

New York's Open Meetings Law: A 21st Century Approach

Written Testimony on behalf of Common Cause New York for New York State Assembly's Public Hearing- The COVID-19 Pandemic's Impact on the Open Meetings Law before the Assembly Standing Committee On Governmental Operations, Assembly Standing Committee On Local Governments, and Assembly Standing Committee On Cities

October 25th, 2021

There is no question that, along with every other aspect of civic life during COVID, tweaks needed to be made to the Open Meetings Law to ensure the safety and health of New Yorkers. However, it is our view that aspects of the Open Meetings Law (OML) are fundamentally broken. The OML must be revised to truly function to serve the public good and provide real transparency and accountability for everyday New Yorkers.

We hope the New York State Assembly takes this opportunity to fundamentally revise the Open Meetings Law in the following ways:

- **Include an enforcement mechanism for public bodies that do not comply with the law.** Enforcement of OML should not be left to individual New Yorkers filing in court.
- **Memorialize hybrid meetings, a mix of in-person and online options for public officials and the general public, as a means to increase public access and engagement.** While the transition to remote work has presented many challenges, a silver lining has been increased access to civic life for New Yorkers. This should be extended and included in statute.
- **Increase the opportunities for meaningful public engagement.** Public comment should be allowed in all settings, online or in-person, as this is a vital component of an open government.

For questions or comments, please contact: Sarah Goff, Deputy Director
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Next legislative session presents an unique opportunity for New York to proactively redesign the New York's Open Meetings Law that reflects the ongoing challenges and opportunities created by COVID and a path forward that best serves the needs of all New Yorkers.

CREATE A REAL OPEN MEETINGS LAW ENFORCEMENT STRUCTURE

Public Officers Law, Article 7, §107, Enforcement leaves much to be desired. Current law calls upon everyday New Yorkers to enforce state law, a backwards precedent that has been replicated across the country in far more harmful ways.¹ Functionally, this has effectively served as a de facto deterrent for those seeking greater access to government proceedings. It is unduly burdensome to rely solely on New Yorkers who have the means or motivation to go to court and thus places undue hardship on those that might try.

As a consequence of the expense and burden on individuals of enforcing the OML, there are public bodies that flaunt the Open Meetings Law on a regular basis. We see this frequently throughout the state, where Boards of Elections make decisions essential to the functioning of our democracy in secret.

A statewide complaint process should be established and The Committee on Open Government (COOG) should be given enforcement powers that include the ability to conduct investigations based on public complaints. COOG should also be tasked with a basic audit function of public bodies subject to OML that confirms basic compliance with the law.

INCREASE EQUITY THROUGH EXPANDED ACCESS TO GOVERNMENT PROCEEDINGS BY MEMORIALIZING MEETINGS WITH A REMOTE OPTION

The pandemic has created countless challenges, but the move to online meetings has created a real opportunity for increased civic engagement. Prior to COVID, the cultural expectation was that if individuals wanted to attend, comment, or testify at a meeting the individual must be in the physical room. Remote meetings have smashed the preconception that in-person attendance is necessary in order to engage with public bodies.

¹ [Citizen Enforcement of Texas Abortion Ban Could Spread to Other Laws](#), 9/23/2021.

As a result, this has reduced barriers to engagement exponentially for individuals and organizations. The financial expense and time commitment of a trip to Albany, for example, to appear before a committee is often too high for those not sponsored by organizations. This has, in effect, created a civic tax for merely wanting to engage on issues that many New Yorkers care about like education, housing, and health care. It is our position that current OML law be amended to allow for a remote testimony option as follows:

PUBLIC OFFICERS LAW, ARTICLE 7 §103. Open meetings and executive sessions. (c) A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, **comment or testify**, listen and observe at any site at which a member participates.

PROVIDE MEANINGFUL OPPORTUNITIES FOR PUBLIC COMMENT OR TESTIMONY

Similar to the cultural norm of attending meetings in-person prior to the pandemic, too often opportunities for written or oral public comment or testimony were severely limited. It is our position that current OML law be amended to allow for required public comment or testimony period as follows:

PUBLIC OFFICERS LAW, ARTICLE 7 §103. Open meetings and executive sessions. (e) **Every meeting of a public body shall be open to the general public and allow for public comment in the form of written or oral comment or testimony that is relevant to the meeting agenda. Written comment or testimony can be submitted online, through email or mail prior, during or up to 72 hours after a meeting. A time for public oral comment or testimony should be specifically included in the meeting agenda limited to a predetermined time no less than two minutes per speaker.**

NEW YORKERS DESERVE A SAY IN HOW THEY ARE GOVERNED

Our testimony reflects the values of over 81,000 members across the state who demand a more equitable democracy and a government that at a most basic level proves itself willing to engage with those it serves. We remain hopeful that our recommendations are considered and the committees that generously organized today's hearing prioritize equitable, meaningful access to New York's government, public servants and elected officials.

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