

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

1 videotape, to broadcast live on radio, and to telecast live on
 2 television the proceedings of a public body at a public meeting.
 3 The exercise of this right does not depend on the prior approval of
 4 the public body. However, a public body may establish reasonable
 5 rules and regulations in order to minimize the possibility of
 6 disrupting the meeting. **For a meeting of a public body held in**
 7 **person before April 1, 2021, the public body shall do both of the**
 8 **following:**

9 (a) **To the extent feasible under the circumstances, ensure**
 10 **adherence to social distancing and mitigation measures recommended**
 11 **by the Centers for Disease Control and Prevention for purposes of**
 12 **preventing the spread of COVID-19, including the measure that an**
 13 **individual remain at least 6 feet from anyone from outside the**
 14 **individual's household.**

15 (b) **Adopt heightened standards of facility cleaning and**
 16 **disinfection to limit participant exposure to COVID-19, as well as**
 17 **protocols to clean and disinfect in the event of a positive COVID-**
 18 **19 case in the public body's meeting place.**

19 (2) All decisions of a public body must be made at a meeting
 20 open to the public. For purposes of any meeting subject to this
 21 section, except a meeting of any state legislative body at which a
 22 formal vote is taken, the public body shall, subject to section 3a,
 23 establish the following procedures to accommodate the absence of
 24 any member of the public body due to military duty, a medical
 25 condition, or a statewide or local state of emergency or state of
 26 disaster declared pursuant to law or charter **or local ordinance** by
 27 the governor or a local ~~official or local governing body~~ **official,**
 28 **governing body, or chief administrative officer** that would risk the
 29 personal health or safety of members of the public or the public

1 body if the meeting were held in person:

2 (a) Procedures by which the absent member may participate in,
3 and vote on, business before the public body, including, but not
4 limited to, procedures that provide for both of the following:

5 (i) Two-way communication.

6 (ii) For each member of the public body attending the meeting
7 remotely, a public announcement at the outset of the meeting by
8 that member, to be included in the meeting minutes, that the member
9 is in fact attending the meeting remotely. If the member is
10 attending the meeting remotely for a purpose other than for
11 military duty, the member's announcement must further identify
12 specifically the member's physical location by stating the county,
13 city, township, or village and state from which he or she is
14 attending the meeting remotely.

15 (b) Procedures by which the public is provided notice of the
16 absence of the member and information about how to contact that
17 member sufficiently in advance of a meeting of the public body to
18 provide input on any business that will come before the public
19 body.

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

23 (4) A person must not be required as a condition of attendance
24 at a meeting of a public body to register or otherwise provide his
25 or her name or other information or otherwise to fulfill a
26 condition precedent to attendance.

27 (5) A person must be permitted to address a meeting of a
28 public body under rules established and recorded by the public
29 body. The legislature or a house of the legislature may provide by

1 rule that the right to address may be limited to prescribed times
2 at hearings and committee meetings only.

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

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

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

10 (i) Section 274 of the worker's disability compensation act of
11 1969, 1969 PA 317, MCL 418.274.

12 (ii) Section 34 of the Michigan employment security act, 1936
13 (Ex Sess) PA 1, 421.34.

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

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

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

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

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

29 (10) This act does not apply to a meeting that is a social or

1 chance gathering or conference not designed to avoid this act.

2 (11) This act does not apply to the Michigan veterans' trust
 3 fund board of trustees or a county or district committee created
 4 under 1946 (1st Ex Sess) PA 9, MCL 35.602 to 35.610, when the board
 5 of trustees or county or district committee is deliberating the
 6 merits of an emergent need. A decision of the board of trustees or
 7 county or district committee made under this subsection must be
 8 reconsidered by the board or committee at its next regular or
 9 special meeting consistent with the requirements of this act.
 10 "Emergent need" means a situation that the board of trustees, by
 11 rules promulgated under the administrative procedures act of 1969,
 12 1969 PA 306, MCL 24.201 to 24.328, determines requires immediate
 13 action.

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

15 (a) "Formal vote" means a vote on a bill, amendment,
 16 resolution, motion, proposal, recommendation, or any other measure
 17 on which a vote by members of a state legislative body is required
 18 and by which the state legislative body effectuates or formulates
 19 public policy.

