

D R A F T  
FOR DISCUSSION ONLY

# Public Meetings During Emergencies Act

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Uniform Law Commission

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February 26, 2021 Video Committee Meeting



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February 19, 2021

## **Public Meetings During Emergencies Act**

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# **Public Meetings During Emergencies Act**

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# **Public Meetings During Emergencies Act**

## **Section 1. Title**

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

## **Reporter's Note**

There are two issues concerning the title of the act. One is about the scope of the act. Is it is limited to public health emergencies or does it apply to all emergencies? As the title of the drafting committee refers to “public meetings during emergencies the “public health” limitation was not added to the title but could be as the draft is revised. The second issue is whether the “public meetings” in the title should be modified by the term “virtual.” That would give a clearer sense of the purpose of the act, but it would make the title longer and is not in the name of the drafting committee.

## **Section 2. Definitions**

In this [act]:

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

(2) “Emergency” means an emergency that has been declared by the governor of the state {insert relevant state law or laws authorizing the governor to declare an emergency} and that is in effect.

(3) “Meeting” shall have the same definition as “meeting” in {the state’s open meeting law}.

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

(5) “Public body” means any [administrative agency of the state] [public entity of the state except the state legislature] that is subject to {insert the relevant state open meetings law}.

(6) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(7) “Virtual meeting” means a meeting of a public body conducted by electronic means. “Virtually” has a corresponding meaning.

### Reporter’s Note

The Public Meetings During Emergencies Act is intended to build on and fit into existing state laws authorizing the declaration of emergencies and subjecting public meetings to various procedural and public access requirements, particularly open meetings laws. Consequently, rather than define “emergency,” “meeting,” or “public body,” or “public meeting,” the Act cross-references the relevant state laws. An alternative approach would be to define these terms.

One question is whether the Act applies to *all* public entities of the state subject to the state’s open meetings requirements – which, in many states, will include local governments – or only to *state-level* administrative agencies. There was considerable discussion and disagreement within the drafting committee at the December 17, 2020 meeting as to whether to include local governments in this Act. This draft presents two alternatives. The first – ‘administrative agency’ – takes the narrower approach of limiting coverage to just state administrative agencies. That excludes both the state legislature and all local legislatures and local agencies. The second alternative includes all public entities within the state except for the state legislature. In many states, the legislatures have adopted or are currently in the process of adopting their own rules for the conduct of virtual meetings. In some states, the open meetings law applies to the state legislature, so the proposed definition excludes the legislature. So, too, in many states the open meetings law applies to local legislatures and local agencies.

This draft of the act uses the term “virtual” to refer to a meeting of a public body conducted by electronic means. The executive orders and state laws that have authorized such meetings more commonly use the term “remote” instead of “virtual.” However, as was pointed out at the December 17, 2020 meeting of the drafting committee, “remote” may imply that there is a physical meeting of the public body with some members participating remotely. “Virtual” makes it clearer that there is no central gathering, and that all the members are participating via electronic means. Subsequent sections of the draft refer to “physical” meetings in contrast to “virtual” meetings. That term is currently undefined but perhaps should be in a future draft.

### Section 3. Authorization of Virtual Meetings of Public Bodies During Emergencies

During an emergency, a public body may meet virtually. If a virtual meeting of a public body complies with Sections 4, 5, and 6, any action taken at such a virtual meeting will have the same legal force and effect as an action taken at a physical meeting of the public body. All other

1 laws of the state that would apply to the physical meeting of a public body shall, to the extent  
2 feasible, apply to a virtual meeting of the public body.

### 3 **Reporter's Note**

4 This draft of section 3 authorizes a public body to meet virtually automatically on the  
5 governor's declaration of an emergency and for the duration of that emergency. An alternative  
6 approach would require that the governor's emergency declaration specifically include an  
7 authorization for virtual meetings during the emergency.  
8

### 9 **Section 4. Conduct of a Virtual Meeting of a Public Body**

10 (a) Except as provided in subsection (b), at a virtual meeting each member of the public  
11 body in attendance must be able to see and hear, and to be seen and heard, throughout the  
12 meeting by every other member of the public body who is attending the meeting simultaneously.  
13 A member of the public body shall be considered present for all purposes, including the  
14 determination of a quorum and for voting, as if the member were physically present at a physical  
15 meeting of the public body, while the member can see and hear and be seen and heard by the  
16 other members of the public body.

