



Conducting an Efficient and Effective Electronic Meeting Under the Open Meetings Act

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Part 1 - Open Meetings Act

- **Purpose:** to provide that meetings of public bodies are to be open to the public and to establish the procedures and guidelines for the conduct of said meetings.
- **Important Definitions**
 1. **“Public Body”** means any state or local legislative or governing body... which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function...
 2. **“Meeting”** means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.
 3. **“Closed Session”** means a meeting or part of a meeting of a public body which is closed to the public.
 4. **“Decision”** means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

Open Meetings Act

Meetings

1. All meetings of a public body shall be open to the public and shall be held in a place available to the general public.
2. All decisions of a public body shall be made at a meeting open to the public.
3. This act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.

Open Meetings Act – Public Notice

1. Public notice shall always be posted at its principal office and any other locations considered appropriate by the public body.
 2. A meeting shall not be held unless public notice is given.
 3. For regular meetings, there shall be posted within 10 days after the first meeting in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.
 4. If there is a change in the schedule of regular meetings, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.
 5. Rescheduled regular or a special meeting, a public notice stating the date, time, and place of the meeting shall be posted (online) at least 18 hours before the meeting.
 6. While the OMA requires a public body to give public notice when it meets, there is no requirement that the public notice include an agenda or a specific statement as to the purpose of a meeting.
- Michigan's Governor's response to Covid-19 has impacted notice requirements under OMA and will be discussed later.

Open Meetings Act - Closed Sessions

1. A 2/3 roll call vote of members elected or appointed and serving shall be required to call a closed session, except for the closed sessions permitted under Section 8 (a), (c), and (g). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.
2. A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, shall not be available to the public, and shall only be disclosed if required by a civil action filed under Section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

Open Meetings Act - Closed Session Purposes

1. To consider personnel matters of public officers, employees, staff or agent, if the person requests a closed hearing.
2. For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.
3. To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.
4. To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.
5. To consider material exempt from discussion or disclosure by state or federal statute.

Open Meetings Act - Minutes

1. Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held.
2. Minutes shall be public records open to public inspection and shall be available at the address designated on posted public notices pursuant to Section 4.
3. Proposed minutes shall be available for public inspection not more than 8 business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than 5 business days after the meeting at which the minutes are approved by the public body.

Open Meetings Act

- **Decisions:** Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this Act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this Act.
- **Noncompliance**
 1. The attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this Act.
 2. If a public body is not complying with this Act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the Act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

Open Meetings Act

Intentional Violations; Misdemeanor; Civil Actions for Damages

1. A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.
2. A public official who is convicted of intentionally violating a provision of this Act for a second time within the same term shall be guilty of a misdemeanor and shall be fined not more than \$2,000.00, or imprisoned for not more than 1 year, or both.
3. A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than \$500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

Part II

Recent Executive Directive and Orders



Recent Executive Directive & Orders:

Executive Directive 2020-02

- During this time of state emergency, the OMA requirements may be satisfied by utilizing phone, video conference or other electronic means; provided, notice of the meeting is given (a minimum of 18 hours (unless an emergency exists) and posted on webpage) and the public has an opportunity to participate (via electronic means).
- We provided a memorandum on the issue dated March 16, 2020.

Recent Executive Directive & Orders:

Executive Order 2020-15

Updated public meeting notice requirements and now must include:

1. An explanation of the reason the Board is meeting electronically;
2. Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both;
3. Procedures by which persons may contact the Board to provide input or ask questions on any business that will come before the Board at the meeting; and
4. Procedures by which persons with disabilities may participate in the meeting.

Executive Order 2020-15 was set to expire April 15, 2020, which was extended to May 12, 2020, through Executive Order 2020-48.

We provided a Sample Notice along with a memorandum on the issue dated March 19, 2020.

Recent Executive Directive & Orders:

Executive Order 2020-38

- Temporarily extended certain deadlines related to requests made under the Michigan Freedom of Information Act (“FOIA”):
 1. Did not suspend FOIA or remove its requirements, but temporarily relaxed the duties under FOIA
 2. Directs public bodies to “continue to respond to requests for public records as expeditiously as possible” and to use electronic means when able BUT if such response would interfere with other emergency orders like the Governor’s stay-at-home order THEN it may extend the period of time to respond to a request “for as long as the public body deems necessary” but not to exceed the expiration of Executive Order 2020-38, which is currently set to expire at June 4, 2020
 3. If a request requires in-person efforts (including search, inspection, examination, preparation, etc.) to produce the requested public records, a public body may defer that portion of the request until after the Order expires and communicate that delay to the requestor in writing
- We provided a memorandum on the issue dated April 6, 2020.

Part III

Conducting a Remote Meeting

*“If you don’t know where
you’re going, you’ll never get
there.”* Anonymous



Conducting a Remote Meeting

Initial Considerations

Telephonic or Videoconference Forum

- The Board may ask its plan sponsor or service providers for options already in place for electronic meetings.

Anticipating Stakeholder Needs

- What resources are available for Trustees and staff?
- Ask service providers for issues that need to be addressed.
- What are the applicable timelines for Board action?

