

D R A F T
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Public Meetings During Emergencies Act

Uniform Law Commission

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October 15, 2021

Public Meetings During Emergencies Act

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Public Meetings During Emergencies Act

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1 **Public Meetings During Emergencies Act**

2 **Section 1. Title**

3 This [act] may be cited as the Public Meetings During Emergencies Act.

4 **Section 2. Definitions**

5 In this [act]:

6 (1) “Electronic” means relating to technology having electrical, digital, magnetic,
7 wireless, optical, electromagnetic, or similar capabilities.

8 (2) “Emergency” means [an emergency, disaster, or comparable event or
9 circumstance that would constitute an emergency] under law of this state or a political
10 subdivision of the state.

11 (3) “Emergency declaration” means a declaration of emergency issued by a
12 person authorized to issue the declaration under the laws of the United States, other law of this
13 state, or a political subdivision of the state.

14 (4) “Meeting” has the same meaning as “meeting” in the open meetings law
15 governing a public body.

16 (5) “Open meetings law” means the law of this state or a political subdivision of
17 the state that governs when and how a meeting of a public body must be open to the public.

18 (6) “Person” means an individual, estate, business or nonprofit entity, or other
19 legal entity. The term does not include a public corporation or government or governmental
20 subdivision, agency, or instrumentality.

21 (7) “Public body” means an entity subject to an open meetings law. The term does
22 not include the]State Legislature and its agencies] or a state [or local] court.

23 (8) “Record” means information:

1 (A) inscribed on a tangible medium; or

2 (B) stored in an electronic or other medium and retrievable in perceivable

3 form.

4 (9) “Virtual meeting” means all or part of a meeting of a public body, at which

5 some or all members of the public body attend wholly or partly by electronic means.

6 **Legislative Note:** *In paragraph (2), the state should insert the words used to describe an*
7 *“emergency” in state law authorizing the declaration of an emergency.*

8
9 *In paragraph (7), the state should insert the language used in the state to describe its state*
10 *legislature and legislative agencies. In a state that does not have local courts, the bracketed*
11 *language at the end of paragraph (7) should be omitted.*

12 13 **Comment**

14
15 The Public Meetings During Emergencies Act builds on and fits into existing state laws
16 authorizing the declaration of emergencies and subjecting public meetings to various procedural
17 and public access requirements, particularly open meetings laws and laws providing for public
18 comment on and participation in the deliberations of public bodies. During the COVID-19
19 pandemic, most governors included within their declarations of emergency provisions
20 suspending many state laws concerning the meetings of public bodies, such as those governing
21 the location of meetings and public access and participation, and authorized virtual meetings.
22 Some of the executive orders included provisions intended to create public access and
23 participation rights in virtual meetings comparable to those applicable to traditional in-person
24 meetings. Since the onset of the pandemic a number of states have adopted laws – some
25 temporary, intended to expire after the pandemic, and others permanent – authorizing public
26 bodies to hold virtual meetings during emergencies, subject to various requirements for the
27 conduct of those meetings, including public access. States that adopted such laws or amended
28 pre-existing laws that provided some authorization for remote or virtual meetings in 2020-2021
29 include Arkansas, Connecticut (expires April 30, 2022), Delaware, Hawaii, Maine,
30 Massachusetts (expires April 1, 2022), Minnesota, Nevada, New York (expires January 15,
31 2022), North Carolina, Oklahoma (expires February 15, 2022, or thirty days after the expiration
32 of the COVID state of emergency), and Virginia. This Act would provide a statutory basis for
33 the authorization of virtual meetings during an emergency conditioned on compliance with
34 requirements intended to assure comparable public access and participation.

35
36 The Act uses a state’s open meetings law to provide definitions of “public body” and
37 “meeting.” Different states use different terms – including but not limited to “open meetings,”
38 “sunshine” or “government in the sunshine,” “open doors,” “freedom of information” – for the
39 law that sets the requirements for public observation of meetings of public bodies. The Act’s use
40 of the term “open meetings law” is intended to reach all such laws regardless of how they are
41 referred to in a specific state. The state’s legislature should use the term consistent with its laws.

