

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

House Bill 3146

BY DELEGATES STORCH, HOWELL, CLARK AND LINVILLE

[Passed March 9, 2023; in effect ninety days from
passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto the following
2 new article, designated as §6-9C-1, §6-9C-2, §6-9C-3, §6-9C-4, §6-9C-5, §6-9C-6, §6-
3 9C-7, §6-9C-8, and §6-9C-9, and §6-9C-10, all relating to adopting the Model Public
4 Meetings During Emergencies Act; setting forth short title; defining terms; providing for
5 virtual meetings; providing mechanism for authorization of virtual meetings; setting forth
6 rules for, and conduct of virtual meetings; providing for public observation of, and public
7 participation in, virtual meetings; providing for notice of virtual meetings; providing for rules
8 governing same and exceptions; providing for procedural rules governing conduct of
9 same; and establishing relation to the Electronic Signatures in Global and National
10 Commerce Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9C. UNIFORM PUBLIC MEETINGS DURING EMERGENCIES ACT.

§6-9C-1. Short title.

1 This article may be cited as the Public Meetings During Emergencies Act.

§6-9C-2. Definitions.

1 In this article:

2 "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
3 electromagnetic, or similar capabilities.

4 "Emergency" means an event or condition that is an emergency, disaster, or public health
5 emergency as addressed in §15-5-2 and §15-5-6 of this code.

6 "Emergency declaration" means a declaration of emergency issued by a person or agency
7 authorized to do so under §15-5-6 of this code and that is in effect.

8 "Meeting" has the same definition as in §6-9A-2 of this code.

9 "Person" has the same definition as in §6-9A-2 of this code. The term does not include a public
10 corporation, government or governmental subdivision, agency, or instrumentality.

11 "Public agency" has the same definition as in §6-9A-2 of this code, however, for purposes of this
12 article, it does not include the Legislature.

13 "Record" means information that is inscribed on a tangible medium or that is stored in an
14 electronic or other medium and is retrievable in perceivable form.

15 "Virtual meeting" or "virtually" means a meeting of a public agency or any part thereof, at which
16 some or all of the members of the public agency participate wholly or partly by electronic means.

§6-9C-3. Virtual meetings.

1 (a) A public agency may meet virtually during an emergency that is the subject of an emergency
2 declaration if otherwise permitted by law, or all or part of the jurisdiction of the public agency is subject
3 to the emergency declaration; and the person authorized by law or by rule of the public agency to act
4 for the public agency determines that due to the emergency it would not be practical or prudent for the
5 public agency to meet physically or if the emergency declaration prohibits physical meetings.

6 (b) If a virtual meeting of a public agency authorized by §6-9C-3(a) of this code complies with
7 the requirements of §6-9C-4, §6-9C-5, and §6-9C-6 of this code, then any action taken at a virtual
8 meeting has the same legal force and effect as an action taken at a physical meeting of the public
9 agency. All other laws of the state that apply to a physical meeting of a public agency shall, to the extent
10 practicable and not inconsistent with a virtual meeting, apply to a virtual meeting of the public agency.

§6-9C-4. Authorization for virtual meeting.

1 (a) A public agency may conduct a virtual meeting while an emergency declaration is in effect
2 that applies to all or part of the jurisdiction of the public agency if:

3 (1) The emergency declaration prohibits, limits, or has the effect of prohibiting or limiting an in-
4 person meeting of the public agency; or

5 (2) The presiding officer of the public agency or other individual authorized to act for the public
6 agency determines it is not practical or prudent for the public agency to conduct an in-person meeting
7 because of the emergency; and

8 (A) Communicates to the members of the public agency that the meeting shall be a virtual
9 meeting; and

10 (B) Takes reasonable steps to inform members of the public that the meeting shall be a virtual
11 meeting.

§6-9C-5. Conduct of virtual meeting.

1 (a) A public agency shall, to the extent practicable, select a means to conduct a virtual meeting
2 that is compatible with assistive technology commonly used by individuals with disabilities and that
3 facilitates the accommodation needs of individuals with disabilities to access the meeting.

4 (b) Except as provided in §6-9C-5(c) or §6-9C-5(d) of this code, the means used to conduct a
5 virtual meeting shall permit each member of the public agency who attends the meeting to see and hear
6 during the meeting and to be seen and heard by, the other members of the public agency who attend
7 the meeting.

8 (c) If a member of a public agency is unable to obtain visual access to the virtual meeting but is
9 able to obtain audio access that permits the member, during the meeting, to hear and be heard by the
10 other members of the public agency who attend the meeting, the member may attend by audio access.

11 (d) If a public agency lacks the capacity to provide contemporaneous visual access to a virtual
12 meeting for members of the public agency, the public agency may conduct the meeting by audio-only
13 access that permits each member of the public agency who attends the meeting, to hear and be heard
14 during the meeting by the other members of the public agency who attend the meeting.

