

**MINNESOTA COALITION ON GOVERNMENT INFORMATION  
(MNCOGI)**

**Senate State and Local Government and Veterans Committee  
Written testimony of Matt Ehling, MNCOGI board member  
Senate File 4297  
March 19, 2024**

Dear Chair Dzierdzic, Senator Mitchell, Senator Fateh, and committee members,

I am writing to you today on behalf of the Minnesota Coalition on Government Information, in regard to a suggested statutory change to the Minnesota Open Meeting Law (OML). We thank Senators Mitchell and Fateh for their interest in this matter, and their willingness to formulate this bill.

MNCOGI (in conjunction with AFSCME members and others) has advocated for this proposed statutory change in response to actions taken by the leadership of the Hennepin County Board of Commissioners, and by other government entities that have made similar procedural changes in the wake of that body's actions. Background on this matter is below:

**Executive Summary**

Certain Minnesota government entities (including the Hennepin County Board of Commissioners) have moved to exclude public comment periods held during open meetings from the broadcasting or live-streaming of those meetings. By selectively excluding such public comment periods, these entities have prevented the viewing public from being able to see the entire content of their broadcast meetings — including citizen feedback that often serves to inform public policy.

MNCOGI suggests that state law be changed to require that when a government entity broadcasts/livestreams an open meeting, it broadcasts the entire meeting — including any public comment period that might occur during the meeting. This will ensure that attendees at the meeting site, as well as members of the public that are viewing remotely, will see the same meeting content.

MNCOGI has also agreed to narrow the scope of the bill as introduced, in the manner suggested by the author's amendment.

**Function of the bill as amended**

SF 4297, as amended by the author's amendment, functions in the following way:

### **Section 1 (as amended)**

Section 1 as amended requires that if a public body subject to the OML allows “monitoring of a meeting from a remote location,” then the entire meeting content must be available for remote viewing. “Monitoring” a meeting from a “remote location” is the term of art used in the OML to refer to broadcasting/livestreaming an open meeting (see § 13D.015, § 13D.02, § 13D.021).

Sections § 13D.015, § 13D.02, § 13D.021 all set out current requirements for when open meetings must be broadcast (i.e., when there is remote attendance by certain meeting participants; or during emergency circumstances when physical meetings are impractical). Government entities also have the discretionary ability to broadcast/livestream meetings in other contexts (i.e., when meetings are governed by § 13D.01 only), a there is no current requirement that they do so. Many municipal and county boards, for instance, routinely broadcast their meetings under this discretionary authority.

What Section 1 of the bill (as amended) does, is to require that when a government entity broadcasts or livestreams a meeting (either when mandated by law, or at its discretion), it must make the entire meeting available for “remote monitoring.” This way, the remote viewing public gets to see the same meeting content as attendees at the physical meeting site.

(NOTE - section 1 of the bill as amended is more narrow than in the bill as introduced, and MNCOGI has agreed to this narrowing.)

### **Section 2**

Section 2 establishes two new procedural requirements that largely track the traditional practices used by public bodies for many years, prior to adjustments that some public bodies have made to exclude public comment periods from meeting broadcasts. This section does not require that public bodies hold public comments periods, but only regulates the manner in which they hold them.

Subdivision 1: Subdivision 1 states that if a public body holds a public comment period, it must be held during an open meeting. This will ensure that if a public comment period is held, it will be viewable during a meeting broadcast, per section 1.

Subdivision 1 largely codifies what had been the traditional practice of holding public comments periods. For many years, when public bodies offered public comments periods, those periods were held before the entire municipal/county governing board, so that comments were heard by all board members who were

present to conduct other meeting business as well. As a matter of course, when/if those meetings were broadcast, the broadcasts included the public comment periods, along with all other meeting business. (Note that a “meeting” under the OML is a “gathering[] of a quorum or more members of [a] governing body ... at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body” per *Moberg v. Independent School District No 281* (Minn. 1983))

Over the past couple of years, some entities (such as Hennepin County, the Roseville School Board. etc.) have drawn an artificial distinction between their public comment periods and the rest of their meetings, claiming that the public comment period is not part of the main meeting, and thus should not be broadcast as part of the meeting. The physical reality in these situations, however, is that the public comment period is held just prior to the other board meeting agenda items, and a quorum of members is present, meaning that the public comment period is part of the OML “meeting” that is occurring. Section 2, subd. 1 makes this connection clear. By clarifying that any public comment period offered must occur during an OML meeting, those public comments periods (if held) will then be part of the full OML meeting broadcast, as provided by section 1.

This, again, ensures that any public feedback provided to a governing body — which often contains information relevant to policy making — is heard by not only in-person meeting attendees, but by remote viewers as well.

Subdivision 2: Subdivision 2 requires that if a public body holds a public comment period, members of the public who wish to testify — at minimum — shall be able to testify at the physical location of the meeting. This does not restrict the governing body from also offering a remote testimony option, if it chooses. (Note — this requirement applies to all OML provisions that have an in-person meeting location — § 13D.01; § 13D.015; and § 13D.02. The emergency OML provision — § 13D.021 — has its own public testimony requirements, which are different, since the physical meeting location is typically closed during an emergency meeting.)

Again, this subdivision codifies what had been the traditional practice of public bodies, in which public comment periods (if offered) were held at the physical meeting location. This has the practical effect of allowing members of the public who come to testify to have further discussions with elected officials before or after an OML meeting. This also benefits members of the press who observe OML meetings, as they have immediate access to in-person testifiers who they might wish to talk to for stories.

### **No creation of required public comment period**

For clarify, this bill does not create a general requirement for government entities to hold public comment periods, beyond what is already required by statute (i.e., under § 394.26 or related law pertaining to hearings for comprehensive plans; certain ordinances; etc.). Outside of those existing public hearing requirements, public bodies can hold public comment periods entirely at their own discretion, and this bill does not modify that discretion. The bill solely regulates the manner in which public comment periods are held, to ensure that if/when they are held, they are viewable in a government entity's broadcast/livestream — whether that broadcast is discretionary, or required by current law.