

**MASS CULTURAL COUNCIL  
EXECUTIVE COMMITTEE  
MONDAY, SEPTEMBER 18, 2023  
9:30-10:00 AM**

BROADCAST MEETING

MEETING WILL BE LIVESTREAMED AT

<https://www.youtube.com/watch?v=BfSOtkgXIWQ>

ANY MEETING MATERIALS WILL BE POSTED ONLINE

[@HTTPS://MASSCULTURALCOUNCIL.ORG/ABOUT/BOARD/](https://massculturalcouncil.org/about/board/)

**UNDER "SEPTEMBER 18, 2023 EXECUTIVE COMMITTEE MEETING"**

**AGENDA**

	VOTE
1. Call to Order & Open Meeting Law	
2. Upcoming Out of State Travel	<b>X</b>
3. Discussion of Executive Session Procedures	
4. Adjourn	



*Power of culture*

MASS CULTURAL COUNCIL  
EXECUTIVE COMMITTEE

**SEPTEMBER 18, 2023**

ON-LINE MEETING

**RESOLUTIONS**

RESOLVED: to acknowledge and consent to the staff-recommended out-of-state travel requests subject to the Council's "Out of State Travel Policy" as presented to the September 18, 2023 Meeting.

To: Mass Cultural Council Executive Committee  
Fr: Michael Bobbitt and David Slatery  
Dt: September 18, 2023  
Re: Travel Memo

Under Mass Cultural Council's Financial Policies, the Executive Committee reviews and consents to out of state travel by Mass Cultural Council staff.

Senior Staff of the Mass Cultural Council have reviewed the following travel requests submitted by staff and approved by their supervisors and finds them to be constitute a direct benefit to the Council and its constituents, aligns with the strategic plan and finds the cost in line with the value the travel would provide. Set forth below is a brief summary of each request. We have Travel Authorization Forms and ethics forms (where needed) on file for each request. We request the Committee acknowledge and consent the following travel.

1. **National Council for the Traditional Arts**. - **Washington DC, September 27-30**. This item we have discovered is not covered by the travel policy but was originally submitted to the Committee in an abundance of caution. Maggie Holtzberg, Program Manager, Folk Arts & Heritage is a well-known personage in the state folklorist world and has often been in demand for speaking engagements at conferences. The National Council for the Traditional Arts (NCTA) has invited Maggie, at their sole expense, to speak and moderate discussions at their gathering of National Heritage Fellows this year. While this is in essence a private trip (Maggie will be on vacation at the time), because one of the National Heritage Fellows is a Mass Cultural Council grantee, Maggie disclosed this event to us before all of the details became clear. Maggie has consulted with the State Ethics Commission, and they have provided guidance to her on proper treatment of this matter. Please note that the Mass Cultural Council has no business dealings or other contacts with the NCTA. Originally, we had believed this was a National Endowment for the Arts (NEA) event but learned that while the NEA will be present, the NEA will not be paying any expenses and no conflicts exist. Cost to the Agency is \$0.
2. **New England Foundation for the Arts. October 25-27, New Haven, CT** Michael Bobbitt is a member of the Board of the New England Foundation for the Arts (NEFA). This is the annual NEFA Board retreat. The retreat takes place over the course of three days in New Haven, CT – October 25, 26, and 27. NEFA is the regional arts organization (RAO) for New England (one of several RAOs across the nation under the purview of the NEA). All state arts agencies in New England

participate in NEFA and have seats on its Board. NEFA invests in artists and communities and fosters equitable access to the arts, enriching the cultural landscape of New England and the nation. The Massachusetts creative and cultural sector directly benefits from NEFA's work. Michael, as Executive Director of Mass Cultural Council, is a key participant in the retreat. The retreat will include a robust session for state arts agency directors followed by an in-depth look at NEFA's strategic planning goals for the year. NEFA also has a newly appointed executive director; it is important for Mass Cultural Council to continue strengthening its relationship with them. Costs to Agency is approximately \$800 consisting of two nights lodging, mileage and meals not otherwise provided at the event.

3. **Strategic HR Conference, October 23-24, Bretton Woods, NH** Proposed is that Cathy Cheng-Anderson, Senior Director of Business Operation and Chief Financial officer, who also serves as the agency's Chief Human Resources Officer attend a human resources conference focused on workplace diversity, compliance, employee engagement, and employee relations. Cathy was previously approved by the Executive Committee for a similar conference in 2022. Tangible improvements stemming from her previous attendance underscored the conference's value to our agency. Costs to Agency is approximately \$1 450 consisting of registration fees mileage and small incidental costs only.

