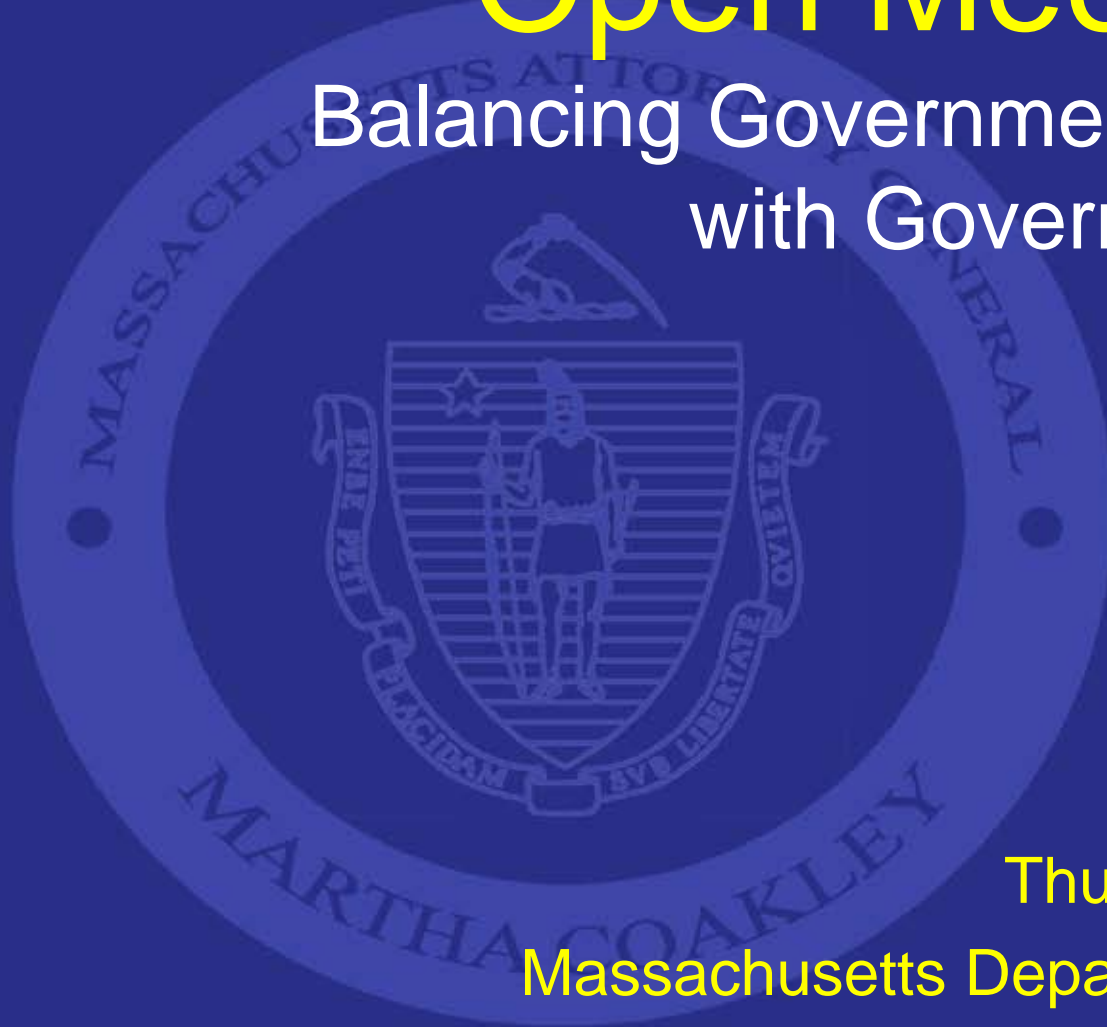


# Open Meeting Law:

Balancing Government Transparency  
with Government Efficiency



Thursday, October 27, 2011

Massachusetts Department of Transportation



# Purpose of Open Meeting Law

- Recognizes the necessary balance between government accountability and government efficiency.
- Ensures transparency by public bodies by requiring:
  - Notice
  - Open Deliberations
  - Public Access
- Allows government to efficiently and effectively manage its operations by:
  - Providing for certain deliberations to take place in executive session
  - Maintaining confidentiality of certain records of executive session



# Attorney General's Role

- Established the Division of Open Government
  - Educate/train public officials and members of public bodies
  - Provide guidance on Open Meeting Law requirements
  - Promulgate regulations
  - Address Open Meeting Law complaints
  - Make findings and bring enforcement actions



# What Remains the Same About the OML

- Meetings must be open to the public unless the public body enters into a proper executive session
- Meetings must be posted
- Public bodies may enter into executive session for certain purposes
- Public records must be retained
- Alternative complaint process where three citizens may file a complaint in Superior Court
- Enforcement by the Attorney General's Office for state public bodies



# What's New?

- Centralizes enforcement in Attorney General's Office
- Creates new Division of Open Government
- Creates Open Meeting Law Advisory Commission
- Provides additional notice to the public
- Enhances record keeping requirements
- Encourages resolution of complaints by the public body
- Requires members of public bodies to be familiar with the law

# Public Body

## Definition

A multi-member board, commission, committee or sub-committee ... however created, elected, appointed or otherwise constituted, established to serve a public purpose ...