1 The Act uses the open meetings law to define “public body” and “meeting” for several reasons.
2 Most of the executive orders or laws addressing virtual meetings during emergencies have, to
3 date, been operated as exceptions to or amendments of an open meetings law as that is necessary
4 to allow a public body not to meet in a publicly accessible physical location. So, too, an
5 important purpose of these orders or laws has been to provide alternative means of public access
6 via electronic technology comparable to the access required by open meetings laws. Moreover, a
7 state’s open meetings law typically includes a comprehensive definition of what the state
8 considers to be its public bodies. Rather than provide a new definition of “public body”
9 consisting of a lengthy list of agencies, authorities, boards, bureaus, commissions, committees,
10 councils, etc that would surely vary from state to state, the Act incorporates by reference the
11 state’s open meetings law definition. However, a state could choose to either insert in the Act the
12 full definition of “public body” found in the open meetings law, or another state law (such as its
13 administrative procedure act), or adopt its own definition specific to this Act.
14

15 The Act also assumes the broad definition of “meeting” – a convening or gathering of a
16 public body to discuss or transact the public’s business – typically found in state open meetings
17 laws.

18 The Act uses the term “virtual” to refer to a meeting of a public body conducted by
19 electronic means. The executive orders and state laws that have authorized such meetings more
20 commonly use the term “remote.” However, “remote” may imply that there is an in-person
21 meeting of the public body with only some members participating remotely by electronic means.
22 Indeed, a number of states before the pandemic had adopted laws permitting some members of
23 public bodies to participate remotely in a public meeting that occurred at the public body’s usual
24 physical location. “Virtual” makes it clearer that this act applies to meetings where there need
25 not be a central gathering. The “some or all” phrase permits the Act to apply in hybrid settings in
26 which some members of the body are at a central location but the meeting involves the use of
27 electronic means to connect them to other members of the body who are participating virtually.
28

29 **Section 3. Authorization for Virtual Meeting During Emergency**

30 (a) A public body may conduct a virtual meeting during an emergency that is the subject
31 of an emergency declaration that is in effect and applies to all or part of the jurisdiction of the
32 public body if:

33 (1) the declaration has the effect of prohibiting or limiting the ability of the public
34 body to meet in person; or

35 (2) the presiding officer of the public body or other individual authorized by law
36 or rule of the public body to act for the public body:

37 (A) determines that due to the emergency it would not be practical or

1 prudent for the public body to meet in person; and

2 (B) informs the other members of the public body and the public of the
3 basis for the determination.

4 (b) An action taken at a virtual meeting that complies with Sections 4 through 8 has the
5 same effect as an action taken at an in-person meeting of the public body.

6 (c) Other law that applies to an in-person meeting of a public body applies to a virtual
7 meeting to the extent practicable.

8 **Comment**

9
10 Subsection (a) creates a two-part test for authorizing public bodies to meet virtually.
11 First, the individual authorized by state law to declare an emergency has done so with respect to
12 a geographic area that is part of the public body's jurisdiction. That individual is likely to be the
13 governor, but for local emergencies it could be a county executive, mayor or other local official.
14 Minnesota's law, for example, requires that "the presiding officer, chief legal counsel, or chief
15 administrative officer for the affected governing body" make the determination that an in-person
16 meeting is "not practical or prudent." Minn. Stat. Ann. § 13D.021.1 (1). Second, either the
17 emergency declaration itself must have the effect of preventing an in-person meeting – such as
18 by a direct prohibition, a stay-at-home order, or an order limiting the number of people at a
19 gathering – or the presiding officer of the public body or another individual authorized to act for
20 the public body determines that due to the emergency it would be impractical or imprudent for
21 the body to meet. The reason for the second requirement is that sometimes emergency
22 declarations remain in effect long past the most acute phase of an emergency. This may be
23 necessary for the area to continue to receive special emergency assistance or because some
24 emergency measures may still be needed. However, it might be possible for the public body to
25 meet. The second requirement addresses that concern. If the emergency declaration in effect
26 continues to have the effect of prohibiting an in-person meeting, the public body may continue to
27 meet virtually. Alternatively, if the emergency declaration by its terms does not have the effect
28 of prohibiting an in-person meeting, a virtual meeting will be authorized only if the public
29 body's presiding officer or someone else – such as its executive director – determines that it
30 would be impractical or imprudent due to the emergency for the public body to meet and advises
31 the members of the public body and the public of that determination.

