

2022 -- S 2661

LC005219

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT – OPEN MEETINGS

Introduced By: Senators Euer, Quezada, Murray, Acosta, Cano, Kallman, Seveney,
DiPalma, DiMario, and Miller

Date Introduced: March 10, 2022

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-46-2, 42-46-5, 42-46-6 and 42-46-7 of the General Laws in
2 Chapter 42-46 entitled "Open Meetings" are hereby amended to read as follows:

3 **42-46-2. Definitions.**

4 As used in this chapter:

5 (1) "Meeting" means the convening of a public body to discuss and/or act upon a matter
6 over which the public body has supervision, control, jurisdiction, or advisory power. As used
7 herein, the term "meeting" expressly includes, without limiting the generality of the foregoing, so-
8 called "workshop," "working," or "work" sessions.

9 (i) "In-person meeting" means a meeting of a public body in which all members of the
10 public body and all members of the public are attending and participating in the meeting in the
11 same physical location. (The provisions of this paragraph shall sunset on July 1, 2023.)

12 (ii) "Virtual meeting" means a meeting of a public body in which all members of the public
13 body and all members of the public are attending and participating in the meeting remotely through
14 teleconferencing or audio/video conferencing technology. (The provisions of this paragraph shall
15 sunset on July 1, 2023.)

16 (iii) "Hybrid meeting" means a meeting of a public body in which some members of the
17 public body and/or some members of the public are attending and/or participating in-person in the
18 physical location of the meeting and others are attending and/or participating in the meeting
19 remotely. (The provisions of this paragraph shall sunset on July 1, 2023.)

1 (2) "Open call" means a public announcement by the chairperson of the committee that the
2 meeting is going to be held in executive session and the chairperson must indicate which exception
3 of § 42-46-5 is being involved.

4 (3) "Open forum" means the designated portion of an open meeting, if any, on a properly
5 posted notice reserved for citizens to address comments to a public body relating to matters
6 affecting the public business.

7 (4) "Prevailing plaintiff" includes those persons and entities deemed "prevailing parties"
8 pursuant to 42 U.S.C. § 1988.

9 (5) "Public body" means any department, agency, commission, committee, board, council,
10 bureau, or authority, or any subdivision thereof, of state or municipal government or the board of
11 directors of any library that funded at least twenty-five percent (25%) of its operational budget in
12 the prior budget year with public funds, and shall include all authorities defined in § 42-35-1. For
13 purposes of this section, any political party, organization, or unit thereof meeting or convening is
14 not and should not be considered to be a public body; provided, however, that no such meeting
15 shall be used to circumvent the requirements of this chapter.

16 (6) "Quorum," unless otherwise defined by applicable law, means a simple majority of the
17 membership of a public body.

18 (7) "Remote public access" means measures that permit contemporaneous and effective
19 public access to the deliberations of the public body through a live transmission of a meeting over
20 the Internet, via teleconference or video conference, television, or other broadcast media that allows
21 the public to clearly follow the proceedings of the public body while those activities are occurring.
22 Remote public access shall be offered to the public without subscription, toll, or similar charge to
23 the public to join the meeting. During a hybrid meeting or a virtual meeting, when public comment
24 or testimony is permitted by the public body or required by law, public bodies shall provide
25 interactive access that includes the capability for members of the public to provide such comment
26 or testimony remotely through telephone, Internet or satellite-enabled audio or video conferencing,
27 or any other similar technology. (The provisions of this subdivision shall sunset on July 1, 2023.)

28 ~~42-46-5. Purposes for which meeting may be closed -- Use of electronic~~
29 ~~communications -- Judicial proceedings -- Disruptive conduct~~ **Purposes for which meetings**
30 **may be closed.**

31 (a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one
32 or more of the following purposes:

33 (1) Any discussions of the job performance, character, or physical or mental health of a
34 person or persons provided that the person or persons affected shall have been notified in advance

1 in writing and advised that they may require that the discussion be held at an open meeting.

2 Failure to provide notification shall render any action taken against the person or persons
3 affected null and void. Before going into a closed meeting pursuant to this subsection, the public
4 body shall state for the record that any persons to be discussed have been so notified and this
5 statement shall be noted in the minutes of the meeting.

6 (2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to
7 collective bargaining or litigation.

8 (3) Discussion regarding the matter of security including, but not limited to, the deployment
9 of security personnel or devices.

10 (4) Any investigative proceedings regarding allegations of misconduct, either civil or
11 criminal.

