



## Minnesota Open Meeting Law

**Date:** August 2023

The Minnesota Legislature enacted the Minnesota Open Meeting Law (Minnesota Statutes Chapter 13D) in 1957 so that the public can observe and be informed about the issues and actions of a public body.

The purpose of the Open Meeting Law is to:

- Prohibit actions being taken at secret meetings where it is impossible for the interested public to become fully informed about a public body's decision or to detect improper influences.
- Assure the public's right to be informed.
- Afford the public an opportunity to present its views to the public body.

(St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Sch., 332 N.W.2d 1 (Minn. 1983))

Public officials and employees must have a solid understanding of the Open Meeting Law's requirements. Aspects of the law can expose public entities to risk, but there are practices to help manage those risks, including coverage provided by MCIT.

### Application of the Law

The Open Meeting Law applies to all meetings of the public body and, in general, meetings of its committees and subcommittees. For the law to apply, a quorum (a majority of the members of the public body) must be present. (Minn. Stat. § 13D.01, subd. 1; Moberg v. ISD No. 281, 336 N.W.2d 510 (Minn. 1983))

The gathering of a quorum constitutes a meeting if "members discuss, decide, or receive information as a group on issues relating to the official business of the governing body."

### Committees and Subcommittees of the Board

The Open Meeting Law applies to meetings of committees and subcommittees of the board if they possess decision-making authority. Decision-making authority is presumed if members of the committee comprise a quorum of the governing body, or the governing body has delegated its power to the committee or subcommittee. (Minn. Stat. § 13D.01, subd. 1; Sovereign v. Dunn, 498 N.W.2d 62, (Minn.App.1993))

The law is somewhat unsettled regarding the Open Meeting Law's application to advisory committees that contain less than a quorum of the board. Although advisory committees are generally not subject to the Open Meeting Law, they could become subject to it if the advisory committee assumes decision-making authority through informal delegation. (Minn. Daily v. Univ. of Minn., 432 N.W.2d 189 (Minn.App. 1988); Minn. Dept. of Admin. Opinion 05-014)

### Serial Meetings

Public bodies that orchestrate serial meetings (a series of face-to-face, telephone or electronic conversations among board members) of less than a quorum to avoid the Open Meeting Law requirements may be found to have violated the law, depending on the circumstances. (Moberg v. ISD No. 281, 336 N.W.2d 510 (Minn. 1983))

## Communication Among Board Members

The law typically *does not* apply to telephone conversations among less than a quorum or to letters or other written communication. However, telephone conversations, email or letters among less than a quorum of the public body used to avoid the open meeting requirements or to fashion an agreement in advance of an open meeting may be found to have violated the law.

No open meeting violation occurs when mail—electronic or printed—is used to distribute materials to board members. A problem or violation may arise when the board members respond to the information and begin a discussion of the materials. Therefore, board members are cautioned against communicating with one another outside of an open meeting on matters that may come before the board.

The board also may not use a third person (not a board member) to facilitate a consensus between the board. This may include agreeing to the content of a letter or other communication outside of a board meeting. (Minn. Dept. of Admin. Opinions 06-017 and 17-005)

The Open Meeting Law states that communication on a social media site open to the public does not violate the law. Communication among board members on a private social media site could constitute a violation. (Minn. Stat. § 13D.065.)

## Social Gatherings

The law does not apply to a quorum of the governing body that comes together by chance or at a social gathering so long as the group does not use the setting for purposes of conducting official business. (St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Sch., 332 N.W.2d 1 (Minn. 1983))

However, a quorum of the body may not, as a group, discuss or receive information about official business in any setting under the guise of a private social gathering.

## Informational Gatherings

The law does apply to informational gatherings, such as retreats, executive sessions, public hearings and work sessions. The law applies regardless of whether action is taken or contemplated. (St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Sch., 332 N.W.2d 1 (Minn. 1983); Op. Minn. Atty. Gen. 63a-5, Feb. 5, 1975)

The Minnesota Supreme Court has held that a gathering of members of a public body for an informational seminar on matters currently facing the body or that might come before the body must be conducted openly.

