

North Carolina Enacts New Requirements for Remote Open Meetings During State of Emergency



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On May 4, 2020, the Governor signed into law the COVID-19 Recovery Act (the “Act”), effective immediately, which was passed by both houses of the General Assembly on May 2, 2020. The Act establishes new requirements for public bodies conducting meetings and hearings during a Declaration of Emergency.

Public Meetings

A remote meeting is one where any member of the public body is participating through simultaneous communication, which may include telephone, video, or other electronic means. Public bodies have been and are permitted to conduct meetings electronically so long as the requirements of the open meetings laws are followed. However, the Act imposes new requirements on public meetings during a Declaration of Emergency. These new requirements include:

Simultaneous Communication. Each member of the public body participating remotely must be able to hear what is being said and being heard in real time.

Openness. Members of the public body who cannot be physically seen by the public must identify themselves at the following times: (1) at the start of the meeting; (2) when participating in deliberations, such as making motions, amendments, or points of order; and (3) prior to voting. The remote meeting must be simultaneously streamed online. In the case of a conference call, the meeting may be streamed online or a dial-in number may be provided to the public.

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Notice. In addition to complying with regular notice requirements, the public body must specify how the public may access the remote meeting simultaneously as the meeting occurs. The notice must include, for example, the link by which the public can stream the meeting.

Closed Session. A board is not required to provide public access to a remote closed session.

Documents. Members of the public body must be provided all documents that will be considered during the meeting.

Acting by Reference. The public body may not deliberate, vote, or take action on a matter by reference, where the public would be unable to determine what matter is being considered, except that the body may refer to an agenda if that agenda is provided for public inspection.

Quorum. If a member of the public body leaves the meeting, the member may not be considered for quorum purposes until the member re-joins the meeting.

Voting. All votes must be by roll call. A member of the public body who has left the meeting cannot be counted in the vote. Members who cannot be physically seen must identify themselves prior to voting.

Minutes. The minutes must reflect how the meeting was conducted, which members attended remotely, when they joined the meeting, and when they left the meeting.

Public Records. All chats, instant messages, texts, or other written communications between members of the public body regarding the transaction of the public business during the remote meeting are deemed a public record.

Note: the other requirements of the public records and open meetings laws still apply to public meetings.

Hearings

The COVID-19 Recovery Act also specified how public bodies could conduct both public hearings and quasi-judicial hearings remotely during a Declaration of Emergency.

Public Hearings. A public hearing may be conducted remotely by allowing the public to submit written comments during the time from the notice of the public hearing until 24 hours after the public hearing.

Quasi-Judicial Hearings. A quasi-judicial hearing may only be conducted remotely if the following elements are met: (1) The right to a hearing and decision occur during the emergency; (2) All individuals who have standing to participate in the hearing have been given notice and consent to having the hearing remotely; and (3) All due process rights of the parties affected are protected.

Note: the other legal requirements associated with these hearings still apply. Many hearings conducted remotely will require additional legal analysis that are not addressed here.

Brooks Pierce attorneys have a wide range of experience assisting local governments in complying with public meetings laws and conducting lawful hearings. If you have any questions regarding the COVID-19 Recovery Act, please contact Jill Wilson, Sarah Saint or Elizabeth Troutman, linked below.

Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our [COVID-19 Response Resources](#) page.