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

22 Sec. 3a. (1) A meeting of a public body held, in whole or in
 23 part, electronically by telephonic or video conferencing in
 24 compliance with this section and, except as otherwise required in
 25 this section, all of the provisions of this act applicable to a
 26 nonelectronic meeting, is permitted by this act in the following
 27 circumstances:

28 (a) Before ~~January 1,~~ **March 31,** 2021 and retroactive to March
 29 18, 2020, any circumstances, including, but not limited to, any of

1 the circumstances requiring accommodation of absent members
2 described in section 3(2).

3 (b) On and after ~~January 1,~~ **March 31,** 2021 through December
4 31, 2021, only those circumstances requiring accommodation of
5 members absent ~~due to military duty, a medical condition, or a~~
6 ~~statewide or local state of emergency or state of disaster as~~ **for**
7 **the reasons** described in section 3(2). For the purpose of
8 permitting an electronic meeting due to a local state of emergency
9 or state of disaster, this subdivision applies only as follows:

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

12 (ii) To permit the electronic meeting of a public body that
13 usually holds its meetings in the affected area.

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

17 (2) A meeting of a public body held electronically under this
18 section must be conducted in a manner that permits 2-way
19 communication so that members of the public body can hear and be
20 heard by other members of the public body, and so that public
21 participants can hear members of the public body and can be heard
22 by members of the public body and other participants during a
23 public comment period. A public body may use technology to
24 facilitate typed public comments during the meeting submitted by
25 members of the public participating in the meeting that may be read
26 to or shared with members of the public body and other participants
27 to satisfy the requirement under this subsection that members of
28 the public be heard by others during the electronic meeting and the
29 requirement under section 3(5) that members of the public be

1 permitted to address the electronic meeting.

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

8 (4) If a public body directly or indirectly maintains an
9 official internet presence that includes monthly or more frequent
10 updates of public meeting agendas or minutes, the public body
11 shall, in addition to any other notices that may be required under
12 this act, post advance notice of a meeting held electronically
13 under this section on a portion of the public body's website that
14 is fully accessible to the public. The public notice on the website
15 must be included on either the homepage or on a separate webpage
16 dedicated to public notices for nonregularly scheduled or
17 electronic public meetings that is accessible through a prominent
18 and conspicuous link on the website's homepage that clearly
19 describes its purpose for public notification of nonregularly
20 scheduled or electronic public meetings. Subject to the
21 requirements of this section, any scheduled meeting of a public
22 body may be held as an electronic meeting under this section if a
23 notice consistent with this section is posted at least 18 hours
24 before the meeting begins. Notice of a meeting of a public body
25 held electronically must clearly explain all of the following:

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

27 (b) How members of the public may participate in the meeting
28 electronically. If a telephone number, internet address, or both
29 are needed to participate, that information must be provided

1 specifically.

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

5 (d) How persons with disabilities may participate in the
6 meeting.

7 (5) Beginning on the effective date of the amendatory act that
8 added this section, if an agenda exists for an electronic meeting
9 held under this section by a public body that directly or
10 indirectly maintains an official internet presence that includes
11 monthly or more frequent updates of public meeting agendas or
12 minutes, the public body shall, on a portion of the website that is
13 fully accessible to the public, make the agenda available to the
14 public at least 2 hours before the electronic meeting begins. This
15 publication of the agenda does not prohibit subsequent amendment of
16 the agenda at the meeting.

17 (6) A public body shall not, as a condition of participating
18 in an electronic meeting of the public body held under this
19 section, require a person to register or otherwise provide his or
20 her name or other information or otherwise to fulfill a condition
21 precedent to attendance, other than mechanisms established and
22 required by the public body necessary to permit the person to
23 participate in a public comment period of the meeting.

24 (7) Members of the general public otherwise participating in a
25 meeting of a public body held electronically under this section are
26 to be excluded from participation in a closed session of the public
27 body held electronically during that meeting if the closed session
28 is convened and held in compliance with the requirements of this
29 act applicable to a closed session.

1 (8) At a meeting held under this section that accommodates
2 members absent due to military duty or a medical condition, only
3 those members absent due to military duty or a medical condition
4 may participate remotely. Any member who is not on military duty or
5 does not have a medical condition must be physically present at the
6 meeting to participate.