

Cape Light Compact Governing Board Meeting

DATE: Wednesday, January 27, 2016

LOCATION: Innovation Room, Open Cape Building
3195 Main Street, Barnstable County Complex

TIME: 2:00 – 4:30 p.m.

AGENDA

- 2:00 – 2:15 2016 Open/Close Nominations and Vote on 2016 Executive Committee Members
- 2:15 – 2:25 Public Comment
- 2:25 – 2:35 Approval of Minutes
- 2:35 – 2:40 Treasurer’s Report, Potential Vote to Ratify Treasurers’ Approval of Contracts
- 2:40 – 2:45 Chairman’s Report
- 2:45 – 3:10 Discussion of Assembly of Delegates Telecommunications & Energy Committee Meetings of December 2015 and January 2016, Potential Vote on Any Recommended Action
- 3:10 – 3:20 Review and Discuss Letter to Harwich Board of Selectmen, Potential Vote
- 3:20 – 3:40 Review Draft Board Member Roles and Responsibilities
- 3:40 – 4:00 Proposed Executive Session – Strategy Discussions on Contested Legal Issues on 2016 -2018 Energy Efficiency Plan, DPU 15-166
- 4:00 – 4:20 Power Supply, Marketing Plan Update, Austin Brandt
- 4:20 -4:30 Board Member Update (Reserved for Updates on Member Activities the Chair Did Not Reasonably Anticipate Would be Discussed – No Voting)
- Administrator’s Report
1. Update on 2016-2018 Energy Efficiency Plan
 2. Board Meeting Schedule
- 4:30 – 5:00 Overview of Massachusetts Open Meeting Law, Compact Counsel

**Cape Light Compact
Governing Board
Open Session Meeting Minutes
Wednesday, December 9, 2015**

The Cape Light Compact Governing Board met on Wednesday, November 18, 2015 in the Innovation Room, Open Cape Building, 3195 Main Street, Barnstable MA 02630 at 2:00 p.m.

PRESENT WERE:

1. Dr. Joyce Flynn, Chairwoman, Yarmouth
2. Robert Schofield, Vice-Chair, Bourne
3. Sheila Lyons, Barnstable County @ 2:20 p.m.
4. Peter Cocolis, Treasurer, Chatham
5. Barry Worth, Secretary, Harwich
6. David Anthony, Barnstable
7. Deane Keuch, Brewster
8. Brad Crowell, Dennis
9. Frederick Fenlon, Eastham
10. Paul Pimentel, Edgartown
11. Ronald Zweig, Falmouth
12. Thomas Mayo, Mashpee
13. Richard Toole, Oak Bluffs remotely by phone
14. Raymond Castillo, Orleans
15. Joshua Peters, Sandwich
16. Richard Elkin, Wellfleet
17. Susan Hruby, W. Tisbury

ABSENT WERE:

18. Michael Hebert, Aquinnah
19. Timothy Carroll, Chilmark
20. Dukes County - vacant appointee needs swearing in
21. Thomas Donegan, Provincetown
22. Tisbury – vacant.
23. Joseph Buteau, Truro

Members Physically present: 16
Members Participating by phone: 1

LEGAL COUNSEL

Audrey Eidelman, Esq., BCK Law, PC

STAFF PRESENT:

Austin Brandt, Power Supply Planner
Phil Moffitt, EM&V Manager
Lindsay Henderson, Marketing & Data Analyst
Karen Loura, Administrative Assistant

Chr. Flynn called the meeting to order at 2:00 p.m. stating the meeting notice/agenda had been duly posted on the Cape Light Compact website in accordance with the Open Meeting Law.

She stated Cape Light Compact Management staff is not present since they are attending Energy Efficiency Plan Hearings with the DPU in Boston this week. She noted there were no members of the public present and that R. Toole is participating remotely by telephone.

PUBLIC COMMENT

There were no members of the public present.

CONSIDERATION OF MEETING MINUTES

B. Worth presented the November 18, 2015 Meeting Minutes. D. Anthony offered corrections to typographical errors. B. Schofield moved the Board vote to accept the minutes as amended, seconded by R. Elkin and voted by roll call vote as follows:

1. R. Schofield, Bourne	Yes	10. B. Worth, Harwich	Yes
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2. S. Lyons, Barnstable County	Not present	11. T. Mayo, Mashpee	Yes
3. D. Anthony, Barnstable	Yes	12. R. Toole, Oak Bluffs	Yes
4. D. Keuch, Brewster	Yes	13. R. Castillo, Orleans	Yes
5. P. Cocolis, Chatham	Abs	14. J. Peters, Sandwich	Yes
6. B. Crowell, Dennis	Yes	15. R. Elkin, Wellfleet	Yes
7. G. Fenlon, Eastham	Yes	16. S. Hruby, W. Tisbury	Yes
8. P. Pimentel, Edgartown	Abs	17. J. Flynn, Yarmouth	Yes
9. R. Zweig, Falmouth	Yes		

Motion carried in the affirmative (14-0-2)

POWER SUPPLY PROGRAM OVERVIEW, AUSTIN BRANDT

A. Brant, Cape Light Compact Power Supply Planner reviewed a Power Point Presentation entitled Power Supply Aggregation History, 12/9/15 CLC Board Meeting. R. Schofield asked for the total number of Commercial Customers enrolled with the Compact receiving electricity via our contract with Nextera. A. Brandt offered to provide the total number at a subsequent meeting. He also said a further analysis can likely be done. P. Cocolis pointed out that many members of the general public do not understand there are two parts to their electric bills and where they get their power. A. Brandt noted that changes to the electric accounts also trigger enrollment with Cape Light Compact. He said the new rates will go into effect the day after the customer's January meter-read date. He said the Cape Light Compact is hoping to re-enroll customers who unenrolled last winter because of increased rates. There was discussion about customers who may have switched to competitive suppliers and who entered into 3-year contracts at .13/kWh. Those customers breaking contracts were charged early termination penalties of \$50.00. If customers opt out from competitive suppliers and did not arrange for a replacement, are automatically supplied by Eversource.