Review Board Policies

- Review Board policies for compliance and timing issues.
- What are the requirements re: administrative appeals, disability applications, etc.

Role of the Chair

“All Discussion Takes Place Through the Chair”

- Chairperson has the difficult role of controlling the structure, order, and type of information being discussed.
- Simply, the Chairperson is responsible for the timely, fair and reasonable conduct of the meeting, which makes it a demanding and complex job.



Conducting a Remote Meeting

Role of the Chair

The Chairperson's goals should be to:

1. Coordinate and focus Board efforts;
2. Choose the best structure for information processing;
3. Give or get clarification of vague statements;
4. Give Trustees clear behavioral expectations;
5. Protect minority opinion; and
6. Reduce needless conflicts.



Conducting a Remote Meeting

Calling a Meeting to Order & Public Participation

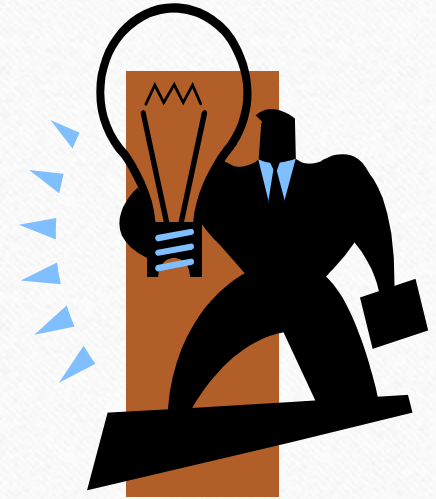
- The Chairperson should call the meeting to order and state the time and title of the meeting, as listed in the public notice and on the agenda.
- Especially when conducting remote meetings, it is important to recognize which Board members and service providers are participating in the meeting.
- The Chairperson may conduct a roll call for attendance where participants can affirm their presence but may not require a member of the public to provide his or her name to participate in the meeting.
- When conducting a meeting through electronic means, the Chair should ask if anyone from the public would like to participate during the public comment portion of the meeting.

Conducting a Remote Meeting

Orientation Speech – Chair and/or Administrator

- State the problem, general objectives and procedures
- Provide comprehensive information based on:
 - History of the problem
 - Present status
 - General Causes
 - Consequences, if unresolved
- Get rid of unnecessary and extraneous discussion
- Obtain agreement on how Board should proceed

Goal is to reduce meeting length and increase probability of better decision.



Conducting a Remote Meeting

Motion Practice

- A Board should be even more cognizant of how to make motions during remote meetings.
- It is recommended that Trustees identify themselves when making motions.
- When calling for the vote on a motion, the Chair should preface the call to the question by stating:
 - *“Motion by (name)_____, support by (name)_____, TO (state motion)_____; all in favor of the motion say “Yes” (pause), any opposed say “No”.*
- A roll call vote should be taken if any Trustee votes “no” or elects to “abstain” (see next slide).

Conducting a Remote Meeting

Roll Call Votes

- Boards may opt to require all board action through roll call votes when conducting an electronic meeting; however, it may instead elect to only take roll call votes when at least one Trustee objects to the proposed action taken i.e., a Trustee votes “no”
 - Caveat: Unless the proposed action otherwise requires a roll call vote under the OMA (e.g., moving into a closed session).
- The idea is to provide the public with an understanding of what board action was taken and how each Trustee voted, which can be achieved in different methods by the Board Chair or the Board itself (i.e., via roll call votes or roll call votes upon a Trustee objection only).

Conducting a Remote Meeting

Closed Sessions

- As of the date of this Webinar, neither of the Governor's applicable OMA Executive Orders have changed how Boards conduct closed session meetings.
- Logistical concerns
 - When to conduct the closed session - during the middle, at the start or the end of the meeting or special meeting directly after the meeting?
 - During the closed session meeting have a staff member stay in open session to advise members of the public or create a notice to post
 - How to conduct the closed session
 - Through a different telephonic or video conferencing number which is not given to the public or a breakout room.
 - Having each participant of a closed session certify that he or she is alone during this part of the meeting

Conducting a Remote Meeting

Meeting Minutes

- As of the date of this Webinar, neither of the Governor's applicable OMA Executive Orders have changed how Boards should prepare meeting minutes
- Minutes should indicate:
 1. Who: Name of Retirement System - "What meeting was I at?"
 2. What: Type of Meeting - "Why was I there?"
 3. When: Date and Time of Meeting - "How long did that meeting last?"
 4. Where: Place of Meeting- "Where was I?"
 5. Why: Reasoning - "What was I thinking?"
- How: That's up to the Board.
- Note: each page of minutes should be numbered and reflect the meeting date.

Conducting a Remote Meeting

Technical Difficulties

- If a meeting is no longer able to be conducted in the method outlined in the notice of meeting (i.e., different login is required) then the Board must stop the meeting.
- The Board may elect to reschedule the meeting or hold a special meeting after, but this must be done in compliance with OMA (i.e., a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted (online or as otherwise noted above) at least 18 hours before the meeting).

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Questions?

You may ask questions by clicking on
the Q&A icon below.