12 (5) Any discussions or considerations related to the acquisition or lease of real property for
13 public purposes, or of the disposition of publicly held property wherein advanced public
14 information would be detrimental to the interest of the public.

15 (6) Any discussions related to or concerning a prospective business or industry locating in
16 the state of Rhode Island when an open meeting would have a detrimental effect on the interest of
17 the public.

18 (7) A matter related to the question of the investment of public funds where the premature
19 disclosure would adversely affect the public interest. Public funds shall include any investment
20 plan or matter related thereto, including, but not limited to, state lottery plans for new promotions.

21 (8) Any executive sessions of a local school committee exclusively for the purposes: (i) Of
22 conducting student disciplinary hearings; or (ii) Of reviewing other matters that relate to the privacy
23 of students and their records, including all hearings of the various juvenile hearing boards of any
24 municipality; provided, however, that any affected student shall have been notified in advance in
25 writing and advised that he or she may require that the discussion be held in an open meeting.

26 Failure to provide notification shall render any action taken against the student or students
27 affected null and void. Before going into a closed meeting pursuant to this subsection, the public
28 body shall state for the record that any students to be discussed have been so notified and this
29 statement shall be noted in the minutes of the meeting.

30 (9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining
31 agreement.

32 (10) Any discussion of the personal finances of a prospective donor to a library.

33 (b) ~~No meeting of members of a public body or use of electronic communication, including~~
34 ~~telephonic communication and telephone conferencing, shall be used to circumvent the spirit or~~

1 requirements of this chapter; provided, however, these meetings and discussions are not prohibited.

2 ~~(1) Provided, further however, that discussions of a public body via electronic~~
3 ~~communication, including telephonic communication and telephone conferencing, shall be~~
4 ~~permitted only to schedule a meeting, except as provided in this subsection.~~

5 ~~(2) Provided, further however, that a member of a public body may participate by use of~~
6 ~~electronic communication or telephone communication while on active duty in the armed services~~
7 ~~of the United States.~~

8 ~~(3) Provided, further however, that a member of that public body, who has a disability as~~
9 ~~defined in chapter 87 of this title and:~~

10 ~~(i) Cannot attend meetings of that public body solely by reason of the member's disability;~~
11 ~~and~~

12 ~~(ii) Cannot otherwise participate in the meeting without the use of electronic~~
13 ~~communication or telephone communication as reasonable accommodation, may participate by use~~
14 ~~of electronic communication or telephone communication in accordance with the process below.~~

15 ~~(4) The governor's commission on disabilities is authorized and directed to:~~

16 ~~(i) Establish rules and regulations for determining whether a member of a public body is~~
17 ~~not otherwise able to participate in meetings of that public body without the use of electronic~~
18 ~~communication or telephone communication as a reasonable accommodation due to that member's~~
19 ~~disability;~~

20 ~~(ii) Grant a waiver that allows a member to participate by electronic communication or~~
21 ~~telephone communication only if the member's disability would prevent the member from being~~
22 ~~physically present at the meeting location, and the use of such communication is the only~~
23 ~~reasonable accommodation; and~~

24 ~~(iii) Any waiver decisions shall be a matter of public record.~~

25 ~~(5) The university of Rhode Island board of trustees members, established pursuant to §~~
26 ~~16-32-2, are authorized to participate remotely in open public meetings of the board if they are~~
27 ~~unable to be physically present at the meeting location; provided, however, that:~~

28 ~~(i) The remote members and all persons present at the meeting location are clearly audible~~
29 ~~and visible to each other;~~

30 ~~(ii) A quorum of the body is physically present at the noticed meeting location;~~

31 ~~(iii) If videoconferencing is used to conduct a meeting, the public notice for the meeting~~
32 ~~shall inform the public that videoconferencing will be used and include instructions on how the~~
33 ~~public can access the virtual meeting; and~~

34 ~~(iv) The board shall adopt rules defining the requirements of remote participation including~~

1 ~~its use for executive session, and the conditions by which a member is authorized to participate~~
2 ~~remotely.~~

3 (c) ~~This chapter shall not apply to proceedings of the judicial branch of state government~~
4 ~~or probate court or municipal court proceedings in any city or town.~~

5 (d) ~~This chapter shall not prohibit the removal of any person who willfully disrupts a~~
6 ~~meeting to the extent that orderly conduct of the meeting is seriously compromised.~~ [\(The provisions](#)
7 [of subsections \(b\) through \(d\) shall be restored on July 1, 2023.\)](#)

8 **42-46-6. Notice.**

9 (a) [Annual meeting calendar.](#) All public bodies shall give written notice of their regularly
10 scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times,
11 and places of the meetings and shall be provided to members of the public upon request and to the
12 secretary of state at the beginning of each calendar year in accordance with subsection (f).

