

# SENATE BILL NO. 641

November 07, 2023, Introduced by Senator MCBROOM and referred to the Committee on Oversight.

A bill to amend 1976 PA 267, entitled "Open meetings act," by amending sections 3 and 7 (MCL 15.263 and 15.267), section 3 as amended by 2020 PA 254 and section 7 as amended by 1996 PA 464, and by adding section 3b; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 3. (1) All meetings of a public body must be open to the
- 2 public and must be held in a place available to the general public.
- 3 All persons must be permitted to attend any meeting except as

1 otherwise provided in this act. The right of a person to attend a  
2 meeting of a public body includes the right to tape-record, to  
3 videotape, to broadcast live on radio, and to telecast live on  
4 television the proceedings of a public body at a public meeting.  
5 The exercise of this right does not depend on the prior approval of  
6 the public body. However, a public body may establish reasonable  
7 rules and regulations in order to minimize the possibility of  
8 disrupting the meeting. ~~For a meeting of a public body held in~~  
9 ~~person before April 1, 2021, the public body shall do both of the~~  
10 ~~following:~~

11 ~~(a) To the extent feasible under the circumstances, ensure~~  
12 ~~adherence to social distancing and mitigation measures recommended~~  
13 ~~by the Centers for Disease Control and Prevention for purposes of~~  
14 ~~preventing the spread of COVID-19, including the measure that an~~  
15 ~~individual remain at least 6 feet from anyone from outside the~~  
16 ~~individual's household.~~

17 ~~(b) Adopt heightened standards of facility cleaning and~~  
18 ~~disinfection to limit participant exposure to COVID-19, as well as~~  
19 ~~protocols to clean and disinfect in the event of a positive COVID-~~  
20 ~~19 case in the public body's meeting place.~~

21 (2) All decisions of a public body must be made at a meeting  
22 open to the public. ~~For purposes of any meeting subject to this~~  
23 ~~section, except a meeting of any state legislative body at which a~~  
24 ~~formal vote is taken, the public body shall, subject to section 3a,~~  
25 ~~establish the following procedures to accommodate the absence of~~  
26 ~~any member of the public body due to military duty, a medical~~  
27 ~~condition, or a statewide or local state of emergency or state of~~  
28 ~~disaster declared pursuant to law or charter or local ordinance by~~  
29 ~~the governor or a local official, governing body, or chief~~

1 ~~administrative officer that would risk the personal health or~~  
2 ~~safety of members of the public or the public body if the meeting~~  
3 ~~were held in person:~~

4 ~~(a) Procedures by which the absent member may participate in,~~  
5 ~~and vote on, business before the public body, including, but not~~  
6 ~~limited to, procedures that provide for both of the following:~~

7 ~~(i) Two-way communication.~~

8 ~~(ii) For each member of the public body attending the meeting~~  
9 ~~remotely, a public announcement at the outset of the meeting by~~  
10 ~~that member, to be included in the meeting minutes, that the member~~  
11 ~~is in fact attending the meeting remotely. If the member is~~  
12 ~~attending the meeting remotely for a purpose other than for~~  
13 ~~military duty, the member's announcement must further identify~~  
14 ~~specifically the member's physical location by stating the county,~~  
15 ~~city, township, or village and state from which he or she is~~  
16 ~~attending the meeting remotely.~~

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

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

25 (4) ~~A person~~ **An individual** must not be required as a condition  
26 of attendance at a meeting of a public body to register or  
27 otherwise provide ~~his or her~~ **the individual's** name or other  
28 information or otherwise to fulfill a condition precedent to  
29 attendance.

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

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

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

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

13           (i) Section 274 of the worker's disability compensation act of  
14 1969, 1969 PA 317, MCL 418.274.

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

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

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

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

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

29           (9) This act does not apply to a committee of a public body

1 that adopts a nonpolicymaking resolution of tribute or memorial, if  
2 the resolution is not adopted at a meeting.

