer and seller or agent for the buyer and seller, as the case may be. The Cape Light Compact JPE and its Members have no responsibility to supply, distribute, transmit, meter, bill or otherwise provide electricity to any consumer and none is implied hereby or thereby. Nothing in this Article XIX(H) shall be construed as prohibiting the Cape Light Compact JPE from entering into a partnership or joint venture relationship with any organization in which it has a membership interest or affiliation.

I. Shared Legal Representation Involving Members or Other Public Entities; Official Duties of Cape Light Compact JPE Counsel.

The Cape Light Compact JPE may from time to time to retain counsel who may also represent its Members or other public entities in matters in which the Cape Light Compact JPE has a direct or substantial interest without violating G.L. c. 268A, subject to the consent and approval of all parties requesting legal representation (which may be one or more Members, or one or more non-Member parties). Such dual or common representation allows the Cape Light Compact JPE to pool resources for a common purpose, develop mutual interests, and preserve public funds. The official duties of the Cape Light Compact JPE counsel include, but are not limited to, representing Members or other public entities in: (i) administrative and judicial proceedings in which the Cape Light Compact JPE is also a party; (ii) contract negotiations or project development matters in which the Cape Light Compact JPE or its Members have an interest, and (iii) other matters in which the Cape Light Compact JPE has a direct or substantial interest, provided that in each instance, such dual or common representation would not cause a violation of rules governing attorney conduct. The Cape Light Compact JPE counsel shall discharge such duties only when requested in writing by the Cape Light Compact JPE's Governing Board. Prior to making such a request, the Cape Light Compact JPE's Governing Board shall determine whether the interests of the Cape Light Compact JPE would be advanced by such dual or common representation and shall evaluate if actual or potential conflicts of interest exist. If any conflicts are identified, they shall be described in the written request. Counsel shall then make its own determination whether such dual or common representation would not cause a violation of rules governing attorney conduct. Representation of the Compact and the Cape Light Compact JPE shall not be considered dual representation as the two entities shall function as two component parts of one legal entity for a transition period, and then the Cape Light Compact JPE shall serve as the successor entity to the Compact.

Should the provision in G.L. c. 268A limiting dual or common representation be amended or replaced after the Effective Date, the Governing Board may elect to follow any alternative

procedures with respect to dual or common legal representation as provided by such statute.

[EXECUTION PAGES TO FOLLOW]

LIST OF EXHIBITS

Exhibit A – List of Members

Exhibit B – Weighted Voting

Exhibit C – JPE Administrator Responsibilities

EXHIBIT B

Weighted Voting

Name of Town	Population
Aquinnah	311
Barnstable	45,193
Bourne	19,754
Brewster	9,820
Chatham	6,125
Chilmark	866
Dennis	14,207
Eastham	4,956
Edgartown	4,067
Falmouth	31,531
Harwich	12,243
Mashpee	14,006
Oak Bluffs	4,527
Orleans	5,890
Provincetown	2,942
Sandwich	20,675
Tisbury	3,949
Truro	2,003
Wellfleet	2,750
West Tisbury	2,740
Yarmouth	23,793

For an example of weighted voting, if the Municipal Members consisted of the Towns of Barnstable, Bourne and Brewster, the total population of the three Municipal Members would be 74,767. For weighted voting purposes, Barnstable's vote would be weighted 60.45%, Bourne's vote would be weighted 26.42%, and Brewster's would be weighted 13.13%.

**Agenda Action Request
Cape Light Compact JPE Governing Board
Meeting Date: 10/11/17**

- Aquinnah*
- Barnstable*
- Bourne*
- Brewster*
- Chatham*
- Chilmark*
- Dennis*
- Dukes County*
- Eastham*
- Edgartown*
- Falmouth*
- Harwich*
- Mashpee*
- Oak Bluffs*
- Orleans*
- Provincetown*
- Sandwich*
- Tisbury*
- Truro*
- Wellfleet*
- West Tisbury*
- Yarmouth*

Vote to Amend Remote Participation Policy

REQUESTED BY: *Maggie Downey*

Proposed Motion(s)

- 1) *I move the Governing Board vote to amend and replace its Remote Participation Policy originally adopted on April 12, 2017 as presented, and the JPE Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.*

The attached Policy has been amended to conform with the recently updated Massachusetts Open Meeting Law regulations which are effective October 6, 2017.

Record of Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition

CAPE LIGHT COMPACT JPE

~~POLICY AND PROCEDURES ON~~ REMOTE PARTICIPATION POLICY

(Adopted ~~October 11~~ April 12, 2017)

In accordance with M.G.L. Chapter 30A, Section 20(d), and 940 CMR 29.10, it is the policy of Cape Light Compact JPE to allow remote participation of a member of a regional public body in accordance with the following policy stipulations:

- 1) At their meeting of ~~October 11~~ April 12, 2017, the Cape Light Compact JPE Governing Board voted to allow remote participation of a member of a regional public body in accordance with the regulations set forth in 940 CMR 29.10 ~~and these regional public policies~~, and that this vote shall apply to all subsequent meetings of ~~the all regional public bodies~~ Cape Light Compact JPE and its committees.
- 2) Members of ~~the~~ a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other as required by M.G.L. c. 30A, Section 20(d). The Chair, or, in the Chair's absence, the person authorized to chair the meeting shall make this determination.
- 3) A quorum of the body, including the chair, or, in the Chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location as required by M.G.L. c. 30A, Section 20(d).
- 4) Members of the public body who participate remotely may vote and shall not be deemed to be absent for the purposes of M.G.L. c. 39, Section 23D (if applicable).
- 5) ~~The Chair, or, in the Chair's absence, the person authorized to chair the meeting shall permit a member of a public body to participate remotely if they determine that one or more of the following factors makes the member's physical attendance unreasonably difficult: a) personal illness, b) personal disability, c) emergency, d) military service, or) geographic distance. A member of a public body shall be permitted to participate remotely in a meeting, in accordance with the procedures described in 940 CMR 29.10(7), only if physical attendance would be unreasonably difficult.~~
- 6) A technology permitted by 940 CMR 29.10(6) must be available in order to allow remote participation.
- 7) The Chair, or, in the Chair's absence, the person authorized to chair the meeting shall decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged, wherever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from

the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

8) PROCEDURES FOR REMOTE PARTICIPATION:

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the Chair or, in the Chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.

(b) At the start of the meeting, the Chair shall announce the name of any member who will be participating remotely ~~and the reason under 940 CMR 29.10(5) for his or her remote participation (See #5 above).~~ This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.

(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at that remote location, unless presence of that person is approved by a simple majority vote of the public body.

(e) When feasible, the Chair or, in the Chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, Section 22.

9) The Cape Light Compact JPE may revoke this Remote Participation Policy in the same manner as it was adopted.

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, _____, who qualified as a member of the
(Name)
Cape Light Compact JPE, on _____, certify pursuant
(Public Body) (Date)

to G.L. c. 30A, § 20(h) and 940 CMR 29.04, that I have received and reviewed copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) the Attorney General's Regulations, 940 CMR 29.00-29.11;
- 3) the Attorney General's Open Meeting Law Guide, explaining the Open Meeting Law and its application; and
- 4) if applicable, a copy of each Open Meeting Law determination issued by the Attorney General within the last five (5) years to the public body of which I am a member and in which the Attorney General found a violation of the Open Meeting Law.

I have read and understand the requirements of the Open Meeting Law and the consequences of violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes to the Open Meeting Law during my term of office.

(Name)

Cape Light Compact JPE
(Name of Public Body)

(Date)

Pursuant to G.L. c. 30A, § 20(h), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

Open Meeting Law Guide



COMMONWEALTH OF MASSACHUSETTS

OFFICE OF ATTORNEY GENERAL
MAURA HEALEY

OCTOBER 6, 2017

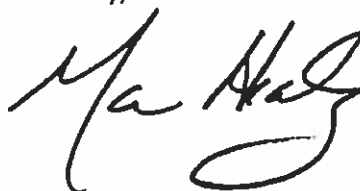
Dear Massachusetts Residents:

One of the most important functions of the Attorney General's Office is to promote openness and transparency in government. Every resident of Massachusetts should be able to access and understand the reasoning behind the government policy decisions that affect our lives. My office is working to achieve that goal through fair and consistent enforcement of the Open Meeting Law, along with robust educational outreach about the law's requirements.

The Open Meeting Law requires that most meetings of public bodies be held in public, and it establishes rules that public bodies must follow in the creation and maintenance of records relating to those meetings. Our office is dedicated to providing educational materials, outreach and training sessions to ensure that members of public bodies and citizens understand their rights and responsibilities under the law.

Whether you are a town clerk or town manager, a member of a public body, or a concerned citizen, I want to thank you for taking the time to understand the Open Meeting Law. If you would like additional guidance on the law, I encourage you to contact my Division of Open Government at (617) 963-2540 or visit our website at www.mass.gov/ago/openmeeting for more information.

Sincerely,

A handwritten signature in black ink, appearing to read "Maura Healey". The signature is fluid and cursive, with a large loop at the end of the last name.

Maura Healey
Massachusetts Attorney General

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Attorney General's Open Meeting Law Guide

Overview

Purpose of the Law

The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently.

Attorney General's Authority

The Open Meeting Law was revised as part of the 2009 Ethics Reform Bill, and now centralizes responsibility for statewide enforcement of the law in the Attorney General's Office. G.L. c. 30A, § 19(a). To help public bodies understand and comply with the law, the Attorney General has created the Division of Open Government. The Division of Open Government provides training, responds to inquiries, investigates complaints, and when necessary, makes findings and orders remedial action to address violations of the law. The purpose of this Guide is to inform elected and appointed members of public bodies, as well as the interested public, of the basic requirements of the law.

Certification

Within two weeks of a member's election or appointment or the taking of the oath of office, whichever occurs later, all members of public bodies must complete the attached Certificate of Receipt of Open Meeting Law Materials certifying that they have received these materials, and that they understand the requirements of the Open Meeting Law and the consequences of violating it. The certification must be retained where the public body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, the Attorney General's regulations, this Guide, and Open Meeting Law determinations issued to the member's public body within the last five years in which the Attorney General found a violation of the law.

In the event a Certificate has not yet been completed by a presently serving member of a public body, the member should complete and submit the Certificate at the earliest opportunity to be considered in compliance with the law. A public body

member must sign a new Certificate upon reelection or reappointment to the public body but need not sign a Certificate when joining a subcommittee.

Open Meeting Law Website

This Guide is intended to be a clear and concise explanation of the Open Meeting Law's requirements. The complete law, as well as the Attorney General's regulations, training materials, and determinations and declinations as to complaints can be found on the Attorney General's Open Meeting website, www.mass.gov/ago/openmeeting. Members of public bodies, other local and state government officials, and the public are encouraged to visit the website regularly for updates on the law and the Attorney General's interpretations of it.

Meetings of Public Bodies

What meetings are covered by the Open Meeting Law?

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction." As explained more fully below, a deliberation is a communication between or among members of a public body.

These four questions will help determine whether a communication constitutes a meeting subject to the law:

- 1) is the communication between or among members of a **public body**;
- 2) if so, does the communication constitute a **deliberation**;
- 3) does the communication involve a matter within the **body's jurisdiction**; and
- 4) if so, does the communication fall within an **exception** listed in the law?

What constitutes a public body?

While there is no comprehensive list of public bodies, any multi-member board, commission, committee or subcommittee within the executive or legislative branches¹ of state government, or within any county, district, city, region or town, if established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the governing board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose. The law excludes the Legislature and its committees, bodies of the judicial branch, and

¹Although the Legislature itself is not a public body subject to the Open Meeting Law, certain legislative commissions must follow the Law's requirements.

bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer.

Boards of selectmen and school committees (including those of charter schools) are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Individual government officials, such as a town manager or police chief, and members of their staff are not subject to the law, and so they may meet with one another to discuss public business without needing to comply with Open Meeting Law requirements. This exception for individual officials to the general Open Meeting Law does not apply where such officials are serving as members of a multiple-member public body that is subject to the law.

Bodies appointed by a public official solely for the purpose of advising the official on a decision that individual could make alone are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a five-member advisory body to assist her in nominating candidates for school principal, a task the superintendent could perform herself. That advisory body would not be subject to the Open Meeting Law.²

What constitutes a deliberation?

The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body’s jurisdiction. Additionally, certain communications that may otherwise be considered deliberation are specifically exempt by statute from the definition of deliberation (for example, discussion of the recess and continuance of a Town Meeting pursuant to G.L. c. 39, § 10A(a) is not deliberation).

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law.

² See Connelly v. School Committee of Hanover, 409 Mass. 232 (1991).

Note that the expression of an opinion on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

What matters are within the jurisdiction of the public body?

The Open Meeting Law applies only to the discussion of any "matter within the body's jurisdiction." The law does not specifically define "jurisdiction." As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body. Certain discussions regarding procedural or administrative matters may also relate to public business within a body's jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body. Statements made for political purposes, such as where a public body's members characterize their own past achievements, generally are not considered communications on public business within the jurisdiction of the public body.

What are the exceptions to the definition of a meeting?

There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and
5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

The Attorney General interprets the exemption for "quasi-judicial boards or commissions" to apply only to certain state "quasi-judicial" bodies and a very limited number of public bodies at other levels of government whose proceedings are specifically defined as "agencies" for purposes of G.L. c. 30A.

We have received several inquiries about the exception for Town Meeting and whether it applies to meetings outside of a Town Meeting session by Town Meeting members or Town Meeting committees or to deliberation by members of a public body – such as a board of selectmen – during a session of Town Meeting. The Attorney General interprets this exemption to mean that the Open Meeting Law does not reach any aspect of Town Meeting. Therefore, the Attorney General will not investigate complaints alleging violations in these situations. Note, however, that this is a matter of interpretation and future Attorneys General may choose to apply the law in such situations.

Notice

What are the requirements for posting notice of meetings?

Except in cases of emergency, a public body must provide the public with notice of its meeting 48 hours in advance, excluding Saturdays, Sundays, and legal holidays. Notice of emergency meetings must be posted as soon as reasonably possible prior to the meeting. Also note that other laws, such as those governing procedures for public hearings, may require additional notice.

What are the requirements for filing and posting meeting notices for local public bodies?

For local public bodies, meeting notices must be filed with the municipal clerk with enough time to permit posting of the notice at least 48 hours in advance of the public meeting. Notices may be posted on a bulletin board, in a loose-leaf binder, or on an electronic display (e.g. television, computer monitor, or an electronic bulletin board), provided that the notice is conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located. In the event that meeting notices posted in the municipal building are not visible to the public at all hours, then the municipality must either post notices on the outside of the building or adopt the municipal website as the official method of notice posting.

Prior to utilizing the municipal website, the Chief Executive Officer of the municipality must authorize or vote to adopt such website as the official method of posting notice. The clerk of the municipality must inform the Division of Open Government of its notice posting method and must inform the Division of any future changes to that posting method. Public bodies must consistently use the most current notice posting method on file with the Division. A description of the website, including directions on how to locate notices on the website, must also be posted on or adjacent to the main and handicapped accessible entrances to the building where the clerk's office is located. Note that meeting notices must still be available in or around the

clerk's office so that members of the public may view the notices during normal business hours.

What are the requirements for posting notices for regional, district, county and state public bodies?

For regional or district public bodies and regional school districts, meeting notices must be filed and posted in the same manner required of local public bodies in each of the communities within the region or district. As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body's website. The regional school district committee must file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district. A copy of the notice must be filed and kept by the chair of the public body or the chair's designee.

County public bodies must file meeting notices in the office of the county commissioners and post notice of the meeting in a manner conspicuously visible to the public at all hours at a place or places designated by the county commissioners for notice postings. As an alternative method of notice, a county public body may post notice of meetings on the county public body's website. The county public body must file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners. A copy of the notice shall be filed and kept by the chair of the county public body or the chair's designee.

State public bodies must post meeting notices on the website of the public body or its parent agency. The chair of a state public body must notify the Attorney General in writing of the specific webpage location where notices will be posted and of any subsequent changes to that posting location. A copy of each meeting notice must also be sent to the Secretary of State's Regulations Division and should be forwarded to the Executive Office of Administration and Finance, which maintains a listing of state public body meetings.

Where a public body adopts a website as the official method of posting notices, it must make every effort to ensure that the website is accessible at all hours. If a website becomes inaccessible within 48 hours of a meeting, not including Saturdays, Sundays or legal holidays, the website must be restored within six business hours of the discovery. If the website is not restored within six business hours, the public body must re-post notice of its meeting to another date and time, in accordance with the requirements of the Open Meeting Law.

A note about accessibility

Public bodies are subject to all applicable state and federal laws that govern accessibility for persons with disabilities. These laws include the Americans with

Disabilities Act, the federal Rehabilitation Act of 1973, and state constitutional provisions. For instance, public bodies that adopt website posting as an alternative method of notice must ensure that the website is readily accessible to people with disabilities, including individuals who use screen readers. All open meetings of public bodies must be accessible to persons with disabilities. Meeting locations must be accessible by wheelchair, without the need for special assistance. Also sign language interpreters for deaf or hearing-impaired persons must be provided, subject to reasonable advance notice.³ The Attorney General's Disability Rights Project is available to answer questions about accessibility and may be reached at (617) 963-2939.

What information must meeting notices contain?

Meeting notices must be posted in a legible, easily understandable format; contain the date, time, and place of the meeting; and list all topics that the chair reasonably anticipates, 48 hours in advance, will be discussed at the meeting. The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. Where there are no anticipated topics for discussion in open session other than the procedural requirements for convening an executive session, the public body should list "open session" as a topic, in addition to the executive session, so the public is aware that it has the opportunity to attend and learn the basis for the executive session.

Meeting notices must also indicate the date and time that the notice was posted, either on the notice itself or in a document or website accompanying the notice. If a notice is revised, the revised notice must also conspicuously record both the date and time the original notice was posted as well as the date and time the last revision was posted. Recording the date and time enables the public to observe that public bodies are complying with the Open Meeting Law's notice requirements without requiring constant vigilance. Additionally, in the event of a complaint, it provides the Attorney General with evidence of compliance with those requirements.

If a discussion topic is proposed after a meeting notice is posted, and it was not reasonably anticipated by the chair more than 48 hours before the meeting, the public body should update its posting to provide the public with as much notice as possible of what subjects will be discussed during the meeting. Although a public body may consider a topic that was not listed in the meeting notice if it was not anticipated, the Attorney General strongly encourages public bodies to postpone discussion and action on topics that are controversial or may be of particular interest to the public if the topic was not listed in the meeting notice.

³ The Massachusetts Commission for the Deaf and Hard of Hearing will assist with arrangements for a sign language interpreter. The Commission may be reached at 617-740-1600 VOICE and 617-740-1700 TTY.

Executive Session

When can a public body meet in executive session?

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session. Before going into an executive session, the chair of the public body must first:

- Convene in open session;
- State the reason for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
- State whether the public body will reconvene in open session at the end of the executive session; and
- Take a roll call vote of the body to enter executive session.

Where a public body member is participating in an executive session remotely, the member must state at the start of the executive session that no other person is present or able to hear the discussion at the remote location. The public body may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant's location.

While in executive session, the public body must keep accurate records, all votes taken must be recorded by roll call, and the public body may only discuss matters for which the executive session was called.

The Ten Purposes for Executive Session

The law states ten specific purposes for which an executive session may be held, and emphasizes that these are the only reasons for which a public body may enter executive session.

The ten purposes for which a public body may vote to hold an executive session are:

- 1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties.**

This purpose is designed to protect the rights and reputation of individuals. Nevertheless, where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this purpose triggers certain rights for the individual who is the subject of the discussion. The individual has the right to be present, though he or she may choose not to attend. The individual who is the subject of the discussion may also choose to have the discussion in an open meeting, and that choice takes precedence over the right of the public body to go into executive session.

While the imposition of disciplinary sanctions by a public body on an individual fits within this purpose, this purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

Generally, a public body must identify the specific non-union personnel or collective bargaining unit with which it is negotiating before entering into executive session under Purpose 2. A public body may withhold the identity of the non-union personnel or bargaining unit if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

While a public body may agree on terms with individual non-union personnel in executive session, the final vote to execute such agreements must be taken by the public body in open session. In contrast, a public body may approve final terms and execute a collective bargaining agreement in executive session, but should promptly disclose the agreement in open session following its execution.

Collective Bargaining Sessions: These include not only the bargaining sessions, but also include grievance hearings that are required by a collective bargaining agreement.

- 3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;**

Generally, a public body must identify the collective bargaining unit with which it is negotiating or the litigation matter it is discussing before entering into executive session under Purpose 3. A public body may withhold the identity of the collective bargaining unit or name of the litigation matter if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Collective Bargaining Strategy: Discussions with respect to collective bargaining strategy include discussion of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, has the burden of proving that an open meeting might have a detrimental effect on its bargaining position. The showing that must be made is that an open discussion may have a detrimental effect on the collective bargaining process; the body is not required to demonstrate a definite harm that would have arisen. At the time the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

Litigation Strategy: Discussions concerning strategy with respect to ongoing litigation obviously fit within this purpose but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

Note: For the reasons discussed above, a public body's discussions with its counsel do not automatically fall under this or any other purpose for holding an executive session.

- 4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;**
- 5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;**

This purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus, it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. However, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. Purpose 5 does not require that the same rights be given to the person who is the subject of a criminal complaint. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which purpose to invoke when going into executive session.

- 6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;**

Generally, a public body must identify the specific piece of property it plans to discuss before entering into executive session under Purpose 6. A public body may withhold the identity of the property if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Under this purpose, as with the collective bargaining and litigation purpose, an executive session may be held only where an open meeting may have a detrimental impact on the body's negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's negotiating position.

- 7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;**

There may be provisions in state statutes or federal grants that require or specifically allow a public body to consider a particular issue in a closed session. Before entering executive session under this purpose, the public body must cite the specific law or federal grant-in-aid requirement that necessitates confidentiality. A public body may withhold that information only if publicly disclosing it would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the

inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

- 8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;**

This purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body. It may, however, include a review of résumés and multiple rounds of interviews by the screening committee aimed at narrowing the group of applicants down to finalists. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session will be detrimental to the public body's ability to attract qualified applicants for the position. If the public body opts to convene a preliminary screening committee, the committee must contain less than a quorum of the members of the parent public body. The committee may also contain members who are not members of the parent public body.

Note that a public body is not required to create a preliminary screening committee to consider or interview applicants. However, if the body chooses to conduct the review of applicants itself, it may not do so in executive session.

- 9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:**

- (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and**

- (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.**

- 10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:**

- in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164;
- in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or
- in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164;
- when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

Remote Participation

May a member of a public body participate remotely?

