

## New Provision of the New York State Open Meetings Law Goes Into Effect February 2, 2012

On January 3, 2012, an amendment to the Open Meetings Law was enacted that impacts governmental agencies such as school districts and municipalities. The amendment was enacted in response to recommendations made by the Committee on Open Government and has been codified as Section 103(e) of the Public Officers Law. The law goes into effect on Thursday, February 2, 2012.

The new legislation requires two things:

- Any document that is subject to disclosure under the Freedom of Information Law (“FOIL”), as well as any proposed resolution, law, rule, regulation, policy or amendment thereto, that is scheduled to be discussed by a public body during an open meeting must be made available upon request either before the meeting or at the meeting during which the record will be discussed, “to the extent practicable” as determined by the governmental agency; and
- If the governmental agency maintains a regularly and routinely updated website that uses a high speed internet connection, all such records described above that are scheduled to be discussed must be posted on the website prior to the meeting, “to the extent practicable” as determined by the governmental agency.

This Open Meetings Law amendment aims to facilitate the public’s ability to follow discussions at open meetings by giving the public the opportunity to obtain copies of the same documents that are provided to board members, as long as those documents would otherwise be subject to disclosure under FOIL. Thus, if the government agency can point to a specific FOIL exception that would permit a document to be withheld from disclosure, the document would not have to be made available to the public under this amendment to the Open Meetings Law. In addition, as with any FOIL request, if the governmental agency makes paper copies of the record(s) available prior to or at a meeting, it may charge individuals seeking copies the same fees that it would charge in responding to a FOIL request for those same records.

Section 103(e) authorizes each governmental agency to determine what is “practicable” regarding making its records available. This flexibility is intended to allow the new provision to be implemented reasonably and without unnecessary burden or cost to governmental agencies. For instance, if a board is discussing a 500-page document, it likely would not be practicable to have hard copies of the document available for distribution prior to or at the meeting, even if it is requested. However, it may be practicable for the agency to post an electronic copy of the document on its website prior to the meeting.

Practically speaking, if a governmental agency has a website that is regularly and routinely updated and has a high speed internet connection, full compliance with the new provision will likely not be overly burdensome and/or costly. When a public body posts its meeting agenda, the best practice would be to simultaneously post electronic copies of all documents the public body is scheduled to discuss at the meeting.

If you have any questions regarding your obligations under this amendment to the Open Meetings Law, please contact:

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