

Model Public Meetings During Emergencies Act*

Drafted by the

Uniform Law Commission

and by it

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Without Prefatory Note and Comments



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**The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.*

Model Public Meetings During Emergencies Act

Section 1. Title

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

Section 2. Definitions

In this [act]:

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

(2) “Emergency declaration” means a declaration of emergency issued under other law of this state, law of a political subdivision of the state, or federal law.

(3) “Meeting” has the meaning of [meeting] in the open meetings law governing a public body.

(4) “Observe” means listen to or watch, whether or not permitted to participate.

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

(6) “Participate” means speak or submit a comment.

(7) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity.

(8) “Political subdivision of the state” includes a city, [county], district, and any other local or regional governmental authority.

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

(10) “Record” means information:

(A) inscribed on a tangible medium; or

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

(11) “Virtual meeting” means a meeting of a public body, during at least part of which one or more members of the public body attend by electronic means.

Legislative Note: *If a state or political subdivision uses a term other than “meeting” in its open meetings law, insert that term in the brackets in paragraph (4).*

In paragraph (10), a state that includes the state legislature and its agencies and its state and local courts in the state’s open meetings law and does not choose to extend the scope of the act to those branches of government should include the bracketed sentence. If the bracketed sentence is included, the state should insert the language used in the state to describe its state legislature and legislative agencies. In a state that does not have local courts, the bracketed text “or local” should be omitted.

Section 3. Scope

(a) This [act] applies to the conduct of a virtual meeting only while an emergency declaration is in effect.

(b) This [act] does not limit or supersede other law authorizing a public body to permit a member of the public body to participate, or a member of the public to observe or participate, by electronic means, in a meeting of the public body, whether or not an emergency declaration is in effect.

Section 4. Authorization for Virtual Meeting

(a) A public body may conduct a virtual meeting while an emergency declaration is in effect that applies to all or part of the jurisdiction of the public body if:

(1) the emergency declaration prohibits, limits, or has the effect of prohibiting or limiting an in-person meeting of the public body; or

(2) the presiding officer of the public body or other individual authorized to act

for the public body determines it is not practical or prudent for the public body to conduct an in-person meeting because of the emergency; and

(A) communicates to the members of the public body that the meeting will be a virtual meeting; and

(B) takes reasonable steps to inform members of the public that the meeting will be a virtual meeting.

(b) An action taken at a virtual meeting that complies with this [act] has the same effect as an action taken at an in-person meeting of the public body.

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

Section 5. Conduct of Virtual Meeting

(a) A public body shall to the extent practicable select a means to conduct a virtual meeting that is compatible with assistive technology commonly used by individuals with disabilities and that facilitates the accommodation needs of individuals with disabilities to access the meeting.

(b) Except as provided in subsections (c) and (d), the means used to conduct a virtual meeting must permit each member of the public body who attends the meeting contemporaneously and throughout the meeting to see and hear, and to be seen and heard by, the other members of the public body who attend the meeting.

(c) If a member of a public body is unable to obtain visual access to the virtual meeting but is able to obtain audio access that permits the member contemporaneously and throughout the meeting to hear and be heard by the other members of the public body who attend the meeting, the member may attend by audio access.

(d) If a public body lacks the capacity to provide contemporaneous visual access to a virtual meeting for members of the public body, the public body may conduct the meeting by audio-only access that permits each member of the public body who attends the meeting contemporaneously and throughout the meeting to hear and be heard by the other members of the public body who attend the meeting.

(e) A member of a public body who attends a virtual meeting is considered present for all purposes, including for determination of a quorum and voting, if contemporaneously and throughout the meeting the member can:

(1) for a meeting conducted in compliance with subsection (b), see and hear and be seen and heard by the other members of the public body who attend; or

(2) for a meeting conducted in compliance with subsection (c) or (d), hear and be heard by the other members of the public body who attend.