13 (b) Public bodies shall give supplemental written public notice of any meeting within a
14 minimum of forty-eight (48) hours, excluding weekends and state holidays in the count of hours,
15 before the date. This notice shall include the date the notice was posted; the date, time, and place
16 of the meeting; [information on how to attend the meeting by remote public access, if applicable;](#)
17 and a statement specifying the nature of the business to be discussed. Copies of the notice shall be
18 maintained by the public body for a minimum of one year. Nothing contained herein shall prevent
19 a public body, other than a school committee, from adding additional items to the agenda by
20 majority vote of the members. School committees may, however, add items for informational
21 purposes only, pursuant to a request, submitted in writing, by a member of the public during the
22 public comment session of the school committee's meetings. Said informational items may not be
23 voted upon unless they have been posted in accordance with the provisions of this section. Such
24 additional items shall be for informational purposes only and may not be voted on except where
25 necessary to address an unexpected occurrence that requires immediate action to protect the public
26 or to refer the matter to an appropriate committee or to another body or official.

27 (c) Written public notice shall include, but need not be limited to, posting a copy of the
28 notice at the principal office of the public body holding the meeting, or if no principal office exists,
29 at the building in which the meeting is to be held, and in at least one other prominent place within
30 the governmental unit, and electronic filing of the notice with the secretary of state pursuant to
31 subsection (f); however, nothing contained herein shall prevent a public body from holding an
32 emergency meeting, upon an affirmative vote of the majority of the members of the body when the
33 meeting is deemed necessary to address an unexpected occurrence that requires immediate action
34 to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted

1 as soon as practicable and shall be electronically filed with the secretary of state pursuant to
2 subsection (f) and, upon meeting, the public body shall state for the record and minutes why the
3 matter must be addressed in less than forty-eight (48) hours in accordance with subsection (b) of
4 this section and only discuss the issue or issues that created the need for an emergency meeting.
5 Nothing contained herein shall be used in the circumvention of the spirit and requirements of this
6 chapter.

7 (d) Nothing within this chapter shall prohibit any public body, or the members thereof,
8 from responding to comments initiated by a member of the public during a properly noticed open
9 forum even if the subject matter of a citizen's comments or discussions were not previously posted,
10 provided such matters shall be for informational purposes only and may not be voted on except
11 where necessary to address an unexpected occurrence that requires immediate action to protect the
12 public or to refer the matter to an appropriate committee or to another body or official. Nothing
13 contained in this chapter requires any public body to hold an open-forum session to entertain or
14 respond to any topic nor does it prohibit any public body from limiting comment on any topic at
15 such an open-forum session. No public body, or the members thereof, may use this section to
16 circumvent the spirit or requirements of this chapter.

17 (e) A school committee may add agenda items not appearing in the published notice
18 required by this section under the following conditions:

19 (1) The revised agenda is electronically filed with the secretary of state pursuant to
20 subsection (f), and is posted on the school district's website and the two (2) public locations required
21 by this section at least forty-eight (48) hours in advance of the meeting in accordance with
22 subsection (b) of this section;

23 (2) The new agenda items were unexpected and could not have been added in time for
24 newspaper publication;

25 (3) Upon meeting, the public body states for the record and minutes why the agenda items
26 could not have been added in time for newspaper publication and need to be addressed at the
27 meeting;

28 (4) A formal process is available to provide timely notice of the revised agenda to any
29 person who has requested that notice, and the school district has taken reasonable steps to make the
30 public aware of this process; and

31 (5) The published notice shall include a statement that any changes in the agenda will be
32 posted on the school district's website and the two (2) public locations required by this section and
33 will be electronically filed with the secretary of state at least forty-eight (48) hours in advance of
34 the meeting in accordance with subsection (b) of this section.

1 (f) All notices required by this section to be filed with the secretary of state shall be
2 electronically transmitted to the secretary of state in accordance with rules and regulations that shall
3 be promulgated by the secretary of state. This requirement of the electronic transmission and filing
4 of notices with the secretary of state shall take effect one year after this subsection takes effect.