17 (b) If the public body lacks the technological capacity to provide for simultaneous visual  
18 contact for its members, the body may conduct a virtual meeting by electronic means that  
19 provides audio access such that each member of the public body in attendance is able to hear and  
20 be heard throughout the meeting by the other members of the public body who are attending the  
21 meeting simultaneously. Any member of the public body who can hear and be heard by the other  
22 members of the public body shall be considered present for all purposes, including the  
23 determination of a quorum and for voting as if the member were physically present at a physical  
24 meeting of the body. Any member of the public body who participates in a virtual meeting  
25 through electronic means that provide only such audio connection to the meeting shall identify  
26 himself or herself before speaking or voting.

1 (c) Any document or exhibit to be considered at a virtual meeting shall be provided to  
2 each member of the public body.

3 (d) The notice for a virtual meeting of a public body shall indicate that it will be a virtual  
4 meeting, why the public body is meeting virtually, the technology used for the meeting, and the  
5 means by which members of the public body may attend the meeting.

6 (e) The minutes of a virtual meeting shall reflect that the meeting was conducted by  
7 electronic means, the type of means use, which members were participating by electronic means,  
8 when each member joined or left the virtual meeting, and any interruption in or suspension of the  
9 meaning due to technical problems with the electronic means supporting the meeting.

10 (f) Every public body may adopt rules to implement the provisions of this Section for the  
11 conduct of virtual meetings with the purpose of making the conduct of a virtual meeting of a  
12 public body as comparable to the conduct of a physical meeting of that body as possible. Such  
13 rules may include, but are not limited to, all of the following:

14 (1) specifying the means for confirming the identity of a member of the public  
15 body attending the virtual meeting by electronic means that provide an audio but not a visual  
16 connection to the meeting under Section 4(b); and

17 (2) addressing the effects on the conduct of a virtual meeting of any technical  
18 problems that interfere with the electronic means supporting the virtual meeting or the  
19 connection of any member of the public body to the meeting.

20 **Reporter's Note.**

21  
22 The provisions of this Section derive from some of the gubernatorial executive orders or  
23 state laws authorizing remote public meetings, most of which were adopted in 2020. These  
24 include: Ky SB 150, ch. 73, Ls of 2020; Me. Rev. Stat. tit. 1, § 403-A; Michigan Gov. E.O.  
25 2020-154 (July 17, 2020); Mich. Comp. L .Ann. § 15.263a; N.J.S.A. § 52:27D-18.11; N.C. Gen.  
26 Stat. § 166A-19.24; Va Code Ann. § 2.2-3708.2.  
27

1           **Section 5. Public Access to and Public Participation in Virtual Meetings**

2           (a) For any meeting of a public body that would be subject to any other law of this state  
3 providing for public access if held as a physical meeting, a virtual meeting of the public body  
4 shall provide comparable access to the public to the maximum extent possible.

5           (1) If any other law of the state provides that members of the public shall be able  
6 to see and hear a meeting of the public body as it occurs, the public body shall give such notice  
7 of the meeting as is required by such law. The notice shall also specify the electronic means by  
8 which the public can access the virtual meeting as it occurs. If at such a public meeting, members  
9 of the public are entitled to observe any documents or exhibits presented to the public body, such  
10 documents or exhibits shall, to the extent practicable given the technology being utilized, be  
11 made available for public observation by electronic means at a virtual meeting.

12           (2) If pursuant to Section 4(b), the virtual meeting is conducted through electronic  
13 means that provides only an audio connection, public access may be limited to an audio  
14 connection as well.

15           (3) If under a law of the state providing for a public access to a public meeting,  
16 such public access consists only of the public's right to examine a record of the meeting after the  
17 meeting has occurred, a record of the virtual meeting shall be made available to the public within  
18 the same time period and in the same format as required for a physical meeting of the public  
19 body.

20           (b) If under a law of the state governing the meetings of a public body, members of the  
21 public have the right to submit comments, that right shall also be available at a virtual meeting.  
22 The notice of the meeting shall provide directions for members of the public to submit  
23 comments, which may include written comments or oral comments by electronic means.