(f) A member of a public body who attends a virtual meeting through electronic means that provide audio-only access to the meeting shall state the member's name each time the member speaks. Failure by a member to state the member's name does not invalidate an action taken at the virtual meeting.

(g) A vote taken at a virtual meeting shall be by a process that identifies how each member of the public body votes.

(h) The minutes of a virtual meeting must include any vote taken, that the meeting was conducted by electronic means, the technology used, and which members of the public body attended by electronic means.

Section 6. Public Observation

(a) If the open meetings law requires that the public be able to contemporaneously

observe all or part of a meeting of a public body:

(1) the public body shall permit the public to contemporaneously observe a virtual meeting or the part of the virtual meeting that would be required to be open to the public if it were part of an in-person meeting; and

(2) the public body shall provide the technological means to allow the members of the public who observe the virtual meeting to see and hear or, if the public body conducts the meeting by audio-only access under Section 5(d), to hear any members of the public authorized by the public body to speak in the meeting.

(b) A document, exhibit, or other record presented to a public body at a virtual meeting that, under the open meetings law, would have been available to the public at an in-person meeting, including members of the public observing or participating in a virtual meeting under Section 7, must be made available to the public contemporaneously with the virtual meeting to the extent practicable.

Section 7. Public Participation

(a) If a law of this state or a political subdivision of the state or a rule, practice, or procedure adopted by the public body requires that members of the public be permitted to participate in a meeting of the public body, the public body to the extent practicable shall permit members of the public to participate in a virtual meeting, subject to the conditions that apply at an in-person meeting of the public body.

(b) If members of the public are permitted to speak at a virtual meeting, the technology used to conduct the meeting must permit the members of the public body and members of the public attending the meeting to hear the members of the public who speak at the meeting.

(c) If a public body considers at a virtual meeting a matter affecting the right or interest

of a person entitled by other law of the state or a political subdivision of this state or by rule of the public body to participate, present evidence, or examine or cross-examine witnesses at an in-person meeting, the public body shall permit the person to use the same technology that the public body uses to conduct the virtual meeting, or provide equivalent access, to attend the meeting and present evidence, or examine or cross-examine witnesses in the meeting.

(d) A person to which subsection (c) applies may object that the virtual meeting does not allow the person effectively to protect the right or interest referred to in subsection (c). The public body shall consider the objection and may proceed with the matter at a virtual meeting if the public body determines that the virtual meeting will allow the person effectively to protect the right or interest. The determination and the reason for the determination must be stated in a record.

Section 8. Notice

(a) In addition to any other requirement concerning notice a public body must give for a meeting of the public body, notice of a virtual meeting must specify that the meeting will be a virtual meeting and the technology that will be used for the virtual meeting.

(b) Notice of a virtual meeting must specify how:

(1) members of the public can observe the meeting contemporaneously pursuant to Section 6;

(2) members of the public permitted to participate, present evidence, or examine or cross-examine witnesses at the meeting pursuant to Section 7 can do so;

(3) a member of the public can alert the public body of a technical problem that prevents the member from accessing the meeting; and

(4) a reasonable accommodation can be requested by or for a member of the

public with a disability.

Section 9. Rulemaking Authority

A public body may adopt rules for conducting a virtual meeting under this [act]. The rules may include:

- (1) the means by which the public body will inform members of the public that a virtual meeting will be held;
- (2) the effect of a technical problem that interferes with meeting or access to a meeting by a member of the public body or the public;
- (3) the means by which a record considered at a meeting is made available to the public body and, if required by other law, the public;
- (4) the means for access to a meeting by an individual with a disability; and
- (5) the process by which a person may object under Section 7 to the conduct of a meeting on the ground that the procedure denies the person due process of law.

Section 10. Relation to Electronic Signatures in Global and National Commerce Act

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

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

[Section 11. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid,

the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

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

[Section 12. Repeals; Conforming Amendments

(a) . . .

(b) . . .]

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

Section 13. Effective Date

This [act] takes effect . . .