



## STATE OF RHODE ISLAND

Executive Department

### GOVERNOR'S COMMISSION ON DISABILITIES

John O. Pastore Center, 2 Cherry Dale Court

Cranston, RI 02920-3049

[voice] (401) 462-0110 [tty] via Relay 711 [fax] (401) 462-0106

[e-mail] [Elisabeth.Hubbard@gcd.ri.gov](mailto:Elisabeth.Hubbard@gcd.ri.gov) [website] [www.disabilities.ri.gov](http://www.disabilities.ri.gov)

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#### **GCD Legislative Impact Statement on House 7676 and Senate 2612**

The Governor's Commission on Disabilities supports a modification to the Rhode Island Open Meetings Law's telecommunications ban that would allow public bodies that are "advisory" to meet virtually.

The RI Open Meetings Law (R.I.G.L. 42-46-1 et seq.) is intended to ensure transparency of meetings of Rhode Island public bodies. Public bodies are defined generally by the law as "any department, agency, commission, committee, board, council, bureau or authority or any subdivision thereof of state or municipal government" R.I.G.L. 42-46-2.1A.6. The law requires that public bodies post their meeting dates and agendas, allow the public to observe their meetings, hold their meetings in venues that are accessible to people with disabilities, and post their meeting minutes. The law also requires that members of a public body attend the meeting in person as the use of telecommunications is not allowed. R.I.G.L. 42-46-5(b)

Unfortunately, the in-person requirement prevents many people from serving on a public body. This bill would allow public bodies that are considered "advisory" be exempt from the be permitted to meet using virtual meeting technology and expand the opportunity to serve to more Rhode Island residents

#### **Virtual meeting technology has advanced and is used by the state in other contexts.**

Virtual meeting technology allows groups to hold meetings with many participants without the burden of travel and include people who would otherwise not have the opportunity to

participate because of health or other reasons. Since the Open Meetings Laws were first enacted and especially after Covid, virtual meeting technology has advanced considerably and become common business practice. During the Covid epidemic the State temporarily allowed for virtual meetings of public bodies by Executive Order, enabling the state to continue to function. This not only kept residents safe but made it easier for people to attend meetings. Although the order expired and the in-person requirement returned, virtual meeting technology has continued to be used by state allow workers to collaborate more easily. In addition, many public bodies continue to broadcast their meetings using virtual technology so that members of the public can observe and even comment during meetings.

**The law already has a distinction for public bodies that are “advisory”.**

There exists an exemption for public bodies that are “advisory” which are exempt from posting their minutes, although still subject to the in-person requirement. There is currently no statutory definition of “advisory”, but the Attorney General defines public bodies in their administrative decisions as those that provide recommendations, but do not make final decisions, are considered “solely advisory in nature”. *See Re: Farinelli v. Pawtucket Mayor’s Community Board*, OM 22-12 (The Community Board was found to be advisory as it made recommendations to the Mayor for enacting policy, but did not have the power to create policy itself. *See also Kelley v. Scituate Human Resource Policy Committee*, OM 21-01 (finding that entity was “solely advisory in nature” where the “record indicates that although the Committee reviews and make reports providing recommendations to the Town Council, the Town Council is vested with the final decision-making authority”).

This bill would codify the definition of “advisory public body” into statute as:

any department, agency, commission, committee, board, council, bureau, or authority, or any subdivision thereof, of state or municipal government, or other like body that does not have decision-making authority and whose primary purpose is to consider an issue or issues designated by the appointing entity so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation or other matter assigned to the advisory body.

**While the law provides for a waiver for people whose disabilities prevent them from attending in person, the requirements are stringent, and it is therefore rarely used.**

The Governor's Commission on Disabilities has limited authority to "[g]rant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation". R.I.G.L. 22-46-5(b)(3).

Unfortunately, this standard for eligibility for this waiver is very high. The application form requires personal information to be provided to the Commissioners. An applicant does not need to state what their disability is, but they do need to explain how it prevents them from being able to attend the meeting in person. The Commissioners must then make a determination regarding the severity of the applicant's disability. To qualify, a person must be nearly housebound because of their disability.

As a result, we have fewer than 10 applications for waivers each year. Yet the number of people who could benefit from attending virtually is much higher. There are people with disabilities who are not entirely housebound but for whom the in-person requirement is a burden (for example, a person with a respiratory condition who attends doctors' appointments masked and shops for groceries when there are fewer customers may find sitting in a small room with several other people for two hours too high a risk.) Furthermore, people who rely on paratransit cannot be sure of their arrival time, making arrival for a scheduled meeting difficult, and trips are likely to be much longer than for a person who uses their own vehicle.

**This modification would also be a benefit to people without disabilities who have other barriers that prevent them from attending.**

People who could benefit from attending virtually include caregivers of children or other relatives who must arrange coverage for family care. It would also include people who use public transportation and face long commutes to meetings due to RIPTA schedules. Those who use paratransit are not guaranteed an arrival time and therefore cannot be sure if they will arrive at the meeting on time. Likewise, people who live further away from the meeting or face long trips because of traffic (particularly those affected by the partial closing of the Washington

Bridge) may not be able to attend meetings because of the lengthy travel time. In addition, there are those whose work schedules would prevent them from attending a meeting if they had to travel to attend in-person.

The in-person requirement has the effect of excluding these people from the opportunity to serve on public bodies, which means they are not represented on them. Only those who have the privilege and ability to attend in person are represented. Removing the telecommunications ban would allow a broader representation of the population of Rhode Island. Furthermore, allowing advisory public bodies to meet virtually would also have the advantage of making it easier for them to achieve quorum. As a result of the in-person requirement, many public bodies have had difficulty recruiting members, and those members they recruit are finding it difficult to attend in-person. For example, the Rhode Island Council on Assistive Technology (RICAT) has not achieved quorum for several of its meetings since the telecommunications ban was put back into place. Members have said that they would be able to attend if the meetings were held virtually.

**Guidelines can be created to ensure transparency and accessibility for virtual meetings.**

We are advocating for this change to be made in a manner that preserves government transparency and accessibility for people with disabilities. We plan to work with the Commission on the Deaf and Hard of Hearing, the Secretary of State's Office, the Olmstead Advisory Group and other entities to draft guidance for best practices to ensure accessibility for open meetings. In addition, we would encourage other organizations concerned with government transparency to also contribute their thoughts regarding guidelines.

Allowing public bodies that are classified as advisory to meet virtually would allow for more participation by a wider range of Rhode Island residents, resulting in public bodies that truly reflect the state's population and better policy decisions for Rhode Island's residents.

Please let us know if you have any questions.

Sincerely,  
Elisabeth K. Hubbard  
Executive Secretary