5 (g) If a public body fails to transmit notices in accordance with this section, then any
6 aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8. [\(The](#)
7 [amendments to this section shall sunset on July 1, 2023, and the language in effect on January 1,](#)
8 [2021, shall be restored.\)](#)

9 **42-46-7. Minutes.**

10 (a) All public bodies shall keep written minutes of all their meetings. The minutes shall
11 include, but need not be limited to:

12 (1) The date, time, and place of the meeting;

13 (2) The members of the public body recorded as either present or absent, [and for all](#)
14 [members of the public body who are present, record whether attendance is in person or through](#)
15 [teleconferencing or audio/video conferencing technology;](#)

16 [\(3\) If held as a virtual meeting or hybrid meeting, indicate how remote public access was](#)
17 [provided;](#)

18 ~~(3)~~(4) A record by individual members of any vote taken; and

19 ~~(4)~~(5) Any other information relevant to the business of the public body that any member
20 of the public body requests be included or reflected in the minutes.

21 (b)(1) A record of all votes taken at all meetings of public bodies, listing how each member
22 voted on each issue, shall be a public record and shall be available to the public at the office of the
23 public body within two (2) weeks of the date of the vote. The minutes shall be public records and
24 unofficial minutes shall be available to the public at the office of the public body within thirty-five
25 (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except
26 where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body
27 by majority vote extends the time period for the filing of the minutes and publicly states the reason.

28 (2) In addition to the provisions of subsection (b)(1), all volunteer fire companies,
29 associations, fire district companies, or any other organization currently engaged in the mission of
30 extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is
31 a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21)
32 days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting,
33 whichever is earlier, on the secretary of state's website. Except for discussions related to finances,
34 the provisions of this subsection shall not apply to a volunteer fire company if the matters of the

1 volunteer fire company are under the supervision, control, or jurisdiction of another public body.

2 (c) The minutes of a closed session shall be made available at the next regularly scheduled
3 meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4
4 and 42-46-5.

5 (d) All public bodies shall keep official and/or approved minutes of all meetings of the
6 body and shall file a copy of the minutes of all open meetings with the secretary of state for
7 inspection by the public within thirty-five (35) days of the meeting; provided that this subsection
8 shall not apply to public bodies whose responsibilities are solely advisory in nature.

9 (e) All minutes and unofficial minutes required by this section to be filed with the secretary
10 of state shall be electronically transmitted to the secretary of state in accordance with rules and
11 regulations that shall be promulgated by the secretary of state. If a public body fails to transmit
12 minutes or unofficial minutes in accordance with this subsection, then any aggrieved person may
13 file a complaint with the attorney general in accordance with § 42-46-8. (The amendments to this
14 section shall sunset on July 1, 2023, and the language in effect on January 1, 2021, shall be
15 restored.)

16 SECTION 2. Chapter 42-46 of the General Laws entitled "Open Meetings" is hereby
17 amended by adding thereto the following section:

18 **42-46-15. Virtual participation in meetings by members of the public body. (Effective**
19 **until July 1, 2023).**

20 Members of public bodies may participate in meetings subject to this chapter by remote
21 interactive means through telephone or audio/video conferencing, or similar technology, and such
22 members shall be included in the quorum. Public bodies shall not deny a member of the public
23 body who is on active duty in the military or who has a disability as defined in chapter 87 of title
24 42 the ability to participate remotely in a meeting.

25 **42-46-16. Public access requirements for meetings of public bodies. (Effective until**
26 **July 1, 2023).**

27 (a) There shall be three (3) types of meetings, as defined in § 42-46-2: in-person meetings,
28 virtual meetings and hybrid meetings. Public bodies may hold meetings subject to this chapter as
29 any of the three (3) types, subject to the limitations set forth in this section.

30 (b) A meeting or portion of a meeting which is held in closed executive session pursuant
31 to §§ 42-46-4 and 42-46-5 may be held as any of the three (3) types of meetings, without providing
32 any public access.

33 (c) For all virtual meetings and hybrid meetings, public bodies shall provide remote public
34 access as defined in § 42-46-2.

1 (d) Until December 31, 2022, all public bodies may hold meetings as any one of the three
2 (3) types of meetings defined in § 42-46-2.

