

Uniform Law Commission
Drafting Committee on Public Meetings During Emergencies
Memorandum on Issues for the Committee
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Overview

In July 2020, in response to a Report of the Study Committee on State Governance during Public Health Emergencies, the Uniform Law Commission authorized the formation of a Drafting Committee on Public Meetings During Emergencies.

The Study Committee found that during the COVID-19 pandemic many states have taken steps to authorize state agencies and other public bodies to meet remotely during this period but relatively few states actually have permanent legislation authorizing remote public meetings or addressing the issues implicated when public bodies meet through electronic or technological means.

Prior to the COVID-19 pandemic a number of states had adopted laws expressly or impliedly authorizing public bodies to permit members to participate remotely in sessions at which official business may be considered and determined. Virtually all were predicated on the assumption that that the public body would be meeting physically in a publicly accessible space – the “anchor location” in the words of the Utah statute² -- but that one or more members would be allowed to participate remotely. Only rarely did a pre-COVID-19 statute provide for the entire governing board of a public body to meet remotely in case of emergency.³

As the COVID-19 pandemic spread in early 2020, in many states governors in their executive orders addressing the emergency took steps to authorize or encourage public bodies to meet remotely. Often this involved simply suspending state open meetings law-type requirements that a public body meet in a physical location and that the public have physical access to that location. Some executive orders went further and set rules addressing such issues as public notice of, access to, and participation in the remote meetings of public bodies, but these orders varied considerably in their scope and content. A handful of states adopted new legislation providing for the remote meeting of public bodies during emergencies, although many of these were keyed specifically to COVID-19 and were set to terminate at the end of the current emergency.⁴

The principal concerns implicated by remote meetings, as raised by good government groups, members of the public, and public officials include the impact on the ability of the members of the public body to deliberate and transact the public’s business;

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² Utah Code § 52-4-207(2).

³ See Va. Code Ann. § 2.2-3087.2A.3.

⁴ See 1 Me. Rev. Stat. Ann. § 403-A; 2020 Vt. Sess. Ls. No. 92; 25 Okla. Stat. Ann § 307.1.

technological capacity and security; transparency to and access by members of the public with an interest in the proceedings; and the ability of remote meetings to provide due process to members of the public with business before the public body. Remote meetings can make public bodies more accessible both to members of the body and the general public by making it easier for people constrained by work or caregiving obligations, distance, or physical limitations to avoid the time and financial costs of travel to the physical location of a public body. And they may be essential when emergency conditions preclude gathering at a specific physical location. But remote meetings can also create new barriers due to unequal access to -- or capacity to utilize -- the technology enabling a remote meeting. Remote meetings are subject to bandwidth limitations and the vicissitudes of communications technology, and prone to technological disruption. They make the interactions of members of the public body with each other and with the general public more cumbersome. The benefits and shortcomings of remote public meetings will necessarily shape the laws authorizing and governing them.

Issues:

The principal issues for a uniform law on remote meetings of public bodies in emergencies addressed in this memorandum can be grouped into the following six categories:

- What conditions will authorize remote meetings;
- The extent to which the technological requirements for holding a remote meeting should be specified in the authorizing legislation;
- The extent to which basic procedural meeting rules such as the definition of a quorum and the process for voting to remote meetings should be specified in the authorizing legislation;
- The extent to which the rules governing public access -- including notice to the public; public observation; public comment and other forms of participation; public access to documents presented at a meeting; and recording of meetings -- should be specified in the authorizing legislation;
- Whether there should be any limits on the public business conducted during a remote meeting, e.g., only business dealing with the emergency that is the basis for the authorization of a remote meeting, or business subject to a constitutional or legal time deadline that would expire during the emergency period;
- Whether and to what extent a public body authorizing legislation should specially address remote public meetings that involve quasi-judicial proceedings.

Issue #1: Authorization of remote public meetings

When may a public body meet remotely? This involves consideration of who has the power to authorize remote meetings, and under what conditions.

The “who” could be the governor alone; a mayor or other local government executive for public bodies within the locality; the governor [or local executive] and the public body, acting either through its chair or by a vote of the public body; or the public body – through its chair or through a vote – by itself.

The “what” could simply be that the governor or local executive has declared an emergency through an existing emergency powers law. Or it could involve something more, such as an emergency declaration plus a specific finding by the governor, executive, or public body that, given the emergency, it would be unsafe or otherwise unwise to the public body to meet physically. The authorizing law could also spell out in more detail the kinds of emergencies that would permit a remote meeting.

