

**MINNESOTA COALITION ON GOVERNMENT INFORMATION (MNCOGI)
Written testimony of Matt Ehling, MNCOGI board member**

**House State and Local Government Finance and Policy Committee
House File 4413**

March 9, 2024

Executive Summary: MNCOGI recommends further work on HF 4413 to more narrowly draw its scope; and to implement a sunset provision.

Dear Chair Klevorn, Representative Koegel, and committee members,

MNCOGI appreciates the willingness of Representative Koegel and the committee to review our organization’s perspective on HF 4413, and on Open Meeting Law issues generally.

Since the COVID-19 pandemic, suggestions have been raised about changing the “public place” requirement in section § 13D.02 of the Minnesota Open Meeting Law, and HF 4413 is a part of those ongoing conversations. MNCOGI’s general response to such suggestions has been to urge great care when making any statutory modifications. Prior to detailing why, I wish to provide the committee with some historical background about the statute at issue.

Minnesota’s Open Meeting Law was first enacted in the 1950s, with the express purpose of allowing members of the public to observe the operations of government bodies, so that decision-making did not occur in secret. To accomplish this, the law ensured that the public had access to the physical space where government meetings were occurring. This had the effect of allowing the public to oversee the proceedings, but it also had the ancillary effect of allowing citizens to talk directly with decision makers before and after those proceedings; encouraging interaction around public policy matters, and allowing members of the press direct access to meeting participants for follow-up questions.

As telecommunications technology developed, the Open Meeting Law was modified to reflect new technological changes. By the 1990s, a “remote meeting” section was added to the law — section § 13D.02 — which is the section that HF 4413 would modify. § 13D.02 contemplated circumstances in which some members of a local governing body (such as a city council) could choose to attend a meeting through technological means, from a remote location. To ensure that citizen interaction with meeting participants was preserved, the legislature required

that any participant attending remotely had to appear from a noticed location that was “open and accessible to the public”— such as a public library, or similar.

This “public place” requirement remains in law today, and is in effect any time remote meetings of a local governing body are held — except during emergency circumstances such as the COVID-19 pandemic, when the “public place” requirement does not apply (and meetings are governed instead by § 13D.021).

HF 4413 changes this “public place” requirement for the advisory boards of local governing bodies, allowing members of such boards to attend meetings remotely — without appearing in a public place — for up to half of a twelve-month period. Although a member’s remote location must (in large part) be *noticed* during their remote appearances, the public and press would no longer have in-person *access* to board members to ask follow-up questions, or to interact about meeting content in the important, informal manner that in-person access permits.

While HF 4413 would only apply to advisory boards comprised entirely of non-elected members, we would note that such bodies often perform important policy-making functions. Even if advisory board recommendations must later be formally ratified by an elected body, much policy creation work is often undertaken by the boards themselves. Such boards deal with all manner of policy areas — from police oversight, to zoning appeals, to budget amendments. Under the change afforded by the bill, members of advisory boards dealing with such core governance issues would not need to appear in public for up to half of a twelve-month period.

MNCOGI receives ongoing citizen feedback about government access issues, and the loss of in-person access to governmental process was a recurring concern that we heard about during the COVID pandemic. Due to the novel nature of that pandemic, temporary, emergency limits on in-person access were understandable, but we do not believe that the era’s heavy reliance on remote government meetings (with a lack of in-person access to meeting participants) should become normal practice. Hence, our call for caution as changes to the Open Meeting Law’s remote meeting provisions are contemplated.

The COVID era — and its broad utilization of remote meeting practices — spurred an ongoing conversation about modifying section § 13D.02 and other portions of the Open Meeting Law. During the past few years, MNCOGI has been open to discussing tailored modifications — including the modifications that eventually permitted limited, remote attendance (with no in-person access requirement) during military leave or illness (see § 13D.02 subd. 1(b)). We remain open to

discussing further modifications — such as those stemming from child care or elder care circumstances. In general though, we continue to be of the opinion that exceptions to the “public place” requirement should be narrowly-drawn.

When exceptions to a general rule are added to a statute, they can often be difficult to contain, since other parties will then approach the legislature about applying the same exception to their own circumstances. Thus, MNCOGI is concerned that adding an exception allowing advisory board members to appear from a non-public location for half a year will eventually spread to the other sections of the Open Meeting Law. Rather than passing this type of broader exception into law, MNCOGI recommends working on revisions that would address specific circumstances in which limited exceptions to the general “public place” requirement could be appropriate, without risking broader impacts to the statute’s general rule.

It is important to note that HF 4413 is more narrowly drawn than another Open Meeting Law bill circulating this session (which is being promoted by Metro Cities) — HF4554/SF4461 — which would allow the complete elimination of the “public place” requirement for all §13D.02 meetings. We appreciate that Rep. Koegel’s bill (HF 4413) is more tailored than HF 4554; but for the reasons expressed above, we would encourage that more work be done to further refine HF 4413 (including by convening additional conversations between the relevant stakeholders); and to add a two-year “sunset” clause to the bill, so that its impacts can be fully reviewed by the legislature before it becomes a permanent part of the statutory landscape. (A similar “sunset” and review process accompanied the “health care” exception now codified at § 13D.02, subd. 1(b)(2)).

Sincerely,

Matt Ehling
MNCOGI board member