However, a Minnesota Attorney General opinion stated that city council attendance at a League of Minnesota Cities training program for city officials did not violate the law if the members did not discuss specific municipal business.

The Department of Administration has also opined that if a board meets privately with a facilitator to “improve trust, relationships, communication and collaborative problem solving” among the board members, it is a not meeting for purposes of the OML as long as the board does not “discuss, decide or receive information as a group relating to the official business of the governing body.” (Minn. Dept. of Admin. Opinion 16-006)

## Meeting Requirements

The Open Meeting Law is intended to preserve the rights of the public to observe and comment on actions and decisions of its representatives.<sup>1</sup> To satisfy this burden, the public must be informed as to the time and place of meetings.

Although the responsibility to ensure that meetings are properly noticed lies with the public body, this operational activity is typically carried out by the individual who functions as the clerk to the board.

The public body is also required to maintain a record of all votes taken at open meetings. This record must be maintained in a journal and should identify the issues considered by the public body. The law requires that the journal be open and available for inspection by the public. (Minn. Stat. § 13D.01, subd. 4 & subd. 5)

# Meeting Types and Notice Requirements

Notice requirements depend on the type of meeting being held. The Open Meeting Law classifies meetings as regular, special and emergency. (Minn. Stat. § 13D.04)

**Note:** *When in doubt as to whether a committee or subcommittee meeting of the governing body is subject to the Open Meeting Law, notice the meeting and comply with the Open Meeting Law requirements.*

## Regular Meetings

Regular meetings are meetings conducted routinely or on a prescribed schedule. (Minn. Stat. § 13D.04, subd. 1)

### Notice Requirements

A schedule of the regular meetings of the board must include times and locations, and must be kept on file at its primary office.

Public bodies are not required under the Open Meeting Law to post an agenda or other type of notice for regular meetings.

If a meeting is to be held at a time or location inconsistent with the schedule, notice of the changes must be made in the same manner as a special meeting.

## Special Meetings

Special meetings are meetings not conducted as part of the normal routine but are planned far enough in advance to be scheduled. The discussion and the board's actions at a special meeting are limited to only those topics specified in the notice of a special meeting. (Minn. Stat. § 13D.04, subd. 2; Minn. Dept. of Admin. Opinion 04-004; Minn. Dept. of Admin. Opinion 19-006)

### Notice Requirements

Written notice must be posted with the date, time, place and purpose of the meeting on the principal bulletin board or on the door of the public body's usual meeting room.

The principal bulletin board must be located in a place that is reasonably accessible to the public. The written notice must be posted at least three days before the date of the meeting.

In addition to posting the written notice, the notice must be mailed or otherwise delivered at least three days before the date of the meeting to each person who has filed a written request for notice of special meetings.

As an alternative to mailing or otherwise delivering the notice, the public body may publish notice three days before the special meeting in the official newspaper or if there is no official newspaper, in a qualified newspaper of general circulation within the area of the public body's authority.

A person filing a request for notice of special meetings may limit the request to notification of meetings concerning particular subjects. The public body is required to send notice to that person only concerning special meetings involving those subjects.

A public body may establish an expiration date for requests for notices of special meetings and require refiling of the request once each year. Public bodies establishing an expiration date must send notice of the refiling requirement not more than 60 days before the expiration date of a request for notice to each person who filed during the preceding year.

## Emergency Meetings

Emergency meetings are special meetings called because of circumstances that, in the public body's judgment, require immediate attention. Although not yet interpreted by the courts, the Minnesota Department of Administration has opined that "emergency meetings should be used rarely and for circumstances where public safety is jeopardized." (Minn. Stat. § 13D.04, subd. 3; Minn. Dept. of Admin. Opinion 04-004)

## Notice Requirements

Notice of the emergency meeting must be given to members of the public body.