The simplest law would, thus, be one that says something like:

Notwithstanding any provision of law, rule, or regulation to the contrary, during a period declared by the Governor pursuant to the laws of this State as an emergency [or a public health emergency] a public body shall be authorized to meet remotely [provided it satisfies the conditions of this law]. Arkansas and New Jersey have passed laws with similar language.

If the state grants local executives the power to declare local public health emergencies, a comparable provision could allow the local chief executive to authorize the meeting of local public bodies:

Notwithstanding any provision of law, rule, or regulation to the contrary, during a period declared by the local chief executive pursuant to the laws of this State as an emergency [or a public health emergency] a public body shall be authorized to meet remotely [provided it satisfies the conditions of this law].

Some jurisdictions have gone further and required an additional finding that the emergency interferes with the ability of a public body to meet physically. The Virginia law thus provides that a public body may meet remotely “*when the Governor has declared a state of emergency in accordance with [the state’s emergency law] . . . provided that . . . the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location.*” It’s unclear whether the Governor has to make that additional finding or it is one that can be made by the public body itself.

Similarly, some of the state legislative resolutions authorizing a remote meeting of the legislature have required both a gubernatorial declaration of emergency and findings by the legislative leadership that due to the emergency it would be “*dangerous, unwise, impractical, or inconsistent with the requirements of the declaration*” or that due to the emergency a certain percentage of the public body, such as twenty-five percent, is unable to attend a physical meeting.

So a law could read:

Notwithstanding any provision of law, rule, or regulation to the contrary, during a period declared by the Governor pursuant to the laws of this State as an emergency [or a public health emergency] a public body shall be authorized to meet remotely provided that it determines that it is dangerous, unwise, impractical, or inconsistent with the requirements of the declaration for it to meet in a physical location and provided it satisfies the conditions of this law. One problem with requiring the public body to make this finding is that it might be dangerous, unwise, impractical, etc. for it to meet physically to make the determination that it should not meet in a physical location. The authority to make that determination, if it is required, probably ought to be delegated to the body's chair or presiding officer.

Another way to define the trigger would be to spell out in the remote meeting authorization law the types of emergencies that would authorize a remote meeting. Some of the legislative resolutions adopted in early 2020 authorizing remote meetings of legislative bodies took this approach, such as the Delaware definition of "Emergency" as "*an impending or existing attack, act of terrorism, disease, accident, or other natural or man-made disaster,*" the Georgia resolution referring to "*an emergency or disaster, resulting from manmade or natural causes or enemy attack,*" or Hawaii's reference to "catastrophic disaster" defined as "*a severe or prolonged natural or human caused occurrence including, but not limited to, world conflicts, terrorist threat, national or global economic crisis, natural disaster, outbreak of disease, or any other event or occurrence that severely threatens or negatively impacts life, health, welfare, property, infrastructure, the environment, and financial security of the State.*" Having a definition of emergency in the remote meetings authorization of law might make sense if the state does not have a general emergency law, but if it does it is probably better to rely on that rather than adopt multiple and potentially inconsistent definitions of "emergency."

It is not clear whether it would be appropriate for a public body to authorize its own remote session in the absence of an emergency declaration by the governor or, for a local body, by the mayor or local chief executive. The concerns of transparency, deliberation, and security raised by remote meetings would appear to require some external constraint – such as an emergency declaration by the governor or mayor – on the ability of a public body to go into remote session. If it is to be allowed, it should require something like a supermajority vote of the members of the body in a physical, public session: *Notwithstanding any provision of law, rule, or regulation to the contrary, a public body shall be authorized to meet remotely provided that by a two-thirds vote in a meeting open to the public, the public body determines that due to an emergency [as defined in state law] it is dangerous, unwise, or impractical, for it to meet in a physical location and provided it satisfies the conditions of this law.*

As a number of states already have laws authorizing remote participation by some but not all members of a public body it would be desirable to make clear that those laws are not superseded by the new authorizing remote meetings. Therefore, the law should state: "*This section applies only during emergencies, as defined herein, and does not supersede any other authority for remote meetings.*"