- Excludes:
  - Legislature and its committees
  - Bodies of Judicial branch
  - Bodies created by a constitutional officer solely to advise the constitutional officer
  - Bodies that do not serve a public purpose
  - Groups that are not established with the “jurisdiction” to make decisions or recommendations collectively
- Connelly exception: where a public official creates a committee to advise that public official on a decision that he or she has sole responsibility for, the committee or board is not subject to the Open Meeting Law



# Examples: Public Bodies

- **State:** Open Meeting Law Advisory Commission; Board of Library Commissioners; Board of Higher Education
- **Local:** Board of Selectmen; School Committee, Planning Board
- **Regional:** Regional School Committee; Regional Water Commission; Regional Planning Commission
- **County:** Board of County Commissioners; County Retirement Board; County Charter Review Commission



# Examples: NOT Public Bodies

**State:** State Senate; House of Representatives; Judicial Nominating Commission; Massachusetts Municipal Association

**Regional:** Regional high school boosters club

**Local:** Neighborhood watch association; PTO; Republican/Democratic Town Committees



# Deliberation

## Definition

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

- Excludes:
  - Distribution of meeting agenda, scheduling or procedural information
  - Distribution of reports or documents to be discussed
    - Distributor should not express opinion of member of public body



# Meeting

## Definition

Deliberation by public body with respect to any matter within the body's jurisdiction

- Excludes:
  - On-site inspection provided no deliberation
  - Attendance by a quorum at an event provided no deliberation
  - Attendance by a quorum at meeting of another public body provided no deliberation
  - Meeting of a quasi-judicial board for sole purpose of making a decision in an adjudicatory proceeding
  - Town Meeting



# Meeting Notices

- Except in an emergency, a public body must post notice of meeting at least 48 hours in advance, excluding Saturdays, Sundays, and legal holidays
- Notice must include:
  - Date
  - Time
  - Place of meeting; and
  - Listing of topics the chair reasonably anticipates will be discussed at the meeting. Topics should give enough specificity so that the public will understand what will be discussed.
- “Emergency” is a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.
- In an emergency, a public body shall post notice as soon as reasonably possible prior to a meeting



# Meeting Notices: Local Public Bodies

- Local public body must file notice with municipal clerk
- Notice must be posted in a manner conspicuously visible to the public, including persons with disabilities, at all hours in or on the municipal building where the clerk's office is located
- Posting options
  - Municipal website
  - Cable television/alternate municipal building open 24 hours
  - Newspaper/alternate municipal building open 24 hours
  - Monitor/electronic display where may be viewed 24 hours
  - Audio recording available 24 hours



# Meeting Notices: County, District and Regional Public Bodies

- Regional or district public bodies must post notice in each city or town within the region or district in the manner prescribed for local public bodies, or may post to a website
- For a regional school district, the secretary of the regional school district is the clerk of the school district and shall file the notice with the clerk of each city or town in the district, or may post to a website
- County public bodies must post notice with the office of the county commissioner and a copy of the notice posted in a manner conspicuously visible to the public at all hours in a place or places designated by the county commissioners, or may post to a website



# Meeting Notices: State Public Bodies

- Post to the public body's website or the website of its parent agency
- Notify the Attorney General of the location of the website where meeting notices will be posted
- Send a copy of the meeting notice to the Regulations Division of the Secretary of State's Office.
  - [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us)



# Notice Posting: Common Concerns

- Public bodies are encouraged to update the notice when made aware of new topic within the 48 hour period before the meeting.
- Chairs should not post notices so far in advance that there is a high likelihood that new topics will arise.
- Chairs are encouraged to work with municipal clerks to enable sufficient time for posting.
- Meeting cancellations do not require 48 hours notice.
- Meetings that are cancelled and rescheduled must comply with all notice requirements of the Open Meeting Law.



# Accessibility

- Public bodies must continue to abide by the applicable state and federal laws that govern accessibility for the disabled.
- These laws include the Americans with Disabilities Act, the federal Rehabilitation Act of 1973 and state constitutional provisions.
- The Civil Rights Division of the Attorney General's Office is available to assist public with the requirements of these laws.



# Public Participation

- Public may attend open session of meeting
- Public may not address public body without permission of chair or otherwise disrupt meeting
- Public may make audio or video recording of open session upon notification to chair and subject to reasonable requirements
- Chair must inform other attendees of recording at beginning of meeting
- If a person continues to disrupt a meeting after clear warning from the chair, 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 that person.