15 (e) A member of a public agency who attends a virtual meeting is considered present for all
16 purposes, including for determination of a quorum and voting, if during the meeting, the member may:

17 (1) For a meeting conducted in compliance with §6-9C-5(b) of this code, see and hear and be
18 seen and heard by the other members of the public agency who attend; or

19 (2) For a meeting conducted in compliance with §6-9C-5(c) or (d) of this code, may hear and be
20 heard by the other members of the public agency who attend.

21 (f) A member of a public agency who attends a virtual meeting through electronic means that
22 provide audio-only access to the meeting shall state the member's name each time the member speaks.
23 Failure by a member to state the member's name does not invalidate an action taken at the virtual
24 meeting.

25 (g) A vote taken at a virtual meeting shall be by a process that identifies how each member of
26 the public agency votes.

27 (h) The minutes of a virtual meeting shall include any vote taken, that the meeting was conducted
28 by electronic means, the technology used, and which members of the public agency attended by
29 electronic means.

§6-9C-6. Public observation.

1 (a) If the open meetings law requires that the public be able to observe all or part of a meeting
2 of a public agency in real time:

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

5 (2) The public agency shall provide the technological means to allow the members of the public
6 who observe the virtual meeting to see and hear or, if the public agency conducts the meeting by audio-
7 only access under §6-9C-5(d) of this code, to hear any members of the public authorized by the public
8 agency to speak in the meeting.

9 (b) A document, exhibit, or other record presented to a public agency at a virtual meeting that,
10 under the open meetings law, would have been available to the public at an in-person meeting, including
11 members of the public observing or participating in a virtual meeting under §6-9C-7 of this code, shall
12 be made available to the public at the same time as the virtual meeting to the extent practicable.

§6-9C-7. Public participation.

1 (a) If a law of this state or a political subdivision of the state or a rule, practice, or procedure
2 adopted by the public agency requires that members of the public be permitted to participate in a

3 meeting of the public agency, the public agency to the extent practicable shall permit members of the
4 public to participate in a virtual meeting, subject to the conditions that apply at an in-person meeting of
5 the public agency.

6 (b) If members of the public are permitted to speak at a virtual meeting, the technology used to
7 conduct the meeting shall permit the members of the public agency and members of the public attending
8 the meeting to hear the members of the public who speak at the meeting.

9 (c) If a public agency considers at a virtual meeting a matter affecting the right or interest of a
10 person entitled by other law of the state or a political subdivision of this state or by rule of the public
11 agency to participate, present evidence, or examine or cross-examine witnesses at an in-person
12 meeting, the public agency shall permit the person to use the same technology that the public agency
13 uses to conduct the virtual meeting, or provide equivalent access, to attend the meeting and present
14 evidence, or examine or cross-examine witnesses in the meeting.

15 (d) If a person to which §6-9C-7(c) of this code applies objects that the virtual meeting does not
16 allow the person to effectively protect the right or interest referred to in §6-9C-7(c) of this code, the public
17 agency shall consider the objection and may proceed with the matter at a virtual meeting if the agency
18 determines that the virtual meeting will allow the person to effectively protect the right or interest. The
19 determination and the reason for the determination shall be stated in a record.

§6-9C-8. Notice.

1 (a) In addition to any other requirement concerning notice, a public agency, for a meeting of the
2 public agency, shall give notice of a virtual meeting and shall specify that the meeting will be a virtual
3 meeting and the technology that will be used for the virtual meeting.

4 (b) Notice of a virtual meeting shall specify how:

5 (1) Members of the public may observe the meeting in real time pursuant to §6-9C-6 of this code;

6 (2) Members of the public permitted to participate, present evidence, or examine or cross-
7 examine witnesses at the meeting pursuant to §6-9C-7 of this code may do so;

8 (3) A member of the public may alert the public agency of a technical or quality problems that
9 prevents the member from accessing the meeting; and

10 (4) A member of the public with a disability may request a reasonable accommodation to access
11 the meeting.

§6-9C-9. Procedural rules.

1 A public agency may adopt rules for conducting a virtual meeting under this article, comparable
2 to rules for conducting an in-person meeting of the public agency. The rules may include:

3 (1) The means by which the public agency will inform members of the public that a virtual meeting
4 will be held;

5 (2) The effect of a technical or quality problems that interferes with meeting or access to a
6 meeting by a member of the public agency or the public;

7 (3) The means by which a record considered at a meeting is made available to the public agency
8 and, if required by other law, the public;

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

10 (5) The process by which a person may object under §6-9C-7 of this code to the conduct of a
11 meeting on the ground that the procedure denies the person due process of law.

§6-9C-10. Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits, or supersedes the Electronic Signatures in Global and National
2 Commerce Act, 15 U.S.C. § 7001 *et seq.*, but does not modify, limit, or supersede Section 101(c)
3 of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in
4 Section 103 (b) of that act, 15 U.S.C. § 7003(b).

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor