



Open Meetings

On June 30, 2021, Governor Abbott approved Attorney General Ken Paxton's request to lift the open meeting law suspensions that had been temporarily suspended in March 2020 in response to the COVID-19 pandemic. As a result, all open meeting requirements will resume on September 1, 2021.

The suspensions have allowed Texas governmental bodies and other entities subject to the provisions of the Open Meetings Act ("the Act") to utilize more easily telephonic and videoconference meetings amid the COVID-19 outbreak while ensuring governmental transparency to the public. As of September 1, entities subject to the Act wishing to utilize remote tools must comply with all open meetings laws as written.

Videoconference Call Meetings

The Act authorizes governmental bodies to conduct meetings by videoconference call. Section 551.127 authorizes a member or employee of a governmental body to participate remotely in a meeting of the governmental body through a videoconference call if there is live video and audio feed of the remote participant that is broadcast live at the meeting and the feed complies with the other provisions of section 551.127.

As a preliminary matter, a meeting held by videoconference call must meet the regular notice requirements of the Act. In addition, section 551.127 authorizes two logistical scenarios depending on the territorial jurisdiction of the governmental body and requires that the notice specify a particular location of the meeting and who will be physically present there, as follows: Centers that extend into three or more counties may meet by videoconference call only if the member of the governmental body presiding over the meeting is physically present at one location of the meeting. The notice must specify that location, which must be open to the public during the open portions of the meeting, as well as state the intent to have the member of the governmental body presiding over the meeting present there.

For Centers with one or two counties in their service area, the Act authorizes a meeting by videoconference call only if a full quorum of the governmental body is physically present at one location of the meeting. In that instance, the notice must specify that location, as well as the intent to have a quorum present there. The location where the presiding member is physically present must be open to the public during the open portions of the meeting.

Beyond notice and logistics, the Act specifies certain technical requirements. The meeting location where the quorum or presiding member is present as well as each remote location from which a member participates "shall have two-way audio and video communication with each other location during the entire meeting." The Act requires that, while speaking, each participant's face must be clearly visible and the voice audible to each other participant and to the members of the public in attendance at the location

where the quorum or presiding member is present, and any other location of the meeting that is open to the public.

The Act additionally requires that each open portion of the meeting is to be visible and audible to the public at the meeting location where the quorum or presiding member is present and that at any time that the meeting is no longer visible and audible to the public, the meeting must be recessed until the problem is resolved. The meeting must be adjourned if the problem is not resolved in six hours.

The Act tasks the Department of Information Resources to specify minimum standards for the audio and video signals required at a videoconference meeting, and the quality of the signals at each location of the meeting must meet or exceed those standards. Generally speaking, a remote participant “shall be counted as present at the meeting for all purposes.” However, if the audio or video communication is lost for any portion of the meeting, the remote participant is considered absent during that time. Should this occur, the governmental body may continue the meeting only as follows: (1) If the meeting is being held by a statewide body or one that extends into three or more counties, there must continue to be a quorum participating in the meeting. (2) If the meeting is held by another governmental body, a full quorum must remain physically present at the meeting location.

Section 551.127 also requires the governmental body to “make at least an audio recording of the meeting” and to make the recording available to the public. And section 551.127 expressly permits a governmental body to allow a member of the public to testify at a meeting from a remote location by videoconference call.