Good faith efforts must be made to provide notice to all news media that have filed a written request for such notice if the request contains a telephone number.

Notice to the news media must be given by telephone or by any other method used to notify members of the public body and must be provided as soon as reasonably practicable after the notice has been given to the board members.

The notice must include the subject of the meeting. Posted or published notice of an emergency meeting is not required.

If matters not directly related to the emergency meeting are discussed or acted upon at an emergency meeting, the minutes of the meeting must include a specific description of these matters.

The Minnesota Department of Administration has opined that this authority was intended to allow a public body the authority to take care of public business necessary to focus on the emergency and “not meant as a tool for the public body to avoid the public scrutiny that the Open Meeting Law affords.”

## Other Notice Requirements

### Recessed or Continued Meetings

Recessed or continued meetings are those meetings that are a continuation of a previous meeting. No notice is required so long as the time and place of the meeting was established during the previous meeting and recorded in the meeting minutes. (Minn. Stat. § 13D.04, subd. 4)

### Closed Meetings

Unless otherwise provided by law, closed meetings must conform to the same notice requirements as meetings that are open. See below for a further discussion of closed meetings. (Minn. Stat. § 13D.04, subd. 5)

### Actual Notice

If a person receives actual notice of a meeting of a public body at least 24 hours before the meeting, all notice requirements of this section are satisfied with respect to that person, regardless of the method of receipt of notice. (Minn. Stat. § 13D.04, subd. 7)

## Discussing Not Public Data

With increased awareness of the risks associated with the release of not public data, public bodies may be inclined to close a meeting whenever this data may be discussed. However, meetings cannot be closed simply because private or confidential data may be discussed. (Minn. Stat. § 13D.05, subd. 1)

Unless the meeting is required to be closed, a governing body may discuss otherwise private or confidential data in public without liability or penalty as long as

- The disclosure of data is related to a matter within the scope of the governing body’s authority; and
- The disclosure is reasonably necessary to conduct business.

Data discussed at an open meeting retain the data’s original classification. A record of the open meeting, regardless of the form, is public.

## Closing Meetings

The Minnesota Legislature has identified several valid reasons for conducting business in a closed session. In addition to the reasons discussed below, meetings may be closed if the closure is expressly authorized by statute. (Minn. Stat. § 13D.03; Minn. Stat. § 13D.05)

## Discussion of Certain Types of Private Data

Meetings *must* be closed if the following types of not public data are discussed (Minn. Stat. § 13D.05, subd. 2(a)):

- Data that identifies alleged victims or reporters of criminal sexual conduct, domestic abuse, maltreatment of minors or vulnerable adults

- Active criminal investigative data, as defined in Minnesota Statutes, Section 13.82, Subdivision 7
- Internal affairs data relating to allegations of law enforcement personnel misconduct
- Educational data (Minn. Stat. § 13.32)
- Health data (Minn. Stat. § 13.3805, subd. 1)
- Medical data (Minn. Stat. § 13.384)
- Welfare data (Minn. Stat. § 13.46, subd. 2)
- Mental health data (Minn. Stat. § 13.46, subd. 7)
- An individual's medical records governed by Minnesota Statutes, Sections 144.291 to 144.298

### Requirements

Prior to closing a meeting, the body must indicate that it must be closed pursuant to the Open Meeting Law because certain types of nonpublic data will be discussed. (Minn. Stat. § 13D.01, subd. 3)

The motion closing the meeting may identify the general classification or type of private data that will be discussed but should not identify any individual either by name or position. (Minn. Stat. § 13D.05, subd. 1(d))

A closed meeting (except for attorney-client privilege) must be electronically recorded at the expense of the governing body. The recording must be preserved for at least three years, if not longer, depending on the type of data involved.

