

D R A F T  
FOR DISCUSSION ONLY

# Public Meetings During Emergencies Act

---

Uniform Law Commission

---

April 30, 2021 Video Committee Meeting



Copyright © 2021  
National Conference of Commissioners on Uniform State Laws

---

*This draft, including the proposed statutory language and any comments or reporter's notes, has not been reviewed or approved by the Uniform Law Commission or the drafting committee. It does not necessarily reflect the views of the Uniform Law Commission, its commissioners, the drafting committee, or the committee's members or reporter.*

April 19, 2021

## Public Meetings During Emergencies Act

The Committee appointed by and representing the Uniform Law Commission in preparing this act consists of the following individuals:

Mark F. Glaser	New York, <i>Chair</i>
Claire Levy	Colorado, <i>Vice Chair</i>
Emma Buck	Virginia
Jennifer S.N. Clark	North Dakota
Paul J. DeMarco	Alabama
Brian K. Flowers	District of Columbia
Patricia Brumfield Fry	Missouri
Othni J. Lathram	Alabama
Blake K. Oshiro	Hawaii
Fred C. Patton	Kansas
Frank E. Perez	Texas
Larry L. Ruth	Nebraska
Jerod E. Tufte	North Dakota
V. David Zvenyach	Wisconsin
William H. Henning	Alabama, <i>Division Chair</i>
Carl H. Lisman	Vermont, <i>President</i>

### Other Participants

Richard Briffault	New York, <i>Reporter</i>
Michael T. Kamprath	Florida, <i>American Bar Association Advisor</i>
Nora Winkelman	Pennsylvania, <i>Style Liaison</i>
Tim Schnabel	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

Uniform Law Commission  
111 N. Wabash Ave., Suite. 1010  
Chicago, IL 60602  
(312) 450-6600  
[www.uniformlaws.org](http://www.uniformlaws.org)

# Public Meetings During Emergencies Act

## Table of Contents

Section 1. Title .....	1
Section 2. Definitions.....	1
Section 3. Authorization of Virtual Meetings of Public Bodies During Emergencies .....	3
Section 4. Conduct of a Virtual Meeting of a Public Body .....	4
Section 5. Public Observation of and Public Participation in Virtual Meetings.....	6
Section 6. Savings Clause .....	9
Section 7. Transitional Provision.....	10
[Section 8. Severability].....	10
Section 9. Repeals; Conforming Amendments .....	10
Section 10. Effective Date .....	10

1 **Public Meetings During Emergencies Act**

2 **Section 1. Title**

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

4 **Reporter’s Note**

5 There are two issues concerning the title of the act. The second issue is whether the  
6 “public meetings” in the title should be modified by the term “virtual.” That would give a clearer  
7 sense of the purpose of the act, but it would make the title longer and is not in the name of the  
8 drafting committee.

9  
10 **Section 2. Definitions**

11 In this [act]:

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

14 (2) “Emergency” means an event or condition that is an [emergency, disaster, or public  
15 health emergency] [under the appropriate laws of this state or a political subdivision of the state].

16 (3) “Emergency declaration” means a declaration of emergency issued by a person  
17 authorized to do so under the laws of the state [or a political subdivision of the state] and that is  
18 in effect.

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

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

25 (6) “Public body” means any [administrative agency of the state] [public entity of the  
26 state except the state legislature and state or local courts] that is subject to {insert the relevant

1 state open government law}.

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

4 (8) “Virtual meeting” means a meeting of a public body or any part thereof, at which some  
5 or all of the members of the public body participate wholly or partly by electronic means.

6 “Virtually” has a corresponding meaning.

### 7 **Reporter’s Note**

8  
9 The Public Meetings During Emergencies Act is intended to build on and fit into existing  
10 state laws authorizing the declaration of emergencies and subjecting public meetings to various  
11 procedural and public access requirements, particularly open meetings laws. Consequently,  
12 rather than define “emergency,” “meeting,” or “public body,” or “public meeting,” the Act cross-  
13 references the relevant state laws. An alternative approach would be to define these terms.

