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**M E M O R A N D U M**

TO: Local Governmental Units

FROM: Stewart H. Diamond  
Robert K. Bush  
Keri-Lyn J. Krafthefer  
Jeffrey R. Jurgens

DATE: September 30, 2006

SUBJECT: Open Meetings Act-Remote Participation

New changes to the Open Meetings Act will take effect on January 1, 2007, that clarify the definition of a "meeting" and permit board members to attend meetings remotely. Attached to this memorandum are a model ordinance and model remote attendance policy, both of which are designed to meet the basic elements of the law and provide governmental units with the necessary procedures to permit remote attendance.

**I. Meeting**

Under the new law, a "meeting" is redefined to mean "any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business." This new definition includes electronic methods of communication and clarifies an ongoing issue as to whether contemporaneous forms of electronic communication constitute a meeting. Historically, board members have been counseled to be cautious of such communications, but the law is now clear that these types of communication can be considered a meeting.

The attached model ordinance codifies the new definition and amends any existing ordinances or policies inconsistent with the new law.

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**II. Remote Attendance**

The second major facet of the new law is the ability of a member of a public body to attend a meeting by remote attendance (e.g., via telephone or video conferencing). However, a variety of restrictions apply to remote attendance and a policy permitting members to participate remotely must first be adopted. The attached model Remote Attendance Policy is designed to meet the basic qualifications of the Act and establish procedural guidelines for those seeking to attend remotely.

The Act provides that a majority of the public body may allow a member to attend a meeting by other means only in "accordance with and to the extent allowed by rules adopted by the public body." 5 ILCS 120/7(c). The rules must conform to the statutory requirements, but may also further limit the extent to which attendance is allowed, including additional notice requirements. The first step in allowing remote attendance is therefore the adoption of a policy.

The attached model policy contains the key statutory provisions regarding quorum, the acceptable reasons for absence, new minute procedures, and guidelines for attendance at closed sessions. Other provisions may also be appropriate. For example, Section 9 in the model policy sets forth restrictions on what remote attendance costs are reimbursable. Although costs are not addressed in the Act, public bodies are encouraged to review the method best suitable for remote attendance and make a determination regarding what expenditures are appropriate.

As the law provides that a member seeking to participate remotely must meet one of the qualifying reasons for absence and that the public body must vote to allow participation, there may be circumstances in which a member is willing and able to participate but does not qualify. In this situation, a public body could add a provision to its remote attendance policy allowing that member to listen to the meeting via audio or video conference. In this situation, the member would have only the same rights as any other member of the general public.

In addition to members of the public body attending remotely, there may be circumstances in which the body needs its legal counsel or another officer, such as the treasurer, to participate via audio or video conference. Since these individuals are non-voting participants in the meeting, their participation either in an open or closed session does not require any rules be established. If they participate in a closed session, both the minutes and the tape will show their attendance.

Additional procedures may be added for closed sessions. For example, if a member only wants to attend the closed session, separate procedures may be added to permit this attendance. To

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comply with the spirit of the Act, it is our recommendation that a vote be taken in open session to allow an off-site member to attend the closed session.

**III. Conclusion**

The attached documents are provided only as samples and should be reviewed by your legal counsel. Although many provisions are mandated by the Act, there are a variety of interpretations to the new statutory language. There may also be other scenarios that the public body wants to address or limit. Accordingly, it is important that any ordinance and policy adopted reflect the specific needs and values of the public body.

SHD:dar

Enclosures

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