Whether some or all of the recording can be released upon request will depend on how the data is classified under the [Minnesota Government Data Practices Act](#) and who makes the request. (Minn. Stat. Chpt. 13)

## Preliminary Consideration of Allegations or Charges

Meetings at which preliminary consideration of allegations or charges against an individual under the board's authority are discussed *must* be closed unless the individual requests that the meeting remain open. (Minn. Stat. § 13D.05, subd. 2(b))

This exception most often applies to employees. The purpose for closing the meeting is to safeguard information or materials that may not be public under the Minnesota Government Data Practices Act.

### Requirements

Prior to closing the meeting, the board must identify that it is closing the meeting for preliminary consideration of charges against an individual. The board should contact its legal counsel for advice on how to best describe the subject to be discussed without violating the rights of the individual given the particular circumstances at issue. (Minn. Stat. § 13D.01, subd. 3)

One or more meetings may be closed while the body is considering whether disciplinary action is warranted. Once a conclusion is reached, the discussion must be conducted in public. Final decisions must be made in an open session. (Minn. Stat. § 13D.05, subd. 2(b))

The individual generally does not participate in the closed meeting unless the purpose of attendance is to respond to charges against him or her; or the employee requests the meeting be open/public.

The individual should be given advance notice of the existence and nature of the charges so he or she can make an informed decision about whether to request that the meeting be open.

Meetings closed for preliminary charges against an individual must be electronically recorded. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting. (Minn. Stat. § 13D.05, subd. 1(d); Minn. Stat. Chpt. 13)

Whether some or all of the recording can be released upon request will depend on how the data is classified under the Minnesota Government Data Practices Act and who makes the request.

## Performance Evaluation

The performance evaluation of an individual who is subject to the board's authority may be closed to the public unless the individual being evaluated requests to be evaluated in public. In that case, the meeting must be open. This exception is predominately used with public entity employees. (Minn. Stat. § 13D.05, subd. 3(a))

### Requirements

Prior to closing the meeting, the board must identify the individual to be evaluated. At its next open meeting, the board must summarize its conclusions regarding the evaluation. (Minn. Stat. § 13D.05, subd. 3(a))

The individual being evaluated generally participates in the meeting. Advance notice should be given to the individual being evaluated so that the individual can make an informed decision about whether to request that the meeting be open.

Meetings closed for performance evaluations must be electronically recorded. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting. Whether some or all of the recording can be released upon request will depend on how the data is classified under the Minnesota Government Data Practices Act and who makes the request. (Minn. Stat. § 13D.05, subd. 1(d); Minn. Stat. Chpt. 13)

## Attorney-client Privilege

Attorney-client privilege allows a meeting to be closed if the meeting is to discuss pending or threatened litigation against the public body. The public body's legal counsel must participate in the meeting. (Minn. Stat. § 13D.05, subd. 3(b); Prior Lake v. Mader, 642 N.W.2d 729 (Minn. 2002); Brainerd Daily Dispatch v. Dehen, 693 N.W.2d 435 (Minn. App. 2005))

The meeting may not be closed to seek general legal advice or to discuss litigation the public body assumes may occur. Depending on the facts of each case, a threat of litigation may authorize a closed session.

### Requirements

Prior to closing the meeting, the body must indicate that the meeting is being closed under attorney-client privilege to discuss pending or threatened litigation and must provide a specific description of the subject to be discussed.

To satisfy the requirement for a specific description, the public body should state the nature of the pending claim, e.g., "to discuss the pending EEOC charge filed against the county," or "to discuss a grievance filed in the Social Services department against the county."

The governing body should also describe the reasons that absolute confidentiality in its discussions with its attorney outweighs the purposes of the Open Meeting Law and the public's right to be informed.

Meetings closed on the basis of attorney-client privilege are not required to be electronically recorded. (Minn. Stat. § 13D.05, subd. 1(d))

## Preliminary Consideration for Purchase or Sale of Property, or Review of Confidential or Nonpublic Appraisal Data

Under this exception, a public body may close a meeting to (Minn. Stat. § 13D.05, subd. 3(c)):

- Determine the asking price for real or personal property to be sold by the government entity.
- Review confidential or protected nonpublic appraisal data classified under Minnesota Statutes, Section 13.44, Subdivision 3.
- Develop or consider offers or counteroffers for the purchase or sale of real or personal property.

### Requirements

Before holding a closed meeting under this provision, the public body must identify on the record the particular real or personal property that is the subject of the meeting. The proceedings of the meeting must be electronically recorded at the expense of the public body. The particular property must be specifically described on the recording. (Minn. Stat. § 13D.05, subd. 3(c))

The recording must be preserved for eight years after the date of the meeting. The recording is only available to the public after all real or personal property discussed at that meeting has been purchased or sold, or the governing body has abandoned the purchase or sale.

A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting.

If a claim is made that public business other than the discussions allowed under this exception were transacted at the closed meeting during the time when the tape is not yet available to the public, a court may review the recording in private to determine if a violation of the Open Meeting Law has occurred. If the court finds a violation has occurred, the recording can be used in the trial.

An agreement reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body's internal procedures. At that time, the purchase price or sale price is public data.

## Receipt of Security Briefings, and Reports or Discussion of Issues Related to Security and Emergency Response Procedures

Under this exception, meetings may be closed to (Minn. Stat. § 13D.05, subd. 3(d)):

- Receive security briefings and reports.
- Discuss issues related to security systems.
- Discuss emergency response procedures.
- Discuss security deficiencies in or recommendations regarding public services, infrastructure and facilities.

Meetings may be closed only if disclosure of the information discussed would pose a danger to public safety, or compromise security procedures or responses. Discussions of financial issues related to security matters and all related financial decisions must occur in an open meeting.

### Requirements

The motion closing the meeting under this provision must describe the subject to be discussed and refer to the facilities, systems, procedures, services or infrastructures to be considered during the closed meeting. A closed meeting must be electronically recorded at the expense of the governing body. The recording must be preserved for at least four years. (Minn. Stat. § 13D.05, subd. 3(d); Minn. Stat. Chpt. 13)

Whether some or all of the recording can be released upon request will depend on how the data is classified under the Minnesota Government Data Practices Act and who makes the request.

## Labor Negotiations

By a majority vote in a public meeting, the governing body of a public employer may decide to hold a closed meeting to consider strategy for labor negotiations. This includes negotiation strategies, or developments, discussion and review of labor negotiation proposals. (Minn. Stat. § 13D.03)

Section 13D.01, subdivisions 1, 2, 4, 5 and Section 13D.02 of the Open Meeting Law do not apply to meetings held pursuant to the procedures in this section.

### Requirements

The time and place of the closed meeting must be announced at the public meeting. A written roll of members and all other persons present at the closed meeting must be made available to the public after the closed meeting.

Meetings closed for labor negotiations must be electronically recorded. The recording must be retained for two years after the contract is signed. The recordings must be made available to the public after all labor contracts have been signed by the governing body for the current budget period.

If an action is brought claiming that public business other than the discussion allowed under this exception was transacted at the closed meeting during the time when the recording is not yet available to the public, a court shall review the recording in private to determine if a violation of the Open Meeting Law has occurred.

If the court finds a violation has occurred, the recording can be used at the trial subject to any protective orders and as deemed appropriate by the court.

Closed meetings held for labor negotiations strategy may not be held via interactive technology under Minnesota Statutes, Section 13D.02 (Minn. Stat. § 13D.02, subd. 1)

## Procedures to Close a Meeting

A motion to close a meeting must be made in an open session. The board member making the motion should reference the applicable statutory provision permitting or mandating that the meeting be closed and describe the subject matter to be discussed. (Minn. Stat. § 13D.01, subd. 3)

Once the vote is taken and the meeting is closed, the public and any employees whose job duties do not reasonably require their presence at the meeting should be asked to leave the meeting room. (Minn. Stat. § 13D.01, subd. 6(b))

With the exception of meetings closed under the attorney-client privilege, the closed meeting must be electronically recorded. Any materials discussed in the closed session should be withheld from the public.