There was discussion about marketing to re-enroll customers. A. Brandt explained it is hard to identify customers leaving due to competitive pricing opportunities from those who moved away. He said he will check to see if the data is available.

S. Lyons arrived to the meeting at 2:20 p.m.

L. Henderson said new rates are sent in press releases and advertised on the CLC website, e-newsletter (1300) blast and on Facebook social media. S Hruby suggested an interview on radio CRI and asked if there are other venues that haven't been used (i.e., Real Estate Agents, etc.). A. Brandt said we are not allowed to use certain customer account information to market program participation.

R. Elkin asked if we could contact participants who un-enrolled and send them a letter: A. Brandt said he will check if ConEdison has that information but expressed it may be difficult to get that specific information. There was discussion about how the Compact might reach back. R. Elkin stated the best time to re-connect is during the next 6 months. A. Brandt agreed to discuss the matter with M. Downey to determine feasibility of the strategy. P. Cocolis said it is a good idea to target recent opt-outs but also to market to Eversource Customers.

R. Zweig noted that everyone on Cape Cod & Martha's Vineyard receive the Compact's Energy Efficiency & Advocacy services regardless of participation in our Power Supply Program.

A. Brandt said the Compact wants not only to offer a choice but the Power Supply Program is integral to support the Energy Efficiency and Consumer Advocacy Programs. Our advocacy has proven savings. He added that many competitors charge monthly service fees, cancelation fees and low introductory teaser rates. The Cape Light Compact believes it offers the best terms and conditions.

T. Mayo urged utilization of the Public Access Channels by providing regular interviews which can be shared among all Public Access Channels and broadcast throughout the service territory.

J. Flynn asked if Power Supply information can be included in the Home Energy Assessment packets. L. Henderson said our General Brochure is included in the audit packets. A. Brandt explained the adder is the

Compact's Operating Budget and is not used to fund Energy Efficiency Programs.

S. Hruby said the Board can request Staff develop a Marketing Plan and provide it to the Board.

B. Crowell noted the supply side of the bill contains two groups Cape Light Compact/Eversource and marketers. He said the Compact can never compete with marketers. He said consumers who try competitive suppliers regret doing so and if they can figure out how to get back to Cape Light Compact, they usually stay. He said there is need to focus on the "getting back" customers as the Compact is perceived as the provider always on Consumer's side. He also noted as a governmental organization, the Compact has better access to media.

D. Anthony said the Board is fortunate to have talented staff to bring back a marketing plan. The Board can express concerns and make sure staff is aware the Board seeks solutions.

P. Pimentel asked to see trend data on a regular basis? A. Brandt said he can provide periodic updates.

Eversource rate is 10.804/kWh effective January 1st. Eversource has the ability to prorate bills. A. Brandt said based on estimates, the Compact is expecting to save consumers almost 4 million dollars over the next six months. The new rate which will take effect beginning on the day after the customer's January meter-read date is .09613/kWh for our residential customers. The commercial/industrial rate is still being established and should be available within a week.

TREASURER REPORT

P. Cocolis reported the 3-year Energy Efficiency Budget report is not available. County staff were busy on the annual County audit and were delayed in providing information.. He distributed copies of the Compact's Operating Budget Year-to-date Budget Report through 12/9/15 and provided review. There was discussion about possibly transferring funds into the Marketing Budget once a Marketing Plan is drafted.

T. Mayo urged marketing through available channels which do not carry charges. It was noted if necessary, funds can also be transferred from the Power Supply Reserve Fund.

P. Cocolis distributed a Contract Summary showing one Amendment which he approved. This will be added to an updated summary at the January and the Board will have the opportunity to vote to ratify his actions at that time.

CHAIRMAN'S REPORT

J. Flynn reminded members that Town Annual reports are coming due. She spoke about the deadline occurring before the close of the calendar-year Energy Efficiency Budget and missing data in order to submit the report timely. T. Mayo said boiler-plate reports can be submitted and permission sought to extend the deadline for a few weeks and then inserting numbers. It was noted the final numbers are often not available until late January/February. J. Flynn suggested a sentence be included within the report to explain the report covers 10-11 months vs. 12 months of the program year.

J. Flynn noted the addition of the last item on the agenda provided to allow members a chance to provide updates on their activities or report matters to the Board. She seeks to provide members an opportunity to speak ideas without fear of violating the Open Meeting Law. She said Cape Light Compact has consistently been found to be in compliance with the Open Meeting Law.

OPEN NOMINATIONS FOR 2016 EXECUTIVE COMMITTEE MEMBERS

Chr. Flynn announced the opening of Nominations to the Executive Committee and turned nominating process over to L. Henderson.

