

Chapman Client Alert

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Current Issues Relevant to Our Clients

Governor Approves Amendments to the Open Meetings Act for Public Meetings held during a Disaster

The General Assembly passed Senate Bill 2135 on May 23, 2020, and the Governor signed the same on June 12, 2020. Senate Bill 2135, now Public Act 101-0640 (the “Act”), amends Sections 2.01 and 7 of the Open Meetings Act (the “OMA”). The Act provides greater flexibility for public bodies to conduct business remotely when in-person attendance is not feasible due to a disaster.

The Act was adopted in response to the COVID-19 pandemic and largely codifies provisions in the Governor’s executive orders concerning public meetings during the COVID-19 pandemic and actions taken by public bodies in response thereto.

The Act allows both open and closed meetings to be conducted via audio or video conference without the physical presence of a quorum of members, if certain conditions are met. A summary of the key conditions are as follows:

- (1) The Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration because of a disaster as defined in Section 4 of the Illinois Emergency Management Agency Act, and all or part of the jurisdiction of the public body is covered by the disaster area (the “*Issued Disaster Declaration*”). (On May 29, 2020, the Governor again declared all counties in the State as disaster areas because of the spread of COVID-19 (the “*May 29 Declaration*”). The May 29 Declaration remains in effect until June 28, 2020.)
- (2) The head of the public body determines that an in-person meeting or a meeting conducted under the OMA is not practical or prudent because of a disaster.
- (3) All members of the public body participating in the meeting are verified and can hear one another and all discussion and testimony.
- (4) When there is an open meeting, members of the public present at the regular meeting location must be able to hear all discussion, testimony and votes of the members of the public body. If attendance at the regular meeting location is not feasible due to the disaster, including the Issued Disaster Declaration, the public body must make alternative arrangements and provide notice to the public.

The alternative arrangements must allow the public to contemporaneously hear all discussion, testimony and roll call votes (such as offering a telephone number or web-based link). (In the May 29 Declaration, the Governor found that public health concerns render in-person attendance of more than ten people at the regular meeting location not feasible.)

- (5) At least one member of the public body, chief legal counsel, or chief administrative officer must be physically present at the regular meeting location, unless unfeasible due to the disaster, including the Issued Disaster Declaration.
- (6) All votes must be conducted by roll call, so each member’s vote on each issue can be identified and recorded.
- (7) Except in the event of a bona fide emergency, 48 hours’ notice must be given for such meeting and notice shall be given to all members of the public body, shall be posted on the website of the public body, and shall also be provided to any news media who has requested notice of meetings pursuant to subsection (a) of Section 2.02 of the OMA.
- (8) The public body must keep a verbatim record of such meeting in the form of an audio or video recording, and such verbatim records must be available to the public.

Each member of the public body participating in such meeting by audio or video conference is considered present for the purposes of determining a quorum and participating in all proceedings.

In conclusion, under certain conditions, such as those now existing under the May 29 Declaration, the Act allows public bodies to hold meetings via audio or video conference without

a quorum of members physically present. Public bodies should note that, unless it is not feasible to do so, a physical site must be maintained with at least one member of the body, chief legal counsel, or chief administrative officer physically present to ensure that all discussion, testimony and votes of the members of the public body can be heard by the attending public. If physical attendance, however, is not feasible due to the disaster, including the Issued Disaster Declaration, the public body must provide contemporaneous access to all discussions, testimony and roll call votes.

For More Information

If you would like further information concerning the matters discussed in this article, please contact a member of our Illinois Public Finance Group or visit us online at chapman.com.

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