

SENATE BILL NO. 870

May 09, 2024, Introduced by Senators MCCANN, SHINK, CHANG and POLEHANKI and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1976 PA 267, entitled
"Open meetings act,"
by amending section 3a (MCL 15.263a), as amended by 2023 PA 214.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

5 (b) Subject to subdivision (d), on and after March 31, 2021
6 through December 31, 2021, only those circumstances requiring
7 accommodation of absent members described in section 3(2). For the
8 purpose of permitting an electronic meeting due to a local state of
9 emergency or state of disaster, this subdivision applies only as
10 follows:

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

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

15 (c) Subject to subdivisions (d), (e), and (f), after December
16 31, 2021, only in the circumstances requiring accommodation of
17 ~~members~~**a member** absent due to military duty as described in
18 section 3(2), **or as an accommodation to a member with a disability**
19 **who requests remote access in order to fully participate in the**
20 **meeting. At a meeting held under this subdivision, only those**
21 **members absent due to military duty or a disability may attend and**
22 **participate electronically. Any member who is not on military duty**
23 **or does not have a disability must be physically present at the**
24 **meeting to attend and participate. As used in this subdivision:**

25 (i) "Disability" means a determinable physical or mental
26 characteristic of an individual, which may result from disease,
27 injury, congenital condition of birth, or functional disorder, if
28 the characteristic substantially limits 1 or more of the major life
29 activities of that individual.

1 (ii) "Participate" includes, but is not limited to, discussing,
2 debating, or voting on a motion, proposal, recommendation,
3 resolution, order, ordinance, bill, or any other measure on which a
4 vote by members of the public body is required and by which the
5 public body effectuates or formulates public policy.

6 (d) On and after March 31, 2021, for a public body that is an
7 agricultural commodity group, any circumstances, including, but not
8 limited to, any of the circumstances requiring accommodation of
9 absent members described in section 3(2). As used in this
10 subdivision, "agricultural commodity group" means any of the
11 following:

12 (i) A committee as that term is defined in section 2 of the
13 agricultural commodities marketing act, 1965 PA 232, MCL 290.652.

14 (ii) The state beef industry commission created in section 3 of
15 the beef industry commission act, 1972 PA 291, MCL 287.603.

16 (iii) The potato industry commission created in section 2 of
17 1970 PA 29, MCL 290.422.

18 (iv) The Michigan bean commission created in section 3 of 1965
19 PA 114, MCL 290.553.

20 (e) On and after ~~the effective date of the amendatory act that~~
21 ~~added this subdivision,~~ **February 13, 2024**, for a public body that
22 is responsible for the investment, administration, or management of
23 a municipal public employee retirement system, any circumstances,
24 including, but not limited to, any of the circumstances requiring
25 accommodation of absent members described in section 3(2). As used
26 in this subdivision, "municipal public employee retirement system"
27 means a retirement system as that term is defined in section 3 of
28 the protecting local government retirement and benefits act, 2017
29 PA 202, MCL 38.2803. A public body that is eligible to meet

1 remotely under this subdivision shall set and publish an attendance
2 policy that includes the determination of a quorum with 1 or more
3 members participating electronically.

4 (f) On and after ~~the effective date of the amendatory act that~~
5 ~~added this subdivision,~~ **February 13, 2024**, for a public body that
6 is a joint agency formed under article 3 of the Michigan energy
7 employment act of 1976, 1976 PA 448, MCL 460.831 to 460.848, any
8 circumstances, including, but not limited to, any of the
9 circumstances requiring accommodation of absent members described
10 in section 3(2). As used in this subdivision, "joint agency"
11 includes a joint agency's board of commissioners and any committee
12 of the joint agency.

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

27 (3) Except as otherwise provided in subsection ~~(8)~~, **(1) (c)**, a
28 physical place is not required for an electronic meeting held under
29 this section, and members of a public body and members of the

1 public participating electronically in a meeting held under this
2 section that occurs in a physical place are to be considered
3 present and in attendance at the meeting for all purposes.

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

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

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

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

1 (d) How ~~persons~~ **members of the public** with disabilities may
2 participate in the meeting.

3 (5) Beginning on October 16, 2020, if an agenda exists for an
4 electronic meeting held under this section by a public body that
5 directly or indirectly maintains an official internet presence that
6 includes monthly or more frequent updates of public meeting agendas
7 or minutes, the public body shall, on a portion of the website that
8 is fully accessible to the public, make the agenda available to the
9 public at least 2 hours before the electronic meeting begins. This
10 publication of the agenda does not prohibit subsequent amendment of
11 the agenda at the meeting.

12 (6) A public body shall not, as a condition of participating
13 in an electronic meeting of the public body held under this
14 section, require a person to register or otherwise provide the
15 person's name or other information or otherwise to fulfill a
16 condition precedent to attendance, other than mechanisms
17 established and required by the public body necessary to permit the
18 person to participate in a public comment period of the meeting.

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

25 ~~(8) At a meeting held under this section that accommodates~~
26 ~~members absent due to military duty or a medical condition, only~~
27 ~~those members absent due to military duty or a medical condition~~
28 ~~may participate remotely. Any member who is not on military duty or~~
29 ~~does not have a medical condition must be physically present at the~~

1 ~~meeting to participate. This subsection does not apply to a meeting~~
2 ~~of a public body held electronically under subsection (1)(d), (e),~~
3 ~~or (f).~~