Chairman:

- T. Mayo nominated **Joyce Flynn to the position of Chairperson**, seconded by R. Schofield

Vice Chairman:

- T. Mayo nominated **Robert Schofield to the position of V. Chairperson**, seconded by B. Worth. R. Schofield said he is willing to serve but is more than willing to step down if there are others interested in the position.

Treasurer:

- P. Cocolis said he is willing to serve as Treasurer but is more than willing to step down if there are others interested in the position. T. Mayo nominated **Peter Cocolis to the position of Treasurer**, seconded by R. Schofield. R. Elkin expressed gratitude and admiration to P. Cocolis.

Secretary:

- R. Schofield nominated Barry Worth to the position of Secretary. B. Worth respectfully declined. He said the Secretary Position does not require very much work. It is mostly to review and edit meeting minutes.
- P. Cocolis nominated **Ronald Zweig as Secretary**, sec. Bob Schofield.

Member-at-large:

- B. Schofield nominated Susan Hruby to the position of Member-at-Large. S. Hruby declined the nomination due to illness over the past year.
- S. Hruby nominated R. Toole to the position of Member-at-Large. R. Toole declined as he finds it difficult to attend meetings.
- R. Toole nominated Paul Pimentel. P. Pimentel declined because he is overextended. Chr. Flynn noted for R. Toole that there are not many Executive Committee Meetings. A majority of the committee needs to be physically present to constitute a quorum (3 members) and R. Toole could participate by phone. **R. Toole said he would further consider accepting the nomination of Member-at-large.**

There was discussion as to the method the Board would use when voting and electing officers. The Board will either vote by a show of hands or paper ballot.

BOARD MEMBER UPDATE

(Reserved for Updates on Member Activities the Chair Did Not Reasonably Anticipate Would be Discussed-No Voting)

R. Zweig reported on his attendance to the Mass. Municipal Association (MMA) Seminar in Fall River last Thursday 12/3/15) He reported on the Presentation by Constellation Energy and ISO NE relative to the current status in the market today and the transition the industry is currently going through and what future will look like. The Attorney General's Office's view on Natural Gas and NG pipelines. There are a fleet of plants around New England which are retiring over next six years (coal, oil and nuclear) with 12,500 MW going off-line and project/proposal to develop Natural Gas, wind and solar generation to fill the gap over the next 6-10 years. Natural Gas is projected to comprise 61% of the mix with wind generated power comprising 37%. Much of wind generation will be in Maine. Offshore wind generation was not included because it was not put forward. 2% other mostly for solar. Most of the plant retirement is due to age. There is no increase in hydro from Canada. B. Schofield asked if they are still working on transmission. R. Zweig said it was not an area they are going into. A Bill in the Legislature from Somerset area calls for the allocating of 2000 MW of offshore wind which would be a part of the mix. Large capacity has been renewables and Natural Gas. All new capacity is renewable mostly wind.

At 3:39 p.m., T. Mayo moved to adjourn, seconded by D. Anthony and voted unanimously in favor.

Respectfully submitted,

Karen E. Loura

Administrative Assistant

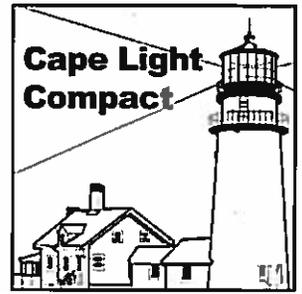
LIST OF DOCUMENTS AND EXHIBITS

- Meeting Notice/Agenda
- 11/18/15 Draft Meeting Minutes
- Power Supply Program Overview Power Point Presentation
- Year-to-date Operating Budget Report dated 12/9/15
- Contract Tracking Summary
- Copy of Cape Light Compact's Municipal Aggregation Annual Report

Cape Light Compact
Contracting Tracking

Vendor Name	Amount of Amendment	Total Amount of Contract	Term	Purpose	Competitively Procured Y/N	P. Cocolis (A)Approved/(D) Denied	Approved by Commissioners/County Administrator
Honeywell		\$4,159/month	1-1-16 to 3-31-16	4th Amendment BBCS Data Center Services BBCS	yes	A 12/7/15	12/10/2015
Rise Engineering		\$1,658,259.05	1-1-16 to 12-31-16	Installation Services Agreement (Small Commercial Services)	yes	A 1/5/2016	1/20/2016
Accem LLC		\$9,750.00	1-1-16 to 12/31/16	Professional/Consulting Services Agreement (Energy Education)	MGL Ch 30B§(1b)(33) Exemption	A 1/5/2016	1/13/2016
Rise Engineering	\$488,212.69	\$14,590,992.83	1/1/15 to 12/31/15	11th Amendment Lead Vendor Home Energy Services	Yes	A 1/5/2016	
Kelliber Sameis Volk (KSV)	\$210,000.00	\$210,000.00	1/1/16 to 12/31/16	1st Amendment - Statewide Marketing Services for Energy Efficiency (Residential, Low Income and Commercial & Industrial).	yes Statewide RFP	A 1/5/2016	1/20/2016
Rise Engineering	\$209,030.00	\$1,117,100.00	1-1-15 to 12/31/15	6th Amendment to Multi-family Services Contract. Amendment is to increase budget by \$209,030.00	yes	A 1/7/2016	1/20/2016
Direct Technologies	\$51,156.00	\$251,656.00	1/1/16-12/31/16	2nd Amendment to Data Management and tracking services for 2016	yes	A 1/7/2016	1/20/2016
TRC Energy Services		pricing matrix	1-15/16-12/31/18	C/I Engineering and Ancillary Services	Yes	A 1/13/2016	1/20/2016
People Power	\$387,490.00	\$387,490.00	1/1/16-12/31/16	3rd Amendment - Behavior Initiative	yes	A 1/13/2016	1/20/2016
Rise Engineering		\$598,283.21	1/1/2016	Contract for Lead Vendor Multi-family EE Services	yes	A 1/7/2016	on 1/27/16 agenda
National Resource Management, Inc.		\$219,978.88	1/1/16-12/31/16	Contract for Lead Refrigeration Vendor for Sm. Commercial Business Services	yes	A 1/14/2016	on 1/27/16 agenda
Galligan Energy Consulting, Inc	\$95.00/hr	May exceed \$25,000	1/15/16-12/31/18	C&I Engineering & Other Ancillary Services	Yes	A 1/15/16	on 1/27/16 agenda
Ridley & Associates	\$8650/month	\$51,900.00	1/1/16-6/30/16	2nd Amendment for Marketing Consulting Services	Yes	A 1/19/16	