The law also needs to define the public bodies whose remote meetings are authorized by the law. Most likely that will involve incorporating by reference the state's definition of *public body* or similar term in the state's open meetings law. Similarly, there will need to be a definition of *"meeting."* Again, that should probably involve incorporation by reference to the state's open meetings law. Alternatively, it might be useful to say something like: *"This section shall apply to any remote meeting of a public body held for the purpose of discussing or acting on public business."* As the law may contrast or incorporate by reference pre-existing laws that deal with meetings of public bodies which in memorandum will be referred to as "physical meetings" the law will also have to define that term or whatever term is used to describe meeting where the members of a body gather in the same location to conduct the public's business

Issue #2: Definition of remote meeting

As a preliminary matter, there is a little uncertainty as to how to refer to the meeting of a public body when the members of the body do not gather in a specific physical location. At various times, laws, executive orders or agency rules have referred to "electronic" or "virtual" or "online" meetings, but the most common term has been "remote meeting," which is the term this memo has been using.

The principal issue in the definition of a remote meeting is whether such a meeting should be defined in terms of the technology used, the criteria for a meeting, or both. A second question is that assuming that the best remote meeting would be one in which all the make participants are simultaneously audible and visible to each other and to the public throughout the meeting, should an allowance also be made for bodies that have more limited resources to authorize them to hold remote meetings in which the members are audible to, but not visible to each other or the public.

Some of the laws and executive orders authorizing remote meetings do so by authorizing the use of a specific technology or technologies -- such as videoconference, video teleconference, video broadcast teleconference, or telephone -- or via a more general reference to "electronic, digital, or similar technology." New Jersey has adopted a regulation that more specifically directs that "a local public body shall use an electronic communications technology that is routinely used in academic, business, and professional settings, and can be accessed by the public at no cost," and that "[p]articipant capacity on the selected platform should be consistent with the reasonable expectation of the public body for public meetings of the type being held."⁵ The regulation also directs that communications platforms and Internet-accessible technologies used for public meetings meet certain defined federal cybersecurity standards.

One question is whether, and to what extent, should a law governing remote meetings address the technical capacity and security questions raised by remote meetings; whether it should direct an appropriate state agency to develop rules and

⁵ N.J.A.C 5:39-1.4(a).

regulations addressing technology and security issues; or whether it should simply leave this to each public body to determine for itself.

Many of the existing remote meeting authorizations focus instead on what the technology must accomplish in order to constitute a meeting. Most commonly they require that each member of the public body must be able to see and hear each other throughout the meeting, and for meetings required to be open to the public that the meeting be audible and visible to the public as it occurs. To the extent that members of the public are invited to or required to speak at the meeting they need to be audible and visible to the members of the public body and to the public as well. [The requirements for public access are discussed more fully in Issue #4, below.]

Given the changing nature of communications technology it probably makes more sense for the authorization law to focus on what the technology is expected to accomplish rather than define the meeting in terms of specific types of platforms. Thus, the law might say:

“A remote meeting of a public body authorized by this section is a meeting in which each member of the body may by electronic or other technological means be able to see and hear each other simultaneously throughout the meeting, and in which, for a meeting required to be open to the public, the public may see and hear the meeting as it occurs. If members of the public are required or permitted to participate in the meeting, such persons shall also be audible and visible to the members of the public body and to the public.”

Although simultaneous audibility and visibility of members of the public body and any public participants is the gold standard for remote meetings, some public bodies may lack the resources or technological capacity for this, so one question is whether a remote meeting may be held in which the participants are audible but not visible to each other. Kentucky’s authorization of remote public meetings takes “technological capacity” into account:

During a state of emergency, a public agency may “[c]onduct the meeting by a. Live video conference if the public agency has the technological capacity and availability to provide for live video teleconference or b. Live audioconference if the public agency does not have the technological capacity or availability to provide for a live video teleconference.”⁶

Alternatively, the law might require audibility and visibility only for members of the public body, but authorize the use of audio-only technology for public observation. Public access is discussed more fully in Issue #4, below.

Issue #3: Basic procedural rules and requirements to remote meetings.

