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EXECUTIVE DIRECTOR

SHOSHANAH BEWLAY

MEMORANDUM

TO: Whom it May Concern

FROM: Shoshanah Bewlay
Executive Director, Committee on Open Government

RE: *Chapter 481 of the Laws of 2021 Relating to Records Scheduled to be Discussed at an Open Meeting*

Chapter 587 of the Laws of 2021 Relating to the Posting of Meeting Minutes

Chapter 676 of the Laws of 2021 Relating to the Definition of "Public Body"

Chapter 1 of the Laws of 2022 amending Chapter 417 of the Laws of 2021 "Notwithstanding" Elements of Public Officers Law Article 7 "The Open Meetings Law" Through the End of the Declared Disaster Emergency

DATE: November 9, 2021 (Updated February 28, 2022)

On September 2, 2021, Governor Kathy Hochul signed into Law Chapter 417 of the Laws of 2021 which, in part, authorizes most public bodies "to meet and take such action authorized by law without permitting in public in-person access to meetings and authorize such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed."

The language of the Law substantially mirrors former Executive Order 202.1 issued in March 2020. Guidance relating to that order can be found on the Committee on Open Government's website under Open Meetings Law Advisory Opinions, key phrase "Declared Disaster Emergency." Links to those opinions are below.

[OML AO 5630A](#), [OML AO 5631A](#), [OML AO 5632A](#),

On October 19, 2021, the Governor signed into law Chapter 481 of the Laws of 2021 which amends § 103(e) of the Open Meetings Law to require that records to be discussed at a meeting be made available, to the extent practicable, upon request and posted online, at least 24-hours before the meeting. The obligation to make records available to the public upon request "prior to or at the meeting" and to post the records on the agency or public body website "prior to the meeting" has been in effect since February 2012. This amendment simply places a 24-hour minimum time frame for making those records available. Additional guidance can be found [here](#).

On November 8, 2021, the Governor signed into law Chapter 587 of the Laws of 2021 which amends the Open Meetings Law to require agencies that maintain a website and use a high-speed internet connection to post meeting minutes on its website within two weeks of the date of the meeting, or within one week of an executive session. It further states: “unabridged video recordings or unabridged audio recordings or unabridged written transcripts may be deemed to be meeting minutes. Nothing in this section shall require the creation of minutes if the public body would not otherwise take them.”

On December 21, 2021, the Governor signed into law Chapter 676 of the Laws of 2021 which amends the definition of “public body” contained in the Open Meetings Law. The definition now reads:

“Public body” means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body consisting of members of such public body or an entity created or appointed to perform a necessary function in the decision-making process. A necessary function in the decision-making process shall not include the provision of recommendations or guidance which is purely advisory and which does not require further action by the state or agency or department thereof or public corporation as defined in section sixty-six of the general construction law.

Public Officers Law § 102(2).

**** On February 24, 2022, the Governor signed into law Chapter 115 of the Laws of 2022** which made changes to Chapter 676 of the Laws of 2021 (see above), to clarify the definition of “public body” for purposes of the Open Meetings Law. The amended definition now reads:

“Public body” means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body consisting of members of such public body or an entity created or appointed to perform a necessary function in the decision-making process for which a quorum is required in order to conduct public business and which consists of two or more members. A necessary function in the decision-making process shall not include the provision of recommendations or guidance which is purely advisory and which does not require further action by the state or agency or department thereof or public corporation as defined in section sixty-six of the general construction law.

On January 14, 2022, Governor Kathy Hochul signed into Law Chapter 1 of the Laws of 2022 amending Chapter 417 of the Laws of 2021 to authorize any public body (as that term is defined by [§ 102\(2\) of the Open Meetings Law](#)) “to meet and take such action authorized by law without permitting in public in-person access to meetings and authorize such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.”

Chapter 1 takes effect immediately and shall expire and be deemed repealed upon the expiration or termination of the state disaster emergency declared pursuant to [Governor Hochul’s Executive Order 11](#) or any extension or modification thereof. As of the updated date of this memo, Executive Order 11.3 had extended Executive Order 11 through March 16, 2022.