**Agenda Action Request
Cape Light Compact
Meeting Date: 1/27/2016**



Ratify Actions of Treasurer

REQUESTED BY: Peter Cocolis

Proposed Motion(s)

I move the Board vote to ratify the actions of the Compact Treasurer relative to Compact contracts from November 13, 2005 through January 27, 2016.

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.

Additional Information

- **This motion is consistent with the Board's March 11, 2015 vote to establish a contract review process**

Record of Board Action

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

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

Open Meeting Law Guide



COMMONWEALTH OF MASSACHUSETTS

OFFICE OF ATTORNEY GENERAL

MAURA HEALEY

MARCH 18, 2015

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 "Ma Healey". The signature is fluid and cursive, with the first name "Ma" and the last name "Healey" clearly distinguishable.

Maura Healey
Massachusetts Attorney General

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, and this Guide.

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.

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.

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 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

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

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.

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.

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

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.

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 or on the municipal building in which the clerk's office is located. In the event that the 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 follow one of these alternative posting methods approved by the Attorney General in 940 CMR 29.03(2)(b):

- public bodies may post notice of meetings on the municipal website;
- public bodies may post notice of meetings on cable television, **AND**, post notice or provide cable television access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- public bodies may post notice of meetings in a newspaper of general circulation in the municipality, **AND**, post notice or a copy of the newspaper containing the meeting notice at an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- public bodies may place a computer monitor or electronic or physical bulletin board displaying meeting notices on or in a door, window, or near the entrance of the municipal building in which the clerk's office is located in such a manner as to be visible to the public from outside the building; or
- public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours.

Prior to utilizing an alternative posting method, 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 alternative posting method 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, even if an alternative posting method has been adopted, 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. 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. 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 file meeting notices by posting the notice 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 website address 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.

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 utilizes technology that 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.

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.

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.

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 resumés 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.

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: Beginning on April 7, 2015, 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 if the chair (or, in the chair's absence, the person chairing the meeting) determines that one of the following factors makes the member's physical attendance unreasonably difficult:

1. Personal illness;
2. Personal disability;
3. Emergency;
4. Military service; or
5. Geographic distance.

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 and which of the five reasons listed above requires that member's remote participation. The chair's statement does not need to contain any detail about the reason for the member's remote participation other than the section of the regulation that justifies it. This information must also be recorded in the meeting minutes.

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.

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.

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, along with the reason under 940 CMR 29.10(5) for his or her remote participation.

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 State'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 State'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. The Open Meeting Law does not provide a definition of "timely manner," but the Attorney General recommends that minutes be approved at a public body's next meeting whenever possible. The law requires that existing minutes be made available to the public within 10 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 10 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 resumé 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 10 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 10 days, notifying the requestor that it is conducting this review.

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 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 Attorney General. While the public body may delegate responsibility for responding to the complaint to counsel or another individual, it must first meet to do so.

The public body may request additional information from the complainant. 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.

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 or, after full disclosure, acted in good faith compliance with the advice of counsel, its conduct

will not be considered an intentional violation of the Law. G.L. c. 30A, § 23(g); 940 CMR 29.02.

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.



Attorney General Maura Healey

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Open Meeting Law, M.G.L. c. 30A, §§ 18-25 (Effective July 1, 2015)

THE COMMONWEALTH OF MASSACHUSETTS

OPEN MEETING LAW, G.L. c. 30A, §§ 18-25

...

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.

...

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.

[OPEN MEETING LAW, G.L. c. 30A, §§ 18-25 \(Effective July 1, 2015\)](#)

[Section 18: Definitions](#)

[Section 19: Division of Open Government, Open Meeting Law Training, Open Meeting Law Advisory Commission, Annual Report](#)

[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](#)

[Section 21: Executive Sessions](#)

[Section 22: Meeting Minutes; Records](#)

[Section 23: Enforcement of Open Meeting Law; Complaints; Hearings; Civil Actions](#)

[Section 24: Investigation by Attorney General of Violations of Open Meeting Law](#)

[Section 25: Regulations; Letter Rulings; Advisory Opinions](#)

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.

