



HB 5335: A Proposed Change to the OMA to Prohibit Voting by Telephone and Video Conference

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On February 28, 2012, the House passed HB 5335, an amendment that will change an over 25 year old Open Meetings Act ("OMA") interpretation by the Michigan Court of Appeals about telephone participation at public meetings. HB 5335 has not yet been adopted as law but has been referred to the Committee on Local Government and Elections.

Specifically, HB 5335 proposes to amend the OMA to prohibit voting by phone, video conference or other electronic means as follows: "A meeting is not open to the public if a member of the public body casts his or her vote on a decision of the public body without being physically present at the meeting." (Proposed addition to MCL 15.263(2)). Further, HB 5335 proposes changing the definition of "quorum" to include only those members physically present. MCL 15.263(3). Thus, only the members who physically attend at the meeting can vote and be counted as part of the quorum.

In the House Fiscal Analysis of HB 5335, the Legislature acknowledged that telephone and video conferencing did not violate the OMA based on case law and Attorney General opinions. Immediately after the adoption of the OMA, in 1977, the Attorney General opined that conference calls violated the Michigan Open Meetings Act ("OMA"). OAG, 1977-1978, No. 5783, p. 21 (March 8, 1977). However, the Michigan Court of Appeals later disagreed with that opinion. In *Goode v Dep't of Social Services*, 143 Mich App 756; 373 NW2d 210 (1985), the Court found that holding hearings via telephone conference did not per se violate the OMA. The Court noted that the hearings would be held through speaker phone and audible to everyone in the room. The Attorney General later opined that video conferences also did not per se violate the OMA. OAG, 1995-1996, No. 6835, p. 10 (January 13, 1995). The Attorney General concluded that a public body may conduct a meeting under the OMA without all the participants being physically present in the room: "The use of interactive television enhances the public's access to the meeting." The Attorney General also found that

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videoconferencing can be more desirable than telephone conferencing because representatives and members of the public can be seen as well as heard.

The OMA was originally enacted in 1976, and does not address many issues involved with new technology, such as videoconferencing or Skype. However, instead of adapting and taking advantage of the new means of communication, the House has proposed to prohibit its use entirely. For some municipalities, this new law may not impact their typical meetings. However, there are some public bodies in Michigan with legal jurisdictions that encompass one or more counties. With such a vast service area, telephone and video conferencing have been an important part of their operations. This may particularly affect authorities and other public bodies that provide joint service to a number of different municipalities. Thus, your public body should consider how this proposed new law would impact its operations and board meetings if finally adopted.

If you have any questions, please let me know.
