

An Overview of the Amendments to MCL 15.263

Meetings of public bodies held in person or held remotely must comply with all of the requirements enumerated in section 3 of the Open Meetings Act (OMA), MCL 15.263,¹ to enforce the long-standing rights of the public and obligations of public bodies under the act.

Meetings of a Public Body Held in Person.

- **For a meeting of a public body held in person before April 1, 2021**, “the public body shall do both of the following: (a) To the extent feasible under the circumstances, ensure adherence to social distancing and mitigation measures recommended by the Centers for Disease Control and Prevention for purposes of preventing the spread of COVID-19, including the measure that an individual remain at least 6 feet from anyone from outside the individual’s household; (b) Adopt heightened standards of facility cleaning and disinfection to limit participant exposure to COVID-19, as well as protocols to clean and disinfect in the event of a positive COVID-19 case in the public body’s meeting place.” MCL 15.263(1)(a) and (b).

Meetings of a Public Body Held Remotely.²

A. Timeframes and Circumstances:

- **Before March 31, 2021 and retroactive to March 18, 2020**, electronic meetings may be held under any circumstances, including, but not limited to, any of the circumstances requiring accommodation of absent members described in MCL 15.263(2). MCL 15.263a(1)(a).

¹ The Open Meetings Act was most recently amended by Public Act 254 of 2020 on December 22, 2020.

² Section 3(2) of the OMA, MCL 15.263(2), was amended, subject to the newly added section 3a, MCL 15.263a, to, “establish . . . procedures [see, MCL 263(2)(a)(i) and (ii) and (b)], to accommodate the absence of any member of the public body, as defined under the act, due to military duty, a medical condition, or a statewide or local state of emergency or state of disaster declared pursuant to law or charter or local ordinance by the governor or a local official, governing body, or chief administrative officer that would risk the personal health or safety of members of the public or the public body if the meeting were held in person[.]” The latter two reasons for accommodation were added to the existing provision addressing absence due to military duty.

- **On and after March 31, 2021 through December 31, 2021,** electronic meetings may be held only under those circumstances requiring accommodation of absent members described in MCL 15.263(2), which are listed below. MCL 15.263a(1)(b).
 - (1) Military duty.
 - If a member of a public body is on military duty, only that member can participate by electronic means. Any member who is not on military duty (or falls within another exception, not including a medical condition) must be physically present at the meeting to participate. MCL 15.263a(8).
 - (2) A medical condition.
 - If a member has a medical condition, only that member can participate by electronic means. Any member who does not have a medical condition (or falls within another exception, not including a military duty) must be physically present at the meeting to participate. MCL 15.263a(8).
 - “Medical condition” is defined to mean, “an illness, injury, disability, or other health-related condition.” (Documentation from a medical provider is not required.) MCL 15.263(12)(b).
 - (3) A statewide or local state of emergency or state of disaster.
 - It must be declared under law, charter, or local ordinance by the Governor or a local official, governing body, or chief administrative officer because of the risk to the personal health or safety of members of the public or the public body if the meeting were held in person. MCL 15.263(2).
 - Permitting an electronic meeting for the above-stated timeframe due to a local state of emergency or state of disaster applies to permit the electronic attendance of a member of the public body who resides in the affected area or to permit the electronic meeting of a public body that usually holds its meetings in the affected area. MCL 15.263(a)(1)(b)(i) and (ii).
 - Under this provision, if there is a statewide state of disaster, all members can participate by electronic means. If there is a local state of emergency or state of disaster, all members can participate by electronic means if the public body usually holds its meetings in the affected area. If the meetings are not

usually held in the affected area, then only members who reside in the affected area can participate by electronic means.

- A “statewide or local state of emergency or state of disaster declared pursuant to law or charter or local ordinance by the governor or a local official, governing body, or chief administrative officer” includes:
 - A state of emergency or disaster declared by the Governor or the Legislature under the Emergency Management Act.
 - A state of emergency or disaster declared by a local official, governing body, or chief administrative officer under a local law or charter.
- **After December 31, 2021**, electronic meetings may be held only in the circumstances requiring accommodation of members absent due to military duty as described in MCL 15.263(2). This means that only those members that are on military duty can participate by electronic means under this provision. Any member who is not on military duty must be physically present at the meeting in order to participate. MCL 15.263a(1)(c).

B. Requirements for all electronic meetings include, but are not limited to:

- **2-Way Communication:** An electronic meeting must be conducted in a manner that permits 2-way communication so that members of the public body can hear and be heard by other members of the public body, and so that public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. MCL 15.263(2)(a)(i), MCL 15.263a(2).
 - A public body may use technology to facilitate typed public comments during the meeting submitted by members of the public participating in the meeting that may be read to or shared with members of the public body and other participants to satisfy the requirement under this subsection that members of the public be heard by others during the electronic meeting and the requirement under MCL 15.263(5), that members of the public be permitted to address the electronic meeting. MCL 15.263a(2).

- **Confirmation of remote attendance:** 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. MCL 15.263(2)(a)(ii).

- **Public 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 under this section on a portion of the public body's website that is fully accessible to the public. MCL 15.263a(4).
 - The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for nonregularly 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 nonregularly scheduled or electronic public meetings. MCL 15.263a(4).

 - Subject to the requirements of MCL 15.263, any scheduled meeting of a public body may be held as an electronic meeting under MCL 15.263 if a notice consistent with this section is posted at least 18 hours before the meeting begins. MCL 15.263a(4).

 - Notice of a meeting of a public body held electronically must clearly explain all of the following: (a) Why the public body is meeting electronically. (b) 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. (c) 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. (d) How persons with disabilities may participate in the meeting. MCL 15.263a(4)(a)-(d).

 - Public bodies should consider providing in the notice the business telephone number, business email address, or both of the public body's administrative assistant or other support staff person to receive and forward to a member or members of the public body all public input or questions on any business that will come before the public body at a public meeting. See, MCL 15.263a(4)(c).

- **Agenda:** “Beginning on the effective date of the amendatory act that added this section, if an agenda exists for an electronic meeting held under this section by 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, 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 2 hours before the electronic meeting begins. This publication of the agenda does not prohibit subsequent amendment of the agenda at the meeting.” MCL 15.263a(5).
- **Other Considerations:**
 - A physical place is not required for an electronic meeting and members of the public participating and 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 (except for members attending due to military activity or a medical condition). MCL 15.263a(3).
 - “A public body shall not, as a condition of participating in an electronic meeting of the public body under this section, require a person to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms established and required by the public body necessary to permit the person to participate in a public comment period of the meeting.” MCL 15.263a(6).
 - “Members of the general public otherwise participating in a meeting of a public body held electronically under this section are to be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of this act applicable to a closed session.” MCL 15.263a(7).

This document has been prepared by the State Operations Division of the Department of Attorney General and does not constitute the formal opinion of the Attorney General and is not intended to provide legal advice. Persons should consult with their own attorneys for questions on the application of the OMA.

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