

Open Meeting Law and Remote Participation

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MCIT
MINNESOTA COUNTIES INTERGOVERNMENTAL TRUST

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Minnesota Open Meeting Law



- Presumes all governing body meetings are open to public unless statutory authority to close meeting
- Notice requirements are based on meeting type
- Fines, penalties on board member if intentional violation
- Court may order board member to pay reasonable costs, disbursements, attorney fees, up to \$13,000, to claimant

Purposes of the Law

- Prohibit actions from being taken at a secret meeting
 - Impossible for public to become fully informed about a public body's decision
 - Impossible to detect improper influences
- To assure public's right to be informed
- To afford public opportunity to present its views to public body

Using Technology to Meet

2 Statutes Permit Remote Meetings



Minn. Stat. § 13D.02: Other Entity Meetings by Interactive Technology

- Can be used any time
- Interactive technology (video):
 - Must be able to both **hear and see** all discussion, testimony and votes
 - At all board member locations



Minn. Stat. § 13D.021: Meetings During Pandemic or Chapter 12 Emergency

- Can be used **when in-person meeting or a meeting conducted under 13D.02** is not practical or prudent because of a **health pandemic or an Chapter 12 emergency**
- Can be telephone or interactive technology

Determining Quorum and Participating



Minn. Stat. § 13D.02: Other Entity Meetings by Interactive Technology

- Each board member participating by interactive technology is considered present at the meeting for purposes of determining a quorum and participating in all proceedings



Minn. Stat. § 13D.021: Meetings During Pandemic or Chapter 12 Emergency

- Each board member participating by telephone or interactive technology is considered present at the meeting for purposes of determining a quorum and participating in all proceedings

MINN. STAT. § 13D.02:

Other Entity Meetings by Interactive Technology



Requirements:

- All participating board members, wherever their physical location,
 - Can **hear and see** one another and
 - Can **hear and see** all discussion and testimony presented at any location at which at least one member is present
- Members of public present at the regular meeting location of the body can **hear and see** all discussion and testimony and all votes of all members of the body
- **At least one member of body is physically present at regular meeting location**

MINN. STAT. § 13D.02:

Additional Requirements



Requirements:

- All votes are conducted by roll call
- Each location at which a member of the body is present must be open and accessible to the public, unless an exception is met

MINN. STAT. § 13D.02:

Open, Accessible Requirement, Exceptions



Each location at which a board member is present must be open and accessible to the public, unless:

- Board member is serving in military and at a required drill, deployed or on active duty; or
- Board member has been advised by a health care professional against being in a public place for personal or family medical reasons ~~during a state of emergency declared under Minnesota Statutes, Section 12.31 or within 60 days of its expiration~~

Exceptions are limited to 3 times per calendar year

Notice



Entities must give:

- Notice of the regular meeting location *and*
- Notice of any location where a board member will be via interactive technology
 - **Except** for locations that do not need to be open and accessible to the public

Notice Location, Timing



Generally, notice:

- Must be posted on the principal bulletin board (or on the door of its usual meeting room if there is no principal bulletin board) *and*
- Mailed or otherwise delivered to each person who has filed a written request for special meeting notices
- **At least 3 days before meeting date**

MINN. STAT. § 13D.02:

Monitoring and Minutes



- To extent practical, government entity must allow person to monitor meeting electronically from a remote location
- Minutes for meeting conducted under Section 13D.02 must reflect:
 - Names of board members appearing by interactive technology **and**
 - State reason(s) for appearance by interactive technology

MINN. STAT. § 13D.021:

Meetings During Pandemic, Chapter 12 Emergency



- Presiding officer, chief legal counsel or chief administrative officer for governing body determines that **in-person meeting or meeting conducted under Section 13D.02 is *not* practical or prudent because of a health pandemic or an emergency declared under Chapter 12**
 - May depend on particular circumstances of governing body
 - May take local public health conditions into account, as well as state and federal guidance

MINN. STAT. § 13D.021:

Requirements



- All members of body participating in the meeting, wherever their physical location, can **hear** one another and can **hear** all discussion and testimony
- Members of public present at regular meeting location of the body can **hear** all discussion and testimony and all votes of the members of the body
 - Unless attendance at regular meeting location is not feasible due to health pandemic or emergency declaration

MINN. STAT. § 13D.021:

Physical Presence and Voting



- At least 1 member of body, chief legal counsel or chief administrative officer is physically present at regular meeting location
 - Unless unfeasible due to health pandemic or emergency declaration
- All votes are conducted by roll call

MINN. STAT. § 13D.021:

Notice



Entities must give:

- Notice of regular meeting location *and*
- Fact that some board members may be participating by telephone or interactive technology *and*
- Ability for public to monitor meeting electronically from a remote location

MINN. STAT. § 13D.021:

