

---

---

## OLR Bill Analysis

### sHB 6448

#### ***AN ACT CONCERNING ACCESS TO LOCAL GOVERNMENT, THE MODERNIZATION OF LOCAL GOVERNMENT OPERATIONS, REGIONAL COUNCILS OF GOVERNMENT AND THE PROVISION OF OUTDOOR DINING.***

#### **SUMMARY**

This bill requires public agencies to make their meetings that are subject to the Freedom of Information Act (FOIA) (including in-person meetings) accessible to the public through electronic equipment. It establishes several requirements for meetings held using electronic equipment, including that all votes be conducted by roll call and that members of the public have the same participation opportunities as they would for an in-person meeting. The bill allows public agencies to terminate a person's electronic access to a meeting if he or she disrupts the meeting. It also allows voters attending a town meeting using electronic equipment to cast a vote using electronic equipment.

Additionally, the bill expands the information that public agencies must make available before a regular meeting (whether electronic or in-person). It requires public agencies with a website to post public documents that will be introduced during the meeting at least 24 hours in advance. It also allows (1) public agencies to electronically send meeting notices to interested parties and (2) the Freedom of Information Commission (FOIC) to electronically send certain documents to parties in an appeal before the commission.

Separately, the bill changes the funding calculation for grants to regional councils of government (COGs) beginning in FY 22. It requires a COG's member municipalities to affirmatively vote to approve the COG's regional service provision and administration and specifies that an interlocal agreement is not required for these regional services (§ 10). It also modifies the entities and projects that are eligible for

Regional Performance Incentive Program (RPIP) funding (§ 9).

The bill generally requires municipalities to allow outdoor food and beverage service as an accessory use to a licensed food establishment (e.g., restaurant), including in pedestrian pathways and parking areas (§ 14). Lastly, it makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2021, except that provisions about (1) limiting disorderly individuals' meeting access and holding town meetings by electronic equipment are effective January 1, 2022, and (2) RPIP and COG-provided regional services are effective upon passage.

### **§ 1-5 & 15 — FOIA**

#### ***Public Agency Meetings (§§ 1 & 3(a))***

Under current law, FOIA's definition of "meeting" includes those held by electronic equipment, but it does not explicitly authorize, or establish procedures for, telephone or other remotely held meetings (see BACKGROUND).

The bill (1) defines "electronic equipment" for purposes of FOIA as any technology facilitating real-time access to and participation in meetings, including telephone, video, or other conferencing platforms and (2) establishes several requirements for meetings held using electronic equipment (see below). It also requires public agencies to make their meetings (whether electronic or in-person) accessible to the public through electronic equipment.

#### ***Conducting Meetings (§§ 3(a), 3(b) & 3(g))***

Under the bill, if a public agency holds a meeting (other than an executive session or emergency special meeting) solely by electronic equipment, then it must provide any member of the public with (1) a physical location and electronic equipment needed to attend the meeting in real-time, if requested in writing at least 24 hours before the meeting, and (2) the same opportunities to comment, testify, vote, or otherwise participate that it would have for an in-person meeting.

The bill specifies that it does not require public agencies to offer any of these participation opportunities to members of the public attending

electronically if they are not legally required to do so for members of the public attending in person. Under the bill, if at least two members of a public agency conduct an in-person meeting, then the agency must allow the public to attend in person.

The bill requires that agencies conduct all votes at a meeting by roll call if at least one member participates in the meeting electronically. It requires meeting participants (both agency members and the public) to make a good-faith effort to state their name and title each time before speaking during an uninterrupted dialogue or series of questions and answers during a meeting conducted by electronic equipment.

***Meeting Minutes (§ 3(b))***

FOIA requires public agencies to make meeting minutes available no later than seven days after a meeting. Among other things, they must record all votes taken at the meeting. The bill requires that the minutes also list the agency members who attended in-person or electronically, respectively.

***Agendas for Regular Meetings (§ 3(d))***

Under current law, FOIA requires state agencies to post agendas for regular meetings on their websites but does not apply this requirement to political subdivisions. The bill instead requires all public agencies to post their meeting agendas on their websites if they maintain one.

Additionally, the bill requires public agencies that maintain a website to post the following on the website at least 24 hours before the meeting (whether held in person or electronically):

1. any public records subject to disclosure under FOIA that (a) will be introduced by a member of the agency or its staff and (b) were prepared before the meeting by the agency or a party to a matter on the agenda, including applications to the agency, and
2. instructions for the public to attend the meeting in person or electronically and comment, vote, or otherwise participate, as applicable.

***Notices of a Special Meeting (§ 3(e))***

The bill similarly requires that the above instructions for meeting attendance and participation be included in any notice of a special meeting. It specifies that agencies need not offer any of these participation opportunities to members of the public attending a special meeting electronically if they are not legally required to do so for members attending in person. (A special meeting is one that is held to consider business that (1) was unforeseen when scheduling regular meetings and (2) should be addressed before the next regular meeting.)

The bill allows notices of a special meeting to be sent to a public agency's members by "electronic transmission" rather than delivered by mail to their homes as current law requires. Current law also allows members to waive delivery of the notice by filing a written waiver with the agency's clerk or secretary. The bill allows members to submit these waivers electronically.

The bill defines "electronic transmission" as any communication form or process that (1) does not directly physically transfer paper or another tangible medium and (2) the recipient may retrieve (including in paper form, specifically), retain, or reproduce.

***Notices of Adjournment (§ 5)***

Existing law requires public agencies, when a meeting is adjourned because all members are absent, to post a notice of adjournment on or near the door of the meeting's location. The bill additionally requires agencies to post this notice on their websites, if applicable.

***Meeting Notices to Interested Parties (§§ 2 & 4)***

FOIA requires public agencies, where practicable, to give notice of each regular and special meeting at least seven days in advance to a person who makes a written request for this notice. The bill allows public agencies to provide this notice by electronic transmission rather than by mail as current law requires.

FOIA allows a person who does not receive proper notice of a meeting to appeal to FOIC. Existing law presumes that a political

subdivision agency (e.g., a municipal agency) has given proper notice if it timely sends the notice by first-class mail to the address provided by the requestor. The bill additionally presumes proper notice if it is timely sent by electronic transmission to the requestor's information processing system (e.g., email account). (By law, an "information processing system" is an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.)

### ***FOIC Appeals (§ 2)***

By law, a person who is denied a right conferred by FOIA (e.g., inspecting or copying public records or attending a public agency's meeting) may file an appeal with FOIC. Existing law requires that specified documents and notices be provided to parties to the appeal.

The bill allows the following types of documents to be provided by electronic transmission:

1. service of the appeal notice by FOIC upon all parties (and any other commission notice or order);
2. notice by a public agency to an employee (and his or her collective bargaining representative, if any) of any appeal to FOIC involving the employee's personnel, medical, or similar file;
3. notice by FOIC to any person against whom the commission levies a civil penalty (by law, FOIC may levy a civil penalty of \$20-\$1,000 against (a) a complainant whom it finds acted frivolously or (b) a respondent whom it finds unreasonably denied a request); and
4. service by FOIC upon all parties of a public agency's petition for relief from a vexatious requestor (when the executive director determines that a hearing is warranted for the petition) and any other commission notice or order.

### **§ 6 — TOWN MEETINGS**

The bill allows voters attending a town meeting using electronic

equipment to cast a vote using electronic equipment. To do so, the meeting moderator, secretary, or clerk must be able to see and hear the person and authenticate that he or she is eligible to vote in the town meeting (i.e., that he or she is (1) an elector of the town or (2) a U.S. citizen age 18 or older and liable to the town for taxes on an assessment of \$1,000 or more). The bill makes a conforming change by requiring the clerk or secretary, if votes are taken using electronic equipment, to phrase the items so that they are suitable in a form for viewing.

It is unclear whether the bill's provisions extend to votes taken at an adjourned town meeting (i.e., a referendum).

### **§§ 3 & 7-8 — ORDERLY CONDUCT AT MEETINGS**

Under existing law, a town meeting moderator may order a proper officer to take a disorderly person into custody and remove him or her from the meeting if necessary. Additionally, FOIA allows a public agency's members, when order cannot be restored by removing disorderly individuals, to order the room cleared before continuing with the meeting.

The bill expands this authority to include disorderly individuals attending a meeting by electronic equipment. It allows town meeting moderators and public agency members to terminate these individuals' attendance by electronic equipment until they conform to order or, if necessary, until the meeting is over.

The bill also creates an exception to FOIA's prohibition against requiring members of the public to provide their names or other information to a public agency as a condition of attending a meeting. It allows public agencies to require this information from the public for meetings conducted by electronic equipment if the agency determines the requirement necessary for controlling public access and ensuring the meeting's orderly conduct.