32 **Section 4. Conduct of Virtual Meeting**

33
34 (a) Except as provided in subsections (b) and (c), the technology used to conduct a virtual
35 meeting must enable each member of the public body who attends the meeting
36 contemporaneously to see and hear, and to be seen and heard by, every other member of the

1 public body who attends the meeting. If a member of the public body who attends the meeting
2 can see and hear and be seen and heard by the other members of the public body who attend, the
3 member is present for all purposes, including the determination of a quorum and for voting, as if
4 the member were present at an in-person meeting of the public body.

5 (b) If a member of a public body is unable to obtain visual access to the virtual meeting
6 but is able to obtain audio access that allows the member contemporaneously to hear and be
7 heard by the other members of the public body who attend, the member is present for all
8 purposes, including the determination of a quorum and for voting, as if the member were present
9 at an in-person meeting of the public body.

10 (c) If a public body lacks the capacity to provide contemporaneous visual access to a
11 virtual meeting for its members, the public body may conduct the meeting by electronic means
12 that provides audio access that permits each member of the public body who attends the meeting
13 contemporaneously to hear and be heard throughout the meeting by the other members of the
14 public body who attend. A member of the public body who attends the meeting and can hear and
15 be heard by the other members of the public body who attend is present for all purposes,
16 including the determination of a quorum and for voting, as if the member were present at an in-
17 person meeting of the public body.

18 (d) A member of a public body who attends a virtual meeting through electronic means
19 that provide only audio access to the meeting shall state the member's name before speaking or
20 voting.

21 (e) The minutes of a virtual meeting must report that the meeting was conducted by
22 electronic means, identify the technology used and which members attended by electronic
23 means, and report any vote taken.

1 (f) In determining the technology to be utilized, the public body shall, to the extent
2 practicable, ensure that the technology selected accommodates the needs of persons with
3 disabilities.

4 **Comment**

5 The provisions of this Section derive from some of the gubernatorial executive orders or
6 state laws authorizing remote public meetings, most of which were adopted in 2020. These
7 include: 5 Ill. C.S. 120/7(e), Ind. Code 5-14-1.5-3.7, Ky SB 150, ch. 73, Ls of 2020; Me. Rev.
8 Stat. tit. 1, § 403-A; Michigan Gov. E.O. 2020-154 (July 17, 2020); Mich. Comp. L .Ann. §
9 15.263a; N.J.S.A. § 52:27D-18.11; N.C. Gen. Stat. § 166A-19.24; Va Code Ann. § 2.2-3708.2.
10 The intent is to require technology that permits the members of the public body attending the
11 meeting to see and hear each other throughout the meeting. However, this may not always be
12 possible. Paragraph (a)(1) addresses the situation of a meeting conducted by technology that
13 provides both visual and audio access but where a particular member may not be able to obtain
14 video access. That member will still be treated as attending for purposes of a quorum,
15 participation, and voting, if the member has audio access. Paragraph (a)(2) addresses the
16 situation where the public body as a whole lacks the technical capacity to provide video access.
17 That could be due, for example, to Internet bandwidth limitations in the public body's area. In
18 that case, the virtual meeting may still be conducted using technology that provides only audio
19 access. Subsection (c) provides that the type of technology used, e.g., audio-visual or just audio,
20 shall be reflected in the minutes of the virtual meeting.

21 22 **Section 5. Application of Open Meetings Law**

23 (a) If the open meetings law provides that the public must be able to observe all or part of
24 a meeting of a public body as it occurs, the public body shall enable the public to observe as it
25 occurs a virtual meeting or that part of the virtual meeting that would be required to be open to
26 the public if it were part of an in-person meeting.

27 (b) If a document, exhibit or other record is presented to a public body at a virtual
28 meeting that, under the open meetings law, would have been available to the public at an in-
29 person meeting, the document, exhibit or record must be made available to the public
30 contemporaneously with the virtual meeting, to the extent practicable given the technology used.

31 (c) If under Section 4(c), a virtual meeting is conducted by electronic means that provide
32 only audio connection, public observation may be limited to audio connection.