To Top

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

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(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:

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- (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.

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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 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) 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.

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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.

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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.

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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.

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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.

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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.

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940 CMR 29.00: Open Meetings

Open Meetings

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29.01: Purpose, Scope and Other General Provisions

(1) **Authority** . The Attorney General promulgates 940 CMR 29.00, relating to the Open Meeting Law, pursuant to M.G.L. c. 30A, sec. 25 (a) and (b).

(2) **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, sec. 18-25.

(3) **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

(4) **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.

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29.02: Definitions

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

Commission means the Open Meeting Law Advisory Commission, as defined by G.L. c. 30A, sec. 19(c).

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, sec. 18-25. Evidence of an intentional violation of M.G.L. c. 30A, sec. 18-25 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, sec. 18-25. 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 or, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel, such conduct will not be considered an intentional violation of M.G.L. c. 30A, sec. 18-25.

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, cable television channel, newspaper 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, sec. 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 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 biannual basis on January 1st of a calendar year beginning on January 1, 2011. Where a member's term of office began prior to July 1, 2010, and will not expire until after July 1, 2011, the member shall be deemed to have qualified for office on January 1, 2011.

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.

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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, sec. 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. The date and time that the notice is posted shall be conspicuously recorded thereon or therewith.

(c) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2)-(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

(2) Requirements Specific to Local Public Bodies

(a) The municipal clerk, or other person designated by agreement with the municipal clerk, shall post notice of the meeting 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. Such notice shall be accessible to the public in the municipal clerk's office. If such notice is not conspicuously visible to the public during hours when the clerk's office is closed, such notice shall also be made available through an alternative method prescribed or approved by the Attorney General under 940 CMR 29.03(2)(b). A description of such alternative method, sufficient to allow members of the public to obtain notice through such method, 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.

(b) For local public bodies, the Attorney General has determined, pursuant to M.G.L. c. 30A, sec. 20(c), that the following alternative methods will provide more effective notice to the public:

- a. Public bodies may post notice of meetings on the municipal website;
- b. Public bodies may post notice of meetings on cable television, AND, post notice or provide cable television access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- c. Public bodies may post notice of meetings in a newspaper of general circulation in the municipality, AND, post notice or a copy of the newspaper containing the meeting notice at an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- d. Public bodies may place a computer monitor or electronic or physical bulletin board displaying meeting notices on or in a door, window, or near the entrance of the municipal building in which the clerk's office is located in such a manner as to be visible to the public from outside the building, or;
- e. Public bodies may provide an audio recording of meeting notices, available to the public by telephone at all 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 post a meeting notice on the regional or district public body's website. A copy of the notice shall be filed and kept by the chair of the public body or the chair's designee.

(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 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 post a meeting notice on the regional school district's website. A copy of the notice shall be filed and kept by the secretary of the regional school district committee or the secretary's designee.

(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 post a meeting on the county public body's website. A copy of the notice shall be filed and kept by the chair of the county public body or the chair's designee.

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website in accordance with procedures established by the Attorney General in consultation with the Information Technology Division of the Executive Office for Administration and Finance for the purpose of providing the public with effective notice. A copy of each notice shall also be sent by first class or electronic mail to the Secretary of State's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its Internet notice posting location and any change thereto. The public body shall consistently use the most current notice posting method on file with the Attorney General.

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29.04: Certification

(1) For local public bodies, a document including M.G.L. c. 30A, sec. 18-25; a document including 940 CMR 29.00; and educational materials prepared by the Attorney General explaining M.G.L. c. 30A, sec. 18-25, and its application, shall be delivered by the municipal clerk to each member of a public body, whether elected or appointed, upon taking the oath of office, if required, and in every case before entering into performance of the office. Within two weeks after receipt of such materials, the member shall certify, on the form prescribed by the Attorney General, receipt of such materials. The municipal clerk shall maintain the signed certification for each such person, indicating the date the person received the materials.

(2) For regional, district, county or state public bodies, a document including M.G.L. c. 30A, sec. 18-25; a document including 940 CMR 29.00; and educational materials prepared by the Attorney General explaining M.G.L. c. 30A, sec. 18-25, and its application, shall be delivered by the appointing authority, executive director or other appropriate administrator or their designees, to each member of a public body, whether elected or appointed, upon taking the oath of office, if required, and in every case before entering into the performance of the office. Within two weeks after receipt of such materials, the member shall certify, on the form prescribed by the Attorney General, receipt of such materials. The 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.

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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.

(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. The complaint shall be filed within 30 days of the alleged violation of M.G.L. c. 30A, sec. 18-25, or if the alleged violation of M.G.L. c. 30A, sec. 18-25, could not

reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

(4) The public body shall review timely complaints to ascertain the time, date, place and circumstances which constitute the alleged violation. 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 10 business days after he or she receives the request. The public body will then have an additional 10 business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5)..

(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)(a) and (b), the public body shall review the complaint's allegations; take remedial action, if appropriate; and send to the Attorney General a copy of the complaint and a description of any remedial action taken. The public body shall simultaneously notify the complainant that it has sent such materials to the Attorney General and shall provide the complainant with a copy of the 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. 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 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 may decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of M.G.L. c. 30A, sec. 18-25, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.