The Attorney General's Regulations, 940 CMR 29.10, permit remote participation in certain circumstances. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

Note that the Attorney General's regulations enable members of public bodies to participate remotely if the practice has been properly adopted, but do not require that a public body permit members of the public to participate remotely. If a public body chooses to allow individuals who are not members of the public body to participate remotely in a meeting, it may do so without following the Open Meeting Law's remote participation procedures.

How can the practice of remote participation be adopted?

Remote participation may be used during a meeting of a public body if it has first been adopted by the chief executive officer of the municipality for local public bodies, the county commissioners for county public bodies, or by a majority vote of the public body for retirement boards, district, regional and state public bodies. The chief executive officer may be the board of selectmen, the city council, or the mayor, depending on the municipality. See G.L. c. 4, § 7.

If the chief executive officer in a municipality authorizes remote participation, that authorization applies to all public bodies in the municipality. 940 CMR 29.10(2)(a). However, the chief executive officer determines the amount and source of payment for any costs associated with remote participation and may decide to fund the practice only

for certain public bodies. See 940 CMR 29.10(6)(e). In addition, the chief executive officer can authorize public bodies in that municipality to "opt out" of the practice altogether. See 940 CMR 29.10(8).

Note about Local Commissions on Disability: Local commissions on disability may decide by majority vote of the commissioners at a regular meeting to permit remote participation during a specific meeting or during all commission meetings. G.L. c. 30A, § 20(e). Adoption by the municipal adopting authority is not required.

What are the permissible reasons for remote participation?

Once remote participation is adopted, any member of a public body may participate remotely only if physical attendance would be unreasonably difficult.

What are the acceptable means of remote participation?

Acceptable means of remote participation include telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another. Text messaging, instant messaging, email and web chat without audio are not acceptable methods of remote participation. Note that accommodations must be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

What are the minimum requirements for remote participation?

Any public body using remote participation during a meeting must ensure that the following minimum requirements are met:

1. A quorum of the body, including the chair or, in the chair's absence, the person chairing the meeting, must be physically present at the meeting location;
2. Members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other; and
3. All votes taken during a meeting in which a member participates remotely must be by roll call vote.

What procedures must be followed if remote participation is used at a meeting?

At the start of any meeting during which a member of a public body will participate remotely, the chair must announce the name of any member who is participating remotely; such information must also be recorded in the meeting minutes. The chair's statement does not need to contain any detail about the reason for the member's remote participation.

Members of public bodies who participate remotely may vote and shall not be deemed absent for purposes of G.L. c. 39, § 23D. In addition, members who participate remotely may participate in executive sessions but must state at the start of any such session that no other person is present or able to hear the discussion at the remote location, unless the public body has approved the presence of that individual.

If technical difficulties arise as a result of utilizing remote participation, the chair (or, in the chair's absence, person chairing the meeting) may decide how to address the situation. Public bodies are encouraged, whenever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If a remote participant is disconnected from the meeting, the minutes must note that fact and the time at which the disconnection occurred.

Public Participation

What public participation in meetings must be allowed?

Under the Open Meeting Law, the public is permitted to attend meetings of public bodies but is excluded from an executive session that is called for a valid purpose listed in the law. While the public is permitted to attend an open meeting, an individual may not address the public body without permission of the chair. An individual may not disrupt a meeting of a public body, and at the request of the chair, all members of the public shall be silent. If, after clear warning, a person continues to be disruptive, the chair may order the person to leave the meeting. If the person does not leave, the chair may authorize a constable or other officer to remove the person. Although public participation is entirely within the chair's discretion, the Attorney General encourages public bodies to allow as much public participation as time permits.

Any member of the public may make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the chair so as not to interfere with the meeting. The chair is required to inform other attendees of any such recording at the beginning of the meeting. If someone arrives after the meeting has begun and wishes to record a meeting, that person should attempt to notify the chair prior to beginning recording, ideally in a manner that does not significantly disrupt the meeting in progress (such as passing a note for the chair to the board administrator or secretary). The chair should endeavor to acknowledge such attempts at notification and announce the fact of any recording to those in attendance.

Minutes

What records of public meetings must be kept?

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must include:

- the date, time and place of the meeting;
- the members present or absent;
- the decisions made and actions taken, including a record of all votes;
- a summary of the discussions on each subject;
- a list of all documents and exhibits used at the meeting; and
- the name of any member who participated in the meeting remotely.

While the minutes must include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. While public bodies must identify in the minutes all documents and exhibits used at a meeting and must retain them in accordance with the Secretary of the Commonwealth's records retention schedule, these documents and exhibits needn't be attached to or physically stored with the minutes.

Minutes, and all documents and exhibits used, are public records and a part of the official record of the meeting. Records may be subject to disclosure under either the Open Meeting Law or Public Records Law. The State and Municipal Record Retention Schedules are available through the Secretary of the Commonwealth's website at: <http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm>.

Open Session Meeting Records

The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. A "timely manner" is considered to be within the next three public body meetings or 30 days from the date of the meeting, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages minutes to be approved at a public body's next meeting whenever possible. The law requires that existing minutes be made available to the public within ten days of a request, whether they have been approved or remain in draft form. Materials or other exhibits used by the public body in an open meeting must also be made available to the public within ten days of a request.

There are two exemptions to the open session records disclosure requirement: 1) materials (other than those that were created by members of the public body for the

purpose of the evaluation) used in a performance evaluation of an individual bearing on his professional competence, and 2) materials (other than any résumé submitted by an applicant, which is subject to disclosure) used in deliberations about employment or appointment of individuals, including applications and supporting materials. Documents created by members of the public body for the purpose of performing an evaluation are subject to disclosure. This applies to both individual evaluations and evaluation compilations, provided the documents were created by members of the public body for the purpose of the evaluation.

Executive Session Meeting Records

Public bodies are not required to disclose the minutes, notes, or other materials used in an executive session if the disclosure of these records may defeat the lawful purposes of the executive session. Once disclosure would no longer defeat the purposes of the executive session, however, minutes and other records from that executive session must be disclosed unless they fall within an exemption to the Public Records Law, G.L. c. 4, § 7, cl. 26, or the attorney-client privilege applies. Public bodies are also required to periodically review their executive session minutes to determine whether continued non-disclosure is warranted. These determinations must be included in the minutes of the body's next meeting.

A public body must respond to a request to inspect or copy executive session minutes within ten days of the request. If the public body has determined, prior to the request, that the requested executive session minutes may be released, it must make those minutes available to the requestor at that time. If the body previously determined that executive session minutes should remain confidential because publication would defeat the lawful purposes of the executive session, it should respond by stating the reason the minutes continue to be withheld. And if, at the time of a request, the public body has not conducted a review of the minutes to determine whether continued nondisclosure is warranted, the body must perform such a review and release the minutes, if appropriate, no later than its next meeting or within 30 days, whichever occurs first. In such circumstances, the body should still respond to the request within ten days, notifying the requestor that it is conducting this review.

Open Meeting Law Complaints

What is the Attorney General's role in enforcing the Open Meeting Law?

The Attorney General's Division of Open Government is responsible for enforcing the Open Meeting Law. The Attorney General has the authority to receive and investigate complaints, bring enforcement actions, issue advisory opinions, and promulgate regulations.

The Division of Open Government regularly seeks feedback from the public on ways in which it can better support public bodies to help them comply with the law's requirements. The Division of Open Government offers periodic online and in-person training on the Open Meeting Law and will respond to requests for guidance and information from public bodies and the public.

The Division of Open Government will take complaints from members of the public and will work with public bodies to resolve problems. While any member of the public may file a complaint with a public body alleging a violation of the Open Meeting Law, a public body need not, and the Division of Open Government will not, investigate anonymous complaints.

