

## CLIENT ALERT

### Illinois General Assembly Formally Relaxes Open Meetings Act

In March 2020, shortly after issuing his first proclamation of emergency due to the COVID-19 pandemic, Governor Pritzker issued an executive order relaxing the Illinois Open Meetings Act's (OMA) requirements for remote participation in meetings. The executive order waived the requirement that a quorum of the public body be physically present at the meeting location, and permitted remote participation by members of the body for any reason (instead of the usual limitations in the OMA that permit remote participation only due to illness, employment purposes, or an emergency). We opined that the Governor had the clear authority to suspend the OMA in this fashion. The executive order was upheld by the Illinois Attorney General's Public Access Counselor, and thousands of public bodies around the state held public meetings virtually to carry out important government functions. Nevertheless, questions persisted, particularly among bond counsel, about the Governor's authority to temporarily suspend the physical presence requirement during an emergency.

In the abbreviated legislative session held last week, the Illinois General Assembly adopted OMA amendments that would permanently and formally legalize virtual public meetings. The amendments are part of Senate Bill 2135, a wide-ranging initiative that contains several statutory changes intended to address the current pandemic as well as future disasters. In this alert, we focus on the proposed new provisions of the OMA.

Senate Bill 2135 would add a new Section 7(e) to the OMA, concerning meetings held entirely by audio or video conference. If approved by the Governor, as expected, the language would formally allow public meetings to be held without a quorum being physically present in any location. The Bill sets forth *eight* requirements for virtual meetings:

1. *Disaster Declaration*: The Governor or the Director of the Illinois Department of Public Health must issue a disaster declaration related to public health. The "disaster" must meet the requirements of the Illinois Emergency Management Agency Act, and the disaster area must include at least a part of the public body's territory.
2. *Local Determination*: The head of the public body must determine that an in-person meeting "is not practical or prudent" due to the disaster. Note that this does not require a local declaration of emergency.
3. *Member Identification*: The members of the public body must be able to verify their identities, and must be able to hear each other and all other discussion and testimony.

4. *Public Participation*: The public must be able to hear all discussion and testimony, and all votes of the members of the public body. If the meeting is entirely virtual (i.e. there is not even one person physically present at a designated location), then the public body must “make alternative arrangements” that will allow the public “to contemporaneously hear all discussion, testimony, and roll call votes.” The new law suggests use of a telephone number or a “web-based link”.
5. *Physical Presence*: At least one member of the public body, or the body’s chief legal counsel or chief administrative officer, must be physically present “at the regular meeting location.” This requirement does not apply if physical presence is “unfeasible due to the disaster, including the issued disaster declaration.” This text appears to mean that the *Governor’s* disaster declaration must acknowledge the infeasibility of physical meetings.
6. *Roll Call Votes*: All votes taken during the meeting must be by roll call vote.
7. *Notice*: Notice of the meeting must be provided at least 48 hours in advance, except in the event of an emergency. Notice must be given to the members of the public body and to the media, and posted on the public body’s website. If the meeting is held under a declaration of a “bona fide emergency,” notice must be provided as soon as practicable and in any event before the meeting, and, at the meeting, the presiding officer must declare the nature of the emergency.
8. *Verbatim Recording*. A verbatim recording of the meeting must be taken and kept pursuant to the other requirements of the OMA. Recordings of open meetings must be made available to the public.

Many local governments that have held meetings under the Governor’s emergency orders have implemented protocols similar to those in Senate Bill 2135. But there are a few notable differences. First, the new law would mandate roll call votes for every single vote taken at a virtual meeting. Second, unless the Governor’s disaster declaration expressly contemplates that it would be “unfeasible” for anyone to be physically present, there must be someone at the public body’s regular meeting location.

We note that the new Section 7(e) *only* applies if there is less than a quorum of the public body physically present at the public meeting. If a quorum is present, the meeting may continue pursuant to the existing provisions of the Open Meetings Act, which, among other things, allows members of the body to participate remotely under certain specified circumstance and would not require a verbatim recording of the open meeting.

Governor Pritzker’s current disaster declaration expires at the end of this week. We will monitor both his decisions on whether to sign Senate Bill 2135, and whether to issue a new disaster declaration, as those actions (or inaction) will dictate whether, how, and to what extent local governments in Illinois can continue to meet virtually in June and through the summer.

As your local government continues to hold public meetings, feel free to reach out to any Elrod Friedman attorney for updates on Senate Bill 2135 and for assistance in implementing these new laws.