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

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

17 ~~(12) As used in subsection (2):~~

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

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

25 **Sec. 3b. (1) Remote attendance and participation**  
26 **electronically at a meeting of a public body is permitted under**  
27 **this act only as provided in this section. Except as otherwise**  
28 **provided in this section, all of the provisions of this act**  
29 **applicable to a meeting of a public body held entirely in person in**

1 a physical place apply to a meeting of a public body at which 1 or  
2 more members attend remotely under this section.

3 (2) Subject to subsections (5) to (8), all of the following  
4 apply to a meeting of a Class A public body:

5 (a) The public body shall hold the meeting in a physical place  
6 at which at least a quorum of the public body attends in person.

7 (b) A member not attending in person who attends remotely may  
8 fully participate in all discussions and deliberations but shall  
9 not participate in any decisions, such as a vote taken on any  
10 motion, proposal, recommendation, resolution, order, ordinance,  
11 bill, or measure by which the public body effectuates or formulates  
12 public policy. The remote participation authorized by this  
13 subdivision does not apply to any given agenda item unless the  
14 remotely attending member maintains 2-way communication with  
15 everyone attending the meeting throughout the public body's  
16 consideration of the agenda item.

17 (c) The public body may permit members of the public to attend  
18 the meeting and participate remotely pursuant to reasonable rules  
19 and procedures established and published by the public body.

20 (3) Subject to subsections (5) to (8), all of the following  
21 apply to a meeting of a Class B public body:

22 (a) The public body shall hold the meeting in a physical place  
23 at which at least 1/3 of the public body's members attend in  
24 person.

25 (b) A member not attending in person who attends remotely may  
26 fully participate in all discussions, deliberations, and decisions,  
27 including any vote that may be taken. The remote participation  
28 authorized by this subdivision does not apply to any given agenda  
29 item unless the remotely attending member maintains 2-way

1 communication with everyone attending the meeting throughout the  
2 public body's consideration of the agenda item.

3 (c) The public body may permit members of the public to attend  
4 the meeting and participate remotely pursuant to reasonable rules  
5 and procedures established and published by the public body.

6 (4) Subject to subsections (5) to (8), all of the following  
7 apply to a meeting of a Class C public body:

8 (a) The meeting may be held in a manner that allows some or  
9 all of the public body's members to participate remotely in all  
10 discussions, deliberations, and decisions, including any vote that  
11 may be taken. The remote participation authorized by this  
12 subdivision does not apply to any given agenda item unless the  
13 remotely attending member maintains 2-way communication with  
14 everyone attending the meeting throughout the public body's  
15 consideration of the agenda item.

16 (b) If the meeting is not held in a physical place open to the  
17 public, the public body shall provide the public with a means to  
18 remotely attend the meeting and participate pursuant to reasonable  
19 rules and procedures established and published by the public body.

20 (c) If the meeting is held in a physical place open to the  
21 public, the public body may further provide the public with a means  
22 to remotely attend the meeting and participate pursuant to  
23 reasonable rules and procedures established and published by the  
24 public body.

25 (5) All of the following apply to a public body's rules and  
26 procedures established and published for the purpose of providing  
27 the public with a means to remotely attend a meeting:

28 (a) Members of the public must not be required to maintain any  
29 more connectivity or complex communications than are used by any

1 member of the public body attending remotely.

2 (b) The remote participation of nonconstituents may be more  
3 limited than the remote participation of constituents.

4 (c) The public body's rules and procedures must not prevent  
5 the public body from complying with the Americans with disabilities  
6 act of 1990, Public Law 101-336, or the persons with disabilities  
7 civil rights act, 1976 PA 220, MCL 37.1101 to 37.1607, insofar as  
8 either or both of these acts may require the public body to provide  
9 a member of the public with an accommodation in the form of remote  
10 attendance and participation in a meeting of the public body due to  
11 a disability.

12 (6) Both of the following apply to a closed session if 1 or  
13 more members of the public body attend remotely:

14 (a) The participation of a remotely attending member of a  
15 Class A public body, Class B public body, or Class C public body is  
16 subject to the requirements and limitations described in subsection  
17 (2) (b), (3) (b), or (4) (a), respectively.