14  
15 One question is whether the Act applies to *all* public entities of the state subject to the  
16 state’s open meetings requirements – which, in many states, will include local governments – or  
17 only to *state-level* administrative agencies. There was considerable discussion and disagreement  
18 within the drafting committee at the December 17, 2020 meeting as to whether to include local  
19 governments in this Act. This draft presents two alternatives. The first – ‘administrative agency’  
20 – takes the narrower approach of limiting coverage to just state administrative agencies. That  
21 excludes both the state legislature and all local legislatures and local agencies. The second  
22 alternative includes all public entities within the state excerpt for the state legislature and state  
23 and local courts. In many states, the legislatures have adopted or are currently in the process of  
24 adopting their own rules for the conduct of virtual meetings. In some states, the open meetings  
25 law applies to the state legislature, so the proposed definition excludes the legislature. So, too, in  
26 many states the open meetings law applies to local legislatures and local agencies.

27  
28 This draft of the act uses the term “virtual” to refer to a meeting of a public body  
29 conducted by electronic means. The executive orders and state laws that have authorized such  
30 meetings more commonly use the term “remote” instead of “virtual.” However, as was pointed  
31 out at the December 17, 2020 meeting of the drafting committee, “remote” may imply that there  
32 is a physical meeting of the public body with some members participating remotely. “Virtual”  
33 makes it clearer that there is no central gathering. Subsequent sections of the draft refer to  
34 “physical” meetings in contrast to “virtual” meetings. An alternative term would be “in-person”  
35 meeting.

36  
37 After the February 26, 2021 meeting of the drafting committee the definition of “virtual”  
38 was revised to make it clear that it covers “hybrid” meetings in which some members are  
39 participating remotely and some are at the public body’s physical location. The language used is  
40 similar to that in N.C. Gen. Stat. § 166A.19.24(i)(3).



1           There was some discussion at the February 26 meeting of whether there should be a  
2 sunset provision for the virtual meetings. The requirement that a physical meeting be either  
3 barred by the emergency declaration or determined because of the emergency to be not prudent  
4 may address the sunset concern as well.  
5

6           **Section 4. Conduct of a Virtual Meeting of a Public Body**

7           (a) Except as provided in subsection (b), during a virtual meeting each member of the  
8 public body in attendance must be able contemporaneously to see and hear, and to be seen and  
9 heard by, every other member of the public body who is attending the meeting. As long as a  
10 member of the public body attending the meeting can see and hear and be seen and heard by the  
11 other members of the public body that member shall be considered present for all purposes,  
12 including the determination of a quorum and for voting, as if the member were physically present  
13 at a physical meeting of the public body.

14           (1) If, due to a technical problem, a member of the public body is unable to obtain  
15 both visual and audio access to the meeting but can obtain audio access to the meeting by a  
16 means that allows that member to hear and be heard, that member shall be considered present  
17 for all purposes, including the determination of a quorum and voting, as if the member were  
18 physically present at a physical meeting of the public body.

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

1 (c) Any member of the public body who participates in a virtual meeting through  
2 electronic means that provide only such audio connection to the meeting shall identify himself or  
3 herself before speaking or voting.

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

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

12 (f) A public body may adopt rules to implement the provisions of this Section for the  
13 conduct of virtual meetings with the purpose of making the conduct of a virtual meeting of a  
14 public body as comparable to the conduct of a physical meeting of that body as feasible given the  
15 technology available to the public body. Such rules may address, but are not limited to, all of the  
16 following:

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

20 (2) the effects on the conduct of a virtual meeting of any technical problems that  
21 interfere with the electronic means supporting the virtual meeting or the connection of any  
22 member of the public body to the meeting;

23 (3) the means by which any document, exhibit, or other record considered at the

1 meeting is made available to all the members of the public body; and,

2 (4) provisions for access to the meeting for a member of the public body with a  
3 disability.