What is the Open Meeting Law complaint procedure?

Step 1. Filing a Complaint with the Public Body

Individuals who allege a violation of the Open Meeting Law must first file a complaint **with the public body** alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation. The complaint must be filed on a Complaint Form available on the Attorney General's website, www.mass.gov/ago/openmeeting. When filing a complaint with a local public body, the complainant must also file a copy of the complaint with the municipal clerk.

Step 2. The Public Body's Response

Upon receipt, the chair of the public body should distribute copies of the complaint to the members of the public body for their review. The public body has 14 business days from the date of receipt to meet to review the complainant's allegations, take remedial action if appropriate, notify the complainant of the remedial action, and forward a copy of the complaint and description of the remedial action taken to the complainant. The public body must simultaneously notify the Attorney General that it has responded to the complainant and provide the Attorney General with a copy of the response and a description of any remedial action taken. While the public body may delegate responsibility for responding to the complaint to counsel or another individual, it must first meet to do so. A public body is not required to respond to unsigned complaints or complaints not made on the Attorney General's complaint form.

The public body may request additional information from the complainant within seven business days of receiving the complaint. The complainant then has ten business days to respond; the public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take remedial action. The public body may also request an extension of time to respond to the

complaint. A request for an extension should be made within 14 business days of receipt of the complaint by the public body. The request for an extension should be made in writing to the Division of Open Government and should include a copy of the complaint and state the reason for the requested extension.

Step 3. Filing a Complaint with the Attorney General's Office

A complaint is ripe for review by the Attorney General 30 days after the complaint is filed with the public body. This 30-day period is intended to provide a reasonable opportunity for the complainant and the public body to resolve the initial complaint. It is important to note that complaints are *not* automatically treated as filed for review by the Attorney General upon filing with the public body. A complainant who has filed a complaint with a public body and seeks further review by the Division of Open Government must file the complaint with the Attorney General after the 30-day local review period has elapsed but before 90 days have passed since the date of the violation or the date that the violation was reasonably discoverable.

When filing the complaint with the Attorney General, the complainant must include a copy of the original complaint and may include any other materials the complainant feels are relevant, including an explanation of why the complainant is not satisfied with the response of the public body. Note, however, that the Attorney General will not review allegations that were not raised in the initial complaint filed with the public body. Under most circumstances, complaints filed with the Attorney General, and any documents submitted with the complaint, will be considered a public record and will be made available to anyone upon request.

The Attorney General will review the complaint and any remedial action taken by the public body. The Attorney General may request additional information from both the complainant and the public body. The Attorney General will seek to resolve complaints in a reasonable period of time, generally within 90 days of the complaint becoming ripe for review by our office. The Attorney General may decline to investigate a complaint that is filed with our office more than 90 days after the date of the alleged violation.

May a public body request mediation to resolve a complaint?

If a complainant files five complaints with the same public body or within the same municipality within 12 months, the public body may request mediation upon the fifth or subsequent complaint in order to resolve the complaint. The public body must request mediation prior to, or with, its response to the complaint, and will assume the expense of such mediation. If the parties cannot come to an agreement after mediation, the public body will have ten business days to respond to the complaint and its resolution will proceed in the normal course.

Mediation may occur in open session or in executive session under Purpose 9. In addition, a public body may designate a representative to participate on behalf of the public body. If mediation does not resolve the complaint to each party's satisfaction, the complainant may file the complaint with the Attorney General. The complaint must be filed within 30 days of the last joint meeting with the mediator.

The mediator will be chosen by the Attorney General. If the complainant declines to participate in mediation after a request by the public body, the Attorney General may decline to review a complaint thereafter filed with our office. A public body may always request mediation to resolve a complaint, but only mediation requested upon a fifth or subsequent complaint triggers the requirement that the complainant participate in the mediation before the Attorney General will review the complaint.

Any written agreement reached in mediation must be disclosed at the public body's next meeting following execution of the agreement and will become a public record.

When is a violation of the law considered "intentional"?

Upon finding a violation of the Open Meeting Law, the Attorney General may impose a civil penalty upon a public body of not more than \$1,000 for each intentional violation. G.L. c. 30A, § 23(c)(4). An "intentional violation" is an act or omission by a public body or public body member in knowing violation of the Open Meeting Law. G.L. c. 30A, § 18. In determining whether a violation was intentional, the Attorney General will consider, among other things, whether the public body or public body member 1) acted with specific intent to violate the law; 2) acted with deliberate ignorance of the law's requirements; or 3) had been previously informed by a court decision or advised by the Attorney General that the conduct at issue violated the Open Meeting Law. 940 CMR 29.02. If a public body or public body member made a good faith attempt at compliance with the law but was reasonably mistaken about its requirements, its conduct will not be considered an intentional violation of the Law. G.L. c. 30A, § 23(g); 940 CMR 29.02. A fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel. G.L. 30A, § 23(g); 940 CMR 29.07.

Will the Attorney General's Office provide training on the Open Meeting Law?

The Open Meeting Law directs the Attorney General to create educational materials and provide training to public bodies to foster awareness of and compliance with the Open Meeting Law. The Attorney General has established an Open Meeting

Law website, www.mass.gov/ago/openmeeting, on which government officials and members of public bodies can find the statute, regulations, FAQs, training materials, the Attorney General's determination letters resolving complaints, and other resources. The Attorney General offers periodic webinars and in-person regional training events for members of the public and public bodies, in addition to offering a free online training video.

Contacting the Attorney General

If you have any questions about the Open Meeting Law or anything contained in this guide, please contact the Attorney General's Division of Open Government. The Attorney General also welcomes any comments, feedback, or suggestions you may have about the Open Meeting Law or this guide.

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THE COMMONWEALTH OF MASSACHUSETTS
OPEN MEETING LAW, G. L. c. 30A, §§18-25

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This version of the law is current as of April 7, 2015.

NOTICE: This is NOT the official version of the Massachusetts General Law (MGL). While reasonable efforts have been made to ensure the accuracy and currency of the data provided, do not rely on this information without first checking an official edition of the MGL.

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Section 18: [DEFINITIONS]

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any part of a meeting of a public body closed to the public for deliberation of certain matters.

"Intentional violation", an act or omission by a public body or a member thereof, in knowing violation of the open meeting law.

"Meeting", a deliberation by a public body with respect to any matter within the body's jurisdiction, provided, however, "meeting" shall not include:

- (a) an on-site inspection of a project or program, so long as the members do not deliberate;
- (b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;
- (c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;
- (d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or
- (e) a session of a town meeting convened under section 9 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notice", to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

"Preliminary screening", the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

"Public body", a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose, provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body, provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Section 19. [Division of Open Government; Open Meeting Law Training; Open Meeting Law Advisory Commission; Annual Report]

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

- (1) the general background of the legal requirements for the open meeting law,
- (2) applicability of sections 18 to 25, inclusive, to governmental bodies;
- (3) the role of the attorney general in enforcing the open meeting law; and
- (4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight, 1 of whom shall be the president of the Massachusetts Municipal Association or his designee, 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee, and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

- (1) the number of open meeting law complaints received by the attorney general;
- (2) the number of hearings convened as the result of open meeting law complaints by the attorney general;
- (3) a summary of the determinations of violations made by the attorney general;
- (4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
- (5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
- (6) the number of actions filed in superior court seeking relief from an order of the attorney general; and
- (7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

Section 20. [Meetings of a Public Body to be Open to the Public; Notice of Meeting; Remote Participation; Recording and Transmission of Meeting; Removal of Persons for Disruption of Proceedings]

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website under the procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division of the state secretary's office.

The attorney general may prescribe or approve alternative methods of notice where the attorney general determines the alternative methods will afford more effective notice to the public.