Unless otherwise required by the Open Meeting Law, the minutes of the meeting should not reflect the substance of the discussions that took place during the closed session. The minutes should simply state that a closed session was held and give the reason for closing the meeting.

Unless otherwise provided by law, closed meetings must conform to the same notice requirements as meetings that are open. (Minn. Stat. § 13D.04, subd. 5)

## Distribution of Materials for the Meeting

The public must have access to materials distributed or available to the governing body for consideration during its open meeting. To satisfy this requirement, the public body must make at least one copy of any printed materials relating to the agenda items of the meeting prepared or distributed by or at the direction of the governing body or its employees and:

- Distributed at the meeting to all board members.
- Distributed before the meeting to all board members.
- Available in the meeting room to all board members.

(Minn. Stat. § 13D.01, subd. 6)

The copy of printed materials must be available in the meeting room for inspection by the public while the governing body considers their subject matter.

The public body can only distribute materials classified as public pursuant to the Minnesota Government Data Practices Act. Materials containing not public data and those distributed at a closed meeting should not be made available to the public. They should be collected from board members after the discussion of the materials has concluded.

## Remote Participation in Meetings

There are two sections of the Open Meeting Law that allow local government board members to be counted as part of the quorum and participate remotely in meetings.

Minnesota Statutes, Section 13D.02 can be used for any meeting that would be covered by the Open Meeting Law, with the exception of a closed meeting held under Section 13D.03 for labor negotiations strategy.

The second, Minnesota Statutes Section 13D.021 is limited to circumstances when an in-person meeting or a meeting conducted under Section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under Chapter 12.

Each statute has different requirements. Failure to comply with the requirements of the particular statute under which the board is meeting may mean that the remote board member is unable to be counted as part of the quorum nor participate in all proceedings.

## Section 13D.02: Other Entity Meetings by Interactive Technology

Section 13D.02 allows a local government board member to be considered present at the meeting for purposes of determining a quorum and participating in all proceedings from a remote location via interactive technology when certain statutory conditions are met. (Minn. Stat. § 13D.02)

“Interactive technology” means a device, software program or other application that allows individuals in different physical locations to see and hear one another. (Minn. Stat. § 13D.001, subd. 2)

The statutory conditions for meeting via interactive technology include all of the following:

- All members of the body participating in the meeting, wherever their physical locations, can hear and see one another, as well as hear and see all discussion occurring at any location at which at least one member is present.
- Members of the public present at the regular meeting location can hear and see all discussions, testimony and votes of the public body.
- At least one member of the public body is physically present at the regular meeting location.
- All votes are conducted by roll call so each member's vote on each issue can be identified and recorded.
- Each location at which a member of the public body is present is open and accessible to the public.

There are two exceptions to the requirement that the board member's remote location be open and accessible to the public. They are:

1. The board member is serving in the military and is at a required drill, deployed or on active duty.
2. The board member has been advised by a health care professional against being in a public place for personal or family medical reasons.

These limited exceptions to the open and accessible requirement can be used by a board member *no more than three times* in a calendar year.

Entities must give notice of the regular meeting location and any locations at which board members will be participating via interactive technology, unless the remote location is closed to the public under the limited exceptions.

The timing and method of providing the notice must be as described in Minnesota Statutes, Section 13D.04 (which describes notice provisions for regular, special and emergency meetings).

Generally for most regular and special meetings, this means that the 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 three days before the date of the meeting.<sup>2</sup>

When all required conditions are met, remotely attending board members will be considered present at the meeting for purposes of determining a quorum and participating in all proceedings from a remote location via telephone or interactive technology.

To the extent practical, the public body must allow a person to monitor the meeting electronically from a remote location.

The minutes for a meeting conducted under Section 13D.02 must reflect the names of any members appearing by interactive technology and state the reason or reasons for the appearance by interactive technology.

