



**KWAME RAOUL**  

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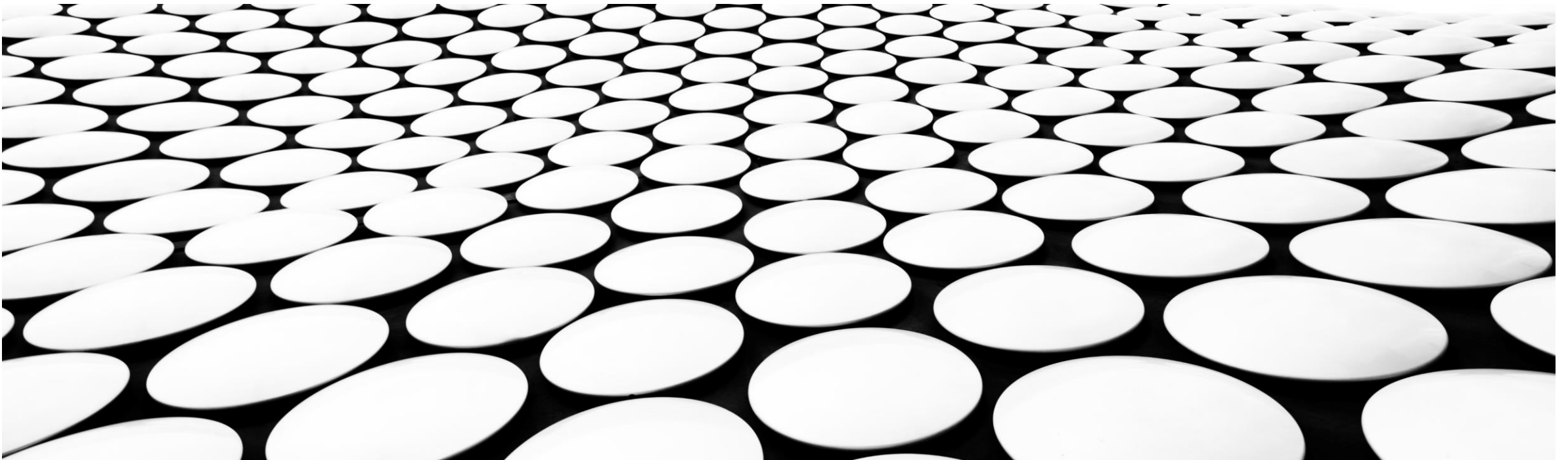
**ILLINOIS ATTORNEY GENERAL**

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# **CURRENT ISSUES IN OMA**

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SIAAB 2121 FALL GOVERNMENT AUDITING VIRTUAL CONFERENCE, OCTOBER 26, 2021





# OVERVIEW

- Background - Purpose of OMA, Key Requirements
- Training
- Remote Meetings - When Appropriate? Issues Raised?
- Empowering Public Participation Act
- Questions?

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# PUBLIC ACCESS BUREAU

Added to the Attorney General Act in 2010 (15 ILCS 205(7)), the Office of the Public Access Counselor (PAC) within the Attorney General's Office was created to:

- Provide advice and education with respect to OMA and the Freedom of Information Act;
- Resolve complaints concerning compliance with OMA and FOIA without litigation
- PAC has issued over 150 Binding Opinions and thousands of determination letters

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# OMA PUBLIC POLICY

“The General Assembly \* \* \* declares it to be the public policy of this State that its citizens shall be given **advance notice of and the right to attend** all meetings at which any business of a public body is discussed or acted upon in any way.”

*“[T]he people have a right to be informed as to the conduct of their business.”*

5 ILCS 120/1.

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# KEY POINTS FOR AUDITORS

If a “public body” subject to OMA has a “meeting,” the requirements of OMA must be followed. Requirements include:

- Advance notice of the meeting to the public;
- Agenda that identifies the “general subject matter” of any item on which final action will be taken;
- Opportunity for the public to attend;
- Opportunity for public to address public officials;
- Proper record-keeping in the form of minutes or recordings, where required.

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# OMA TRAINING REQUIREMENT

- Each elected or appointed member, as well as each OMA designee, of a public body subject to OMA must complete the electronic training curriculum developed and administered by the Public Access Counselor.
- The member must file a copy of the certificate of completion with the public body.

5 ILCS 140/1.05.

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## OMA TRAINING CONT.

- OMA **designees** must complete the training each year.
- **Members** need to complete once during term of office, not annually.
- New members must take within 90 days.
- The requirement is ongoing; if for any reason a public body member has failed to take the training since 2012 when it became effective, he or she must still do so.



# ALTERNATIVE TRAINING

- School Board Members
  - Drainage District Commissioners
  - Directors of Soil and Water Conservation Districts
  - Park, Forest Preserve, Conservation, and Fire Protection District Members
  - Municipality Members
- Conducted by Specified Organizations
  - Certain Content Must Be Included
  - Certificate Required

See 5 ILCS 120/1.05 (c)-(g)

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# REMOTE MEETINGS UNDER OMA

- Remote Meetings Issues:
  - When is it appropriate for public body members to meet remotely?
  - Any changes to agenda and notice requirements?
  - “Convenient and Open”: Does this mean in-person or remote for the public?
  - What about public comment?
  - Masks?
  - What about those meeting recordings?

