



MEMORANDUM

To: CMAP Board

From: CMAP Intergovernmental Affairs staff

Date: March 1, 2024

Subject: Update on other stakeholders' legislative efforts to modify Open Meetings Act requirements and discussion of potential CMAP action

Action Requested: Information

In 2020, the Illinois General Assembly and Governor's Office took steps to permit public bodies subject to the Open Meeting Act (5 ILCS 120) to allow members to meet remotely. [P.A. 101-0640](#) authorized public bodies to conduct business without a physical presence of a quorum as long as certain conditions were met, including the issuance of a disaster declaration related to public health concerns. Members were permitted to participate remotely and public bodies were encouraged to provide video, audio, or telephone access to meetings to ensure members of the public could still monitor the meeting. The Governor issued several executive orders to sustain these provisions over the course of the pandemic.

These flexibilities came to an end when the public health emergency declaration ended in May 2023. In light of this expiration, there have been several bills filed in the Illinois General Assembly that seek to retain some element of these provisions within the OMA statute so that, in limited and defined circumstances, members of a public body may participate remotely so that a public body can continue to conduct business.

One bill that has been championed by the Illinois Municipal League is [SB103/HB1408](#), filed by Senator Cristina Castro (D – Elgin) and Representative Janet Yang Rohr (D – Naperville). This bill seeks to retain some of these provisions in the absence of an official public health emergency issuance.¹ Specifically, these bills would allow the chief elected or appointed official of the public body to determine that an in-person meeting would pose a risk to the health and safety of members of the public body or the public and conducting a meeting by audio or video

¹ For more information about the Illinois Municipal League's position on these bills, please see their [fact sheet](#) and [2024 state legislative agenda](#).

conference is in the best interest of the public body or the public. The public body would need to provide a means by which the public may provide comment or address the public body, and meeting notices would need to provide the public with the information necessary to access the meeting.

As written, SB103/HB1408 permits public bodies subject to OMA to meet remotely in cases when the chief elected or appointed official of the public body deems it is unsafe or a danger to public health to meet in person. This creates a limited set of circumstances in which this provision could be used. Since this topic was not previously included in the CMAP Advocacy Agenda, CMAP staff would like the Board's input on whether staff should pursue legislative action that would permit this flexibility more permanently.

In addition, 5 ILCS 120/2.01 delineates certain public bodies that can allow for remote participation of members from another public building. These bodies include: a public body with statewide jurisdiction, or select public bodies that have jurisdiction over a specific geographic area of more than 4,500 square miles: an Illinois library system, a municipal transit district, or a local workforce investment area. It is important to note that this also requires that meeting be "held simultaneously at one of its offices and one or more other locations in a public building, which may include other of its offices, through an interactive video conference and the public body provides public notice and public access as required under this Act for all locations."

CMAP's jurisdiction, covering 4,071 square miles, is not much smaller than some of these above noted public bodies that already are authorized to allow members to participate remotely as long as they do so from a public building and post the appropriate notices. This supports participation from members who reside farther from the public body's central offices and can help sustain regional representation in large and diverse regions. It should be noted that this does not require Board members to participate remotely, and the Board may decide for certain meetings that all members shall participate in person.

Should the Board like to pursue such changes, below includes one proposal for how CMAP (and other MPOs that cover a large jurisdiction) could be provided with this flexibility based on the precedent set for other public bodies that cover a large geographic jurisdiction.

CMAP staff seek feedback from the Board regarding potential legislative action related to the Open Meetings Act.

Example amendment to OMA to permit remote meetings for larger MPOs

(5 ILCS 120/2.01) (from Ch. 102, par. 42.01)

Sec. 2.01. All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public. No meeting required by this Act to be public shall be held on a legal holiday unless the regular meeting day falls on that holiday.

Except as otherwise provided in this Act, a quorum of members of a public body must be physically present at the location of an open meeting. If, however, an open meeting of a public body (i) with statewide jurisdiction, (ii) that is an Illinois library system with jurisdiction over a specific geographic area of more than 4,500 square miles, (iii) that is a municipal transit district with jurisdiction over a specific geographic area of more than 4,500 square miles, (iv) that is a local workforce investment area with jurisdiction over a specific geographic area of more than 4,500 square miles, or (v) that is a federally designated metropolitan planning organization with jurisdiction over a specific geographic area of more than 4,000 square miles, is held simultaneously at one of its offices and one or more other locations in a public building, which may include other of its offices, through an interactive video conference and the public body provides public notice and public access as required under this Act for all locations, then members physically present in those locations all count towards determining a quorum. "Public building", as used in this Section, means any building or portion thereof owned or leased by any public body. The requirement that a quorum be physically present at the location of an open meeting shall not apply, however, to State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action.

