

# Insights

## Public Access Alert: New Law Permits Electronic Meetings, but Requires Planning

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The COVID-19 pandemic upended the norm for public meetings, and what was once unthinkable – members of a governing body meeting and voting virtually – became a welcome and many times necessary option almost overnight.

We analyzed the early exceptions to public meetings starting in March, 2020.<sup>1</sup> Since that time, many have waited anxiously for the Indiana General Assembly to weigh in, and provide a statutory mechanism to make electronic meetings a permanent option, especially as the COVID-19 pandemic continues. House Enrolled Act 1437 (“HEA 1437”) is that mechanism, which Governor Holcomb recently signed into law and which became effective April 20, 2020.

HEA 1437 modifies Indiana’s Open Door Law, Indiana Code § 5-14-1.5-1 *et seq.* (“ODL”). As it relates to the ODL, electronic meetings (and requirements for such meetings) now apply to two (2) situations – during an emergency, such as the ongoing COVID-19 pandemic, and during times of non-emergency. Both situations are addressed below.

### **BEFORE:**

- A member of the governing body who was not physically present at a meeting could not participate in final action and could not be considered present at the meeting unless authorized by statute.

### **NOW (UNDER DECLARED EMERGENCY):**

- If the governor or the executive of a political subdivision declares a disaster emergency under Title 10 of the Indiana Code, the members of a governing body may:
  - Meet electronically so long as a quorum of the members meet by electronic communication or in person, and the public is able to simultaneously attend and observe the meeting.
  - The memoranda for the meeting must state the name of each member who participated by electronic means or was absent, and identify the electronic means of communication by which the members of the body participated and the public attended and observed.
  - All votes taken must be by roll call.<sup>2</sup>

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### **NOW (UNDER NO DECLARED EMERGENCY):**

#### A Plan Must be Adopted:

- The governing body shall adopt a written policy establishing the procedures that apply to electronic meeting participation.<sup>3</sup>

#### In-person Attendance is Still Required at all Meetings:

- At least fifty percent (50%) of the members must still be physically present at the meeting.<sup>4</sup>

#### There are Member-Specific Limitations:

- A member of the governing body may not electronically attend more than fifty percent (50%) of the body's meetings in a calendar year, unless that member's electronic participation is due to military service, illness or medical conditions, death of a relative, or an emergency involving actual or threatened injury to persons or property.<sup>5</sup>
- A member of the governing may **participate** in a meeting by any electronic means so long as all members of the governing body can communicate with each other, and the public can simultaneously attend and observe the meeting.<sup>6</sup>
- A member of the governing body that participates electronically may **vote** so long as the member can be seen and heard.<sup>7</sup>

#### Attending Consecutive Electronic Meetings:

- A member may attend two (2) consecutive meetings by electronic communication, but must then attend one (1) meeting in person before another electronic meeting, unless the member's absence is due to:
  - Military service;
  - Illness or other medical condition;
  - Death of a relative; or
  - An emergency involving actual or threatened injury to persons or property.<sup>8</sup>

#### There are Topic-Specific Limitations:

- A member cannot attend electronically if the governing body is attempting to take final action to:
  - Adopt a budget;
  - Make a reduction in personnel;
  - Initiate a referendum;
  - Establish or increase a fee;
  - Establish or increase a penalty;

- Use eminent domain authority; or
- Establish, raise, or renew a tax.

#### Meeting Memoranda Must Include:

- The names of each member that was present physically, present electronically, or absent.
- Identify the electronic means of communication by which members of the governing body participated and by which the public attended and observed the meeting.<sup>9</sup>

#### Votes Must be by Roll Call:

- All votes taken during an electronic meeting authorized by HEA 1437 must be by roll call.<sup>10</sup>

### **TAKEAWAYS**

Because of the ongoing public health emergency (issued pursuant to Indiana Code § 10-14-3-12 (see e.g., Indiana Executive Order 21-11)), HEA 1437 allows members of a governing body to meet electronically with relative ease. However, should the governing body prefer to meet electronically *after* the expiration of Indiana's (or a local official's) declared emergency, a written policy must be adopted, and considerations must be made based on HEA 1437's limitations based on each member's participation, as well as limitations on the meeting's topics.

If you have any questions about this alert, Indiana's Open Door Law, or other public access laws, please contact **Christopher W. Bloomer**.

*Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.*

[1] *Indiana's Open Door Law ("ODL") Partially Suspended in Response to COVID-19*, Christopher W. Bloomer and Robert S. Schein, March 17, 2020, located at: <https://www.kriegdevault.com/insights/indianas-open-door-law-odl-partially-suspended-response-covid>

[2] Indiana Code § 5-14-1.5-3.7.

[3] Indiana Code § 5-14-1.5-3.5(d).

[4] Indiana Code § 5-14-1.5-3.5(g).

[5] Indiana Code § 5-14-1.5-3.5(h).

[6] Indiana Code § 5-14-1.5-3.5(b).

[7] *Id.*

[8] Indiana Code § 5-14-1.5-3.5(j).

[9] Indiana Code § 5-14-1.5-3.5(e).

[10] Indiana Code § 5-14-1.5-3.5(f).