(7) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days. If additional time is necessary to resolve a particular complaint, the Attorney General will notify the complainant and the public body.

(8) If a complaint appears untimely, is not in the proper form, or is missing information, the Attorney General shall return the complaint to the complainant within 14 business days of its receipt, noting its deficiencies. The complainant shall then have 14 business days to correct the deficiencies and resubmit the complaint to the Attorney General. If the deficiencies are not corrected, no further action on the complaint will be taken by the Attorney General.

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29.06: Investigation

Whenever the Attorney General has reasonable cause to believe that a violation of M.G.L. c. 30A, sec. 18-25, has occurred that has not been adequately remedied, 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 and an investigation 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 subpoenas to obtain the information in accordance with M.G.L. c. 30A, sec. 24, 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 other action taken to conduct or resolve the investigation pursuant to 940 CMR 29.00.

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29.07: Resolution

(1) **No Violation.** If the Attorney General determines, after investigation, that the M.G.L. c. 30A, sec. 18-25, has not been violated, the Attorney General shall terminate the investigation and notify, in writing, the subject of the investigation and any complainant

(2) **Violation Resolved Without Hearing.** If the Attorney General determines after investigation that M.G.L. c. 30A, sec. 18-25, 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, and whether the violation was intentional or unintentional. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon finding a violation of M.G.L. c. 30A, sec. 18-25, the Attorney General may take one of the following actions:

(a) **Informal action.** The Attorney General may resolve the investigation with a telephone call, letter or other appropriate form of communication that explains the violation and clarifies the subject's obligations under M.G.L. c. 30A, sec. 18-25, 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, sec. 18-25;
2. Attendance at a training session authorized by the Attorney General;
3. That minutes, records or other materials be made public; or
4. 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, sec. 18-25, occurred, whether the public body, one or more of its members, or both, were responsible, and whether the violation was intentional or unintentional. 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, sec. 18-25;
- (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;
- (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 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.

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29.08: Advisory Opinions

The Attorney General may issue advisory opinions on request or at his or her own initiative to provide guidance to public bodies and the public on changes to M.G.L. c. 30A, sec. 18-25, court decisions interpreting M.G.L. c. 30A, sec. 18-25, or other developments concerning M.G.L. c. 30A, sec. 18-25.

(1) The Attorney General shall ordinarily make a draft advisory opinion available for comment on the Attorney General's website at least 60 days prior to the planned issuance of the opinion. Notice of the posting shall be provided to the Commission.

(2) Comments on the draft advisory opinion shall be submitted, in writing, to the Attorney General at least 30 days prior to the planned issuance of the opinion.

(3) Action taken by a public body in good faith compliance with an advisory opinion, provided that the circumstances are not materially different, shall not constitute an intentional violation of the M.G.L. c. 30A, sec. 18-25.

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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, sec 18-25 M.G.L. c. 30A, sec. 18-25 pursuant to M.G.L. c. 30A, sec. 23(f).

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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 these regulations, 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 Open Meeting Law, 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, sec. 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, 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 these regulations, 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 these regulations, 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 these regulations, 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 these regulations, 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, sec. 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of these regulations, with that vote applying to all subsequent meetings of that public body and its committees.

(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;

(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, sec 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, sec. 23D.

(5) Permissible Reasons 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), if the chair or, in the chair's absence, the person chairing the meeting, determines 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

(e) Geographic distance.

(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 and the reason under 940 CMR 29.10(5) for his or her remote participation. 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, sec. 22.

(8) **Further Restriction by Adopting Authority.** These regulations do 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.

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**Agenda Action Request
Cape Light Compact
Meeting Date: 1/27/2016**



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

MOTION TO SEND LETTER TO THE TOWN OF HARWICH

REQUESTED BY: *Maggie Downey*

Proposed Motion(s)

I move the Board approve the submission of a letter to the Chairman of the Harwich Board of Selectmen

Additional Information

The letter is a response to the November 16, 2015 letter from the Harwich Board of Selectmen regarding proposed amendments to the Cape Light Compact's Intergovernmental Agreement.

Record of Board Action

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

CAPE COD REGIONAL GOVERNMENT
ASSEMBLY of DELEGATES

• • • • •

Notice of Committee Meeting

Standing Committee on Telecommunications & Energy

will meet on

Wednesday, January 6, 2016

beginning at 3:00 p.m.

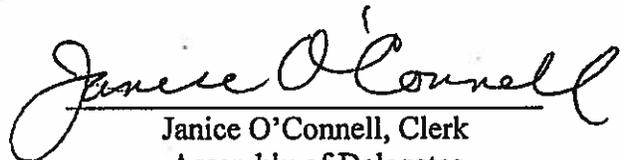
in the

CHAMBER OF THE ASSEMBLY OF DELEGATES
First District Courthouse
Route 6A – Barnstable, MA

The committee will meet to discuss Barnstable County electric energy rates and economics, the supplier market, and the Cape Light Compact aggregation plan with Chris Powicki, President of Water Energy Ecology, Information and Design Services, Inc.

Posted:

12-31-15 A08:21 IN


Janice O'Connell, Clerk
Assembly of Delegates

If you are deaf or hard of hearing or are a person with a disability who requires an accommodation, contact Janice O'Connell, Assembly Clerk at 508-375-6761 or Barnstable County Department of Human Services TTY 508-362-5885.