18 (b) The public body shall ensure that any nonmember whose  
19 attendance and participation is invited by the public body or who  
20 has a right to demand a closed session for a personnel issue is  
21 provided with adequate means to remotely attend the closed session  
22 if the nonmember would rather attend remotely than in person.

23 (7) Regardless of how a meeting of a public body is conducted,  
24 during the meeting, all electronic communications between members  
25 of the public body regarding the business of the meeting must be  
26 transmitted to everyone attending the meeting, whether in person or  
27 remotely. A member of a public body shall not engage in any private  
28 communication with another member of the public body regarding the  
29 business of the meeting by telephone, text, email, social media, or



1 otherwise.

2 (8) As used in this section:

3 (a) "Class A public body" means a public body that has both of  
4 the following:

5 (i) A majority of members consisting of 1 of the following:

6 (A) Individuals elected to serve on the public body.

7 (B) Individuals elected to serve in some other state or local  
8 public office.

9 (C) A combination of individuals described in sub-  
10 subparagraphs (A) and (B).

11 (ii) Legislative powers, taxing or spending authority,  
12 disciplinary powers, or jurisdiction over citizen issues, appeals,  
13 or reviews.

14 (b) "Class B public body" means a public body that is not a  
15 Class A public body and that has legislative powers, taxing or  
16 spending authority, disciplinary powers, or jurisdiction over  
17 citizen issues, appeals, or reviews.

18 (c) "Class C public body" means a public body that is not a  
19 Class A public body or Class B public body.

20 (d) "Taxing or spending authority" means having either or both  
21 of the following:

22 (i) The authority to levy or impose any tax on persons,  
23 property, or transactions within the jurisdiction of the public  
24 body. As used in this subparagraph, "tax" does not include access,  
25 user, registration, or licensing fees, service charges, special  
26 assessments, or the like.

27 (ii) The authority to spend revenues raised by any tax  
28 described in subparagraph (i).

29 Sec. 7. (1) A 2/3 roll call vote of members elected or

1 appointed and serving is required to call a closed session, except  
 2 for the closed sessions permitted under section ~~8(a)~~, **8(1)(a)**, (b),  
 3 (c), (g), (i), and (j). The roll call vote and the purpose or  
 4 purposes for calling the closed session ~~shall~~**must** be entered into  
 5 the minutes of the meeting at which the vote is taken.

6 (2) A separate set of minutes ~~shall~~**must** be taken by the clerk  
 7 or the designated secretary of the public body at the closed  
 8 session. These minutes ~~shall~~**must** be retained by the clerk of the  
 9 public body, ~~are~~**must not be made** available to the public, and  
 10 ~~shall only~~**must not** be disclosed ~~if~~**unless** required by a civil  
 11 action filed under section 10, 11, or 13. These minutes may be  
 12 destroyed 1 year and 1 day after approval of the minutes of the  
 13 regular meeting at which the closed session was approved.

14 (3) **In addition to the requirements of subsections (1) and**  
 15 **(2), a closed session attended remotely by 1 or more members of the**  
 16 **public body is subject to the requirements of section 3b(6).**

17 Enacting section 1. Section 3a of the open meetings act, 1976  
 18 PA 267, MCL 15.263a, is repealed.

19 Enacting section 2. The provisions in section 3b(2)(c),  
 20 (3)(c), and (4)(c) of the open meetings act, 1976 PA 267, MCL  
 21 15.263b, as added by this amendatory act, are curative and must be  
 22 retroactively applied, expressing the legislature's original intent  
 23 that any limitations in the open meetings act, 1976 PA 267, MCL  
 24 15.261 to 15.275, on the remote attendance or participation of an  
 25 individual at a meeting of a public body subject to the open  
 26 meetings act, 1976 PA 267, MCL 15.261 to 15.275, do not prevent a  
 27 public body from permitting members of the public to attend and  
 28 participate remotely in a meeting of the public body whether or not  
 29 the meeting is attended remotely by any of the public body's

1 members.