### **§ 9 — REGIONAL PERFORMANCE INCENTIVE PROGRAM**

#### ***Eligible Entities***

The bill limits eligibility for RPIP grants to COGs and regional educational service centers (RESC), or any combination of them, thus making economic development districts, boards of education serving a population of more than 100,000, and municipalities applying through COGs no longer eligible.

***Eligible Purposes***

The bill expands the purposes for which OPM may award the grants to include:

1. redistributing specified state grants to municipalities according to regional priorities (specifically Small Town Economic Assistance Program, Main Street Investment Fund, Intertown Capital Equipment Purchase Incentive Program, and Local Capital Improvement Fund grants) and
2. revenue sharing among municipalities that have entered certain agreements to do so.

As under existing law, OPM may also award the grants for (1) the provision of a service that a member municipality or board of education currently provides, but not on a regional basis, and (2) for regional special education initiatives to RESCs that serve more than 100,000 people.

The bill removes OPM’s ability to award grants for (1) planning studies on joint services and (2) shared information technology services.

***Application and Other Requirements***

As under existing law, applicants must provide certain information to OPM about the proposal and its projected benefits. The bill expands the required information to include:

1. an acknowledgment from any employee organization potentially impacted by the proposal that it was informed of and consulted about the proposal (under the bill, an “employee organization” is a labor or other lawful organization whose

primary purpose is to improve wages, hours, and other employment conditions) and

2. a statement from the COG or RESC that it will fund at least 25% of the proposal's first year costs and all of its costs by the fourth year.

The applicant must include the statement in a resolution endorsing the proposal from the COG's or RESC's governing body. Under current law, each participating municipality's legislative body must provide an endorsing resolution instead.

The bill also modifies the existing application requirements by specifying that the explanations about (1) economies of scale must pertain to participating members and (2) legal obstacles must also explain how the obstacles will be resolved.

Additionally, the bill specifies that COGs, RESCs, member municipalities, and boards of education are not required to execute an interlocal agreement to implement a proposal.

### ***Selection Criteria***

Current law requires OPM to prioritize certain grant proposals (e.g., proposals submitted by boards of education and economic development districts). Under the bill, the OPM secretary must instead award grants to proposals that she determines best meet specified criteria, specifically those that:

1. will be available to or benefit all COG or RESC members;
2. demonstrate, compared to existing service delivery, an increased capacity and efficiency; a cost benefit to members; increased cost savings; and a diminished need for state funding;
3. promote cooperation among members that may lead to a reduction in economic or social inequality;
4. were approved by a majority of members; and



5. comply with application requirements about employee labor organizations and COG or RESC proposal funding.

The bill allows boards of education that are awarded a grant (presumably through a RESC), and realize cost savings as a result, to deposit those cost savings into an unexpended education fund account.

### ***Reporting Requirements***

The bill requires applicants to send a copy of their applications to the legislators representing the participating local or regional boards of education. Existing law already requires that they send a copy to the participating municipalities' legislators.

Under existing law, the OPM secretary must annually submit to the governor and Finance, Revenue and Bonding Committee a report that lists the grant amounts, their potential to leverage other public and private investments, and property tax reductions achieved. The bill also requires the report to describe any service improvements due to the program.

## **§§ 11-13 — CHANGE TO COG FUNDING**

### ***Regional Performance Incentive Account Grant Amounts***

Beginning in FY 22, the bill requires the OPM secretary to annually distribute a grant from the regional planning incentive account to each COG in the amount of \$185,500 plus 68 cents per capita (in practice, this grant is referred to as a regional service grant-in-aid).

Current law requires the OPM secretary to distribute \$4.1 million from this account to the COGs for each of FYs 20 and 21 (PA 19-117, § 29). From this amount, it requires the secretary to allocate to each COG \$125,000 plus 50 cents per capita. COGs composed of one or more planning regions that voluntarily merged before 2014 receive an additional \$125,000 for each merged region. Under current law, the secretary must also distribute an additional amount, within available appropriations, based on a formula the secretary establishes.

The regional planning incentive account is a separate, nonlapsing

General Fund account funded by 6.7% of the revenue generated by the room occupancy tax and 10.7% of the revenue generated by the rental car tax (CGS § 12-411(1)(J)).

***Grant Proposed Spending Plan***

Under existing law and the bill, COGs must annually submit a proposed spending plan to OPM by July 1 to be eligible for a grant that fiscal year. The bill authorizes the secretary to establish an approval process for biennial submissions of these spending plans.