January 27, 2016

Peter Hughes, Chair
Office of the Selectmen
Town of Harwich
732 Main Street
Harwich, MA 02645

Re: Letter to the Cape Light Compact Dated November 16, 2016

Dear Mr. Hughes:

The Cape Light Compact ("Compact") is in receipt of the above referenced letter regarding the process of amending the Compact's Intergovernmental Agreement (IGA). The Compact Governing Board discussed the Compact's IGA at their November 16, 2015 Governing Board meeting. At this meeting, Harwich's Compact Board member, Barry Worth, informed the Compact Governing Board of the Harwich Board of Selectmen's (BOS) desire to have all amendments to the IGA require prior approval from the Board of Selectmen or other executive body of all Compact member towns before amending the IGA.

The Compact Governing Board discussed Harwich's request as part of its deliberations on the proposed amendments. It was noted that Compact member towns presently have the ability, through their appointing authority, to require their representative to take certain actions (i.e. no votes on the IGA without BOS approval). Almost all of the Compact Governing Board members had contacted their appointing authority regarding the proposed amendments to the IGA well in advance of the actual vote, and requested input on the amendments. In fact, the section of concern referenced in the BOS letter, Section K/Administrator responsibilities, was amended as part of the Governing Board deliberations on November 16th. As a result of this discussion, the Compact Governing Board felt that it was best left to each member town to decide how its Compact representative should interact with the member Town.

The Compact Governing Board voted to approve the proposed amendments to the IGA; Harwich's representative abstained from this vote. Attached is a copy of the Sixth Amended Intergovernmental Agreement for your records.

In closing, I would like to recognize Barry Worth for his years of service to the Cape Light Compact on behalf of the Town of Harwich. His commitment to energy efficiency has benefitted both Harwich and all of Cape Cod.

Sincerely,

Margaret T. Downey
Administrator

Cc: Cape Light Compact Governing Board



732 MAIN STREET, HARWICH, MA 02645

November 16, 2015

Ms. Maggie Downey
Compact Administrator
Cape Light Compact
P.O. Box 427
Barnstable, MA 02630



Dear Ms. Downey:

At a meeting of the Harwich Board of Selectmen held on Monday, November 2, 2015, the Board discussed the matter of amendments to the Cape Light Compact Inter-Governmental Agreement (IGA). Part of this discussion focused on the current ability of the Compact to effect changes to the IGA without first seeking approval from member Boards of Selectmen and Town Councilors.

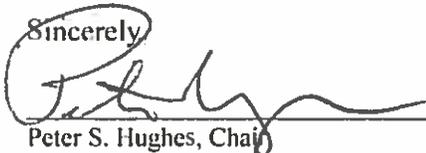
While we have been advised by our Town Counsel that our appointed representative to the Compact currently has the authority to vote on amendments without needing our Board's approval, we recommend that such authority needs to be limited.

We strongly urge the Compact to amend the IGA to require prior approval from the member towns before significant changes can be made to the IGA. We recognize that the term "significant" can be open to interpretation; therefore we urge you, as part of this suggested amendment, to clearly define the terms "significant change" and "administrative/housekeeping change". For example, we consider the addition of the job description of the Administrator to be a significant change, particularly in light of its broadly defined authority.

Our Charter has the Board of Selectmen as Chief Executive Authority, guiding the community by establishing policy. Our Town Administrator, not unlike the Compact Administrator, manages the organization on a day-to-day basis consistent with those policies.

We await your response and look forward to continued discussion related to this important matter.

Sincerely,


Peter S. Hughes, Chair


Angelo S. LaMantia

Linda A. Cebula, Vice Chair


Michael D. MacAskill


Jannell M. Brown, Clerk

HARWICH BOARD OF SELECTMEN

cc: Barry Worth, as representative to Cape Light Compact for Harwich
Cape Light Compact member towns

Cape Light Compact Governing Board

Roles and Responsibilities

January 27, 2016

Consistent with a) the Cape Light Compact ("Compact") Intergovernmental Agreement, as amended from time to time ("IGA"), b) Bylaws adopted pursuant to the IGA and c) the Compact's Aggregation Plan, as amended from time to time and as approved by the Massachusetts Department of Public Utilities (the "Aggregation Plan"), the Compact Governing Board is responsible for the general management and supervision of the affairs of the Compact except with respect to those powers reserved to the member municipalities or counties of the Compact by law or the IGA:

- Compact Governing Board members shall use their best efforts to:
 - Attend meetings of the Governing Board; including review of meeting materials and participation at meetings;
 - Conduct all meetings consistent with, and otherwise act in accord with, the Open Meeting Law (M.G.L. c. 30A, §§18-25), the Conflict of Interest Law (M.G.L. c. 268A) and other applicable provisions of the Massachusetts General Laws;
 - Provide updates to member Town/County as directed by the chief executive board of such member Town/County, but at a minimum provide an annual update on Compact activities;
 - Provide copies of the Compact's audited financial statements to member Town/County;
 - Provide a copy of the Compact's Three-Year Energy Efficiency Term report to member town/County;
 - Provide reasonable advance notice [define? minimum of? and discuss all proposed amendments to the Compact IGA \ with member Town/County, as directed by the chief executive board of such Town/County, before acting on amendments; and
 - Submit an Annual Report to Town for inclusion in Town Annual Report.
 - ??

