

UPDATE (MAY 6): Governor Whitmer Extends Authorization for Remote Participation in Public Meetings

May 6, 2020

On May 6, 2020, Governor Gretchen Whitmer issued Executive Order 2020-75 (the "Order"), extending the ability of public bodies to conduct remote public meetings through June 30, 2020. The Order rescinds Executive Order 2020-48 (the first order extending authorization for remote public meetings). The new order also allows public bodies to require that technology be used to facilitate typed public comments that may be read to or shared with members of the public body and other meeting participants. No other substantive changes were made. Please see our original March 19, 2020, alert below for further details.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.

UPDATE (APRIL 15): Governor Whitmer Extends Authorization for Remote Participation in Public Meetings

On April 14, 2020, Governor Gretchen Whitmer issued Executive Order 2020-48 (the "Order"), extending the ability of public bodies to conduct remote public meetings through May 12, 2020. The Order rescinds Executive Order 2020-15 (the initial order authorizing remote public meetings), but makes no other substantive changes. Please see our original March 19, 2020, alert below for further details.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.

Governor Whitmer Issues Executive Order Authorizing Meetings of a Public Body to be Held Electronically

March 19, 2020

On March 17, 2020, Governor Gretchen Whitmer issued Executive Order 2020-15 (the "Order"), suspending "strict compliance" with Section 3 of the Open Meetings Act, 1976 PA 267 (the "Act"), until April 15, 2020 at 11:59 p.m. and authorizing public bodies to electronically meet and to provide for the electronic participation of the members of the public body and general public in the meeting. Members of the public body participating electronically "will be considered present and in attendance at the meeting and may participate in the meeting as if physically present at the meeting." The Order also provides that a decision or other action of the public body taken in compliance with the Order and the other requirements of the Act will be in compliance with the Act. The Order encourages public bodies holding meetings electronically to effectuate as fully as possible the purposes of the Act, which include promoting government accountability and fostering openness in government to enhance responsible decision-making.

Under the Order, a meeting of a public body may be held electronically in a manner in which both the general public and the members of the public body may participate by electronic means. A public meeting held electronically must be conducted in a manner that permits two-way communication so that (a) members of the public body can hear and be heard by other members of the public body, and (b) general public participants can (i) hear members of the public body and (ii) be heard by members of the public body and other participants during a public comment period.

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Notably, the Order requires a public body to establish and record rules related to the public's right to address a public body during an electronically-held meeting. The public body may permit the use of technology facilitating the submission of typed public comments to be read or shared with members of the public body and other meeting participants.

In addition to the existing public notice requirements under the Act, if the public body maintains an internet presence and will hold a public meeting electronically, the public body must provide advance notice on its homepage or a separate webpage dedicated to public notices for non-regularly schedule public meetings. This notice must include:

1. An explanation of the reason why the meeting will be held electronically;
2. Detailed procedures by which the public may participate in the public meeting, including a telephone number and/or an Internet address;
3. Procedures by which people may contact members of the public body to provide input or ask questions on business that will be considered at the meeting; and
4. Procedures by which persons with disabilities may participate in the meeting.

For meetings held electronically, the Governor encourages public bodies to distribute the agenda and other meeting materials on the public body's website and to take all votes by roll call to avoid questions as to how a member voted. The Governor also admonishes members of public bodies against using email, texting, instant messaging and other electronic forms of communication when making or deliberating towards a decision.

The Order reaffirms the provisions of the Act that (a) guarantee (i) a person's right to participate in the meeting without prior approval (including the right to record the meeting) and (ii) the right of the public body to hold closed sessions, and (b) prohibit the public body from (i) requiring registration or other disclosure of a person's name in order to participate (other than during public comment), and (ii) limit or restrict the rights of the press or other news media under the Act.

Through April 15, 2020, the Order also (1) temporarily suspends the Revised School Code's requirement for school boards to meet at least monthly, and (2) provides that any other statute or rule that requires public comment to be permitted or public hearings to be held may be satisfied via remote public comment or participation through the use of technology that facilitates such comment or participation in the same manner as if the person appeared in person.

This is part of a series of our COVID-19 alerts providing clients with practical advice on measures they can take to navigate through these troubled times. If you have any questions about the Order or the Act, please contact your Miller Canfield attorney or any of the authors of this alert.

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