## Section 13D.021: Meetings During a Pandemic or Chapter 12 Emergency

Section 13D.021 permits meeting by either telephone or interactive technology when the presiding officer, chief legal counsel or chief administrative officer for the governing body determines that an in-person meeting or a meeting conducted under Section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under Chapter 12. (Minn. Stat. § 13D.021)

Whether an in-person meeting or a meeting conducted under Section 13D.02 is not practical or prudent because of a health pandemic or declared emergency will depend on the particular circumstances of the governing body. The determination may take local conditions into account, as well as state and federal guidance.

As a best practice, the reasoning for this determination should be placed on the record at the beginning of the meeting or done by resolution. The board could also place this reasoning in its meeting notice.

Governing boards do want to take caution that Section 13D.021 is not inadvertently being used to avoid the more stringent requirements of Section 13D.02. For example, the Minnesota Department of Administration has opined that when a quorum of board members was able to gather in person at the regular meeting location, this contradicted the prior determination that an in-person meeting or a meeting under Section 13D.02 was not practical or prudent.<sup>3</sup>

In addition to the determination that an in-person meeting under Section 13D.02 is not practical or prudent, all of the following conditions must also be met:

- All members of the body participating in the meeting, wherever their physical locations, can hear one another and all discussion and testimony.
- Members of the public present at the regular meeting location of the body can hear all discussion, testimony and 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.
- 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.
- All votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

To the extent practical, the government entity shall allow a person to monitor the meeting electronically from a remote location.

Notice must be provided of the regular meeting location, the fact that some board members may be participating by telephone or interactive technology and the ability for the public to monitor the meeting electronically. The timing and method of providing the notice must be as described in Minnesota Statutes, Section 13D.04, as described above.

When all required conditions are met, remotely attending board members will be considered present at the meeting for purposes of determining a quorum and participating in all proceedings from a remote location via telephone or interactive technology.

If attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration and the public body's practice is to offer a public comment period at in-person meetings, members of the public shall be permitted to comment from a remote location during the public comment period of the meeting to the extent practical.

## Penalties and Coverage

If a court finds that a board member violated the Open Meeting Law with a specific intent to do so, the court may fine the board member up to \$300 for each violation. Fines imposed by the court are the responsibility of the individual fined. The public body cannot legally indemnify the board member for these penalties. (Minn. Stat. § 13D.06)

If the board member has been found to have intentionally violated the law three or more separate and unrelated times, he or she may be removed from office.

In addition to other remedies, the court may order the board member to pay costs and attorney fees up to \$13,000 to any party to the action. However, costs and fees can only be awarded to the defendant if the court finds that the lawsuit was frivolous and without merit.

The court must award reasonable attorney fees to the prevailing plaintiff if a public body's conduct violated an official opinion by the commissioner of the Department of Administration that was previously issued to the public body.

The court must find that the opinion is directly related to the cause of action being litigated, and the public body did not act in conformity with the opinion. The court must give deference to the opinion in the proceeding.

Unlike the personal penalty, the public body may choose to indemnify the board member for the awarded costs and attorney fees. In the event that the public body chooses not to indemnify the board member, the awarded costs and attorney fees must be paid by the individual board member.

MCIT coverage typically applies when a claim is made alleging that an MCIT member violated the Open Meeting Law. MCIT assigns counsel and pays for the defense of the matter, including attorney fees and other costs associated with defending a claim.

However, MCIT coverage excludes coverage for fines and penalties associated with an Open Meeting Law violation, as well as any award of attorney fees to the claimant.

<sup>1</sup> Although the courts have held that the Open Meeting Law is intended to afford the public an opportunity to present its views to the public body, the law does not grant the public the right to speak at all open meetings or require that the public body establish a public comment period.

<sup>2</sup> Minn. Stat. § 13D.04, subd. 1 states that if a public body decides to hold a regular meeting at a time or place different than in its schedule of regular meetings, it shall give the same notice of the meeting as that is provided in this section for a special meeting.

<sup>3</sup> See Minnesota Department of Administration Advisory Opinion 21-003.