Comment [MD1]: Question for the Board on the next few bullets: Do you want to do this, or do you want me to send directly to member Towns/Counties

Power Supply Campaign Marketing Budget

Item	Amount	Fund	Frequency	Notes
Newspaper Ads	\$ 7,000.00	Operating Fund		Pricing message with quotes from customers
Cape Cod Times				these would be color ads (except for MV Gazette)
Enterprise Papers				
Barnstable Patriot			Once now, maybe once	
Cape Cod Chronicle			early summer depending	
Cape Codder			on Eversource rates?	
Provincetown Banner				
MV Times				
MV Gazette				
Radio - short term ads		Operating Fund	mid February - mid April	Customer who returned to CLC
WXTK 95.1	\$ 5,000.00			60 sec ads - 108 total ads
WQRC 99.9	\$ 2,940.00			30 sec ad, 28 spots per week for 5 weeks
Ocean 104.7	\$ 2,576.00			30 sec ad, 28 spots per week for 4 weeks
Radio - longer term sponsorship		Operating/EE		
WCAI	\$ 3,861.00		9 spots over 3 days for 13 weeks	not able to promote pricing or a call to action, this would be couple of sentences on CLC as whole (ex. Mission statement)
WQRC 99.9				Right of first refusal to continue for another quarter
Cape Country 103.9	\$ 5,000.00		1 Quarter	100x promotional mentions on each station, static logo on capecod.com's community calendar page. \$33,500 promotional value
Classical 107.5				Goes by calendar year quarter (Jan-Mar (pro-rated), Apr-June, July-Sept, Oct-Dec)
Ocean 104.7				
Online		Operating	March - April	
Capecod.com	\$ 1,500.00			75,000 impressions per month
CLC Folder - redesign for assessments	\$ 3,000.00	Operating/EE		printing only, price is for 5000. Would probably need to order twice a year
Mailing to lost customers		Operating	once	Pricing Message with quotes from customers
5.5 x 8.5 postcard	\$ 3,069.00			approx. 22,600, includes printing, mailing, postage
Standard Postage	\$ 6,870.40			Other options:
Total	\$ 9,939.40			Flyer in envelope \$6436.50
				Letter in envelope \$6962.00
				First Class Postage \$9921.40
Energy Assessment Insert	\$ 500.00	Operating		one sided
Website Savings Calculator	\$ -			Lindsay to work with BCIT to put this on website
	\$ 35,385.90	Operating Fund		
	\$ 5,930.50	EE Fund		
TOTAL	\$ 41,316.40			with long-term radio sponsorship
	\$ 30,955.40	Operating Fund		
	\$ 1,500.00	EE Fund		
	\$ 32,455.40			without long-term radio sponsorship

December 15 2016
22 Captain Bears Road
Harwich, MA 02645



Ms. Joyce Flynn, Chairwoman
Cape Light Compact
Ms Maggie Downey Administrator
Cape Light Compact

Re: Resignation:

This letter will serve to notify you of my decision to resign as Harwich Representative and as Secretary of the Cape Light Compact, effective January 31, 2016

It is a difficult decision to make but it is simply time to move on. I believe I have served my township effectively over the past seventeen (17) years while participating fully in the operations of the Compact. I appreciate the association, cooperation and friendship that the many members of the compact have shown me each year.

It has been a privilege to serve as a member of this outstanding team of individuals, led effectively by Maggie Downey and Joyce Flynn, dedicated to the principals of providing low cost energy and effective energy efficiency services to the people on Cape Cod.

Thank you for the opportunity to serve

Barry R. Worth

Handwritten signature of Barry R. Worth.

OFFICE OF THE SELECTMEN

PHONE (508) 430-7513
FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



January 20, 2016



Ms. Valerie Bell
814 Route 28
Harwich Port, MA 02646

Dear Ms. Bell:

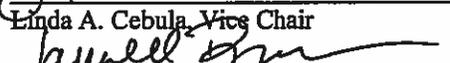
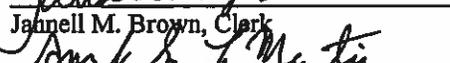
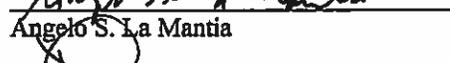
At a public meeting of the Board of Selectmen, held on Tuesday, January 19, 2016, the Board voted to appoint you as Harwich's representative to the Cape Light Compact. The term of your appointment will be in effect until June 30, 2017.

Before assuming the duties of this appointment, please sign this letter and bring it with you to the Town Clerk's office for certification and to be sworn in. You must contact the Clerk's office in advance at 430-7516 to make arrangements.

By signing this appointment letter, you acknowledge receipt of a Committee Handbook which contains the new Open Meeting Law, Conflict of Interest Law and information pertaining to the State Ethics Mandatory Training Program.

Sincerely,


Peter S. Hughes, Chair

Linda A. Cebula, Vice Chair

Jannell M. Brown, Clerk

Angelo S. La Mantia

Michael D. MacAskill

I accept the appointment as indicated above

Signature

Date

Sworn in by Town Clerk on _____

Anita N. Doucette, Town Clerk

Harwich Board of Selectmen

CC: Town Clerk
Cape Light Compact

