

Client Alert

FRYBERGER

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Remote Meetings under Minnesota's Open Meeting Law and COVID-19

As COVID-19 continues to progress, it also continues to change the way many of us approach our work including both the private sector and public. This can be a challenge for both private sector employees and public as many have not previously worked remotely. However, officials of state and local governments face another challenge - open meeting laws. This client alert is intended to inform public officials and members of certain government bodies subject to Minnesota's Open Meeting Law of their ability to conduct official business remotely and related restrictions.

Background

The Minnesota Open Meeting Law under Minnesota Statutes Chapter 13D applies to a variety of government entities (subject to limited exceptions). Such entities include: (i) state agencies, boards, commissions or departments, (ii) governing bodies of school districts, unorganized territories, counties, home rule or statutory cities, towns or other public bodies, (iii) committees, subcommittees, boards, departments or commissions of public bodies, (iv) governing bodies or committees of statewide pension plans or pension plans administered by them, and (v) governing bodies or committees of local pension plans.

Minnesota's Open Meeting Law requires that "[a]ll meetings, including executive sessions" of certain public bodies must be "open to the public."ⁱ Meetings are not defined under Minnesota's Open Meeting Law, however, case law has generally interpreted meetings to occur where there is a quorum or more of the public body subject to the open meeting law at which members discuss, decide, or receive information as a group on issues relating to the official business of the body.ⁱⁱ

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Minnesota's Open Meeting law recognizes three types of open meetings: (i) regular meetings, (ii) special meetings and (iii) emergency meetings.ⁱⁱⁱ Each meeting type provides different notice requirements and other conditions.

Open Meetings and Remote Participation

Generally, Minnesota's Open Meeting Law requires public bodies hold their meetings in physical locations open to the public. However, exceptions do exist which allow certain public bodies to conduct meetings via telephone or "other electronic means."

For purposes of this alert, we are focusing on how cities and towns may conduct meetings by telephone or other electronic means, provided certain conditions are met.

Those conditions include the following:

- (1) the presiding officer, chief legal counsel, or chief administrative officer for the affected governing body determines that an in-person meeting or a meeting conducted under section 13D.02^{iv} is not practical or prudent because of a health pandemic or an emergency declared under chapter 12;
- (2) all members of the body participating in the meeting wherever their physical location, can hear one another and can hear all discussion and testimony;
- (3) 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 health pandemic or emergency declaration;
- (4) 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 health pandemic or emergency declaration; and
- (5) all votes are conducted by roll call, so each member's vote on each issue be identified and recorded.^v

Under such circumstances, "each member of the body participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings."^{vi}

Sample language which may be used to make a signed written administrative finding for the purposes of satisfying paragraph (1) above may consist of:

The [presiding officer], [chief legal counsel or] [chief administrative officer] for the [City][Town] has determined that an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of the continuing health risks posed by the health pandemic resulting from COVID-19 and the peacetime emergency declared by the Governor of Minnesota on March 13, 2020, under Executive Order 20-01.

COVID-19 Emergency Declaration

Minn. Stat. § 13D.021 provides a limited exception to in person meetings under circumstances involving a health pandemic or an emergency declaration, where public bodies may hold remote meetings via telephone or other electronic means provided participants are able to access, participate in and “hear one another and can hear all discussion and testimony.”

On March 13, 2020, Minnesota Governor Tim Walz issued Executive Order 20-01 declaring a peacetime emergency^{vii} in response to COVID-19 authorizing and directing the Commissioner of Education to temporarily close schools because “[the] pandemic, an act of nature, threatens the lives of Minnesotans, and local resources are inadequate to address the threat.” The Governor’s Executive Order is an emergency declaration described in the Open Meeting Law.^{viii}

Conclusion

Because of the Governor’s Executive Order, Minnesota cities and towns may hold meetings remotely via telephone or other electronic means after an authorized official of the body makes a determination “that an in-person meeting or a meeting conducted under section 13D.02” is infeasible while the emergency declaration and public health pandemic related to COVID-19 continues. Importantly, such remote meetings do not require the governing body to ensure at least one member of the body, chief legal counsel or chief administrative officer is physically present at the regular meeting location and does not require that the regular meeting location be open to the public.

However, such meetings remain subject to other applicable requirements under Minnesota’s Open Meeting Law and thus must be open to the public as discussed above. Such requirements include compliance with special notice requirements under Minn. Stat. § 13D.04 (i.e., posting written notice three days before such meeting on its principal bulletin board) and other applicable requirements under Minn. Stat. § 13D.01. In addition to Minnesota’s Open Meeting Law, additional requirements (such as “public comment” or “open forum” periods) may be provided in city charters, local ordinances, regulations or rules of procedure.^{ix}

Governing bodies considering holding remote meetings should take care to ensure that members of the public are provided adequate notice of how to access the meeting, including any dial in numbers or in the case of video conferences, the service or

application which will be utilized to conduct the meeting, and any other requirements necessary to participate in the meeting. In addition to any other applicable requirements, any meeting notice should include a statement that the meeting is being conducted via telephone or video conference and that a physical meeting location will not be utilized, the reason for the remote meeting (declared emergency or health pandemic), that the public is able to monitor the meeting remotely, how to access the meeting (or where to obtain instructions to access the meeting) and any meeting materials (or how to obtain such materials).

Capacity and accessibility related issues should be reviewed or even tested sufficiently in advance of any planned remote meeting. Any materials to be discussed at the meeting should also be made available ahead of the meeting in a manner sufficient to ensure members of the public are able to access them by posting such materials on the governing body's website or making them available via email.

For More Information

If you have any questions about this Client Alert, please contact any of the attorneys in the Public Finance Practice Group identified above or the attorney in the firm with whom you are regularly in contact.

Disclaimer

Please note that governing bodies providing hearing notices will likely need to modify language provided in the hearing notice by adding or altering existing standard language to reflect changed circumstances under which the hearing will be conducted. Governing bodies considering making such modifications should contact their attorneys with any questions related to such modifications.

This Client Alert has been prepared and published for informational purposes only and is not offered, nor should be construed, as legal advice.

i Minn. Stat. § 13D.01 subd. 1.

ii See *Moberg v. Ind. School Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983)

iii See Minn. Stat. § 13D.04.

iv Minn. Stat. § 13D.02 governs meetings conducted by Interactive TV and provides certain conditions, including that at least one member of the body is physically present at the regular meeting location.

v Minn. Stat. § 13D.021, subd. 1.

vi Minn. Stat. § 13D.021, subd. 2.

vii "Declared Emergency" is defined under Minn. Stat. § 12.03 to a mean "national security or peacetime emergency declared by the governor under section 12.31." See also, Minn. Stat. § 12.31 which provides in part that "[t]he governor may declare a peacetime emergency. A peacetime declaration of emergency may be declared only when an act of nature, a technological failure or malfunction, a terrorist incident, an industrial accident, a hazardous materials accident, or a civil disturbance endangers life and property and local government resources are inadequate to handle the situation.

viii State of Minnesota, Executive Department, Governor Tim Walz, Emergency Executive Order 20-02 Authorizing and Directing the Commissioner of Education to Temporarily Close Schools to Plan for a Safe Educational Environment (Mar. 13, 2020) https://mn.gov/governor/assets/EO%2020-02%20Final_tcm1055-423073.pdf.

ix *See generally* Information Brief, Deborah A. Dyson, Research Department Minnesota House of Representatives: Minnesota Open Meeting Law (Revised July 2017)
<https://www.house.leg.state.mn.us/hrd/pubs/openmtg.pdf>.