1 **Comment**

2 This section confirms that the state’s open meetings law applies to a virtual meeting to the
3 same extent as it would to a comparable in-person meeting. If a meeting, or a portion of meeting,
4 would not be open to the public under the state’s open meetings law, that meeting or portion, would
5 not be open when conducted virtually. The form of public observation will inevitably be affected
6 by the nature of the technology used. For a meeting conducted by audio-only technology because,
7 under section 4, the public body lacks the capacity for an audio-visual meeting, public observation
8 may be limited to listening to the meeting. Public observation of the meeting requires that the
9 members of the public body, depending on the technology used, be visible and audible, or audible,
10 to the members of the public observing the meeting. Any documents or exhibits considered by
11 members of the public body may be provided by making those documents or exhibits available for
12 inspection separately from the meeting, such as by posting them to the public body’s website.
13

14 **Section 6. Public Participation**

15 (a) If a public body is subject to a law of this state or a political subdivision of the state,
16 or the public body has adopted a rule, practice, or procedure that permits members of the public
17 to speak or submit comments at a meeting of the public body, the public body to the extent
18 practicable shall allow members of the public to speak or submit comments at a virtual meeting,
19 subject to the conditions that apply at an in-person meeting of the public body.

20 (b) If members of the public are allowed to speak at a virtual meeting, the technology
21 used to conduct the meeting must enable the members of the public body attending the meeting
22 to hear the members of the public who so participate in the meeting, Members of the public who,
23 pursuant to section 5, are observing the virtual meeting must be able, depending on the
24 technology used, to see and hear, or hear, any members of the public whom the public body has
25 invited or authorized to speak publicly to the public body.

26 **Comment**

27
28 This section addresses the situation in which members of the public have a right to
29 provide comments at the meeting of a public body, either orally or in writing. This right to
30 participate typically derives not from an open meetings law but from some other law, such as an
31 administrative procedure act, another law dealing with the operations of state and local public
32 bodies, or the organic law governing the specific public body. Compliance with public comment
33 requirements may require flexible arrangements. For example, the public body could provide for

1 the submission of written comments by e-mail or text message in advance of, or within a limited
2 time after, the virtual meeting. Subsection (b) is intended to confirm that members of the public
3 who, pursuant to section 5, have a right to observe the virtual meeting also have a right to
4 observe members of the public – such as such as government officials, staff of the public body,
5 experts, witnesses, or parties to a proceeding before the public body – that the public body has
6 invited or authorized to address the public body
7

8 **Section 7. Quasi-Adjudicative Proceedings**

9 (a) If a public body at a virtual meeting considers a matter affecting the right or interest
10 of a person entitled as a matter of law to address the public body and participate in the meeting,
11 including through the presentation of testimony or evidence and the examination or cross-
12 examination of witnesses, the public body shall enable the person to address the public body and
13 participate in the meeting using the same electronic means that the public body uses to conduct
14 the meeting.

15 (b) If a person entitled under subsection (a) to address the public body and participate in
16 the meeting objects that the person cannot receive due process at a virtual meeting, the public
17 body may proceed with the matter only if the public body considers the objection and determines
18 under the totality of the circumstances that it can provide the person due process. The objection,
19 the public body's decision and the reason for the decision, are matters of public record.

20 **Comment**

21
22 This Section addresses the situation in which the action of the public body will so affect
23 the rights or interests of specific members of the public that they have a due process right to be
24 heard at the meeting. These are commonly referred to as quasi-adjudicative proceedings, and
25 typically involve such land use matters as variances, special use permits, and site-specific
26 rezonings, but may also include the grant (or revocation) of licenses, franchises, permits, or
27 benefits. Georgia and North Carolina would bar quasi-adjudicative action at a virtual proceeding
28 unless all persons whose interests are affected agree. The North Carolina law also requires that
29 the right to a hearing and emergency occur during the emergency. This draft follows the
30 approach of New Jersey's virtual meeting law, which does not require the consent of the parties
31 or that a decision must be needed during the emergency. However, it incorporates in the
32 proposed statute language derived from an administrative rule adopted by New Jersey's Division
33 of Local Government concerning whether a land use board can conduct a public hearing on a
34 development application virtually. The rule requires the public body to undertake a "totality of