(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location, provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. The authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting permit remote participation applicable to a specific meeting or generally to all of the commission's meetings; provided, however, that the commission shall comply with all other requirements of law and regulation.

(f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any recordings.

(g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated under section 25 and a copy of the educational materials prepared by the attorney general explaining the

open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

Section 21. [EXECUTIVE SESSIONS]

(a) A public body may meet in executive session only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf, and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants;

provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23

Section 22. [Meeting Minutes; Records]

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not

performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Section 23. [Enforcement of Open Meeting Law; Complaints; Hearings; Civil Actions]

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation, provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

- (1) compel immediate and future compliance with the open meeting law;
- (2) compel attendance at a training session authorized by the attorney general;
- (3) nullify in whole or in part any action taken at the meeting;
- (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
- (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
- (6) compel that minutes, records or other materials be made public; or
- (7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of

issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties, provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law, provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

Section 24. [Investigation by Attorney General of Violations of Open Meeting Law]

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be

examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced, and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. [REGULATIONS, LETTER RULINGS, ADVISORY OPINIONS]

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, _____, who qualified for the office of
(Name)

_____, on _____, certify pursuant
(Office) (Date)

to G.L. c. 30A, § 20(h), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences of violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

(Name)

(Name of Public Body)

(Date)

Pursuant to G.L. c. 30A, § 20(h), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

940 CMR: OFFICE OF THE ATTORNEY GENERAL

940 CMR 29.00: OPEN MEETINGS

Section

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29.01: Purpose, Scope and Other General Provisions

(1) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25.

(2) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.

(3) Mailing. All complaints, notices (except meeting notices), and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

County Public Body means a public body created by county government with jurisdiction that comprises a single county.

District Public Body means a public body with jurisdiction that extends to two or more municipalities.

Emergency means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation means an act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, §§ 18 through 25. Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, that the public body or public body member: (a) acted with specific intent to violate the law; (b) acted with deliberate ignorance of the law's requirements; or (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, such conduct will not be considered an intentional violation of M.G.L. c. 30A, §§ 18 through 25.

Person means all individuals and entities, including governmental officials and employees. Person does not include public bodies.

Post Notice means to place a written announcement of a meeting on a bulletin board, electronic display, website, or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with 940 CMR 29.03.

Public Body has the identical meaning as set forth in M.G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

Qualification for Office means the election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified, the member shall be deemed to be qualified for office on a biennial basis following appointment or election to office.

Regional Public Body means a public body with jurisdiction that extends to two or more municipalities.

Remote Participation means participation by a member of a public body during a meeting of that public body where the member is not physically present at the meeting location.

29.03: Notice Posting Requirements

(1) Requirements Applicable to All Public Bodies.

(a) Except in an emergency, public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays, in accordance with M.G.L. c. 30A, § 20. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.

(b) Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.

(c) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2) through (5) shall include the same content as required by 940 CMR 29.03(1)(b). If such an alternative posting method is adopted, the municipal clerk, in the case of a municipality, or the body, in all other cases, shall file with the Attorney General written notice of adoption of the alternative method, including the website address where applicable, and any change thereto, and the most current notice posting method on file with the Attorney General shall be consistently used.

(d) The date and time that a meeting notice is posted shall be conspicuously recorded thereon or therewith. If an amendment occurs within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, then the date and time that the meeting notice is amended shall also be conspicuously recorded thereon or therewith.

(2) Requirements Specific to Local Public Bodies.

(a) The official method of posting notice shall be by filing with the municipal clerk, or other person designated by agreement with the municipal clerk, who shall post notice of the meeting in a manner conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located.

(b) Alternatively, the municipality may adopt the municipal website as the official method of notice posting.

1. The Chief Executive Officer of the municipality, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to adopt the municipal website as the official method of posting notice. Any municipality that has adopted its website as the official method of posting notice by another method as of October 6, 2017 will have satisfied the adoption requirement.
2. If adopted, a description of the website as the notice posting method, including directions on how to locate notices on the website, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the

main and handicapped accessible entrances to the municipal building in which the clerk's office is located.

3. Once adopted as the official method of notice posting, the website shall host the official legal notice for meetings of all public bodies within the municipality.
4. Notices must continue to be filed with the municipal clerk, or any other person designated by agreement with the municipal clerk.

(c) A municipality may have only one official notice posting method for the purpose of M.G.L. c. 30A, §§ 18 through 25, either 940 CMR 29.03(2)(a) or (b). However, nothing precludes a municipality from choosing to post additional notices via other methods, including a newspaper. Such additional notice will not be the official notice for the purposes of M.G.L. c. 30A, §§ 18 through 25.

(d) Copies of notices shall also be accessible to the public in the municipal clerk's office during the clerk's business hours.

(3) Requirements Specific to Regional or District Public Bodies.

(a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional or district public body may, by majority vote, adopt the regional or district public body's website as its official notice posting method. A copy of each meeting notice shall be kept by the chair of the public body or the chair's designee in accordance with the applicable records retention schedules. The public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(4) Requirements Specific to Regional School Districts.

(a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district committee shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.

(b) As an alternative method of notice, a regional school district committee may, by majority vote, adopt the regional school district's website as its official notice posting method. A copy of each meeting notice shall be kept by the secretary of the regional school district committee or the secretary's designee in accordance with the applicable records retention schedules. The regional school district committee shall file and post notice of the website address, as well as directions on how to locate notices on the

website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.

(5) Requirements Specific to County Public Bodies.

(a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(b) As an alternative method of notice, a county public body may, by majority vote, adopt the county public body's website as its official notice posting method. A copy of the notice shall be kept by the chair of the county public body or the chair's designee in accordance with the applicable records retention schedules. The county public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website. A copy of each notice shall also be sent by first class or electronic mail to the Secretary of the Commonwealth's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its webpage for listing meeting notices and any change to the webpage location. The public body shall consistently use the most current website location on file with the Attorney General. A copy of the notice shall be kept by the chair of the state public body or the chair's designee in accordance with the applicable records retention schedules.

(7) Websites. Where a public body adopts a website as its method of noticing meetings, it must make every effort to ensure that the website is accessible to the public at all hours. If a website becomes inaccessible to members of the public within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, the municipal clerk or other individual responsible for posting notice to the website must restore the website to accessibility within six hours of the time, during regular business hours, when such individual discovers that the website has become inaccessible. In the event that the website is not restored to accessibility within six business hours of the website's deficiency being discovered, the public body must re-post notice of its meeting for another date and time in accordance with M.G.L. c. 30A, § 20(b).

29.04: Certification

(1) For local public bodies, the municipal clerk, and for all other public bodies, the appointing authority, executive director, or other appropriate administrator or their designees, shall, upon a public body member's qualification for office, either deliver to the public body member, or require the public body member to obtain from the Attorney General's website, the following educational materials:

(a) The Attorney General's Open Meeting Law Guide, which will include an explanation of the requirements of the Open Meeting Law; the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25; and the Attorney General's regulations, 940 CMR 29.00-29.11.

(b) A copy of each Open Meeting Law determination issued to that public body by the Attorney General within the last five years in which the Attorney General found a violation of M.G.L. c. 30A, §§ 18 through 25. Open Meeting Law determinations are available at the Attorney General's website.

(2) Educational materials may be delivered to public body members by paper copy or in digital form.

(3) Within two weeks after receipt of the educational materials, the public body member shall certify, on the form prescribed by the Attorney General, receipt of the educational materials. The municipal clerk, appointing authority, executive director or other appropriate administrator, or their designees, shall maintain the signed certification for each such person, indicating the date the person received the materials.

