

**2021 -- H 5891 SUBSTITUTE A**

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LC002033/SUB A/3  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2021**

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- OPEN MEETINGS

Introduced By: Representative Alex D. Marszalkowski

Date Introduced: February 24, 2021

Referred To: House State Government & Elections

(Dept. of Business Regulation)

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 meeting**  
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 such 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 such notification shall render any action taken against the person or  
3 persons affected null and void. Before going into a closed meeting pursuant to this subsection, the  
4 public body shall state for the record that any persons to be discussed have been so notified and  
5 this 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 which relate to the  
23 privacy of students and their records, including all hearings of the various juvenile hearing boards  
24 of any municipality; provided, however, that any affected student shall have been notified in  
25 advance in writing and advised that he or she may require that the discussion be held in an open  
26 meeting.

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

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

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

34 (b) ~~No meeting of members of a public body or use of electronic communication, including~~

1 ~~telephonic communication and telephone conferencing, shall be used to circumvent the spirit or~~  
2 ~~requirements of this chapter; provided, however, these meetings and discussions are not prohibited.~~

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

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

9 (3) ~~Provided, further however, that a member of that public body, who has a disability as~~  
10 ~~defined in chapter 87 of title 42 and:~~

11 (i) ~~Cannot attend meetings of that public body solely by reason of his or her disability; 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 him/her 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 (c) ~~This chapter shall not apply to proceedings of the judicial branch of state government~~  
26 ~~or probate court or municipal court proceedings in any city or town.~~

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

30 **42-46-6. Notice.**

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

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

15 (c) Written public notice shall include, but need not be limited to, posting a copy of the  
16 notice at the principal office of the public body holding the meeting, or if no principal office exists,  
17 at the building in which the meeting is to be held, and in at least one other prominent place within  
18 the governmental unit, and electronic filing of the notice with the secretary of state pursuant to  
19 subsection (f); however, nothing contained herein shall prevent a public body from holding an  
20 emergency meeting, upon an affirmative vote of the majority of the members of the body when the  
21 meeting is deemed necessary to address an unexpected occurrence that requires immediate action  
22 to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted  
23 as soon as practicable and shall be electronically filed with the secretary of state pursuant to  
24 subsection (f) and, upon meeting, the public body shall state for the record and minutes why the  
25 matter must be addressed in less than forty-eight (48) hours in accordance with subsection (b) of  
26 this section and only discuss the issue or issues that created the need for an emergency meeting.  
27 Nothing contained herein shall be used in the circumvention of the spirit and requirements of this  
28 chapter.

29 (d) Nothing within this chapter shall prohibit any public body, or the members thereof,  
30 from responding to comments initiated by a member of the public during a properly noticed open  
31 forum even if the subject matter of a citizen's comments or discussions were not previously posted,  
32 provided such matters shall be for informational purposes only and may not be voted on except  
33 where necessary to address an unexpected occurrence that requires immediate action to protect the  
34 public or to refer the matter to an appropriate committee or to another body or official. Nothing

1 contained in this chapter requires any public body to hold an open-forum session to entertain or  
2 respond to any topic nor does it prohibit any public body from limiting comment on any topic at  
3 such an open-forum session. No public body, or the members thereof, may use this section to  
4 circumvent the spirit or requirements of this chapter.

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

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

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

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

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

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

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

27 (g) If a public body fails to transmit notices in accordance with this section, then any  
28 aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8. [\(The](#)  
29 [amendments to this section shall sunset on July 1, 2023, and the language in effect on January 1,](#)  
30 [2021, shall be restored.\)](#)

31 **42-46-7. Minutes.**

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

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

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

4 (3) If held as a virtual meeting or hybrid meeting, indicate how remote public access was  
5 provided;

6 ~~(3)~~(4) A record by individual members of any vote taken; and

7 ~~(4)~~(5) Any other information relevant to the business of the public body that any member  
8 of the public body requests be included or reflected in the minutes.

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

16 (2) In addition to the provisions of subsection (b)(1), all volunteer fire companies,  
17 associations, fire district companies, or any other organization currently engaged in the mission of  
18 extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is  
19 a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21)  
20 days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting,  
21 whichever is earlier, on the secretary of state's website.

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

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

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

1 [restored.](#)

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

4 **42-46-15. Virtual participation in meetings by members of the public body (Effective**  
5 **until July 1, 2023).**

6 [Members of public bodies may participate in meetings subject to this chapter by remote](#)  
7 [interactive means through telephone or audio/video conferencing, or similar technology, and such](#)  
8 [members shall be included in the quorum. Public bodies shall not deny a member of the public](#)  
9 [body who is on active duty in the military or who has a disability as defined in chapter 87 of title](#)  
10 [42 the ability to participate remotely in a meeting.](#)

11 **42-46-16. Public access requirements for meetings of public bodies (Effective until**  
12 **July 1, 2023).**

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

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

19 [\(c\) For all virtual meetings and hybrid meetings, public bodies shall provide remote public](#)  
20 [access as defined in § 42-46-2.](#)

