

CLIENT ALERT: January 26, 2010

**CHANGES TO THE
MASSACHUSETTS OPEN MEETING LAW
APPLICABLE TO STATE GOVERNMENTAL ENTITIES**

As part of the recently-passed “Act to Improve the Laws Relating to Campaign Finance, Ethics and Lobbying,” the laws relating to open meetings have been amended. Until now, there have been separate municipal and state open meeting laws. As of July 1, 2010, municipal and state open meeting laws will be consolidated as the new §18-25 to Mass. Gen. Laws, Ch. 30A (the “New Law”). Highlights of the New Law applicable to state governmental bodies are as follows:

- **“Meetings” covered by the New Law:** The New Law governs any oral or written communication, through any medium, including email, between or among a quorum of a public body (meaning state governmental bodies and certain municipal entities) on any public business within its jurisdiction. The New Law contains some limited exceptions for meeting agenda, scheduling, and similar information, as long as no opinions are expressed in the communication.
- **Notice Requirements:** Notices of meetings must be filed with the Attorney General by posting on a website at least 48 hours prior to the meeting, with some exceptions for emergency meetings. Saturdays, Sundays and legal holidays are excluded from the 48-hour calculation. Under the New Law, the notice must include a list of the topics that the chair reasonably anticipates will be discussed, in addition to the date, time and place of the meeting. The New Law allows the Attorney General to approve alternative methods of notice, if the alternative will afford more effective notice to the public.
- **Recording of the Meeting:** Under the New Law, videotaping the meeting or transmission of the meeting through other media is to be permitted after notice to the chair and subject to the reasonable requirements of the chair. Under the old open meeting law applicable to state governmental bodies, only audio taping was expressly permitted by statute. At the beginning of the meeting, the chair must inform the attendees of the recording.
- **Remote Participation:** The Attorney General, by letter ruling or regulation, may authorize remote participation in a meeting by members of the state entity. Remote participants and parties present at the meeting must be clearly audible to each other, and a quorum of the governing body and the chair must be present at the meeting location.
- **Minutes of Meetings:** Under the New Law, the minutes must include a summary of discussions on each subject and a list of documents or other exhibits used at the meeting. All documents and other exhibits used by the state governmental body must be maintained as part of the record. Minutes of all open sessions must be made available to the public upon request within 10 days of the meeting (even if the minutes are only in draft form and have not been approved by the state governmental body), and all minutes will be considered public records, except for certain performance evaluations and certain materials used in deliberations about employment or appointments. As under the old open meeting law applicable to state governmental bodies, minutes of executive sessions may be withheld from disclosure for so long as publication would defeat the lawful purposes of the executive session. However, the public body will now be required to review the minutes of executive sessions at reasonable intervals to determine if non-disclosure is still appropriate and to announce the determination at the next meeting of the body. In addition, the public body must respond to requests for such records within 10 days, and must perform a review of such records, free of charge, if a review has not previously been conducted.

- **Executive Session:** The New Law added new rationales for meeting in executive session, including meetings held (i) to conduct strategy sessions in preparation for negotiations with nonunion personnel and to conduct collective bargaining sessions or contract negotiations with nonunion personnel; (ii) to consider or interview applicants for employment or appointment by a preliminary screening committee under certain circumstances; (iii) to confer with a mediator with respect to any litigation or decision on any public business, provided certain disclosures are made in an open meeting; and (iv) to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of certain activities in connection with making, selling or distributing electric power and energy.
- **Enforcement:** The Attorney General has new powers to conduct investigations of open meeting law violations. The Attorney General may make determinations in connection with complaints of open meeting law violations or institute actions through the courts. If the Attorney General or a court finds a violation, it may impose multiple remedies, including compelling compliance, requiring training sessions, nullifying actions, reinstating employees, and compelling minutes and records to be made public. The Attorney General or a court may also impose civil penalties of up to \$1,000 upon the public body, but only for intentional violations of the open meeting law.

We expect that the Attorney General's office may issue additional guidance or regulations prior to the July 1, 2010 effective date. During this period, some state governmental bodies may consider requesting the Attorney General to approve remote participation at meetings or alternative forms of notice of meetings. **Please note that this Client Alert only highlights sections of the New Law applicable to state governmental bodies; the sections applicable to local public bodies (such as governing boards of local housing, redevelopment and other authorities) may vary.**

If you have any questions or would like additional information, please contact Sheryl Howard at Krokidas and Bluestein.

Links:

- For a copy of the new Act, see:
<http://www.mass.gov/legis/laws/seslaw09/sl090028.htm>