The authorizing legislation should address at least some basic matters essential to the holding and conduct of a public meeting. There may be disagreement as to how

⁶ Ky. SB 150, ch. 73, Laws of 2020, section 1 (8)(b).

specific the authorizing legislation ought to be but most likely such matters as notice, minutes, quorum, and voting ought to be addressed. It could specifically address the problem of technology problems that cause a member to lose connection to the meeting or that more generally interfere with the conduct of a meeting. Beyond that, the law should also provide for the application of the rules and procedures to the extent possible as well as authorize the public body to adopt procedural rules appropriate to remote meetings. What follows is a first cut, based on a review of recent executive orders and statutes, at topics and possible legislative language addressing the rules and procedures to govern remote meetings. These might include:

Notice. *In addition to any other requirements for giving notice of a meeting of a public body, the notice for any meeting of a public body to be held remotely shall indicate that it will be a remote meeting, why the public body is meeting remotely, the technology used for the meeting, and the means by which members of the public may have access to the meeting.*

Minutes. *The minutes of a meeting held remotely shall indicate that it was held remotely and the technology used to conduct the meeting.*

Presence and Quorum. *Any member of a public body connected by technology to a remote meeting so that he or she can see and hear the other members of the public body and be seen and heard by them shall be considered present for all purposes, including the determination of a quorum and for voting, as if he or she were physically present at a physical meeting of the public body. If a member ceases to be connected by technology to the remote meeting the member will no longer be considered present, can no longer be counted towards a quorum, and will be unauthorized to vote.*

Voting. *All votes shall be roll call votes.*

Legal Effect. *Any action taken by a public body at a remote meeting shall have the same legal effect as if it had been taken at a physical meeting.*

Continuity of Public Meeting Rules and Procedures. *All laws, rules and procedures that would apply to the meeting of a public body at a physical location shall, to the extent feasible, apply when the public body meets remotely.*

Adoption of Rules and Procedures for Remote Meeting. *Public bodies are authorized to adopt reasonable rules to facilitate the fair, efficient, and deliberative conduct of public business at a remote meeting, provided that such rules are consistent with the requirements of public access to the remote meeting as provided in section XXX. Such rules shall address the consequences of any technical disruption that interferes with the conduct of the meeting or the connection of any member to the meeting.*

An alternative to the last sentence might be: *In the event a technical problem affecting the communications technology supporting the meeting interferes with the conduct of the meeting or the connection of any member to the meeting, the chair [or presiding officer] shall [or may] suspend the meeting while reasonable efforts are made to correct the problem [or until the problem is corrected]. Any such suspension of the meeting shall be recorded in the minutes of the meeting.*

Identification of Members. This might be required for remote meetings based on audio-only [without video] technology, or for a member participating through a technology that does not make the member visible to other members of the public body or could be made generally applicable. *If a member of a public body participating in a remote meeting is not visible to the other members of the public body, he or shall identify himself or herself at the start of the meeting, before speaking, and when voting. Alternatively, the public body may adopt rules to verify the identification of a member or the authentication of the action of a member [such as making a motion or voting].*

Availability of documents and exhibits. *Any documents, writings, or exhibits considered at a remote meeting shall be available to all members of the public body.*

Chats and texts. *Any chats, instant messages, texts or similar communications between members of a public body during a remote meeting on the technology being used to support the remote meeting shall be considered a part of the record of the remote meeting.*

Issue #4. Public Access

Public access presents separate issues with respect to (i) the public's ability to observe or monitor a remote public meeting, and (ii) the ability of members of the public to actively participate in the public meeting when that is authorized by law or regulation. Cross-cutting both issues is the question of the technology by which the public access is provided. Should there be both video and audio access, or is audio sufficient? Does that turn on the nature of the technology being used by members of the public body? Should the general public get the quality of access comparable to that used by members of the public body, or can the public body offer members of the public more limited less access? If the resources available to the public body to provide access to the public are limited, is real-time or contemporaneous access to the remote meeting required, or can the requirement of public observation be satisfied by the provision of a record [video & audio, or just audio, or just a transcript] shortly after the meeting on the public body's website. Presumably, even if public observation is limited to hearing the meeting or to a post-meeting recording, members of the public required or entitled to participate in a remote public meeting should have access comparable to that provided to members of the public body.

This is a preliminary cut at statutory language that addresses these issues:

Public observation. *"If any law, ordinance, rule, regulation, or by-law requires that a meeting or a portion of a meeting of a public body be open to the public, a remote meeting or the public portion thereof of the public body shall be open to the public. This requirement shall be satisfied by enabling the public to see and hear the meeting as it occurs using the same technology the public body is using to conduct the meeting."*

Or *"If any law, ordinance, rule, regulation, or by-law requires that a meeting or a portion of a meeting of a public body be open to the public, a remote meeting or the public portion thereof of the public body shall be open to the public. This requirement shall be satisfied by making publicly available a technological connection to the meeting that will allow members of the public to hear the meeting as it occurs."*

Or “If any law, ordinance, rule, regulation, or by-law requires that a meeting or a portion of a meeting of a public body be open to the public, the public shall have timely and effective access to a remote meeting or the public portion thereof of the public body. If the public body lacks the technological capacity or resources to make the remote meeting open to the public as it occurs, the public body shall make a complete recording of the meeting and make it publicly available, including by posting it on its Internet website, as soon as possible but no later than XX days after the meeting.”