# WHEN CAN PUBLIC BODY MEMBERS MEET REMOTELY?

Requirements of section 7(e)\* of OMA must be met:

- Disaster declaration by Governor or IDPH Director related to public health concern; (Sec. 7(e)(1))
- Public body head determines in-person meetings not practical or prudent because of the disaster; (Sec. 7(e)(2))
- Members verified, can see and hear each other, all proceedings; (Sec. 7(e)(3))
- Public present at regular meeting location can hear all discussions, testimony, and votes; if not feasible for public to be present, alternative arrangements must be made for any interested member of the public to contemporaneously hear all discussion, testimony, and votes, such as by telephone or web-based link; (Sec. 7(e)(4))

\* Public Act 101-640, effective June 12, 2020.

## WHEN CAN PUBLIC BODY MEMBERS MEET REMOTELY? (P.2)

- One public body member, chief legal counsel, or chief administrative officer physically present at meeting location, unless disaster renders unfeasible; (Sec. 7(e)(5))
- All votes by roll call; (Sec. 7(e)(6))
- 48 hours' notice on website and to news media that requested notice, unless bona fide emergency; (Sec. 7(e)(7))
- Verbatim record (audio or video) of all open meetings; (Sec. 7(e)(9))
- Public body bears all costs of compliance. (Sec. 7(e)(10))

## QUESTIONS RAISED BY JULY 23, 2021, DISASTER PROCLAMATION

- Prior disaster declarations specifically contained the finding that for purposes of section 7(e)(4), attendance of more than 10 persons at a meeting location was not feasible.
- July 23, 2021, did not contain same language.
- The head of the public body can continue to determine that an in-person meeting is not practical or prudent because of the disaster.
- At present, remote attendance by members must relate to COVID-19 pandemic.
- Considerations: the specific circumstances of the public body and how meetings are conducted, including infection rates and hospital capacity in community, building size and location



## ARE THE PRESENT REMOTE MEETING REQUIREMENTS PERMANENT?

- Public bodies should remain alert for new information and be flexible in their approach, Change is likely for one or more of these reasons:
  - Rising rates of COVID variant infections, local mitigation measures;
  - Decreasing infection rates and relaxed mitigations, remote meetings may no longer be needed;
  - New Executive Orders and/or Disaster Proclamations that specifically address open meetings;
  - Legislation: Senate Bill 482 may be considered during veto session –would allow remote meetings without disaster declaration.

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# REMOTE MEETINGS AND PUBLIC COMMENT

- Public must still be allowed to address the public body during remote meetings (Section 2.06(g)).
- Public bodies encouraged to allow multiple alternative methods such as call-in numbers, web-based links, and reading aloud e-mailed comments to facilitate public participation.
- If only written public comment is allowed, must the public body read the comments aloud?

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# IN-PERSON MEETINGS

- Even when the public body members meet in person, public bodies are encouraged to provide both in-person and remote access for the public if circumstances warrant.
- Remember, the original section 7(a) provisions are still in effect to allow remote attendance for some public body members. Those rules are:



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## ATTENDANCE BY PUBLIC BODY MEMBERS

- Except in special circumstances, a quorum must be *physically present* at the meeting in order for the member to attend electronically **5 ILCS 120/7(a)**.
- Before allowing a member to attend electronically, a public body must adopt a rule or regulation permitting electronic attendance **5 ILCS 120/7(c)**.

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# ATTENDANCE BY OTHER MEANS

If a public body has adopted rules allowing for electronic attendance, a member may attend a meeting electronically for these reasons only:

- Personal illness or disability;
- Employment purposes or business of the public body;  
or
- Family or other emergency.

5 ILCS 120/7(a).

# MASK MANDATES?

- The Public Access Bureau has received complaints because masks were required, because masks weren't required, and because public body members weren't wearing masks.
- Question is whether the meeting is “convenient and open” to the public – “reasonable accessibility” required.
- OMA does not contain specific provisions concerning public safety at open meetings.

See Ill. Att’y Gen. PAC Req. Rev. Ltr. 65724, issued December 8, 2020;

Ill. Att’y Gen. PAC Req. Rev. Ltr. 67055, issued August 11, 2021.

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# BEST PRACTICES FOR REMOTE MEETINGS

- When feasible, in-person attendance by public body members encouraged.
- Be specific about circumstances of the meeting in the notice/agenda. In-person? Remote? Hybrid? Remote access? Social distancing at meeting? Masks required?
- Provide multiple alternative methods for public comment when possible.
- Even if members meet in person, consider offering remote access to the public who can't attend.
- Remember the purpose of OMA – to include the public when deliberations and decisions occur.

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# EMPOWERING PUBLIC PARTICIPATION ACT

- Public Act 102-0348, effective August 13, 2021.
- Bill introduced following Chicago Tribune articles reporting background checks conducted by police agencies on persons speaking at open meetings of the Chicago Police Board;
- Act prohibits law enforcement agencies from conducting a criminal history check using the Law Enforcement Agencies Data System (LEADS);
- Does not apply if reasonable suspicion of criminal conduct or threat to security.

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# **CONTACT INFORMATION**

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