



Pending OMA Legislation: What You Need to Know

Leslie A. Dickinson

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Last week, the Michigan Senate passed a bill (SB 1108) that would amend the Open Meetings Act, PA 267 of 1976 (the "OMA"), to allow meetings of a public body to be held electronically or with remote participation under certain circumstances and to provide procedures and requirements for a meeting held that way. Yesterday, the Michigan House of Representatives passed a substitute bill with slight modifications to SB 1108, which the Senate concurred with.

OMA amendments related to absence of a member:

The bill would revise provisions of the OMA regarding absence of a member of a public body to require the public body to establish procedures to accommodate the absence of a member due to military duty, a medical condition, or a statewide or local state of emergency or state of disaster. The procedures would have to provide for two-way communication. In addition, each member of the public body attending the meeting remotely would have to make a public announcement at the outset of the meeting, to be included in the minutes, that he or she is doing so. A member attending remotely for a reason other than military duty would have to further specify the county, city, township, or village and state where he or she was physically located.

OMA requirements related to electronic public meetings:

Under the bill, a meeting of a public body that was held wholly or partly electronically by telephonic or video conferencing in compliance with the provisions described below, and that was otherwise in compliance with compatible provisions of the OMA applicable to a non-electronic meeting, would be permitted in the following circumstances:

- Before January 1, 2021: in any circumstances, including those requiring accommodation of absent members described above.

AUTHORS/ CONTRIBUTORS

Leslie A. Abdoo

PRACTICE AREAS

Municipal & Public Entity Law

Open Meetings Act

- On and after January 1, 2021 - December 31, 2021: only those circumstances requiring accommodation of members absent due to military duty, a medical condition, or a statewide or local state of emergency or disaster. In the circumstances of a state of emergency or disaster, a meeting could be held electronically only to allow the electronic attendance of a member who lives in the affected area or to allow the electronic meeting of a public body that regularly holds its meetings in the affected area.
- After December 31, 2021: only in the circumstances requiring accommodation of members absent due to military duty.

Electronic meetings would need to comply with the following requirements:

- If the meeting was held electronically to accommodate members absent due to military duty or a medical condition, only those members could participate remotely.
- The meeting would have to be conducted in a way that allows two-way communication so that the members of the public body can all hear one another. A public body could use technology that allows members of the public to submit typed comments that can be shared with all the meeting participants to satisfy the requirements that members of the public must be allowed to address the meeting and be able to be heard by others.
- A physical place would not be required for an electronic meeting.
- A public body with an official internet presence would have to post advance notice of an electronic meeting on its website where the public can access it, either on or linked from its homepage, at least 18 hours before the start of the meeting.
- If an electronic meeting had an agenda, a public body with an official internet presence that included regular updates of posted meeting agenda or minutes would have to make the agenda available to the public on the internet at least two hours before the start of the meeting.
- A public body could not require a person to register or provide his or her name or other information as a condition of participating in an electronic meeting, or require a person to otherwise fulfill a condition for attendance.
- Members of the public must be excluded from any closed sessions held electronically.

The bill will be enrolled and sent to Governor Whitmer who has 14 days to consider it. We will continue to monitor this legal development and provide updates as they arise. If you have any questions regarding the bill, please contact a Foster Swift municipal attorney.