Notice Posting and Timing



Generally, notice:

- Must be posted on principal bulletin board (or on the door of its usual meeting room if there is no principal bulletin board) *and*
- Mailed or otherwise delivered to each person who has filed a written request for special meeting notices
- **At least 3 days before meeting date**

MINN. STAT. § 13D.021:

Monitoring Requirement



- No requirement for remote locations to be open and accessible to the public
- To the extent practical, government entity must allow person to monitor meeting electronically from remote location

MINN. STAT. § 13D.021:

Public Comment Period



If attendance at regular meeting location is not feasible and public body's practice is to offer a public comment period at in-person meetings:

- Members of public shall be permitted to comment from a remote location during public comment period of meeting, to extent practical

FAQs on Meeting Remotely

Limit on Remote Attendance?

Is there a limit on the number of times a board member can attend a meeting from a remote location?



Limit on Remote Attendance?

A: No. It's a policy decision.

The only statutory limitation is related to the **number of times** that a remote location **can be closed to the public**

- For personal or family medical reasons*
- Military service reasons*

*When meeting under Section 13D.02



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Can Meeting Be Fully Remote?



Can a government entity hold its meeting completely online with all board members, staff and the public participating and attending remotely?

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Can Meeting Be Fully Remote?



A: To limited extent under normal circumstances

- All statutory requirements must be met:
 - At least 1 board member must attend meeting at regular meeting location
 - Regular meeting location must be set up so that public can hear, see all discussion, testimony and all votes of public body members
 - Notice given of regular meeting location and all remote locations*

Analysis is different under Section 13D.021

*Unless the remote location is closed under a statutory exception

Change Plans?

A board member recently discovered he cannot attend a scheduled in-person board meeting.

Can the board member attend remotely via interactive technology?



Change Plans?

A: It depends on when the in-person meeting is scheduled:

- Under Section 13D.02
 - Entities must give notice of locations at which board members will be participating via interactive technology*
- Notice needs to be provided at least 3 days before the date of the meeting.
 - If notice cannot be provided within this time frame, all requirements for meeting remotely have not been met

*Unless the remote location is closed to the public under the limited exceptions



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What if a Board Member Is Ill?



Can a board member with a medical issue participate in meetings remotely?

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What If Board Member Is Ill?



A: Yes, if all required conditions under Section 13D.02 are met.

- Board member may close his/her remote location to public if:
 - Advised by a health care professional against being in a public place for medical reasons
 - Have not already done so 3 times in calendar year

Analysis may be different if board is currently meeting under Section 13D.021.

What If Board Member Is Ill? Part 2

If board member's medical issue is a COVID-19 diagnosis, can board decide to meet under Section 13.021, Meetings During Pandemic or Chapter 12 Emergency, instead?



What If Board Member Is Ill? Part 2

A: Probably not, but check with legal counsel

- Under Section 13D.021: Needs to be determination that in-person meeting or meeting conducted under Section 13D.02 is not practical or prudent because of a health pandemic or a Chapter 12 emergency
- 1 board member with a COVID-19 diagnosis may not be enough for a determination that board cannot meet in person or via the regular remote meeting statutes due to a health pandemic
 - See Minnesota Department of Administration Advisory Opinion 21-003



Can Board Members Be Out of State?



Can a board member attend a meeting remotely from an out-of-state location?

Can Board Members Be Out of State?



A: Yes

- Nothing in law addresses location from which a board member may participate remotely
 - See Minnesota Department of Administration Advisory Opinion 13-009
- Under Section 13D.02, entities must give notice of locations at which board members will be participating via interactive technology*
- Remote location must be open and accessible to public

*Unless the remote location is closed to the public under the limited exceptions

What Happens if Video Connection Drops?

A board member participating from a remote location loses his video capability. Audio continues to function.

Can remote board member continue to participate in the meeting?



What Happens if Video Connection Drops?

A: Probably not

- Section 13D.02 requires:
 - All board members participating in meeting can **hear and see** one another, regardless of location
 - Members of public at regular meeting location can **hear and see** all discussion, testimony and votes of all board members
- If board member cannot be seen on video, all statutory requirements have not been met

Analysis may be different if board is meeting under Section 13D.021.



Roll Call Voting Still Required?



Does board still need to conduct a roll call vote if only 1 board member is participating from a remote location?

Roll Call Voting Still Required?



A: Yes

- Both Sections 13D.02 and 13D.021 require that **all** votes be conducted by roll call
 - Can identify and record each board member's vote on each issue

More Questions?

- Consult with legal counsel
- Review MCIT Open Meeting Law resources at *MCIT.org/resources*
- Check materials from Minnesota Department of Administration, Data Practices Office:
MN.gov/admin/data-practices



Discussion

ASK QUESTIONS, SHARE EXPERIENCES



Thank you!

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