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Act No. 228

Public Acts of 2020

Approved by the Governor

October 16, 2020

Filed with the Secretary of State

October 16, 2020

EFFECTIVE DATE: October 16, 2020

STATE OF MICHIGAN

100TH LEGISLATURE

REGULAR SESSION OF 2020

Introduced by Senators Theis, Hollier, LaSata, MacDonald, Lucido, Victory, Daley, Zorn, Wojno, McMorrow, Moss and Schmidt

ENROLLED SENATE BILL NO. 1108

AN ACT to amend 1976 PA 267, entitled “An act to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts,” by amending section 3 (MCL 15.263), as amended by 2018 PA 485, and by adding section 3a.

The People of the State of Michigan enact:

Sec. 3. (1) All meetings of a public body must be open to the public and must be held in a place available to the general public. All persons must be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a 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 by the governor or a local official or local governing body 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, city, township, or village and state from which he or she is attending the meeting remotely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) As used in subsection (2):

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

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

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

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

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

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

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

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

(2) A meeting of a public body held electronically under this section must be conducted in a manner that permits 2-way communication so that members of the public body can hear and be heard by other members of the public body, and so that public

participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. A public body may use technology to facilitate typed public comments during the meeting submitted by members of the public participating in the meeting that may be read to or shared with members of the public body and other participants to satisfy the requirement under this subsection that members of the public be heard by others during the electronic meeting and the requirement under section 3(5) that members of the public be permitted to address the electronic meeting.

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

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

(a) Why the public body is meeting electronically.

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

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

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

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

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

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

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

This act is ordered to take immediate effect.

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