It would also be appropriate to require that even if there is video and audio access to a meeting, there should be an option for members of the public who lack the necessary equipment such as a computer to be able to access the meeting by calling in. It might also be appropriate to provide that access to the meeting shall be free of charge, and that if any software is necessary for access to a remote meeting it shall be available for download free of charge from the notice of the meeting.

Public participation. *“If any law, ordinance, rule, regulation, or by-law provides that a member of the public is required or entitled to participate in a meeting of a public body, such a member of the public shall be able to do so by the same technological means as provided to members of the public body when the meeting is held remotely.”* For the purposes of this provision, “participate” means addressing the members of the public body at the meeting. If the public participation authorized is limited to the submission of written comments, submitting them by e-mail would presumably suffice.

Notice. *“If any law, ordinance, rule, regulation, or by-law requires that a meeting or a portion of a meeting of a public body be open to the public, notice of a remote meeting of the public body must provide the public with information concerning how to access the meeting.”* [A more detailed notice provision could include a requirement that the specific platform be indicated, that instructions be given as to how to download any software, including access to the specific platform used for the meeting, and any password required.]

Documents. If documents, writings, or exhibits presented to or discussed at a meeting of a public body would be made available to the public at a physical meeting of the public body, they shall be made available to the public in a timely and effective manner at a remote meeting of the public body.

Access for people with disabilities. There will need to be some provision requiring that the needs of people with disabilities be addressed to the extent required by the federal Americans with Disabilities Act and any comparable applicable state or local law.

Issue #5: Limited Agenda

Due to concerns that even with the best available technology the quality of deliberation at and public access to a remote meeting of a public body will be inferior to deliberation and transparency at a traditional physical meeting, it has been suggested that the agenda of remote meetings be limited to matters related to the emergency authorizing the remote meeting and/or to matters which due to a constitutional or other legal deadline need to be addressed during the emergency period. Language along these

lines may be found in legislation adopted or executive orders promulgated in 2020 in New Jersey,⁷ Pennsylvania,⁸ and Tennessee,⁹ and in a slightly older law in Virginia.¹⁰

A first cut at language to limit the agenda of a remote hearing of a public body held during an emergency is. *“For any remote meeting of a public body authorized by this law, the agenda and the public business discussed or transacted shall be limited to (i) matters related to the emergency pursuant to which the remote meeting is authorized and (ii) any matters which due to a constitutional, statutory or other legal requirement must be addressed by the public body during the period of the emergency.”*

Issue #6 Quasi-Adjudicative Meetings

Quasi-adjudicative meetings such as those involving the grant or denial of a license, permit, or franchise, or other actions that affect the rights or property of one or a small number of individuals may be seen as presenting special issues. When the public body is meeting in a quasi-adjudicative capacity, the person(s) whose interests are affected by the decision will almost certainly be entitled to notice and the right to be heard, and in some situations – particularly those involving land use – other members of the public may also have a statutory right to be heard. Depending on the issue or underlying substantive law such third parties may have the right to challenge the statements or examine the documents presented by the person seeking the license, permit, development approval, etc. Staff employed by the public body may also speak, present evidence, or examine the evidence presented by the person seeking a public benefit or approval. In other words, a quasi-adjudicative meeting or hearing will both involve the substantive rights of individual members of the public and be likely to be more complicated than other types of public meetings.

To be sure, there is extensive experience with and study of quasi-adjudicative hearings that have been held remotely.¹¹ Indeed, courts have held remote hearings, primarily in civil cases,¹² and the CARES Act authorized federal courts to use video

⁷ N.J. Stat. Ann. 10:4-9.3 (“To the extent practicable, a public body providing only electronic notice of a meeting pursuant to this subsection shall limit public business discussed or effectuated thereat to matters necessary for the continuing operation of government and which relate to the applicable emergency declaration”).

