



ROSENSTEIN, FIST & RINGOLD

RED BANNER UPDATE

Date: February 12, 2020

Re: SB 1031

Signed: February 10, 2021

Effective: Immediately

Topic: Open Meeting Act – Temporary and Permanent Amendments Pertaining to Video and Teleconferencing of Open Meetings

Summary: This Act primarily reinstates all temporary amendments to the Open Meeting Act (OMA) created by last session’s SB 661 and again allows public bodies, subject to certain requirements, to hold their open meetings entirely via videoconference or teleconference during the COVID-19 state of emergency. It adds a new temporary requirement concerning documents provided to or shared electronically between body members and permanently amends the Act regarding the content of public notices for meetings that include a videoconference option.

As applicable to schools, this Act permits public bodies to hold their meetings entirely by videoconference or teleconference, provided each public body member is visible or audible to the other members and the public. The temporary amendments are effective immediately and will continue until the earlier of February 15, 2022, or 30 days after the expiration or termination of the COVID-19 state of emergency. Any open meeting held by videoconference or teleconference must be recorded by written, electronic, or other means. The Act further mandates that should the audio connection be disconnected at any time during a meeting held by videoconference or teleconference, it must be stopped and only reconvened when the audio connection is restored.

Virtual Charter Schools

The Act requires that for any virtual charter school approved and sponsored by the Statewide Virtual Charter School Board that meets via videoconference or teleconference, that public body must maintain a quorum for the entire duration of the meeting, whether achieved using an in-person site, videoconference, teleconference, or any combination of those sites to achieve a quorum.

Notice of Meeting to Identify Remote Appearances

The Act directs that the required posting of a meeting notice and agenda in advance of meetings shall indicate if the meeting will include videoconferencing or teleconferencing and must also state each public body member who will appear remotely, the method of each member's remote appearance, as well as the identity of the public body member(s) who will be physically present. After the meeting notice and agenda are prepared and posted as required by law, no public body member may alter their method of appearance; however, a member who was previously identified as appearing remotely may physically appear at the meeting site (if any).

Public Participation

The Act provides that the public must be allowed to participate and speak during open meetings conducted via videoconferencing or teleconferencing in the same manner and to the same extent the public would participate in a meeting held where all members are physically present. **New Temporary Amendment:** When any documents or other materials are provided to or shared electronically between members of the public body during a meeting with videoconferencing or teleconferencing, those documents shall be made immediately available to the public on the website of the public body (if it maintains one). The Act further requires that when votes are taken at such a meeting, they must be cast and recorded by roll call vote.

Executive Sessions

This Act permits executive sessions by videoconference and teleconference, and although no public body member must be physically present, each member must be audible or visible to the others. The meeting notice and agenda prepared in advance of the meeting shall state if the executive session will include videoconferencing or teleconferencing and also state the identity of each public body member appearing remotely, the manner of their remote appearance, and whether any member will be physically present at the meeting site (if any) during such session.

Notice and Agenda Posting at School's Physical Site

From the earlier of the effective date of this Act until February 15, 2022, or 30 days after the expiration or termination of the COVID-19 state of emergency, public bodies are not required to make the notice of a public meeting available to the public in the principal office of the body or at the location of the meeting, but must still make it available on the public body's Internet website, and through its email distributions lists, pursuant to Section 311 of the OMA. **New Permanent Amendment:** Public bodies that give notice of a meeting that includes a videoconference option may not modify the method of meeting described in the notice prior to the meeting and must conduct that meeting according to the methods described in the notice. If a code or password is required to access the meeting, it must be included in the public notice.



Please note, even though public bodies may conduct their meetings remotely under SB 1031's temporary amendments and suspend physically posting notice, they must still comply with the advance notice requirements for meetings under Section 311 of the OMA. For example, because moving a regularly scheduled meeting from its physical location to a remote location (via videoconference or teleconference) would be considered a change in the "date, time or place of regularly scheduled meetings" under Section 311(A)(9), notice of such change must still be made to the county clerk not less than 10 days prior to the implementation of any such changes, SB 1031 notwithstanding. Furthermore, because the new permanent requirement to include the meeting's access code or password in the public notice is somewhat ambiguous, it is recommended that public bodies include these in both meeting notices and agendas.

Please visit the firm's website to view the signed Act.

Legal counsel at the firm is currently reviewing this legislation and will be advising clients as to any recommended changes to existing district policies.