4 **Reporter’s Note.**  
5

6 The provisions of this Section derive from some of the gubernatorial executive orders or  
7 state laws authorizing remote public meetings, most of which were adopted in 2020. These  
8 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.  
9 Stat. tit. 1, § 403-A; Michigan Gov. E.O. 2020-154 (July 17, 2020); Mich. Comp. L .Ann. §  
10 15.263a; N.J.S.A. § 52:27D-18.11; N.C. Gen. Stat. § 166A-19.24; Va Code Ann. § 2.2-3708.2.  
11 Principal changes from the earlier draft include the use of “contemporaneous” instead of  
12 “simultaneous,” addressing the situation of an individual member who lacks visual access, and  
13 adding a reference to disability access.  
14

15 **Section 5. Public Observation of and Public Participation in Virtual Meetings**

16 (a) For any meeting of a public body that would be subject to a law of this state requiring  
17 the meeting to be open to the public, a virtual meeting of the public body that conforms to the  
18 requirements of this section shall be deemed to be open to the public.

19 (1) If a law of the state provides that members of the public shall be able to  
20 observe a meeting of the public body as it occurs, the public body shall enable the public to  
21 observe the virtual meeting as it occurs.

22 (2) Any notice of the meeting of a public body required by law shall for a virtual  
23 meeting specify the electronic means by which the public can observe the virtual meeting as it  
24 occurs. Such notice shall also provide a means for members of the public to alert the public body  
25 if there is a technical problem that prevents the public from observing the meeting. The meeting  
26 shall be suspended until the technical problem is resolved.

27 (3) If at such a public meeting, members of the public are entitled to observe any  
28 documents or exhibits presented to the public body, such documents or exhibits shall, to the  
29 extent practicable given the technology being utilized, be made available for public observation.

1                   (4) If pursuant to Section 4(b), the virtual meeting is conducted through electronic  
2 means that provide only an audio connection, public observation may be limited to an audio  
3 connection as well.

4                   (5) If under a law of the state providing that a meeting of a public body shall be  
5 open to the public that requirement is satisfied by providing the public with a record of the  
6 meeting after the meeting has occurred, a record of the virtual meeting shall be made available to  
7 the public within the same time period and in the same format as required for a physical meeting  
8 of the public body. Any law of the state requiring that a public meeting be recorded and the  
9 record made available to the public shall apply to a virtual meeting.

10                  (b) If under a law of the state governing the meetings of a public body or the rules of the  
11 public body, members of the public may speak or to submit comments, they shall, to the extent  
12 practicable, be allowed to speak or submit comments at a virtual meeting, subject to the same  
13 conditions as would apply at a physical meeting of the public body. The notice of the meeting  
14 shall provide directions for members of the public to access the meeting in order to speak or to  
15 submit comments, consistent with the law of the state or the rules of the public body.

16                  (c) If, at a virtual meeting, the public body is considering a matter affecting the legally  
17 protected right or interest of a person such that under a law of the state or the rules of the public  
18 body that person would have a right to address the public body with respect to that matter and  
19 participate in the proceeding, including through the presentation of testimony or evidence, or the  
20 examination or cross-examination of witnesses, the public body shall enable such person to  
21 address the public body and participate in the meeting using the same electronic means as the  
22 public body is using to conduct the meeting.

23                  (1) The notice of the meeting shall provide directions to such a person concerning

1 how to access the meeting to speak and participate with respect to the matter in which that  
2 person has a legally protected right or interest. The public body may also provide appropriate  
3 technical assistance to enable such a person to address the public body and participate in the  
4 meeting.

5 (2) If a person whose legally protected right or interest in a matter being  
6 considered by the public body objects that such person's right or interest cannot receive at a  
7 virtual meeting the due process to which the person is entitled, the public body shall consider the  
8 objection. It may proceed with the matter only if it determines under the totality of the  
9 circumstances that it can provide the objector due process. The circumstances it may consider  
10 include but are not limited to the technical capacity of the electronic means it is using to conduct  
11 the meeting and make a record of the proceeding, the complexity of the matter under  
12 consideration, the nature of the evidence presented, and the consequences of delay until a  
13 physical meeting can be held. The public body's decision and the reasons for it shall be a matter  
14 of public record.

15 (d) A public body may adopt rules to implement the provisions of this Section for the  
16 provision of public observation of and public participation in virtual meetings with the purpose  
17 of making public observation and participation at a virtual meeting of the public body  
18 comparable to public observation of or participation in a physical meeting of that body. .