1 (c) If under a law of the state a member of the public is required or entitled to appear  
2 before the public body and participate in a public meeting, the public body shall enable such  
3 person to participate in a virtual meeting using the same electronic means as the public body is  
4 using to conduct the meeting. Participation in a virtual meeting by a member of the public  
5 required or entitled to appear at a meeting of the public body shall be as comparable as possible  
6 to such participation at a physical meeting of the public body.

7 (d) Every public body may adopt rules to implement the provisions of this Section for the  
8 provision of public access to and public participation in virtual meetings with the purpose of  
9 making public access and participation at a virtual meeting of the public body as comparable to  
10 public access to or participation in a physical meeting of that body as possible.

11 (e) The requirements of this Section are subject to enforcement by the rules and  
12 procedures of the other laws of this state providing for public access to or public participation in  
13 the meetings of public bodies.

#### 14 **Reporter's Note**

15  
16 The focus of section 5 is to adapt the pre-existing law of the state with respect to public  
17 access to or public participation in meetings of public bodies to virtual meetings. It does not  
18 create any new rights of access or participation but seeks only to require the provision of  
19 electronic means to secure the rights of access or participation already provided by state law. It  
20 tracks some of the same executive orders or state legislation referred to in the Reporter's Note to  
21 section 4.

#### 22 **Section 6. Quasi-Adjudicative Proceedings**

23  
24 A public body may conduct a quasi-adjudicative proceeding at a virtual meeting only if:

25 (a) The right of a person to a hearing and decision occurs during the emergency.

26 (b) Every person subject to the quasi-adjudicative proceeding who has a right to  
27 participate in the quasi-adjudicative proceeding has been given notice of the quasi-adjudicative  
28 proceeding and consents to do so at a virtual meeting.

(c) All due process rights of the parties affected by the quasi-adjudicative proceeding are protected.

### **Reporter's Note**

The language of this section derives closely from N.C. Gen. Stat. § 166A-19.24(f). Another law with a similar focus is Ga. Stat. § 50-13-15 (5) (“Any hearing which is required or permitted hereunder may be conducted by utilizing remote telephonic communications if the record reflects that all parties have consented to the conduct of the hearing by use of such communications and that such procedure will not jeopardize the rights of any party to the hearing.”). Quasi-adjudicative proceedings include those dealing with licenses, permits, site-specific land use decisions, and other administrative actions affecting one or a very small number of individuals rather than the public more generally. A New Jersey administrative rule adopted by the state’s Division of Local Government concerning whether a land use board can conduct a public hearing on a development application virtually requires the public body to undertake a “totality of the circumstances” examination of the application to determine whether a remote meeting could provide due process to all affected parties: “Before holding a public hearing on an application for development during a remote public meeting, a land use board shall determine whether electronic communication technology can sufficiently facilitate due process of the applicant and any interested party, including the ability to examine exhibits, transcribe testimony and cross-examine witnesses, as well as the ability of the public to comment upon the application. Factors in making this determination shall include, at minimum, the scale of the project, the number of approvals requested, the degree of public interest, and the number of potential objectors.” N.J.A.C. 5:39-1.7(a).

### **Section 7. Savings Clause**

This [act] applies only during emergencies and does not supersede any other state law authorizing a public body to permit members of the body or members of the public to participate in its meetings by remote means.

### **Reporter's Note**

A number of states have laws authorizing remote participation in public meetings of individual members of a public body and some forms of remote participation by members of the public. These laws assume that the meeting of the public body will be in a physical location. The [act] not intended to supersede those laws but only to supplement with an authorization for an entirely virtual meeting during an emergency.

### **Section 8. Transitional Provision**

This [act] applies to a proceeding commenced on or after [the effective date of this [act]].

1           **[Section 9. Severability**

2           If any provision of this [act] or its application to any person or circumstance is held  
3   invalid, the invalidity does not affect other provisions or applications of this [act] which can be  
4   given effect without the invalid provision or application, and to this end the provisions of this  
5   [act] are severable.]

6   ***Legislative Note:** Include this section only if this state lacks a general severability statute or a*  
7   *decision by the highest court of this state stating a general rule of severability.*  
8

9           **Section 10. Repeals; Conforming Amendments**

10          (a) . . . .

11          (b) . . . .

12          (c) . . . .

13   ***Legislative Note:** The state should examine its statutes regarding {the meetings of public bodies*  
14   *and open meetings requirements} to determine whether conforming revisions are*  
15

16          **Section 11. Effective Date**

17          This [act] takes effect . . . .