

Minutes

Web and Audio Conference of the Executive Committee Uniform Law Commission

April 20, 2020
Chicago, IL

Daniel Robbins, Chair of the Executive Committee, called the meeting to order on April 20, 2020, at 12:02 Chicago Time.

The following members of the Committee were present: Carl H. Lisman, President; Timothy Berg, Committee on Scope and Program Chair; Bill Breetz, Vice President; Steve Wilborn, Legislative Committee Chair; Tom Buiteweg, Treasurer; Martha Starkey, Secretary; Anita Ramasastry, Immediate Past President; Paula Tackett; Ryan Leonard; and Jamie Pedersen.

Also present: Tim Schnabel, Executive Director; Elizabeth Cotton-Murphy, Chief Administrative Officer; Ben Orzeske, Chief Counsel; and Katie Robinson, Legislative Program Director.

1. Minutes

A motion was made and approved accepting the minutes of the Executive Committee Meeting held March 30, 2020.

2. Approval of New Study Committees

The Committee discussed expediting the appointment of several study committees to evaluate three clusters of possible projects relating to current and future epidemics and pandemics. After discussion, a motion was made and approved authorizing the immediate appointment of the following study committees:

A Study Committee on Public Health Emergency Authorities will be appointed to study the need for and feasibility of one or more uniform state laws addressing the authority of state governments to respond to epidemics, pandemics, and other public health emergencies. The committee will consider topics including:

- (1) the authority of state governments to order individual and area quarantines, isolation, social distancing, and other restrictions on travel and gatherings, including enforcement powers (such as surveillance, searches, and seizures), criteria for issuance, notice and procedures, and penalties;
- (2) the authority of state governments to order the closure of non-essential businesses, and the criteria for determining which businesses are essential;
- (3) state government acquisition of critical resources through collective purchasing mechanisms (including the need to comply with federal antitrust law) or through commandeering private property with just compensation; and

(4) rules for medical practice, including crisis standards of care, licensure reciprocity, and information sharing.

The committee will report to the Scope and Program Committee by July 7, 2020.

A Study Committee on Mitigation of Public Health Emergency Business Disruptions will be appointed to study the need for and feasibility of one or more uniform state laws providing special rules and procedures to mitigate the impact of an epidemic, a pandemic or other public health emergency on the operation of businesses. The committee will consider topics including:

- (1) the use of special non-liquidating receivership programs to enable court supervision of businesses adversely affected by an epidemic, a pandemic or other public health emergency;
- (2) a requirement that insurers allow business interruption claims based on epidemic-, pandemic-, or other public health emergency-related closures, with the government underwriting the insurers (and paying a fee for having the insurers act as claim processors for the government);
- (3) the application of force majeure and impossibility doctrines to contractual performance during an epidemic, pandemic, or other public health emergency; and
- (4) other measures that might mitigate the impact on businesses.

The committee will report to the Scope and Program Committee by July 7, 2020.

A Study Committee on State Governance during Public Health Emergencies will be appointed to study the need for and feasibility of one or more uniform state laws addressing the operation of state government during public health emergencies. The committee will consider topics including:

- (1) the use of remote voting by state legislatures;
- (2) the temporary suspension of particular laws by executive action, including the process for determining when such suspensions should end or whether they should be made permanent; and
- (3) other issues affecting the operation of state governments during public health emergencies.

The committee will report to the Scope and Program Committee by July 7, 2020.

ULC staff was asked to coordinate outreach to other relevant organizations to notify them about the appointment of the new study committees and to collect feedback to better inform the study process.

3. Policy on Availability of Drafting Committee Records

Chair Robbins summarized the written report regarding the extent to which committee records should be made available following Zoom committee meetings. Questions have been raised recently regarding two categories of committee materials.

Meetings held via Zoom can be recorded, and the video can be made available for later viewing. The Committee discussed the pros and cons of allowing drafting and study committee deliberations to be recorded.

After discussion, a motion was made and approved to establish a policy generally prohibiting the recording of drafting and study committee meetings held via Zoom, subject to limited exceptions such as recording presentations made to committees to enable absent members to view the presentations later.

Several drafting committees have been using Zoom to hold additional meetings to follow up on issues discussed during their in-person meetings. Some of these meetings have included revised drafts of the acts, accompanying memos, and written comments submitted by commissioners and observers.

Our plan for making some of these materials available on the public ULC website is as follows:

- Any revised drafts and formal memos from the chair or reporter that are circulated to the full committee would be posted.
- Any formal comments (e.g., those submitted as separate documents—whether on letterhead or otherwise—rather than in the body of emails) that are submitted by commissioners or observers and circulated to the full committee would be posted.
- Less formal comments, including those submitted as emails, would only be posted if (1) the chair so requests and (2) the person submitting the comments consents.

This approach would be consistent with the approach taken last spring for handling the many comments submitted on the drones draft.

4. Possible Cancellation of the July 2020 Annual Meeting

It seems unlikely that the ULC will be able to safely meet in Madison this summer due to the global pandemic. Chair Robbins reported on proposed alternative plans to cancel the in-person meeting in July, to use Zoom to facilitate remote consideration and approval of final acts over the dates of July 10 – 16, 2020, and to potentially hold an abbreviated in-person annual meeting to consider acts up for a first read this fall.

Chair Robbins also announced the tentative plan to rebook the 2023 annual meeting in Madison using many of the same venues planned for this summer's meeting. This approach could greatly minimize potential financial losses.

The ULC will take immediate steps to mitigate losses by cancelling the Edgewater contract and will continue to defer any deposit payments until final alternative plans for the 2020 annual meeting are decided.

5. Approval Paycheck Protection Program Resolution

Chair Robbins reported that the ULC may be eligible for a Paycheck Protection Program loan that is fully forgivable. The Committee considered the resolution submitted in writing for approval. After discussion, no action was taken.

The meeting was adjourned at 1:07 p.m. Central Time.