The bill specifies that the proposed spending plans may describe the following:

1. state or municipal functions, activities, or services that a COG, RESC, or similar entity may provide in a more efficient, cost-effective, responsive, or quality manner;
2. anticipated cost savings related to sharing government services (e.g., joint purchasing);
3. the standardization and alignment of the state’s regions; and
4. other initiatives that may facilitate service delivery to the public in a more efficient, cost-effective, responsive, or quality manner.

***Eliminated MRSA Grant Funding***

The bill removes the requirement that \$7 million from the municipal revenue sharing account (MRSA) be used to fund COG grants each year and makes conforming changes. It also eliminates obsolete provisions in the MRSA law.

**§ 14 — OUTDOOR DINING ALLOWED AS-OF-RIGHT NEAR FOOD ESTABLISHMENTS**

The bill requires municipalities to allow outdoor food and beverage service (“dining”) as an accessory use to a licensed food establishment (e.g., restaurant or food market). The bill’s requirement is not time-limited and applies regardless of conflicting state laws or local ordinances or charters. The bill’s provisions appear to conflict with

those in SA 21-3 (see BACKGROUND), which establishes different requirements for local approval of outdoor dining and operations in a pedestrian pathway through March 31, 2022.

Under the bill, food establishments may provide outdoor dining as-of-right unless the food establishment is a nonconforming use (i.e., if a food establishment does not comply with current zoning regulations, it is not allowed to offer outdoor dining as-of-right). Under the bill, a food establishment must seek an administrative site plan review to determine whether the proposed outdoor dining use conforms with zoning requirements not contemplated by the bill (e.g., regulations unrelated to providing pedestrian pathways and parking). If outdoor dining is approved, food establishments can offer it until 9:00 p.m. or later if allowed by the zoning commission (or presumably planning and zoning commission, if it is a combined commission). The bill does not specify an application, approval, or appeals procedure.

### ***Dining in Pedestrian Pathways***

The bill specifically allows outdoor dining on public sidewalks and other pedestrian pathways where vehicles are not allowed, if the area used abuts the business and a pathway is provided that (1) extends for the length of the lot (parcel); (2) is at least six feet wide (excluding any portion that is on a street or highway); and (3) remains unobstructed for pedestrian use.

The municipal official or agency that issues right-of-way or obstruction permits may impose reasonable conditions on using a pedestrian pathway for outdoor dining.

### ***Dining in Parking Areas and Other Open Areas***

The bill also allows outdoor dining (1) in off-street parking spaces associated with the business and (2) on any lot, yard, court, or open space abutting the food establishment. The bill specifies that these non-parking areas can be used for outdoor dining if (1) they are in a zoning district that allows food establishments and (2) the owner of these non-parking areas gives written permission, a copy of which must be provided to the zoning commission (or presumably planning and

zoning commission when applicable).

## **BACKGROUND**

### ***Related Act***

SA 21-3, signed by the governor on March 31, 2021, generally incorporates the outdoor dining and retail provisions contained in Executive Order (EO) 7MM (2020), as amended by subsequent EOs, and extends them until March 31, 2022.

### ***Related Bills***

sHB 6651, sSB 183 (File 441), and sSB 1074, reported favorably by the Government Administration and Elections Committee, authorize remote meetings under similar conditions as those in the bill.

HB 6641, reported favorably by the Planning and Development Committee, authorizes remote meetings under similar conditions as those in the bill.

sHB 6104, reported favorably by the Planning and Development Committee, also modifies (1) the funding calculation for COG grants paid from the regional planning incentive account, (2) eligibility for RPIP projects, and (3) procedural requirements pertaining to COGs.

### ***Telephone Meetings Under FOIA***

Although FOIA currently does not explicitly authorize telephone or other remotely held meetings, its definition of “meeting” includes those held by electronic equipment (CGS § 1-200(2)).

In its only advisory opinion on the subject, FOIC advised that public agencies conducting business over the phone must comply with FOIA’s open meeting requirements. According to FOIC, agencies must make sure that the public has “access to the entire proceedings taking place during the course of a meeting.”

Specifically, the commission advised that the meeting must comply with at least the following:

1. members of the public who want to attend the meeting must be

accommodated at a place where the greatest number of participating agency members are located;

2. people attending the meeting, including members of the public, must be able to see and inspect copies of any physical or demonstrable materials presented or used; and
3. all those attending the meeting, at whatever location, must be able to hear and identify adequately all participants in the proceedings, including individual remarks and votes (Advisory Opinion 41, 1980).

### **COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 17    Nay 9    (03/31/2021)