21 [\(d\) Until December 31, 2021, all public bodies may hold meetings as any one of the three](#)  
22 [\(3\) types of meetings defined in § 42-46-2.](#)

23 [\(e\) Effective January 1, 2022:](#)

24 [\(1\) All city and town councils, all elected and appointed school boards and school](#)  
25 [committees, all zoning boards, all planning boards, and all quasi-public boards, agencies and](#)  
26 [corporations \(as defined in § 42-155-3 and provided for in the findings in § 42-155-2\) shall not](#)  
27 [have an exclusively in-person meeting. The open meetings of such public bodies shall be either a](#)  
28 [hybrid meeting or a virtual meeting; however, unless holding a public hearing, these public bodies](#)  
29 [may hold in-person meetings without remote public access for site visits, zoning and planning](#)  
30 [workshops, and in-person meetings of subdivisions of these bodies.](#)

31 [\(2\) All other public bodies may continue to hold meetings as any one of the three \(3\) types](#)  
32 [of meetings defined in § 42-46-2.](#)

33 [\(f\) Nothing herein alters the provisions of § 42-46-6\(d\) such that this chapter does not grant](#)  
34 [the right of public comment to any member of the public where not otherwise provided by statute,](#)



1 [regulation, charter, ordinance, or bylaw.](#)

2 [\(g\) If any member of the public body participates in an open meeting in person, the public](#)  
3 [body must allow members of the public to attend the meeting in person and permit such attendees](#)  
4 [to participate when public comment or testimony is permitted by the public body or required by](#)  
5 [law.](#)

6 **42-46-17. Requirements for access to documents presented or used in open meetings**  
7 **of public bodies (Effective until July 1, 2023).**

8 [For all open meetings of city and town councils, elected and appointed school boards and](#)  
9 [school committees, zoning boards, planning boards, and quasi-public boards, agencies and](#)  
10 [corporations \(as defined in § 42-155-3 and provided for in the findings in § 42-155-2\): the public](#)  
11 [body shall make accessible to the public all documents to be reviewed, discussed, considered and/or](#)  
12 [voted on at an open meeting that are in its possession by the time the agenda must be posted under](#)  
13 [§ 42-46-6\(b\). Such documents must be accessible to the public on the Internet by the time the open](#)  
14 [meeting starts.](#)

15 **42-46-18. Guidelines for hybrid and virtual open meetings for all public bodies**  
16 **(Effective until July 1, 2023).**

17 [\(a\) For hybrid meetings, the public body shall announce the names of any members of the](#)  
18 [public body participating remotely.](#)

19 [\(b\) During a meeting for which only audio is being provided as the means of remote public](#)  
20 [access, public body members should be identified contemporaneous with making their remarks to](#)  
21 [ensure a clear record of the proceedings.](#)

22 [\(c\) The public body shall halt the meeting if it becomes aware that the public's ability to](#)  
23 [access the meeting through remote public access has been severely impeded, including but not](#)  
24 [limited to widespread power failures or widespread internet outages.](#)

25 [\(d\) The public body shall take all votes in a manner that all attendees, including those with](#)  
26 [only audio remote public access, can clearly identify how each member voted consistent with § 42-](#)  
27 [46-7\(b\)\(1\).](#)

28 [\(e\) The public body shall record any open meeting held as a virtual meeting or hybrid](#)  
29 [meeting. The public body shall maintain a copy or access to a copy of the recording for at least two](#)  
30 [hundred \(200\) days from the date of the approval by the public body of the minutes for such](#)  
31 [meeting, and the public body shall provide access to open meeting recordings either by posting on](#)  
32 [the Internet or by request in accordance with chapter 2 of title 38 \("access to public record"\).](#)

33 **42-46-19. Use of electronic communications by and between members of public bodies**  
34 **(Effective until July 1, 2023).**

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

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

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

8            **42-46-20. Exclusion of judiciary (Effective until July 1, 2023).**

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

11           **42-46-21. Disruptive conduct (Effective until July 1, 2023).**

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

14           **42-46-22. Sunset.**

15           The amendments to §§ 42-46-2, 42-46-5, 42-46-6 and 42-46-7 shall remain effective until  
16 July 1, 2023, and as of that date shall become inoperative. Effective July 1, 2023, the language of  
17 §§ 42-46-2, 42-46-5, 42-46-6 and 42-46-7 shall be restored to the language in effect on January 1,  
18 2021. The provisions and requirements of §§ 42-46-15 through 42-46-21 shall expire on July 1,  
19 2023.

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

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LC002033/SUB A/3  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- OPEN MEETINGS

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1           This act would amend the "open meetings act" to allow public bodies the option to hold in-  
2 person, virtual or hybrid open meetings, and would provide for virtual public access in cases where  
3 a public body chooses to hold a virtual or hybrid open meeting until July 1, 2023. The amendments  
4 would sunset on July 1, 2023. The current substantive provisions of the "open meetings act" would  
5 be restored on July 1, 2023.

6           This act would take effect upon passage.

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