(4) An individual serving on multiple public bodies must sign a certification for each public body on which he or she serves. A public body member does not need to sign a separate certification when joining a subcommittee of the public body.

(5) A public body member must sign a new certification upon reelection or reappointment to the public body.

29.05: Complaints

(1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints. A public body need not address a complaint that is not signed by the complainant. A public body need not address a complaint that is not filed using the Attorney General's complaint form.

(2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an Open Meeting Law Complaint Form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.

(3) For local public bodies, the complainant shall file the complaint with the chair of the public body, who shall disseminate copies of the complaint to the members of the public body. The complainant shall also file a copy of the complaint with the municipal clerk, who shall keep such filings in an orderly fashion for public review on request during regular business hours. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body.

(4) The complaint shall be filed within 30 days of the alleged violation of M.G.L. c. 30A, §§ 18 through 25, or if the alleged violation of M.G.L. c. 30A, §§ 18 through 25, could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

(5) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided in 940 CMR 29.05(5)(b), the public body shall meet to review the complaint's allegations; take remedial action, if appropriate; and send to the complainant a response and a description of any remedial action taken. The public body shall simultaneously notify the Attorney General that it has sent such materials to the complainant and shall provide the Attorney General with a copy of the complaint, the response, and a description of any remedial action taken.

(a) Any remedial action taken by the public body in response to a complaint under 940 CMR 29.05(5) shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.

(b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. A request may be submitted by the chair, the public body's attorney, or any person designated by the public body or the chair. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.

(6) If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within ten business days after receiving the request. The public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).

(7) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a complaint with the Attorney General. When filing a complaint with the Attorney General, the complainant shall include a copy of the original complaint along with any other materials the complainant believes are relevant. The Attorney General shall decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of M.G.L. c. 30A, §§ 18 through 25, or if the alleged violation of M.G.L. c. 30A, §§ 18 through 25, could not reasonably have been known at the time it occurred, then within 90 days of the date it should reasonably have been discovered. However, this time may be extended if the Attorney General grants an extension to the public body to respond to a complaint or if the complainant demonstrates good cause for the delay in filing with the Attorney General.

(8) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days.

(9) Mediation to Resolve a Complaint.

(a) If a complainant files five complaints alleging violations of M.G.L. c. 30A, §§ 18 through 25, with the same public body or within the same municipality within 12 months, upon the fifth or subsequent complaint to that public body or a public body within that municipality within the 12-month period, the public body may request mediation with the complainant, at the public body's expense, to resolve the complaint. A mediator is defined by M.G.L. c. 233, § 23C, and will be selected by the Attorney General.

(b) A public body must request mediation prior to, or with, its response to the complaint. If the mediation does not produce an agreement, the public body will have ten business days from the last joint meeting with the mediator to respond to the complaint.

(c) A public body may participate in mediation in open session, in executive session through M.G.L. c. 30A, § 21(a)(9), or by designating a representative to participate on behalf of the public body.

(d) If the complainant declines to participate in mediation after a public body's request in accordance with 940 CMR 29.05(9)(a), the Attorney General may decline to review the complaint if it is thereafter filed with the Attorney General.

(e) If the mediation does not resolve the complaint to the satisfaction of both parties, then the complainant may file a copy of his or her complaint with the Attorney General and request the Attorney General's review. The complaint must be filed with the Attorney General within 30 days of the last joint meeting with the mediator.

(f) Any written agreement reached in mediation shall become a public record in its entirety and must be publicly disclosed at the next meeting of the public body following execution of the agreement.

(g) Nothing in this section shall prevent a complainant from filing subsequent complaints, however public bodies may continue to request mediation in an effort to resolve complaints in accordance with 940 CMR 29.05(9)(a).

(h) Nothing in this section shall prevent a public body or complainant from seeking mediation to resolve any complaint. However, only mediation requests that follow the requirements of 940 CMR 29.05(9)(a) will trigger the application of 940 CMR 29.05(9)(d).

29.06: Investigation

Following a timely complaint filed pursuant to 940 CMR 29.05, where the Attorney General has reasonable cause to believe that a violation of M.G.L. c. 30A, §§ 18 through 25, has occurred, then the Attorney General may conduct an investigation.

(1) The Attorney General shall notify the public body or person that is the subject of a complaint of the existence of the investigation within a reasonable period of time. The Attorney General shall also notify the public body or person of the nature of the alleged violation.

(2) Upon notice of the investigation, the subject of the investigation shall provide the Attorney General with all information relevant to the investigation. The subject may also submit a memorandum or other writing to the Attorney General, addressing the allegations being investigated.

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue one or more civil investigative demands to obtain the information in accordance with M.G.L. c. 30A, § 24(a), to:

(a) Take testimony under oath;

(b) Examine or cause to be examined any documentary material; or

(c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to 940 CMR 29.06 shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or in a written determination to resolve the investigation pursuant to 940 CMR 29.07.

29.07: Resolution

(1) No Violation. If the Attorney General determines, after investigation, that M.G.L. c. 30A, §§ 18 through 25, has not been violated, the Attorney General shall issue a written determination to the subject of the complaint and copy any complainant.

(2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25, has been violated, the Attorney General may resolve the investigation without a hearing. The Attorney General shall determine whether the relevant public body, one or more of its members, or both, were responsible. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon finding a violation of M.G.L. c. 30A, §§ 18 through 25, the Attorney General may take one of the following actions:

(a) Informal Action. The Attorney General may resolve the investigation with a letter or other appropriate form of written communication that explains the violation and clarifies the subject's obligations under M.G.L. c. 30A, §§ 18 through 25, providing the subject with a reasonable period of time to comply with any outstanding obligations.

(b) Formal Order. The Attorney General may resolve the investigation with a formal order. The order may require:

1. immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;
2. attendance at a training session authorized by the Attorney General;
3. nullification of any action taken at the relevant meeting, in whole or in part;
4. that minutes, records or other materials be made public;
5. that an employee be reinstated without loss of compensation, seniority, tenure or other benefits; or
6. other appropriate action.

Orders shall be available on the Attorney General's website.

(3) Violation Resolved After Hearing. The Attorney General may conduct a hearing where the Attorney General deems appropriate. The hearing shall be conducted pursuant to 801 CMR 1.00, et seq., as modified by any regulations issued by the Attorney General. At the conclusion of the hearing, the Attorney General shall determine whether a violation of M.G.L. c. 30A, §§ 18 through 25, occurred and whether the public body, one or more of its members, or both, were responsible. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon a finding that a violation occurred, the Attorney General may order:

- (a) immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;
- (b) attendance at a training session authorized by the Attorney General;
- (c) nullification of any action taken at the relevant meeting, in whole or in part;
- (d) imposition of a fine upon the public body of not more than \$1,000 for each intentional violation; however, a fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel, in accordance with M.G.L. 30A, § 23(g);
- (e) that an employee be reinstated without loss of compensation, seniority, tenure or other benefits;

(f) that minutes, records or other materials be made public; or

(g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

(4) A public body subject to an order of the Attorney General following a written determination issued pursuant to 940 CMR 29.07 shall notify the Attorney General in writing of its compliance with the order within 30 days of receipt of the order, unless otherwise indicated by the order itself. A public body need not notify the Attorney General of its compliance with an order requiring solely immediate and future compliance pursuant to 940 CMR 29.07(2)(b)(1) or 940 CMR 29.07(3)(a).

(5) A public body or any member of a body aggrieved by any order issued by the Attorney General under 940 CMR 29.07 may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of certiorari. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

29.08: Advisory Opinions

The Attorney General will generally not issue advisory opinions. However, the Attorney General may issue written guidance to address common requests for interpretation. Such written guidance will appear on the Attorney General's website.

