

OPEN MEETINGS LAW AMENDMENT REQUIRES MAKING MATERIALS AVAILABLE AT LEAST 24 HOURS BEFORE MEETINGS

Hodgson Russ Municipal Alert
October 29, 2021

On October 19, 2021, Gov. Hochul signed into law an amendment to Section 103 of the Public Officers Law (the “Open Meetings Law”) making the existing language more specific as to the disclosure of documents that will be discussed at open meetings. The law now requires public bodies, to the extent practicable, make agency records that will be discussed at an open meeting available at least 24 hours in advance of such meeting. This amendment takes effect on November 18, 2021, thirty (30) days from the date the Governor signed the bill into law.

Prior to the amendment, this requirement applied only “to the extent practicable as determined by the agency or the department, prior to or at the meeting during which the records will be discussed.”[1] The rationale for the change offered by members of the Legislature includes commentary about the existing “loopholes and a way for agencies to bypass” timely disclosure of materials that would be discussed in an open meeting.[2] Interestingly, the Legislature did not see fit to address the largest loophole in the statute: the language that requires posting in advance only “to the extent practicable,” which is the language remaining in the law. Commenting on the prior law’s lack of a timeframe, the Fourth Department held that a town’s publication of documents only seven hours before the meeting was sufficient because “the legislature failed to include a specific time period other than prior to the meeting, there is an ‘irrefutable inference’ that the exclusion of such a specific time period was intended.”[3]

Some members of the Legislature noted that the lack of posting of such documents sufficiently in advance made it difficult for the public to be aware of materials with sufficient time to prepare to comment on them. As the New York Coalition for Open Government observed, 15 percent of 41 local governments surveyed do not post meeting documents.[4] In light of the available technology, and how many agencies were able to go virtual during the ongoing COVID-19 pandemic, the Legislature determined that posting such documents within the 24-hour timeframe would not be problematic.[5]

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The amendment provides two mechanisms to provide notice of the documents: either copies can be made for a reasonable fee as provided for in Article 6 of the Public Officers Law,^[6] or be made available on the agency's website that it regularly and routinely updates.

Hodgson Russ Takeaways

Overall, this amendment is not a drastic change to the existing obligations of public bodies. The requirement is still governed by a practicability standard, and an agency "shall not be required to expend additional moneys to implement the provisions" of these requirements. However, it may be necessary to make adjustments to your existing practices to ensure compliance, particularly as it relates to posting materials online. And, if your community's standard practice has been to merely bring all the materials to meetings, that is no longer sufficient under the plain terms of the statute.

If you have questions about compliance with these requirements, the Open Meetings Law, or Municipal Law generally, please contact [Charles Malcomb](mailto:charles.malcomb@hodgsonruss.com) (716.848.1261), [Aaron Saykin](mailto:aaron.saykin@hodgsonruss.com) (716.848.1345), or any member of our [Municipal](#) practice.

[1] Public Officers Law § 103.

[2] See New York Senate Bill S1150A, available from <https://www.nysenate.gov/legislation/bills/2021/S1150>.

[3] See *In the Matter of Clover/Allen's Creek Neighborhood Association LLC v. M&F, LLC, et al., Collectively Doing Business as Daniele Family Companies, et al.*, 173 A.D.3d 1828, 1831 (4th Dep't 2019).

[4] See New York Senate Bill S1150A, available from <https://www.nysenate.gov/legislation/bills/2021/S1150>.

[5] *Id.*

[6] Also known as the Freedom of Information Law.