⁸ 33 Pa. C.S.C. § 5741(e)

⁹ Exec. Order No. 14 (suspending various provisions of Tennessee law “to the extent necessary to allow a governing body . . . to meet and conduct its essential business by electronic means, rather than being required to gather a quorum of members physically present at the same location”).

¹⁰ Va. Code Ann. § 2.2-3708.2 A (3) (“a public body may meet by electronic communication means . . . when the Governor has declared a state of emergency provided that . . . (ii) the purpose of the meeting is to address the emergency.”)

¹¹ See, e.g., Federal Energy Regulation Commission, Office of Administrative Law Judges, Remote Hearing Guidance for Participants (July 13, 2020); Administrative Conference of the United States, Legal Considerations for Remote Hearings in Agency Adjudications (June 16, 2020); Administrative Conference of the United States, Agency Use of Video Hearings: Best Practices and Possibilities for Expansion (2011); Administrative Conference of the United States, Handbook for Using Video Teleconferencing in Adjudicative Hearings (2015). See also COVID-19, Remote Technology, and Due Process in Administrative Hearings, <https://editions.lib.umn.edu/mjlst/covid-19-remote-technology-and-due-process-in-administrative-hearingsbrent/>.

¹² See, e.g., Online Courts Working Group of the Commission to Reimagine the Future of New York Court’s, Initial Report on the Goals and Recommendations for New York State’s Online Court System (Nov. 9, 2020),

teleconferencing, “or telephone conferencing if video teleconferencing is not reasonably available” during the COVID-19 emergency for ten specified criminal proceedings, subject to the consent of the defendant and after consultation with counsel.¹³ However, the rights at stake and the greater complexity of quasi-adjudicative proceedings suggest that specific provisions concerning the holding of such proceedings remotely may appropriate.

The most common of these in the handful of laws, executive orders, or regulations that have expressly considered this issue is the requirement included in the CARES Act that the proceeding be with the consent of the affected party or parties. Another requirement found in these measures is that the due process rights of the parties be protected, even though what that entails may not be spelled out. North Carolina’s law is a good example:

“A public body may conduct a quasi-judicial proceeding as a remote meeting only when all of the following apply:

- (1) The right of an individual to a hearing and decision occur during the emergency.*
- (2) All persons subject to the quasi-judicial proceeding who have standing to participate in the quasi-judicial hearing have been given notice of the quasi-judicial hearing and consent to the remote meeting.*
- (3) All due process rights of the parties affected are protected.”¹⁴*

Another approach, exemplified by the regulations adopted by New Jersey’s Division of Local Government Services to determine whether a land use board can conduct a public hearing on a development application at a remote public meeting would require the public body to undertake more of a “totality of the circumstances” examination of the application to determine whether a remote meeting could provide due process to all affected parties. As the agency explains, “certain applications may be of such complexity or scale that they require an in-person public hearing.”¹⁵ Therefore,

“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,

<https://editions.lib.umn.edu/mjlst/covid-19-remote-technology-and-due-process-in-administrative-hearingsbrent/>; Court Hearings in a Time of Social Distancing: Considerations for Video- and Teleconference Hearings, https://www.wiley.law/alert-Court_Hearings_in_a_Time_of_Social_Distancing_Considerations_for_Video_or_Teleconference_Hearings (April 1, 2020).

¹³ CARES Act, § 15002.

¹⁴ N.C. Gen. Stat. § 166A-19.24 (f). See also 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.”).

¹⁵ N.J. Division of Local Gov’t Services, Local Finance Notice, New Emergency Regulations: Remote Public Meetings held During a Declared Emergency, Sept. 2, 2020, <https://www.nj.gov/dca/divisions/dlgs/lfns/20/2020-21.pdf>.

*at minimum, the scale of the project, the number of approvals requested, the degree of public interest, and the number of potential objectors.”*¹⁶

The regulation also requires that such a remote meeting of a land use board “be broadcast by video as well as audio,” and that the public be able to access any plans or documents that may be considered at the meeting.¹⁷

In general, it would seem that for quasi-adjudicative hearings that implicate the due process rights of individuals, remote meetings would have to be conducted by a technology that permits all participants to see and hear the proceedings, and to examine any exhibits presented. It might also be appropriate to require that the cost of the technology to access to any of the parties with a right to participate in the proceeding be taken into account in determining whether such a proceeding may be held remotely.

¹⁶ N.J.A.C. 5:39-1.7(a)

¹⁷ Id at 5:39-1.7(b), (c).