29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce M.G.L. c. 30A, §§ 18 through 25, pursuant to M.G.L. c. 30A, § 23(f).

29.10: Remote Participation

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating 940 CMR 29.10, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the M.G.L. c. 30A, §§ 18 through 25, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

(a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.

(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, § 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(g) Local Commissions on Disability. In accordance with M.G.L. c. 30A, § 20(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.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other, as required by M.G.L. c. 30A, § 20(d);

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by M.G.L. c. 30A, § 20(d);

(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, § 23D.

(5) Permissible Reason for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting, in accordance with the procedures described in 940 CMR 29.10(7), only if physical attendance would be unreasonably difficult.

(6) Technology.

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

i. telephone, internet, or satellite enabled audio or video conferencing;

ii. any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

(c) The public body shall determine which of the acceptable methods may be used by its members.

(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged, wherever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

(7) Procedures for Remote Participation.

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.

(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.

(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.

(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, § 22.

(8) Further Restriction by Adopting Authority. 940 CMR 29.10 does not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from enacting policies, laws, rules or regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.

(9) Remedy for Violation. If the Attorney General determines, after investigation, that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

29.11: Meeting Minutes

(1) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes, in accordance with M.G.L. c. 30A, § 22(a).

(2) Minutes of all open and executive sessions shall be created and approved in a timely manner. A "timely manner" will generally be considered to be within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages public bodies to approve minutes at the next meeting whenever possible.

REGULATORY AUTHORITY 940 CMR 29.00: M.G.L. c. 30A, § 25(a) and (b).

THE COMMONWEALTH OF MASSACHUSETTS

OPEN MEETING LAW, G.L. c. 30A, §§ 18-25¹

* * *

Chapter 28 of the Acts of 2009, sections 17–20, repealed the existing state Open Meeting Law, G.L. c. 30A, §§ 11A, 11A-1/2, county Open Meeting Law, G.L. c. 34, §9F, 9G, and municipal Open Meeting Law, G.L. c. 39, §§ 23A, 23B, and 23C, and replaced them with a single Open Meeting Law covering all public bodies, G.L. c. 30A, §§ 18-25, enforced by the Attorney General.

* * *

Section 18: [DEFINITIONS]

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Deliberation”, an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

“Emergency”, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

“Executive session”, any part of a meeting of a public body closed to the public for deliberation of certain matters.

“Intentional violation”, an act or omission by a public body or a member thereof, in knowing violation of the open meeting law.

“Meeting”, a deliberation by a public body with respect to any matter within the body’s jurisdiction; provided, however, “meeting” shall not include:

- (a) an on-site inspection of a project or program, so long as the members do not deliberate;
- (b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;
- (c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;
- (d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or

¹ NOTICE: This is NOT the official version of the Massachusetts General Law (MGL). While reasonable efforts have been made to ensure the accuracy and currency of the data provided, do not rely on this information without first checking an official edition of the MGL.

(e) a session of a town meeting convened under section 9 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notice", to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

"Preliminary screening", the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

"Public body", a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Section 19. Division of Open Government; Open Meeting Law Training; Open Meeting Law Advisory Commission; Annual Report

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

- (1) the general background of the legal requirements for the open meeting law;
- (2) applicability of sections 18 to 25, inclusive, to governmental bodies;

- (3) the role of the attorney general in enforcing the open meeting law; and
- (4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

- (1) the number of open meeting law complaints received by the attorney general;
- (2) the number of hearings convened as the result of open meeting law complaints by the attorney general;
- (3) a summary of the determinations of violations made by the attorney general;
- (4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
- (5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
- (6) the number of actions filed in superior court seeking relief from an order of the attorney general; and
- (7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

Section 20. Meetings of a Public Body to be Open to the Public; Notice of Meeting; Remote Participation; Recording and Transmission of Meeting; Removal of Persons for Disruption of Proceedings

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a

regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division of the state secretary's office.

The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public.

(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(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.

(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(g) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

Section 21. Executive Sessions

(a) A public body may meet in executive session only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a

license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

Section 22. Meeting Minutes; Records

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from

disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Section 23. Enforcement of Open Meeting Law; Complaints; Hearings; Civil Actions

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following

a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

- (1) compel immediate and future compliance with the open meeting law;
- (2) compel attendance at a training session authorized by the attorney general;
- (3) nullify in whole or in part any action taken at the meeting;
- (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
- (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
- (6) compel that minutes, records or other materials be made public; or
- (7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no

civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

Section 24. Investigation by Attorney General of Violations of Open Meeting Law

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material

demand; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. Regulations; Letter Rulings; Advisory Opinions

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.



CARPE LIGHT COMPACT

Open Meeting Law Update

October 11, 2017

INTRODUCTION

- The Office of Attorney General (“OAG”) promulgates regulations under the Open Meeting Law, G.L. c. 30A, § § 18-25 (“OML”).
- The OAG revised its regulations effective October 6, 2017.
- The regulations are codified at 940 CMR 29.00.
- The purpose of this presentation is to review some of the changes to the regulations and to provide Governing Board members with the required OML certification materials.

CERTIFICATION REQUIREMENTS

- When a member of the Compact Governing Board qualifies for office, the JPE Administrator is required to deliver certain educational materials to the board member.
- The OML regulations defined “qualification for office” as the election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified, the member shall be deemed to be qualified for office on a biennial basis following appointment or election to office.”
- The new OML regulations expressly state that an individual serving on multiple public bodies must sign a certification for each public body on which he or she serves.
- Each Governing Board Member must complete a written certification regarding his or her receipt of the educational materials. The certification form was included in the board packet and the JPE Administrator will be collecting completed certification forms at the end of the meeting.

REQUIRED CERTIFICATION MATERIALS

- **Open Meeting Law**: A hard copy of the entire OML is set forth in the board member handouts. The OML is also available on the OAG's website: <http://www.mass.gov/ago/government-resources/open-meeting-law/open-meeting-law-mgl-c-30a-18-25.html>.
- **OAG Regulations**. A hard copy of the OAG regulations is set forth in the board member handouts. The regulations are also available on the OAG's website: <https://www.mass.gov/service-details/new-open-meeting-law-regulations-effective-october-6-2017>
- **Open Meeting Law Guide**. A hard copy of the OAG's OML Guide dated October 6, 2017 is included in the board member handouts. The new OML Guide is also available on the OAG's website: <https://www.mass.gov/files/documents/2017/09/25/2017%20Guide%20only.pdf>
- **OML Determinations Finding a Violation of OML**. The Compact has not been found to have violated the OML.

REMOTE PARTICIPATION

- One of the significant changes to the OML regulations is that they no longer include five permissible reasons for remote participation.
- The regulations used to state that the permissible reasons for participating in a meeting remotely were: 1) personal illness; 2) personal disability; 3) emergency; 4) military service; or 5) geographic distance.
- The regulations now provide a member of a public body shall be permitted to participate if physical attendance would be unreasonably difficult.
- The Compact has revised its Remote Participation Policy to comply with the new regulations.

OTHER CHANGES TO THE OML REGULATIONS

- The new OML regulations have made significant changes to the complaint process. For example, mediation is now available to resolve disputes.
- Many of the other changes are administrative in nature or they codify practices and rulings that had been set forth in the OAG's OML determinations. For example, the regulations now set forth specific deadlines for approving meeting minutes.
- Anyone interested in reviewing all of the changes to the OML regulations can review the redlined version here:
<https://www.mass.gov/files/documents/2017/09/25/New%20OML%20Regulations%20%28Red-lined%20version%29.pdf>

ADDITIONAL QUESTIONS

- The information in this presentation is general in nature and is not legal advice.
- Board Members with additional OML questions should individually email Erin M. O'Toole, Esq. at eotoole@bck.com.