



Township Meeting Options under the Open Meetings Act as of January 1, 2022

Beginning January 1, 2022, a **member of a public body** can participate electronically in a meeting **ONLY** if that member is absent due to military duty.

This is because the **participation of a member of a public body** (township board, planning commission, zoning board of appeals, board of review, election commission, etc.) is governed by the Open Meetings Act, which requires all members of a public body to be physically present at a meeting to be able to count toward a quorum, participate in discussion, “deliberate” or vote, unless they fall under the military duty exception. A previous, temporary exception allowing remote meetings or participation by members of a public body, due to the COVID-19 pandemic, has expired and is no longer lawful.

Meetings of a Public Body Must be Held in Person Now:

- All meetings of a township public body must be held physically, in person.
- If a township public body wants to ALSO provide public electronic access to some or all of its meetings, it may do so.
- A township public body must provide electronic access for a member of that public body to a meeting that is otherwise held in person **if that member is absent due to participation in the military.**

Member of a Public Body at a Meeting of that Public Body:

- The only way a **member of a public body** can **participate** (**speak at all**) in a meeting by electronic means is if that member of the public body is absent from the physical meeting **due to their participation in the military. There are NO other options for a member of a public body to participate in (speak at) a meeting by electronic means.**
- **All public bodies** must “establish the following procedures to accommodate the absence of **any member of the public body due to military duty** [*as the statute must be read now, this is the only option*]:
 - 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:
 - Two-way communication.
 - 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. [A

member participating remotely due to military duty is NOT required to 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.]

- 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. (MCL 15.263)
- Because MCL 15.263 has required all public bodies to establish procedures to accommodate a member who is absent due to military duty, there would be no reason to deny access to a member who is absent due to military duty. Even though the statute does not specifically say such a member must be accommodated, we believe that is the Legislature's intent.
- Prior to COVID, and now, we do believe that a **member of a public body** who is **present at a physical, in-person meeting** of that public body, may leave the head table and go into the audience to **speak during public comment** (which is a political free speech opportunity), even on board business. Although not typical, because board members should be recognized to speak at appropriate points in the meeting agenda, occasionally a board member may wish to take this approach. But it does not change their ability to interact, because is it still lawfully "deliberating toward" board business with a quorum because they are still physically present in a meeting of their public body held in compliance with the OMA.
- **But if a member of a public body is NOT physically present and is NOT absent due to participation in the military**, then the provisions of the OMA that govern electronic access to meetings apply and that member **cannot participate in (speak at) the electronic meeting at all**. This is because the OMA prohibits any member of a public body from participating a meeting of their public body via electronic means if they are NOT absent due to military participation.

Anyone Else Attending a Meeting of a Public Body:

The OMA's provisions for and restrictions on electronic participation in a meeting of a public body affect the members of the public body. However, there is no limit in the OMA on providing **electronic public access to persons other than members of the public body**. This means that a public body could choose to provide electronic access to the **public**, and/or to **township staff or consultants or other participants**.

A public body is not required to provide electronic access to the public or others (township attorney, other consultants, staff) BUT a public body may decide to provide electronic access at different levels to the public and others who are not members of the public body. So, a public body could have the township attorney, or manager, or department head, recording secretary, etc., "Zoom in" to participate on the agenda.

The Open Meetings Act also provides that every meeting of public body must include one opportunity for **public comment**. And if a public body is holding a **public hearing**, the hearing must be conducted as an agenda item within a properly scheduled and noticed regular or special meeting of that public body.

The OMA does **not** limit the ability of **the public to participate electronically**, during a public comment period or on the record during a public hearing **IF** the public body chooses to provide electronic meeting access to the public AND the public body has authorized electronic participation for public comment and/or public hearing purposes.

MTA believes that **providing electronic meeting access to the public**, including participating in public comment or on the record in a public hearing, is one way to provide public access, input and transparency.

Note that no law currently requires a township public body to provide electronic meeting access to the public. The public is not legally entitled to be able to access a meeting of a public body via electronic means. If a meeting of a public body is being held physically, without any electronic access, the public body is not required to provide electronic access because a member of the public has asked them to. Even if a township board, for example, is accommodating the absence of a member due to their participation in the military to enable them to “Zoom in” to a board meeting, that does not mean the board is required to allow anyone or everyone else to do so, but it is also not prohibited by the OMA’s restrictions on the members of the public body. Also note that there is no mandated level of quality or utility for “electronic” meeting access.

But, if a public body does choose to provide electronic meeting access for the public, that may encourage the public to attend and participate electronically, reducing some health concerns from having a large gathering. Note that all participants must be able to hear and be heard by a member of the board absent due to military participation and any member of the public participating electronically, in both the in-person and the electronic meeting spaces, so some form of microphone and speaker system must be provided in the in-person meeting space.

The OMA prohibits turning any person away from an in-person meeting, including turning them away to require them to use electronic access (or for not wearing a mask), so even if a township does provide electronic access and/or participation to the public, it cannot turn anyone away from an in-person meeting unless that person is actually disrupting that meeting. But having electronic access and participation as an option might encourage more people to participate remotely.