



**Reinvent Albany Testimony at Assembly Hearing
On the COVID-19 Pandemic's Impact on the Open Meetings Law**

October 25, 2021

Good morning Chairs Zebrowski, Thiele, and Braunstein and other members of the Assembly committees. My name is Tom Speaker, and I am a Policy Analyst at Reinvent Albany. Reinvent Albany is a watchdog organization that advocates for open and accountable government in New York. Thank you for holding this hearing and ensuring that members of the public are able to participate both in-person and remotely.

Today, we have two recommendations for updating the Open Meetings Law (OML):

- ***First, amend OML to create a hybrid system of in-person and remote meetings.***
- ***Second, remove all “to the extent practicable” language from the Open Meetings Law.***

***Amend OML to create a hybrid system of
both in-person and remote meetings.***

Many advocates have praised the remote meetings that became practice during the COVID-19 pandemic, saying they increase access for those with ambulatory disabilities or childcare responsibilities. Because of virtual access, many members of the public who could not attend meetings before can now attend with ease. This was undoubtedly one of the few upsides of the pandemic.

On the other hand, many have raised concerns that remote meetings prevent journalists and the public from speaking to officials outside of events or getting statements on the record. It's important for officials to hear from their constituents, but remote meetings make it easy for public officials to evade questions from the press or from advocates.

Both perspectives are valid, so the state needs to find a way to ensure both remote access for meetings and in-person opportunities for the public and press to speak to officials. We believe that the best approach is a hybrid in-person/remote model.

Here are eight components that we think would be make such a system successful:

1. Require all state and local public bodies currently subject to OML to provide free, unrestricted remote video and voice access to their public meetings, including via telephone, using web-based video conferencing applications.

There were numerous reports of local government bodies – such as community boards – meeting in person during the COVID-19 official state of emergency, and not providing remote access. We believe that all government bodies should be required to provide remote access regardless of whether or not the meeting is in person.

2. Require the presiding official or top deputy to attend all public meetings of public bodies in-person, but allow other members of the body to fully participate remotely including being counted towards a quorum and voting. (The presiding official should not be able to designate any colleague for the in-person meeting.)

When the public wants to speak to an official after a public meeting, typically the entity's presiding official is sought most. For example, if a journalist writes an article about this very hearing, it is likely they will reach out to the committee chairs for comment.

Therefore, we think it's reasonable to mandate that an entity's presiding member be present at public meetings and hearings. This allows most officials to attend remotely while also ensuring members of the public can access officials.

We expect heads of staff will continue to attend meetings in-person as they did prior to COVID-19 remote meetings.

3. Require public bodies to provide an in-person meeting location that allows the interested public to attend per the existing requirement in OML. (Discontinue requirement that public can be present at the remote locations used by individual members of the public body.)

If officials wish to continue meeting remotely after January 15, 2022, when recent amendments to OML expire, the law will require those officials to allow members of the public to attend in each official's home. We support replacing this provision with a requirement that public bodies provide a single location for the public to attend in-person (as in, wherever the presiding member would be attending the meeting).

4. Allow state and local public bodies to meet remotely using widely commercially available web applications like Zoom, Google Meet, Microsoft Teams, etc. as long as they meet basic security requirements established by the NYS Office of Information and Technology Services (ITS). Require ITS

to facilitate use of widely available, low-cost applications. Eliminate any requirement that web-based video conferencing apps must be hosted on state or local government-controlled or -owned servers.

We support enabling government bodies to use apps such as Google Meet or Zoom provided they meet security requirements. In New York State agencies, the application of choice has been WebEx, but many users have complained about the app's poor usability.

5. Allow ITS to provide a waiver for localities that lack sufficient broadband access to meet requirement #4.

We understand that a few localities still lack broadband access that would enable them to follow a hybrid model, and support granting those localities a waiver. However, the state should set up a funding program to provide small localities with the necessary resources to meet the requirements.

6. At meetings that allow for public comments, require public bodies to enable the public to provide spoken comment in real-time both in-person and remotely.

Some have advocated for allowing public comment at every open meeting, but we're sensitive to concerns that this would be a large change for entities that don't currently allow comment. Still, for hearings, public comment should be required both in-person and remotely, as the Assembly is doing today.

7. Require public bodies to publish online, replayable recordings of their public meetings within one business day.

Sometimes, when public bodies hold meetings, it takes several days after the end of the meeting for the video to be publicly posted. We support requiring that the video be uploaded within one business day. The process of taking recorded videos and placing it on a website can be done within minutes for most livestreaming services and should not take more than one day.

8. Require public bodies to archive online recordings of their open meetings for at least five years.

This would guarantee that the public continues to have access to information long after the meeting.

Adopting these measures will ensure that the public has both in-person access to officials and remote access to meetings.

Issues with remote meetings

Poor sound quality. Many reviewers have said that currently, many remote public meetings have such poor audio that they are impossible to understand. This is a complaint we also frequently get from journalists. We considered recommending having ITS establish standards, but we do not know if that is the right agency or if such standards are possible to codify or enforce.

ASL interpretation. Disability advocates would like much wider use of American Sign Language interpreters. This is an important issue, but we think this would be a complex mandate and would be better outside of this basic framework for implementing hybrid OML. Our recommendation is that the governor's office and the state speak to NYS and national disability advocates who can discuss best practices that are realistic for NYS.

Remove all “to the extent practicable” language from the Open Meetings Law.

We support removing all “to the extent practicable” language from the Open Meetings Law. This language allows agencies to determine the extent to which they comply with requirements, effectively rendering the law meaningless. The phrase appears in five locations in OML:

- Public Officers Law §103(e):
 - *Agency records available to the public [...] shall be made available, upon request therefor, to the extent practicable as determined by the agency or the department, prior to or at the meeting during which the records will be discussed.*
 - *[...] Such records shall be posted on the website to the extent practicable as determined by the agency or the department, prior to the meeting.*

Note that the language “as determined by the agency or department” has been removed in legislation recently signed Governor Hochul, [A1228A \(Paulin\)/S1150A \(Kaplan\)](#), which adds new language to require documents to be posted 24 hours in advance of meetings to the extent practicable.

Our view is that agency records should always be made available and online prior to meetings.

- Public Officers Law §103(f):
 - *Open meetings of an agency or authority shall be, to the extent practicable and within available funds, broadcast to the public and maintained as records of the agency or authority. If the agency or authority maintains a website and utilizes a high speed internet*

connection, such open meeting shall be, to the extent practicable and within available funds, streamed on such website in real-time, and posted on such website within and for a reasonable time after the meeting.

As mentioned earlier, we believe broadcasting should be mandatory, with a waiver and grant program for smaller municipalities.

- Public Officers Law §104(2):
 - *Public notice of the time and place of every other meeting shall be given or electronically transmitted, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.*

We do not see any reason why local governments would not be able to meet this requirement in 2021. All local governments should be capable of posting public notice of meetings.

Thank you again for the opportunity to testify. I welcome any questions you may have.