

Government Law and Public Finance Alert: New Massachusetts Open Meeting Law Goes Into Effect On July 1, 2010

6/15/2010

By [Elissa Flynn-Poppey](#)

Open Meeting Law

As discussed in our [earlier alert](#), the new Massachusetts Open Meeting Law goes into effect on July 1, 2010. Currently there are separate Open Meeting Laws governing activities at the state, county, and municipal level. The Massachusetts Attorney General is charged with enforcing the Open Meeting Law relating to state entities, and the various District Attorneys are charged with enforcing the other laws. Effective July 1, 2010, there will be one consolidated Open Meeting Law, and the Attorney General will have sole authority to enforce and regulate it.

The Attorney General's office has created a new Division of Open Government to carry out its enforcement obligations, and an Open Meeting Law Advisory Commission will also be formed to make suggestions to the Attorney General's office for regulatory and educational improvements.

For the most part, the newly consolidated Open Meeting Law is consistent with the prior versions, although the inconsistencies among the existing laws between state, county, and municipal level have been eliminated.

Top 10 Changes in the New Open Meeting Law

1. *Certification*: Within two weeks of qualification for office, all persons serving on a public body must certify, on a form to be created by the Attorney General, the receipt of a copy of the Open Meeting Law, regulations, and any relevant educational materials. Please note the Attorney General has not yet issued a certification form or guidance regarding the steps necessary for individuals currently serving on a Public Body.
2. *Timing of Notice*: A notice of a meeting must be posted at least 48 hours in advance, but under the new law, Saturdays, Sundays, and holidays are not counted as days required for providing notice. (e.g. Monday evening meeting must be posted before Thursday evening).
3. *Notice Content*: The notice must contain the date, time and place of the meeting, and now must also include a listing of "topics that the chair reasonably anticipates will be discussed at the meeting," such as the agenda topics.
4. *Notice Posting*: For state government entities, the notice of the meeting will now be posted on a website maintained by the Attorney General. Municipalities are to post the meeting notice in the building or on a municipal building visible to public at all hours.

5. *Deliberations*: Deliberations now expressly include electronic mail. Deliberations do not include the distribution of a meeting agenda, scheduling information, or distribution of reports or documents to be discussed at a meeting, provided that no opinion of a member is expressed. E-mails are still prohibited outside a public session.
6. *Meeting Minutes*: In addition to the date, time, place of meeting, and members present and absent, meeting minutes now require additional information, including a summary of the discussions on each subject, a list of the documents and other exhibits used at the meeting, and the decisions made and the actions taken at each meeting, including the record of all votes. Please note that there is still no requirement for a verbatim transcript.
7. *Documents and Exhibits*: Under the new law, any documents or exhibits used at a meeting, including executive sessions, are part of the official record of the meeting and must be maintained as such. Documents include photographs, records, or maps used by the public body during the meeting.
8. *Executive Session Meeting Minutes*: Chairs are now required periodically to review executive session minutes to determine whether the minutes should be released or if they still warrant continued non-disclosure. After the determination by the Chair that the executive session minutes need not be released, the Chair must announce at the public body's next meeting his or her determination, which shall be included in the minutes of that meeting.
9. *Remote participation*: Under existing interpretation by the Attorney General and the majority of the District Attorneys, remote participation in meetings of public bodies was prohibited. Under the new law, the Attorney General may, either by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location (for example, by teleconference or videoconference).
10. *Violations*: A complaint for a violation of the Open Meeting Law must first be filed with the public body and must set forth the circumstances of the alleged violation. The public body must forward the complaint to the Attorney General's Office and also notify the Attorney General of remedial actions taken.

As under existing law, the state legislature remains exempt from the Open Meeting Law—a sore point with some critics. In addition, the penalty provisions of the law remain relatively weak—compared to the laws in many other states. The current law, which imposes a \$1,000 fine against a governmental body for violating the Open Meeting Law, will be replaced by a requirement that evidence of an intentional violation must be shown before the \$1,000 fine applies. Critics have noted that it is likely to be impossible to prove intention on the part of a governmental body. The legislature rejected proposals to impose individual liability on members of governmental bodies, for fear that it would become even more difficult to persuade citizens to volunteer service on local boards. In addition, the legislature rejected proposals to permit complainants of Open Meeting Law violations to recover costs and attorneys' fees.

We will provide further alerts and advisories on future guidance and regulations issued regarding the new Open Meeting Law.

* * *

Mintz Levin's Government Practice Group has been working with clients to analyze current practices to ensure compliance with the new Open Meeting Law. We can help conduct trainings and develop or review meeting policies. We also work with our private clients to ensure their proprietary and confidential information provided to a public body remains protected.

For assistance in this area please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

Elissa Flynn-Poppey

(617) 348-1868

EFlynn-Poppey@mintz.com

John R. Regier

(617) 348-1720

JRRegier@mintz.com