



2019-2020 General Assembly

SENATE BILL 704: COVID-19 Recovery Act, Sec. 4.31: Public Bodies/Remote Meetings During Declared Emergencies

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| Committee: | | Date: | November 12, 2020 |
| Introduced by: | | Prepared by: | Erika Churchill Staff Attorney |
| Analysis of: | Sec. 4.31 of S.L. 2020-3 | | |

OVERVIEW: *Section 4.31 of S.L. 2020-3, establishes clear authority for public bodies to meet remotely during times of gubernatorial or legislatively declared emergencies, effective May 4, 2020, and applying to any such declaration of emergency in effect on or after that date.*

CURRENT LAW: Article 33C of Chapter 143 governs meetings of public bodies in North Carolina. That article clearly states that each official meeting of a public body shall be open to the public, and any person is entitled to attend that meeting. G.S. 143-318.10. A "public body" is defined to be any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function.

Official meetings are meetings, assemblies, or gatherings at any time or place, or the simultaneous communication by conference telephone or other electronic means, of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction of the public body.

If a public body holds an official meeting by use of conference telephone or other electronic means, that public body must provide a location and means whereby members of the public may listen to the meeting. The notice of the official meeting is to specify that location. A fee of up to twenty-five dollars (\$25.00) may be charged each such listener to defray the costs of providing the necessary location and equipment. G.S. 143-318.13(a).

Particularly with respect to units of local government, the current statutes do not address whether a member participating from a remote location counts towards a quorum, or whether that remote participation member may have his or her vote count.

BILL ANALYSIS: Section 4.31 of the act specifically states that a public body may conduct an official meeting with one or more members participating by simultaneous communication. Simultaneous communication is defined to mean any communication by conference telephone, conference video, or other electronic means.

In order for a member participating in an official meeting using simultaneous communication to count towards a quorum or have that member's vote count, the public body must comply with all of the following:

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- The public body must give proper notice of the open meeting, specifying the means by which the public can access the remote meeting as it occurs.
- Any member of the public body participating in a way that member cannot be physically seen by the public body has to identify himself or herself in each of the following situations:
 - When the roll is taken or the remote meeting is commenced.
 - Prior to participating in the deliberations, including making motions, proposing amendments, and raising points of order.
 - Prior to voting.
- All documents to be considered during the remote meeting are provided to each member of the public body.
- The method of simultaneous communication allows for any member of the public body to:
 - Hear what is said by the other members of the public body.
 - Hear what is said by any individual addressing the public body.
 - To be heard by the other members of the public body when speaking to the public body.
- All votes are roll call, and no vote may be by secret or written ballots.
- The public body may not deliberate, vote or take action by reference, unless the deliberation, voting, or action is by reference to an agenda of which copies are available for public inspection at the meeting.
- The minutes of the remote meeting reflect that the meeting was conducted by use of simultaneous communication, which members were participating by simultaneous communication, and when such members joined or left the remote meeting.
- 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 public record.
- The remote meeting is simultaneously streamed live online so that simultaneous live audio, and video, if any, of such meeting is available to the public.
- Any public hearing required or authorized by law may be conducted during a remote meeting, provided written comments on the subject of the public hearing may be submitted between publication of any required notice and 24 hours after the public hearing.
- A public body may conduct a quasi-judicial proceeding as a remote meeting only upon all of the following:
 - The right of an individual to a hearing and decision occurs during the emergency.
 - 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.
 - All due process rights of the parties affected are protected.
- Closed sessions as authorized in law may be conducted; and while in closed session, the public body is not required to provide access to the remote meeting to the public.

The section clarifies that a member of the public body participating by simultaneous communication is counted as present for quorum purposes only during the period while simultaneous communication is maintained for that member. Additionally, it specifies that votes of each member of a public body made during a remote meeting are to be counted as if the member were physically present only during the period while simultaneous communication is maintained for that member.

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EFFECTIVE DATE: The section became effective May 4, 2020, and applies to gubernatorial or legislatively declared states of emergency in existence on or after that date.