Except as otherwise provided in this Act, a quorum of members of a public body that is not (i) a public body with statewide jurisdiction, (ii) an Illinois library system with jurisdiction over a specific geographic area of more than 4,500 square miles, (iii) a municipal transit district with jurisdiction over a specific geographic area of more than 4,500 square miles, or (iv) a local workforce innovation area with jurisdiction over a specific geographic area of more than 4,500 square miles must be physically present at the location of a closed meeting. Other members who are not physically present at a closed meeting of such a public body may participate in the meeting by means of a video or audio conference. For the purposes of this Section, "local workforce innovation area" means any local workforce innovation area or areas designated by the Governor pursuant to the federal Workforce Innovation and Opportunity Act or its reauthorizing legislation.

(Source: P.A. 100-477, eff. 9-8-17; 101-640, eff. 6-12-20.)

(5 ILCS 120/7)

Sec. 7. Attendance by a means other than physical presence.

(a) If a quorum of the members of the public body is physically present as required by Section 2.01, a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of: (i) personal illness or disability; (ii) employment purposes or the business of the public body; (iii) a family or other emergency; or (iv) unexpected childcare obligations. "Other means" is by video or audio conference.

(b) If a member wishes to attend a meeting by other means, the member must notify the recording secretary or clerk of the public body before the meeting unless advance notice is impractical.

(c) A majority of the public body may allow a member to attend a meeting by other means only in accordance with and to the extent allowed by rules adopted by the public body. The rules must conform to the requirements and restrictions of this Section, may further limit the extent

to which attendance by other means is allowed, and may provide for the giving of additional notice to the public or further facilitate public access to meetings.

(d) The limitations of this Section shall not apply to (i) closed meetings of (A) public bodies with statewide jurisdiction, (B) Illinois library systems with jurisdiction over a specific geographic area of more than 4,500 square miles, (C) municipal transit districts with jurisdiction over a specific geographic area of more than 4,500 square miles, (D) local workforce innovation areas with jurisdiction over a specific geographic area of more than 4,500 square miles, (E) federally designated metropolitan planning organizations with jurisdiction over a specific geographic area of more than 4,000 square miles or (ii) open or closed meetings of State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action. State advisory boards or bodies, public bodies with statewide jurisdiction, Illinois library systems with jurisdiction over a specific geographic area of more than 4,500 square miles, municipal transit districts with jurisdiction over a specific geographic area of more than 4,500 square miles, local workforce investment areas with jurisdiction over a specific geographic area of more than 4,500 square miles, and federally designated metropolitan planning organizations with jurisdiction over a specific geographic area of more than 4,000 square miles, however, may permit members to attend meetings by other means only in accordance with and to the extent allowed by specific procedural rules adopted by the body. For the purposes of this Section, "local workforce innovation area" means any local workforce innovation area or areas designated by the Governor pursuant to the federal Workforce Innovation and Opportunity Act or its reauthorizing legislation.

(e) Subject to the requirements of Section 2.06 but notwithstanding any other provision of law, an open or closed meeting subject to this Act may be conducted by audio or video conference, without the physical presence of a quorum of the members, so long as the following conditions are met:

(1) the Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns because of a disaster as defined in Section 4 of the Illinois Emergency Management Agency Act, and all or part of the jurisdiction of the public body is covered by the disaster area;

(2) the head of the public body as defined in subsection (e) of Section 2 of the Freedom of Information Act determines that an in-person meeting or a meeting conducted under this Act is not practical or prudent because of a disaster;

(3) all members of the body participating in the meeting, wherever their physical location, shall be verified and can hear one another and can hear all discussion and testimony;

(4) for open meetings, members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the disaster, including the issued disaster declaration, in which case the public body must make alternative arrangements and provide notice pursuant to this Section of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link;

(5) at least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the disaster, including the issued disaster declaration; and

(6) all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

(7) Except in the event of a bona fide emergency, 48 hours' notice shall be given of a meeting to be held pursuant to this Section. Notice shall be given to all members of the public body, shall be posted on the website of the public body, and shall also be provided to any news media who has requested notice of meetings pursuant to subsection (a) of Section 2.02 of this Act. If the public body declares a bona fide emergency:

(A) Notice shall be given pursuant to subsection (a) of Section 2.02 of this Act, and the presiding officer shall state the nature of the emergency at the beginning of the meeting.

(B) The public body must comply with the verbatim recording requirements set forth in Section 2.06 of this Act.

(8) Each member of the body participating in a meeting by audio or video conference for a meeting held pursuant to this Section is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

(9) In addition to the requirements for open meetings under Section 2.06, public bodies holding open meetings under this subsection (e) must also keep a verbatim record of all their meetings in the form of an audio or video recording. Verbatim records made under this paragraph (9) shall be made available to the public under, and are otherwise subject to, the provisions of Section 2.06.

(10) The public body shall bear all costs associated with compliance with this subsection (e).

(Source: P.A. 103-311, eff. 7-28-23.)