19 (e) The requirements of this Section are subject to enforcement by the rules and  
20 procedures of the other laws of this state providing for public observation of or public  
21 participation in the meetings of public bodies.

22 **Reporter's Note**  
23

24 The focus of section 5 is to adapt the pre-existing law of the state with respect to public  
25 access to or public participation in meetings of public bodies to virtual meetings. It does not

1 create any new rights of access or participation but seeks only to require the provision of  
2 electronic means to secure the rights of access or participation already provided by state law. It  
3 tracks some of the same executive orders or state legislation referred to in the Reporter’s Note to  
4 section 4.

5  
6 Subsections (a), (b), and (c) address public access at three steadily increasing levels of  
7 public involvement. Subsection (a) addresses the situation in which the public’s only right under  
8 law is to observe the public meeting. This is most commonly the result of a state’s open meeting,  
9 open government, sunshine, or open door. Such observation could be provided by livestreaming  
10 the meeting on the public body’s website, broadcast online, or giving the public access to the  
11 electronic means used to conduct the meeting. Subsection (b) addresses the situation in which  
12 members of the public have the right to provide comments either orally at the meeting or in  
13 writing. This right typically derives not from an open meetings law but from an administrative  
14 procedure act or other law dealing with the operations of state and local bodies, either generally  
15 or with respect to specific bodies.

16  
17 Subsection (c) addresses the situation in which the action of the public body will so affect  
18 the rights or interests of specific members of the public that they have a due process right to be  
19 heard at the meeting. These are commonly referred to as quasi-adjudicative proceedings, and  
20 typically involve such land use matters as variances, special use permits, and site-specific  
21 rezonings, but may also include the grant (or revocation) of licenses, franchises, permits, or  
22 benefits. Recently adopted laws in Georgia and North Carolina would bar quasi-adjudicative  
23 action at a virtual proceeding unless all persons whose interests are affected agree. The North  
24 Carolina law also requires that the right to a hearing and emergency occur during the emergency.  
25 This draft follows the approach of New Jersey’s virtual meeting law, which does not require the  
26 consent of the parties or that a decision must be provided during the emergency. However, it  
27 incorporates in the proposed statute language derived from an administrative rule adopted by the  
28 state’s Division of Local Government concerning whether a land use board can conduct a public  
29 hearing on a development application virtually. The rule requires the public body to undertake a  
30 “totality of the circumstances” examination of the application to determine whether a remote  
31 meeting could provide due process to all affected parties: “Before holding a public hearing on an  
32 application for development during a remote public meeting, a land use board shall determine  
33 whether electronic communication technology can sufficiently facilitate due process of the  
34 applicant and any interested party, including the ability to examine exhibits, transcribe testimony  
35 and cross-examine witnesses, as well as the ability of the public to comment upon the  
36 application. Factors in making this determination shall include, at minimum, the scale of the  
37 project, the number of approvals requested, the degree of public interest, and the number of  
38 potential objectors.” N.J.A.C. 5:39-1.7(a).

#### 39 40 **Section 6. Savings Clause**

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

1 **Reporter’s Note**

2  
3 A number of states have laws authorizing remote participation in public meetings of  
4 individual members of a public body and some forms of remote participation by members of the  
5 public. These laws assume that the meeting of the public body will be in a physical location. The  
6 [act] is not intended to supersede those laws but only to supplement them with an authorization  
7 for an entirely virtual meeting during an emergency.  
8

9 **Section 7. Transitional Provision**

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

11 **[Section 8. Severability**

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

16 *Legislative Note: Include this section only if this state lacks a general severability statute or a*  
17 *decision by the highest court of this state stating a general rule of severability.*  
18

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

- 20 (a) . . . .
- 21 (b) . . . .
- 22 (c) . . . .

23 *Legislative Note: The state should examine its statutes regarding {the meetings of public bodies*  
24 *and open meetings requirements} to determine whether conforming revisions are*  
25

26 **Section 10. Effective Date**

27 This [act] takes effect . . . .