



**Municipal Client Advisory
December 2011**

**ATTORNEY GENERAL'S OFFICE ISSUES REMOTE
PARTICIPATION REGULATION FOR PUBLIC BODIES**

For a discussion of these and other issues, please visit the update on our website at www.mhhl.com/law. To receive legal updates via e-mail, contact information@mhhl.com.

The current version of the Open Meeting Law, M.G.L. c. 30A, §§ 18 to 25, left it up to the Office of the Attorney General to decide whether and under what circumstances public body members could remotely participate in a public meeting. In a recently issued regulation, 940 CMR 29.10, the Attorney General has now authorized certain members of public bodies to remotely participate in a public meeting, without having to be physically present at the meeting location.

- **Adopting Remote Participation as a Practice:** Remote participation must first be specifically adopted as a practice before any such participation occurs:
 - **Local public bodies** (*i.e.* multi-member bodies of a municipality) cannot use remote participation until the practice is adopted by the board of selectmen in a town (by majority vote) or authorized by the mayor in a city, or by the chief executive officer otherwise designated by the local charter.
 - A **regional public body, district public body, or regional school district and their committees** must vote (by simple majority) to permit remote participation.
 - **County public bodies** cannot use remote participation until the county commissioners vote (by simple majority) to permit remote participation.
 - A **state public body** must vote (by a simple majority) to permit remote participation.
 - A **retirement board** created established under M.G.L. c. 32, § 20 or M.G.L. c. 34B, § 19, must vote (by simple majority) to permit remote participation.



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- The authorization/vote should provide that remote participation is being permitted in accordance with the Open Meeting Law Regulations (940 CMR 29.00). Once the authorization/vote occurs, remote participation is available for future meetings of the public body and its committees.
- The entity adopting remote participation as a practice can establish the amount and source of payment for costs resulting from remote participation.
- The revocation of authorization for remote participation occurs in the same manner in which remote participation is adopted as a permitted practice.
- A municipality or public body may adopt a bylaw or policy that forbids or further limits the use of remote participation beyond the requirements of the Open Meeting Law Regulations.
- Even if remote participation is permitted, public bodies must comply with the transparency and other requirements of the Open Meeting Law.
- **Conduct of a Meeting Involving Remote Participation:** If remote participation is adopted as a practice, the following minimum requirements apply to the public meeting:
 - All **members** participating remotely and all **persons** at the meeting location must be clearly audible to each other
 - A **quorum** of the public body must be physically present at the meeting location.
 - The **chair** or an authorized acting chair of the public body must be physically present at the meeting location.
 - Remote participation is permitted only if the chair or the acting chair determines that 1 or more of the following **reasons** render the physical attendance of a member “unreasonably difficult”: (1) Personal illness; (2) Personal disability; (3) Emergency; (4) Service in the military; or (5) Geographical issue.



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- A member seeking to participate remotely must provide **advance notice** to the chair or the acting chair, along with the supporting reason(s) and fact(s) for the request to do so. At the beginning of the public meeting, the chair or acting chair must **state** the name of the remote participant and the reason(s) for the remote participation, which are to be recorded in the meeting minutes.
- At the start of an **executive session**, a remote participant must state that no other person is present and/or capable of listening to the public body's discussion at the remote location, unless the public body votes (by simple majority) to allow another person to be present at the remote location.
- Approved remote participants can vote and are not regarded as absent for purpose of the so-called Mullins Rule (M.G.L. c. 39, § 23D). Votes occurring during a meeting involving a remote participant must occur by **roll call vote**.
- If feasible, the chair or acting chair should provide remote participants with advance copies of any documents or exhibits that are reasonably anticipated to be used during the meeting. Documents and exhibits used during the meeting must be part of the official record, identified in the meeting minutes, and retained pursuant to the Open Meeting Law.
- **Technology Requirements:**
 - A public body member that requires TTY service, video relay service, or an adaptive telecommunication must be accommodated. Remote participation can only take the form of:
 - Telephone, Internet, or satellite-enabled audio or video conferencing (provided that the remote participant is clearly visible to the attendees at the public body's meeting location if video is used); or
 - Any other technology that permits the remote participation and the attendees at the public body's meeting location to be clearly audible to each other.



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- The public body can determine which technological method to use.
- The chair or acting chair is responsible for dealing with technical difficulties that may occur during a meeting.
 - The Attorney General recommends, if possible, for discussion to be suspended while reasonable efforts are made to remedy any issue involving a remote participant's ability to hear or be heard.
 - The meeting minutes must describe any incident (including the time) when any remote participant is disconnected because of a technical difficulty.
 - If a technical difficulty causes the remote participant to be disconnected, that incident and the time when it
- In the event of a violation, the Attorney General may order the public body to temporarily or permanently cease the use of remote participation.

Murphy, Hesse, Toomey & Lehane, LLP, is prepared to assist you by providing training sessions on the Open Meeting Law, at your request. For more information or to schedule a training session, please contact Kevin Bresnahan or Brandon Moss directly at (617) 479-5000 or via email at kbresnahan@mhtl.com or bmoss@mhtl.com.

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