3 (e) Effective July 1, 2022:

4 (1) All city and town councils, all elected and appointed school boards and school
5 committees, all zoning boards, all planning boards, and all quasi-public boards, agencies and
6 corporations (as defined in § 42-155-3 and provided for in the findings in § 42-155-2) shall not
7 have an exclusively in-person meeting. The open meetings of such public bodies shall be either a
8 hybrid meeting or a virtual meeting; however, unless holding a public hearing, these public bodies
9 may hold in-person meetings without remote public access for site visits, zoning and planning
10 workshops, and in-person meetings of subdivisions of these bodies.

11 (2) All other public bodies may continue to hold meetings as any one of the three (3) types
12 of meetings defined in § 42-46-2.

13 (f) Nothing herein alters the provisions of § 42-46-6(d) such that this chapter does not grant
14 the right of public comment to any member of the public where not otherwise provided by statute,
15 regulation, charter, ordinance, or bylaw.

16 (g) If any member of the public body participates in an open meeting in person, the public
17 body must allow members of the public to attend the meeting in person and permit such attendees
18 to participate when public comment or testimony is permitted by the public body or required by
19 law.

20 **42-46-17. Requirements for access to documents presented or used in open meetings**
21 **of public bodies. (Effective until July 1, 2023).**

22 For all open meetings of city and town councils, elected and appointed school boards and
23 school committees, zoning boards, planning boards, and quasi-public boards, agencies and
24 corporations (as defined in § 42-155-3 and provided for in the findings in § 42-155-2): the public
25 body shall make accessible to the public all documents to be reviewed, discussed, considered and/or
26 voted on at an open meeting that are in its possession by the time the agenda must be posted under
27 § 42-46-6(b). Such documents must be accessible to the public on the Internet by the time the open
28 meeting starts.

29 **42-46-18. Guidelines for hybrid and virtual open meetings for all public bodies.**
30 **(Effective until July 1, 2023).**

31 (a) For hybrid meetings, the public body shall announce the names of any members of the
32 public body participating remotely.

33 (b) During a meeting for which only audio is being provided as the means of remote public
34 access, public body members should be identified contemporaneous with making their remarks to

1 ensure a clear record of the proceedings.

2 (c) The public body shall halt the meeting if it becomes aware that the public's ability to
3 access the meeting through remote public access has been severely impeded, including, but not
4 limited to, widespread power failures or widespread Internet outages.

5 (d) The public body shall take all votes in a manner that all attendees, including those with
6 only audio remote public access, can clearly identify how each member voted consistent with § 42-
7 46-7(b)(1).

8 (e) The public body shall record any open meeting held as a virtual meeting or hybrid
9 meeting. The public body shall maintain a copy or access to a copy of the recording for at least two
10 hundred (200) days from the date of the approval by the public body of the minutes for such
11 meeting, and the public body shall provide access to open meeting recordings either by posting on
12 the Internet or by request in accordance with chapter 2 of title 38 ("access to public records").

13 **42-46-19. Use of electronic communications by and between members of public**
14 **bodies. (Effective until July 1, 2023).**

15 The use of electronic communication, including telephonic, text, email, facsimile,
16 teleconferencing, videoconferencing, instant messaging, social networking/media, or similar means
17 of communications shall not be used by any member of a public body to circumvent the spirit or
18 requirement of this chapter; provided, that electronic communication may be used to:

19 (1) Participate in a meeting by virtual means as may be permitted by this chapter; and

20 (2) Schedule a meeting or determine the availability of members of a public body for the
21 purpose of conducting a meeting under this chapter.

22 **42-46-20. Exclusion of judiciary. (Effective until July 1, 2023).**

23 This chapter shall not apply to proceedings of the judicial branch of state government or
24 probate court or municipal court proceedings in any city or town.

25 **42-46-21. Disruptive conduct. (Effective until July 1, 2023).**

26 This chapter shall not prohibit the removal of any person who willfully disrupts a meeting
27 to the extent that orderly conduct of the meeting is seriously compromised.

28 **42-46-22. Sunset.**

29 The language of §§ 42-46-2.1, 42-46-5.1, 42-46-6.1 and 42-46-7.1, 42-46-15 through 42-
30 46-21 shall expire on July 1, 2023.

31 SECTION 3. This act shall take effect upon passage.

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LC005219
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT – OPEN MEETINGS

1 This act would amend the open meetings act to allow public bodies the option to hold in
2 person, virtual or hybrid meetings, and would provide for virtual access in cases where the public
3 body chooses to hold a virtual or hybrid meeting. The sections added to permit the virtual and
4 hybrid meetings would expire on July 1, 2023.

5 This act would take effect upon passage.

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