

SENATE BILL NO. 1246

December 03, 2020, Introduced by Senator THEIS and referred to the Committee of the Whole.

A bill to amend 1976 PA 267, entitled
"Open meetings act,"
by amending sections 3 and 3a (MCL 15.263 and 15.263a), section 3
as amended and section 3a as added by 2020 PA 228.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) All meetings of a public body must be open to the
2 public and must be held in a place available to the general public.
3 All persons must be permitted to attend any meeting except as
4 otherwise provided in this act. The right of a person to attend a
5 meeting of a public body includes the right to tape-record, to

videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body must be made at a meeting open to the public. For purposes of any meeting subject to this section, except a meeting of any state legislative body at which a formal vote is taken, the public body shall, subject to section 3a, establish the following procedures to accommodate the absence of any member of the public body 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 or local governing body~~ **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:

(a) 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:

(i) Two-way communication.

(ii) 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,

1 city, township, or village and state from which he or she is
2 attending the meeting remotely.

3 (b) Procedures by which the public is provided notice of the
4 absence of the member and information about how to contact that
5 member sufficiently in advance of a meeting of the public body to
6 provide input on any business that will come before the public
7 body.

8 (3) All deliberations of a public body constituting a quorum
9 of its members must take place at a meeting open to the public
10 except as provided in this section and sections 7 and 8.

11 (4) A person must not be required as a condition of attendance
12 at a meeting of a public body to register or otherwise provide his
13 or her name or other information or otherwise to fulfill a
14 condition precedent to attendance.

15 (5) A person must be permitted to address a meeting of a
16 public body under rules established and recorded by the public
17 body. The legislature or a house of the legislature may provide by
18 rule that the right to address may be limited to prescribed times
19 at hearings and committee meetings only.

20 (6) A person must not be excluded from a meeting otherwise
21 open to the public except for a breach of the peace actually
22 committed at the meeting.

23 (7) This act does not apply to the following public bodies,
24 but only when deliberating the merits of a case:

25 (a) The Michigan compensation appellate commission operating
26 as described in either of the following:

27 (i) Section 274 of the worker's disability compensation act of
28 1969, 1969 PA 317, MCL 418.274.

29 (ii) Section 34 of the Michigan employment security act, 1936

1 (Ex Sess) PA 1, 421.34.

2 (b) The state tenure commission created in section 1 of
3 article VII of 1937 (Ex Sess) PA 4, MCL 38.131, when acting as a
4 board of review from the decision of a controlling board.

5 (c) The employment relations commission or an arbitrator or
6 arbitration panel created or appointed under 1939 PA 176, MCL 423.1
7 to 423.30.

8 (d) The Michigan public service commission created under 1939
9 PA 3, MCL 460.1 to 460.11.

10 (8) This act does not apply to an association of insurers
11 created under the insurance code of 1956, 1956 PA 218, MCL 500.100
12 to 500.8302, or other association or facility formed under that act
13 as a nonprofit organization of insurer members.

14 (9) This act does not apply to a committee of a public body
15 that adopts a nonpolicymaking resolution of tribute or memorial, if
16 the resolution is not adopted at a meeting.

17 (10) This act does not apply to a meeting that is a social or
18 chance gathering or conference not designed to avoid this act.

19 (11) This act does not apply to the Michigan veterans' trust
20 fund board of trustees or a county or district committee created
21 under 1946 (1st Ex Sess) PA 9, MCL 35.602 to 35.610, when the board
22 of trustees or county or district committee is deliberating the
23 merits of an emergent need. A decision of the board of trustees or
24 county or district committee made under this subsection must be
25 reconsidered by the board or committee at its next regular or
26 special meeting consistent with the requirements of this act.
27 "Emergent need" means a situation that the board of trustees, by
28 rules promulgated under the administrative procedures act of 1969,
29 1969 PA 306, MCL 24.201 to 24.328, determines requires immediate

1 action.

2 (12) As used in subsection (2):

3 (a) "Formal vote" means a vote on a bill, amendment,
4 resolution, motion, proposal, recommendation, or any other measure
5 on which a vote by members of a state legislative body is required
6 and by which the state legislative body effectuates or formulates
7 public policy.

8 (b) "Medical condition" means an illness, injury, disability,
9 or other health-related condition.

10 Sec. 3a. (1) A meeting of a public body held, in whole or in
11 part, electronically by telephonic or video conferencing in
12 compliance with this section and, except as otherwise required in
13 this section, all of the provisions of this act applicable to a
14 nonelectronic meeting, is permitted by this act in the following
15 circumstances:

16 (a) Before ~~January 1,~~ **March 31**, 2021 and retroactive to March
17 18, 2020, any circumstances, including, but not limited to, any of
18 the circumstances requiring accommodation of absent members
19 described in section 3(2).

