

PROPOSED RESOLUTION RE AMENDMENT OF OPEN MEETINGS LAW

RESOLVED, that the New York State School Boards Association supports legislation to amend the Open Meetings Law (the “OML”) to (a) provide enhanced opportunities for the conducting of business at a meeting of a public body through the use of remote meeting technology; (b) authorize committees of a public body to meet through the use of videoconferencing without a fixed location for the meeting, and (c) eliminate the requirement that a public body subject to the OML identify the location(s) from which a member of the public body will be attending the meeting remotely and eliminate the requirement that members of the public be accorded the right to attend such meetings at those remote locations.

RATIONALE

School boards strongly support the purpose and intent of the OML (Article 7 of the Public Officers Law) because it is essential that the public have an opportunity to observe discussions and deliberations of school boards and other public bodies. Further, school boards desire to conduct their business meetings in person. However, as recognized by the OML, circumstances may arise in which a member of a public body is unable to attend a meeting in person. Current law states: “A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates.” [Public Officers Law, §103(c)] Current law also states: “If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.” [Public Officers Law, §104(4)]

On March 7, 2020, because of the coronavirus pandemic, Governor Andrew Cuomo issued Executive Order 202, which among other emergency measures suspended the OML requirements that public bodies conduct in-person meetings and that they provide notice of the locations from which members of the public body were attending such meetings. For more than one year after the issuance of Executive Order and its extension by orders of the Governor, until the Governor’s order of June 25, 2021 cancelling the suspension of the OML requirements of in-person meetings, public bodies conducted business remotely, with full opportunity for the public to attend, listen and observe, using videoconferencing technology such as Zoom, Google Meets, and Microsoft Teams. Public bodies, including school boards, have gained valuable knowledge and experience in utilizing videoconferencing technology to make meetings more accessible to the public and more efficient for members of those public bodies.

Upon the expiration of the suspension of these OML provisions, public bodies (including school boards) are no longer be able to utilize videoconferencing technology as they did during the period of the pandemic emergency. The OML should be amended to enable public bodies to

utilize this technology in the conduct of meetings in a manner that ensures that the public has appropriate opportunity to observe, attend, and participate.

The use of videoconferencing technology was particularly useful to enable school boards committees and subcommittees to engage in their work. The OML defines “public body” to include a “committee or subcommittee or other similar body of such public body.” [Public Officers Law, §102(2)] Thus, board committees and subcommittees (other than advisory committees and task forces that include non-members) are subject to the OML’s location and notice provisions. [See OML-AO-5331 (Committee on Open Government, Dec. 11, 2012)(“the legislative history of [the OML] clearly indicates that a committee or subcommittee consisting solely of members of a governing body is itself a public body.”)] During the suspension of the OML, school board committees functioned effectively through the use of videoconferencing technology, since board members were able to participate remotely without needing to travel to a designated meeting location and without disruption to work or family obligations. Similarly, school administrators were able to participate in committee discussions from their respective offices or other locations (including from home if the administrator was working remotely). Members of the public were accorded full opportunity to attend, listen to and observe committee meetings remotely through the use of videoconferencing technology. The OML should be amended to enable public bodies to conduct committee meetings entirely by videoconferencing, with appropriate opportunity for members of the public to attend the remote meetings in the manner that worked so effectively for school board committees and those of other municipalities for well over a year.

Additionally, during the suspension of the OML, members of public bodies participated in meetings from remote locations without identifying their location. Members of the public have attended numerous meetings remotely in the more than one year that the OML notice and location provisions were suspended—and with only a very few exceptions such meetings have been conducted efficiently and with full opportunity for the public to observe the conduct of public business. Almost all school districts and other public bodies have long provided live stream access to their meetings through videoconferencing and/or social media platforms, even as members of the public attend meetings in person at their noticed location. The past year and a half has demonstrated how remote participation in meetings of public bodies has enhanced the conducting of public business without limiting the access of members of the public to such meetings.

Revealing the location of members participating remotely is not necessary to ensure that the public can attend and observe a meeting. Since meetings of a public body are noticed and conducted at a designated location, members of the public can attend the meeting at the designated location, in the same manner as they would if every member of the public body is present—and the member or members participating remotely will be seen by everyone attending at the meeting location (as well as those who are watching the proceedings through live-streaming). Thus, requiring members of public bodies to open their homes, offices, or other

remote location is unnecessary to ensure the public has full opportunity to attend. Further, and of major concern, revealing remote locations of participating members of a school board or other public body creates a safety or security risk to those members who are participating from their residences or other unprotected locations, and public notice of a member's participation from a location outside the community signals that their residence is likely unoccupied, thereby inviting unlawful entry of their homes. Members of public bodies should not be forced to place their (and their families') personal safety or property in jeopardy when they engage in their civic duty through videoconferencing. For this additional reason, the OML should be amended to remove the requirement that a participating member's remote location be publicized and that the public be permitted to attend the meeting at this remote location.