



New Requirements for the Open Meetings Act – SB 1108

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Foster Swift Library Law News E-blast

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1. Can Members of a Public Body Participate Remotely?

- *Until December 31, 2020 (and retroactive to March 18, 2020):*
The public body may have an electronic meeting for any reason. A physical place is not required for an electronic meeting. Members of a public body and members of the public participating electronically in a meeting that occurs in a physical place are to be considered present and in attendance at the meeting for all purposes.
- *January 1, 2021 to December 31, 2021.* A member of a public body may attend and participate in a public meeting virtually for any of the following reasons:
 - military duty
 - a medical condition, or
 - a statewide or local state of emergency or state of disaster declared pursuant to law or charter by the governor or a local official or local governing body that would risk the personal health or safety of members of the public or the public body if the meeting were held in person.
For the purpose of permitting an electronic meeting due to a local state of emergency or state of disaster, this subdivision applies only as follows:
 - To permit the electronic attendance of a member of the public body who resides in the affected area.
 - To permit the electronic meeting of a public body that usually holds its meetings in the affected area.
- *After December 31, 2020,* at a meeting held that accommodates members absent due to military duty or a medical condition, only those members absent due to military duty or a medical condition may participate remotely. Any member who is not on military duty or does not have a medical condition must be physically present at the meeting to participate.

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Library Law

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Open Meetings Act

- *After December 31, 2021.* The public body may only allow virtual attendance by a member to accommodate that member's absence due to military duty.

2. What Are the New Requirements for Notice?

- *Website Notice.* If a public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, the public body shall, in addition to any other notices that may be required under this act, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public.
- *Homepage or Conspicuous Link.* The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled or electronic public meetings that is accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of non-regularly scheduled or electronic public meetings.
- *18 Hours' Notice.* Subject to the requirements of this section, any scheduled meeting of a public body may be held as an electronic meeting under this section if a notice consistent with this section is posted at least 18 hours before the meeting begins.
- *Content of Notice.* Notice of a meeting of a public body held electronically must clearly explain all of the following:
 - Why the public body is meeting electronically.
 - How members of the public may participate in the meeting electronically. If a telephone number, internet address, or both are needed to participate, that information must be provided specifically.
 - How members of the public may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
 - How persons with disabilities may participate in the meeting.
- *All other Open Meetings Act Notices Apply.* The notice provisions are in addition to notice that is already required by the Open Meetings Act.

3. What are the New Requirements for Publication of Agenda:

- *Publication of Agenda.* If a public body that directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes has an agenda, the public body shall, on a portion of the website that is fully accessible to the public, make the agenda available to the public at least two hours before the electronic meeting begins.
- *Agenda May be Amended.* This publication of the agenda does not prohibit subsequent amendment of the agenda at the meeting.

4. What are the New Requirements (and one reminder of existing provisions) for Action Required at Meetings?:

- *Public Announcement.* At each meeting, there shall be a public announcement as follows:

- For each member of the public body attending the meeting remotely, a public announcement at the outset of the meeting by that member, to be included in the meeting minutes, that the member is in fact attending the meeting remotely. We believe that this announcement does not require the public body to reveal the reason for remote attendance. We do not recommend that the public body announce the reasons because it may reveal confidential medical information.
- If the member is attending the meeting remotely for a purpose other than for military duty, the member's announcement must further identify specifically the member's physical location by stating the county, city, township, or village and state from which he or she is attending the meeting remotely.
- *Reminder of Existing Provision:* "A person must not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance." This appears to require that the public body provide a link that does not require a name or other information. This is a problem for some communities that have established steps to prevent zoom bombing by providing contact information.

5. What are the New Requirements for Minutes: For each member of the public body attending the meeting remotely, the public announcement mentioned above must **be included in the meeting minutes** identifying the members that are in fact attending the meeting remotely.

6. Are there New Requirements for Public Body Procedures?:

- *Adopt Procedures.* The Public Body **must adopt procedures** by which the absent member may participate in, and vote on, business before the public body, including, but not limited to, procedures that provide for both of the following:
 - Two-way communication.
 - For each member of the public body attending the meeting remotely, a public announcement at the outset of the meeting by that member, to be included in the meeting minutes, that the member is in fact attending the meeting remotely. If the member is attending the meeting remotely for a purpose other than for military duty, the member's announcement must further identify specifically the member's physical location by stating the county, city, township, or village and state from which he or she is attending the meeting remotely.
- *Contact Information.* Procedures by which the public is provided notice of the absence of the member and information about how to contact that member sufficiently in advance of a meeting of the public body to provide input on any business that will come before the public body.

Foster Swift can assist with adopting the procedures required by Act 228. Please contact a municipal and public entity attorney if you need assistance with interpreting or implementing the requirements of Act 228.