

Testimony in opposition to H 5891 Sub A

Delivered by John Marion on behalf of Common Cause Rhode Island

Common Cause Rhode Island opposes H 5891 Sub A as written. We are sorry to take this position given the enormous work that has gone into producing the amendments. However, the current draft would allow for largely unfettered fully online public meetings, with too few safeguards, and for too long.

When Governor Gina M. Raimondo issued Executive Order 20-05 on March 16, 2021 she set in motion a grand experiment for our democracy. For decades the only way members of public bodies could participate remotely for purposes of establishing a quorum was if they fell into two very narrow categories. And the public could only observe and/or participate remotely if the public body, by their choice, decided to provide such access.

For the last 16 months we have seen both good and bad happen as a result of this experiment. We do not believe that we can yet come to full conclusions about what permanent changes to the Open Meetings Act should look like, which is why we strongly believe that the legislation should include a sunset. We believe that sunset should be shorter than the two years proposed in the Sub A because we believe that any bad practices codified in, or not restricted by, the Sub A will develop inertia if allowed to continue for two years.

Common Cause Rhode Island starts from the position that any changes to the Open Meetings Act as a result of the pandemic should codify the good, and put in safeguards to protect against the bad. Unquestionably the increased participation by members of the public, particularly for municipal bodies such as school committees, has been good. That is weighed against some bad practices we have seen public bodies engage in, including the use of telephone meetings when video is available, members leaving their cameras off for the entirety of public meetings, and withholding documents from the press and public even though they are being acted upon by the public body, among other failures.

Foremost among our substantive concerns is that the current Sub A allows all public bodies to hold fully virtual meetings for the next two years. That means elected bodies that have extensive authority over the everyday lives of Rhode Islanders, including taxing authority, will not have to face the public in person until July of 2023. For most elected city and town councils that means that voters will not have to appear in person anytime before the next elections in November 2022.

Common Cause Rhode Island does not have a position on which specific bodies, or portions of public bodies, or portion of public meetings, should be required to return in person, but we note that states have taken a variety of approaches to this question. In some states only a certain percentage of meetings per year are allowed to have the members of the body participate remotely. In other states only less than a quorum of the members of the public body can participate remotely. In yet other states only certain categories of public bodies are allowed to have members participate remotely.

H 5891 Sub A is likely the most permissive proposed statute in the United States with respect to allowing members of public bodies to participate remotely. Under this proposal, as written, all public bodies in the state, numbering more than 3,000, could remain fully virtual for two full years, or even more concerning, they could go back to meeting in person but keep the public at arms length by forcing them to observe and/or participate remotely.

Common Cause Rhode Island and our partner organizations in the ACCESS/RI coalition asked that if remote participation for members of public bodies is allowed to continue in any manner a number of safeguards be put in place to protect the public interest. While the Sub A contains several of our proposed safeguards, there are some important ones that are missing, or are watered down so much that they are ineffectual.

As written, members of all public bodies, including elected officials, would never need to physically show themselves. They could participate by telephone or leave their cameras off. This raises important concerns about accountability and privacy. Nothing prevents a member of a public body from allowing other people in the room when they participate in an executive session, for instance.

The proposed Sub A tries to accommodate our request that documents being discussed, and even voted on, by the public body be available to the public that is participating remotely by the time the meeting starts. But as written this safeguard would be easily evaded. First, the vast majority of public bodies would not be subject to the requirement. Second, a public body would simply have to say that the document wasn't available at the time the agenda was posted and then it would be under no obligation to provide it to the public under any terms other than the Access to Public Records Act, which could give the public body weeks to supply the document.

There are unquestionably advances made that benefit the public in this proposed Sub A if they are accompanied by the proper safeguards. There are five categories of public bodies--city and town councils, school committees, quasi-public agencies, zoning and

planning boards--that would have to provide remote public access, and possibly participation, even if they return to in-person meetings. But, as noted earlier, those public bodies could exclude members of the public who want to participate in person even if all members of the public body are participating in person.

Requiring public bodies to record meetings is in the public interest, but not requiring them to be publicly available shortly after the meeting, and allowing them to be destroyed after 200 days, renders that benefit somewhat meaningless.

As written the benefits to the public in the H 5891 Sub A are outweighed by the risks to the public interest. Common Cause Rhode Island believes there is still time to make amendments to this bill that will protect the public interest and let the benefits of this great experiment continue in the short term.