## SUMMARY OF OPEN MEETING LAW PROVISIONS RELATING TO EXECUTIVE SESSION

\*From the **Open Meeting Law Guide and Educational Materials** prepared by the Commonwealth of Massachusetts Office of Attorney General Maura Healy, January 2018, pp.10-15

### **“Executive Session**

#### *When can a public body meet in executive session?*

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session. Before going into an executive session, the chair of the public body must first:

- Convene in open session;
- State the reason for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
- State whether the public body will reconvene in open session at the end of the executive session; and
- Take a roll call vote of the body to enter executive session.

Where a public body member is participating in an executive session remotely, the member must state at the start of the executive session that no other person is present or able to hear the discussion at the remote location. The public body may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant’s location.

While in executive session, the public body must keep accurate records, all votes taken must be recorded by roll call, and the public body may only discuss matters for which the executive session was called.

#### *The Ten Purposes for Executive Session*

The law states ten specific purposes for which an executive session may be held, and emphasizes that these are the only reasons for which a public body may enter executive session.

The ten purposes for which a public body may vote to hold an executive session are:

**1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties.**

This purpose is designed to protect the rights and reputation of individuals. Nevertheless, where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this purpose triggers certain rights for the individual who is the subject of the discussion. The individual has the right to be present, though he or she may choose not to attend. The

individual who is the subject of the discussion may also choose to have the discussion in an open meeting, and that choice takes precedence over the right of the public body to go into executive session.

While the imposition of disciplinary sanctions by a public body on an individual fits within this purpose, this purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

**2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;**

Generally, a public body must identify the specific non-union personnel or collective bargaining unit with which it is negotiating before entering into executive session under Purpose 2. A public body may withhold the identity of the non-union personnel or bargaining unit if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

While a public body may agree on terms with individual non-union personnel in executive session, the final vote to execute such agreements must be taken by the public body in open session. In contrast, a public body may approve final terms and execute a collective bargaining agreement in executive session, but should promptly disclose the agreement in open session following its execution.

**Collective Bargaining Sessions:** These include not only the bargaining sessions, but also include grievance hearings that are required by a collective bargaining agreement.

**3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;**

Generally, a public body must identify the collective bargaining unit with which it is negotiating or the litigation matter it is discussing before entering into executive session under Purpose 3. A public body may withhold the identity of the collective bargaining unit or name of the litigation matter if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

**Collective Bargaining Strategy:** Discussions with respect to collective bargaining strategy include discussion of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, has the burden of proving that an open meeting might have a detrimental effect on its bargaining position. The showing that must be made is that an open discussion may have a detrimental effect on the collective bargaining process; the body is not required to demonstrate a definite harm that would have arisen. At the time the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

**Litigation Strategy:** Discussions concerning strategy with respect to ongoing litigation obviously fit within this purpose but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

**Note:** For the reasons discussed above, a public body's discussions with its counsel do not automatically fall under this or any other purpose for holding an executive session.

**4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;**

**5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;**

This purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus, it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. However, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. Purpose 5 does not require that the same rights be given to the person who is the subject of a criminal complaint. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which purpose to invoke when going into executive session.

**6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;**

Generally, a public body must identify the specific piece of property it plans to discuss before entering into executive session under Purpose 6. A public body may withhold the identity of the property if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Under this purpose, as with the collective bargaining and litigation purpose, an executive session may be held only where an open meeting may have a detrimental impact on the body's negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's negotiating position.

**7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;**

There may be provisions in state statutes or federal grants that require or specifically allow a public body to consider a particular issue in a closed session. Before entering executive session under this purpose, the public body must cite the specific law or federal grant-in-aid requirement that necessitates confidentiality. A public body may withhold that information only if publicly disclosing it would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

**8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;**

This purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body. It may,

however, include a review of résumés and multiple rounds of interviews by the screening committee aimed at narrowing the group of applicants down to finalists. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session will be detrimental to the public body's ability to attract qualified applicants for the position. If the public body opts to convene a preliminary screening committee, the committee must contain less than a quorum of the members of the parent public body. The committee may also contain members who are not members of the parent public body.

Note that a public body is not required to create a preliminary screening committee to consider or interview applicants. However, if the body chooses to conduct the review of applicants itself, it may not do so in executive session.

**9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:**

(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

**10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:**

- in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164;
- in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or
- in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164;
- when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy. “