1 the circumstances” examination of the application to determine whether a virtual meeting could
2 provide due process: “Before holding a public hearing on an application for development during
3 a remote public meeting, a land use board shall determine whether electronic communication
4 technology can sufficiently facilitate due process of the applicant and any interested party,
5 including the ability to examine exhibits, transcribe testimony and cross-examine witnesses, as
6 well as the ability of the public to comment upon the application. Factors in making this
7 determination shall include, at minimum, the scale of the project, the number of approvals
8 requested, the degree of public interest, and the number of potential objectors.” N.J.A.C. 5:39-
9 1.7(a). The public body should also consider the consequences of delay until an in-person
10 meeting can be held.

11 **Section 8. Notice**

13 (a) In addition to any other requirements concerning the notice a public body must give
14 with respect to its meetings, notice of a virtual meeting must specify that the meeting will be
15 virtual, the reason the meeting will be virtual, the electronic means used for the meeting, and
16 how members of the public body may attend the meeting.

17 (b) Notice of a virtual meeting subject to an open meetings law under Section 5 must
18 specify how members of the public may observe the meeting as it occurs.

19 (c) Notice of a virtual meeting subject to public participation requirements under Sections
20 6 and 7 must specify how members of the public may participate in the meeting.

21 (d) Notice under subsections (b) and (c) must specify how a member of the public may
22 alert the public body if there is a technical problem that prevents the member from observing or
23 participating in the meeting.

24 **Section 9. Rulemaking Authority**

25 A public body may adopt rules for the conduct of a virtual meeting as comparable as
26 possible to the conduct of an in-person meeting of the public body that may include:

27 (1) the effect of a technical problem that interferes with the meeting or the
28 connection of a member of the public body or the public to the meeting;

29 (2) the means by which a document, exhibit, or other record considered at the

1 meeting is made available to the public body or the public if required by the open meetings law;

2 (3) the means for access to the meeting by an individual with a disability; and

3 (4) the process by which a person entitled under Section 7 to address the body and
4 participate in a meeting may object to the conduct of the meeting on the ground that the process
5 does not protect the person's due process rights.

6 **Section 10. Uniformity of Application and Construction**

7 In applying and construing this uniform act, a court shall consider the promotion of
8 uniformity of the law among jurisdictions that enact it.

9 **Section 11. Relation to Electronic Signatures in Global and National Commerce Act**

10 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National
11 Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or
12 supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices
13 described in 15 U.S.C. Section 7003(b).

14 ***Legislative Note:*** *It is the intent of this act to incorporate future amendments to the cited federal*
15 *law. A state in which the constitution or other law does not permit incorporation of future*
16 *amendments when a federal statute is incorporated into state law should omit the phrase “, as*
17 *amended”. A state in which, in the absence of a legislative declaration, future amendments are*
18 *incorporated into state law also should omit the phrase.*

19 **Section 12. Saving Provision**

20 This [act] applies only during an emergency and does not limit or supersede other law
21 authorizing a public body to permit a member of the public body or the public to observe or
22 participate in a meeting of the body by remote means.

23 **Comment**

24 A number of states have laws authorizing remote participation in public meetings by
25 individual members of a public body and some forms of remote observation or participation by
26 members of the public. These laws assume that the meeting of the public body will be in a
27 physical location, and may specify that members of the public body also be at a publicly
28
29

1 accessible physical location, such as at a state office building. The [act] does not supersede those
2 laws but supplements them with an authorization for an entirely or primarily virtual meeting
3 during an emergency.

4
5 **[Section 13. Severability**

6 If a provision of this [act] or its application to a person or circumstance is held invalid,
7 the invalidity does not affect another provision or application that can be given effect without the
8 invalid provision.]

9 ***Legislative Note:** Include this section only if the state lacks a general severability statute or a*
10 *decision by the highest court of the state stating a general rule of severability.*

11
12 **[Section 14. Repeals; Conforming Amendments**

13 (a) . . .

14 (b) . . .]

15 ***Legislative Note:** The state should examine its statutes to determine whether conforming*
16 *revisions are required by provisions of this act relating to meetings of public bodies and open*
17 *meetings requirements.*

18
19 **Section 15. Effective Date**

20 This [act] takes effect