**Model Public Meetings During Emergencies Act**

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES

at its

ANNUAL CONFERENCE

MEETING IN ITS ONE-HUNDRED-AND-THIRTY-FIRST YEAR

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*WITHOUT Comments*

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By

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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**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 this state, or federal law.

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

 (4) “Observe” means listen to and watch, 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 this 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, government or governmental subdivision, agency or instrumentality, or other legal entity.

 (8) “Political subdivision of this 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 or an agency 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 uses a term other than “meeting” in its open meetings law, insert that term in the brackets in paragraph (3).

A state that uses a different term for “county” should insert that term in the brackets in paragraph (8). If a state does not have a governmental unit corresponding to a county, it should delete the bracketed term.

In paragraph (9), a state that includes the state legislature and its agencies or 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 that applies to all or part of the jurisdiction of the public body is in effect 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:

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

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

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

(b) An action taken in a virtual meeting that complies with this [act] has the same effect as an action taken in 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 conducting a virtual meeting, to the extent practicable, shall conduct the meeting using a means 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 the meeting 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 the meeting; 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 the meeting.

(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. A member’s failure to state the member’s name does not invalidate an action taken in the virtual meeting.

(g) A vote taken in a virtual meeting must be by a process that identifies the vote of each member of the public body.

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

#### Section 6. Public Observation

 (a) If the open meetings law requires that the public be able to observe contemporaneously all or part of a meeting of a public body:

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

 (2) the public body shall provide technological means to allow 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 members of the public body and 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 in a virtual meeting that under the open meetings law would have been available to the public at an in-person meeting must be made available to the public, including members of the public observing or participating in a virtual meeting under Section 7, contemporaneously with the virtual meeting to the extent practicable.

#  Section 7. Public Participation

 (a) If law of this state or a political subdivision of this 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 conditions that apply to an in-person meeting of the public body.

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

(c) If a public body considers in a virtual meeting a matter affecting the right or interest of a person entitled by other law of this 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 in 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 participate, present evidence, or examine or cross-examine witnesses in the virtual meeting.

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

#  Section 8. Notice

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:

(1) that the meeting will be a virtual meeting;

(2) the technology to be used for the meeting;

(3) how members of the public can observe the meeting contemporaneously under Section 6;

(4) if permitted under Section 7, how members of the public can participate, present evidence, or examine or cross-examine witnesses in the meeting;

(5) how a member of the public can alert the public body of a technical problem preventing the member from accessing the meeting; and

(6) how 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 [under [cite to state administrative procedure act]] 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 a virtual meeting or access to the meeting by a member of the public body or the public;

(3) the means by which a record considered in a virtual meeting is made available to the public body and, if required by other law, the public;

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

(5) the process by which a person may object under Section 7(d).

***Legislative Note:*** *Insert the bracketed phrase in a state with an administrative procedures act that requires specific reference to that act if it is intended to apply to the rulemaking authority under this section.*

#  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 . . .