20 (b) On and after ~~January 1,~~ **March 31**, 2021 through December
21 31, 2021, only those circumstances requiring accommodation of
22 members absent ~~due to military duty, a medical condition, or a~~
23 ~~statewide or local state of emergency or state of disaster as~~ **for**
24 **the reasons** described in section 3(2). For the purpose of
25 permitting an electronic meeting due to a local state of emergency
26 or state of disaster, this subdivision applies only as follows:

27 (i) To permit the electronic attendance of a member of the
28 public body who resides in the affected area.

29 (ii) To permit the electronic meeting of a public body that

1 usually holds its meetings in the affected area.

2 (c) After December 31, 2021, only in the circumstances
3 requiring accommodation of members absent due to military duty as
4 described in section 3(2).

5 (2) A meeting of a public body held electronically under this
6 section must be conducted in a manner that permits 2-way
7 communication so that members of the public body can hear and be
8 heard by other members of the public body, and so that public
9 participants can hear members of the public body and can be heard
10 by members of the public body and other participants during a
11 public comment period. A public body may use technology to
12 facilitate typed public comments during the meeting submitted by
13 members of the public participating in the meeting that may be read
14 to or shared with members of the public body and other participants
15 to satisfy the requirement under this subsection that members of
16 the public be heard by others during the electronic meeting and the
17 requirement under section 3(5) that members of the public be
18 permitted to address the electronic meeting.

19 (3) Except as otherwise provided in subsection (8), a physical
20 place is not required for an electronic meeting held under this
21 section, and members of a public body and members of the public
22 participating electronically in a meeting held under this section
23 that occurs in a physical place are to be considered present and in
24 attendance at the meeting for all purposes.

25 (4) If a public body directly or indirectly maintains an
26 official internet presence that includes monthly or more frequent
27 updates of public meeting agendas or minutes, the public body
28 shall, in addition to any other notices that may be required under
29 this act, post advance notice of a meeting held electronically

1 under this section on a portion of the public body's website that
2 is fully accessible to the public. The public notice on the website
3 must be included on either the homepage or on a separate webpage
4 dedicated to public notices for nonregularly scheduled or
5 electronic public meetings that is accessible through a prominent
6 and conspicuous link on the website's homepage that clearly
7 describes its purpose for public notification of nonregularly
8 scheduled or electronic public meetings. Subject to the
9 requirements of this section, any scheduled meeting of a public
10 body may be held as an electronic meeting under this section if a
11 notice consistent with this section is posted at least 18 hours
12 before the meeting begins. Notice of a meeting of a public body
13 held electronically must clearly explain all of the following:

14 (a) Why the public body is meeting electronically.

15 (b) How members of the public may participate in the meeting
16 electronically. If a telephone number, internet address, or both
17 are needed to participate, that information must be provided
18 specifically.

19 (c) How members of the public may contact members of the
20 public body to provide input or ask questions on any business that
21 will come before the public body at the meeting.

22 (d) How persons with disabilities may participate in the
23 meeting.

24 (5) Beginning on the effective date of the amendatory act that
25 added this section, if an agenda exists for an electronic meeting
26 held under this section by a public body that directly or
27 indirectly maintains an official internet presence that includes
28 monthly or more frequent updates of public meeting agendas or
29 minutes, the public body shall, on a portion of the website that is

1 fully accessible to the public, make the agenda available to the
2 public at least 2 hours before the electronic meeting begins. This
3 publication of the agenda does not prohibit subsequent amendment of
4 the agenda at the meeting.

5 (6) A public body shall not, as a condition of participating
6 in an electronic meeting of the public body held under this
7 section, require a person to register or otherwise provide his or
8 her name or other information or otherwise to fulfill a condition
9 precedent to attendance, other than mechanisms established and
10 required by the public body necessary to permit the person to
11 participate in a public comment period of the meeting.

12 (7) Members of the general public otherwise participating in a
13 meeting of a public body held electronically under this section are
14 to be excluded from participation in a closed session of the public
15 body held electronically during that meeting if the closed session
16 is convened and held in compliance with the requirements of this
17 act applicable to a closed session.

18 (8) At a meeting held under this section that accommodates
19 members absent due to military duty or a medical condition, only
20 those members absent due to military duty or a medical condition
21 may participate remotely. Any member who is not on military duty or
22 does not have a medical condition must be physically present at the
23 meeting to participate.