# Meeting Minutes

- Minutes must state the date, time, place of the meeting, and list of members present or absent
- Minutes must include:
  - A summary of discussion of each topic;
  - Decisions made and actions taken, including a record of all votes
    - Secret ballots are explicitly prohibited; and
  - A list of documents and other exhibits used by the body at the meeting



# Executive Session

- OML allows public bodies to conduct closed, or executive, meetings in certain circumstances
- Public bodies must follow OML requirements for executive session:
  - Convene open session prior to going into executive session
  - State publicly the purpose for the executive session
  - Conduct a roll call vote to enter executive session and obtain a majority of members voting.
  - Announce whether open session will reconvene after
  - Maintain minutes and documents of executive session
  - Discuss only matters for which executive session is lawfully called
  - Conduct roll call votes of all votes taken during executive session

# Purposes for Executive Session

1. Discuss reputation, character, health, discipline, charges, complaints, but not professional competence of individual
2. Conduct strategy sessions in preparation for negotiations, to conduct collective bargaining sessions or contract negotiations, with nonunion personnel
3. Discuss strategy for collective bargaining or litigation\*
4. Security personnel or devices
5. Criminal misconduct
6. Acquisition of real property\*
7. Comply with law or grant-in-aid requirement
8. Preliminary screening for employment\*
9. Confer with mediator on litigation or decision
10. Trade secrets in the course of activities conducted by a public body as an energy supplier

\*If holding an open meeting would have a detrimental effect and the chair so declares on record beforehand.



# Executive Session Minutes

- Minutes must be disclosed once publication will no longer defeat the purpose for having entered into executive session, unless an exemption under the public records law applies.
- Minutes must be reviewed periodically by the chair or public body to determine if the purpose for executive session remains. The determination must be announced during the next meeting and be included in the minutes.
- Minutes must be provided within 10 days in response to a request, unless a review has not yet been undertaken, in which case the minutes must be reviewed by the board at its next meeting or within 30 days, whichever comes first.





# Meeting Records Overview

- Meeting minutes shall be created and approved in a timely manner for both open and executive sessions
- Documents and exhibits used by public body must be retained by the public body but do not need to be physically stored with the meeting minutes
- Minutes of open session must be provided upon request within 10 days, whether in draft or final form
- Executive session records must be disclosed once publication will no longer defeat the purpose for having entered into executive session, unless exempt from disclosure
- Secretary of State recently updated municipal records retention schedule



# Exempt From Public Disclosure

The following materials are exempt from public disclosure:

- Materials used in a performance evaluation of an individual bearing on his/her professional competence that were not created by members of the body for purposes of evaluation
- Materials used in deliberations about employment or appointment of individuals, including applications and supporting materials but excluding resumes, which must be disclosed





# Complaint Process

## Step 1: The Complainant

- Complaint shall be filed in writing with the public body within 30 days of the alleged violation, or if it could not reasonably have been known at the time, then within 30 days of the date the complainant reasonably should have discovered the alleged violation
- Complaint Form, found at the Division of Open Government website, completed and sent to chair of public body



# Complaint Process

## Step 2: The Public Body

- Chair of the public body shall disseminate the complaint to the members of the public body. The public body has 14 business days in which to respond and inform Division of Open Government of remedial action taken
- Public body may request from the Director an extension of time to respond for good cause



# Complaint Process

## Step 3: The AGO

- If the complainant is not satisfied with the resolution of the complaint by the public body, he/she may file the complaint with the Division of Open Government 30 days after the complaint is filed with the public body.
- To be considered timely, complaints must be filed with the AGO within 90 days of the date of the original alleged violation.



# Complaint Process

## Steps 4-10: The DOG

- Step 4: Acknowledgment
- Step 5: Request for documents and interviews
- Step 6: Has there been a violation?
- Step 7: Was the violation intentional?
- Step 8: Was the action taken by the public body adequate?
- Step 9: Resolution
  - Informal
  - Formal
  - Order
- Step 10: Public body appeal



# Alternative Complaint Process

- Attorney General or 3 or more registered voters may initiate a civil action to enforce the Open Meeting Law
- Must file in Suffolk Superior Court for state public bodies
- For all other public bodies, must file in superior court in any county in which the public body acts or meets



# Remedies

- Compel immediate and future compliance
- Compel attendance at training
- Compel public release of minutes or other materials
- Nullify any action taken in violation of the Open Meeting Law
- Reinstate an employee and make whole
- Impose a civil penalty of up to \$1,000 on a public body for each intentional violation
- Other appropriate relief



# Resources

## Attorney General's Open Meeting Law Website

<http://www.mass.gov/ago/openmeeting>

- Open Meeting Law : G.L. c. 30A, §§ 18-25
- Regulations, 940 CMR 29.00
- FAQs
- Guide



# Contact Information

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