



Open and Public Meetings Act

Study Item: Potential Amendments to OPMA

OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

Government Operations Interim Committee

June 16, 2021



Open and Public Meetings Act

Study item from LMC: “Study potential amendments to OPMA, including electronic meetings.”

“It is the intent of the Legislature that the state, its agencies, and its political subdivisions:

(a) take their actions openly; and

(b) conduct their deliberations openly.”

§ 52-4-102(2)



Electronic Meeting Requirements

All Electronic Meetings

To hold an electronic meeting, a public body must adopt a resolution, rule, or ordinance governing the use of electronic meetings.

Public notice must be given 24 hours before the meeting.

Written minutes and a recording of the meeting must be kept.

Anchor Location

One or more anchor locations must be established.

Notice posted @ anchor location.

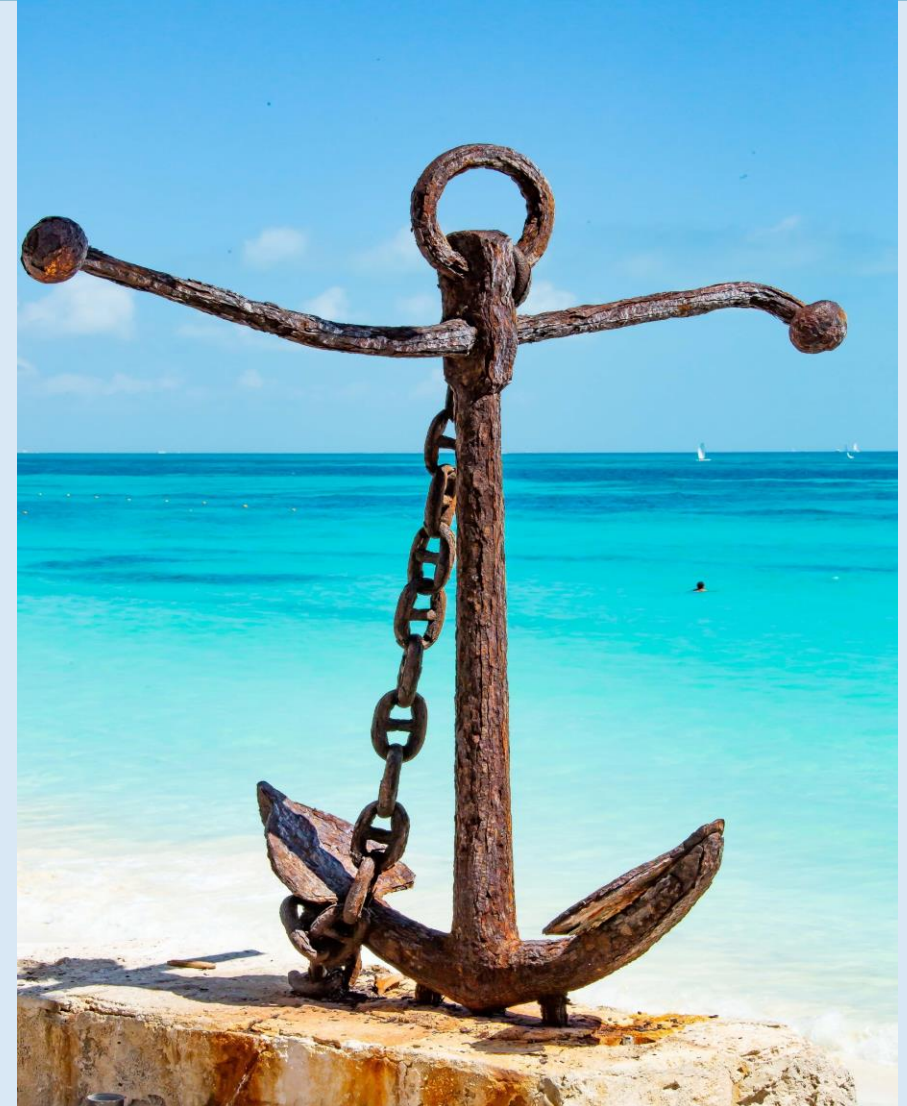
Must provide space and facilities @ anchor so public can attend; may provide means for public to attend “by electronic means.”

No Anchor Location

Written determination of health risk with an anchor location.

Read determination @ meeting.

Must provide means by which the public can attend the meeting remotely “by electronic means.”



Possible Areas to Study



Photo by [Clément Falize](#) on [Unsplash](#)

- **Recordings/minutes**
- **Quorum requirements**
- **Voting**
- **Public participation**
- **Closed meetings**
- **Tech support/issues**
- **Miscellaneous**

Recordings/Minutes

Recordings

- [Arkansas](#) - an electronic meeting must be “recorded in the format in which it is conducted.”
- [New York](#) – remote meetings must be “recorded and later transcribed.”
- [Rhode Island](#) and [Tennessee](#) – if, because of economic hardship or “despite best efforts,” a public body is unable to provide public access to an electronic meeting, the body must post a complete transcript or recording of the meeting on its website. (This option is not available for meetings that must allow for active public participation.)



Photo by [Craig Pattenau](#) on [Unsplash](#)

Minutes

- [Hawaii](#), [Maryland](#), and [New Hampshire](#) - each remote member of the public body must state whether anyone is with the member during the meeting.
- [Massachusetts](#) – at the start of the meeting, the chair must announce the name of all members participating remotely, which must be recorded in the minutes. If a remote participant is disconnected from the meeting, “that fact and the time at which the disconnection occurred” must be reflected in the minutes.
- [Michigan](#) – a remote participant must state at the outset of the meeting that the member is participating remotely and must state the state, county, and city from which the member is participating. This statement must be included in the meeting minutes.
- [Virginia](#) – minutes must record the fact that the meeting was held electronically and the “type of electronic communication means” by which the meeting was held.

Quorum Requirements

- [Alabama](#) – a majority of a quorum must be physically present at the meeting location.
- [Hawaii](#) – a quorum must be “visible and audible” during the meeting.
- [Kentucky](#) – members must be “both seen and heard.”
- [Louisiana](#) – a quorum must “be engaged in the meeting.”
- [Massachusetts](#) – a quorum, including the chair, must be physically present at the meeting location.
- [Oklahoma](#) – quorum must be present at the meeting site and notice must state where each member will physically be. A remote member must participate from the district or political subdivision that they represent.
- [South Dakota](#) – a remote member is present for quorum purposes if the member answers “present” to the roll call.
- [Vermont](#), [Nevada](#), [New Hampshire](#), [Pennsylvania](#), and [South Carolina](#) – a quorum or more can attend electronically.
- [JR 1-4-403](#) – during an emergency, a remote member is counted for quorum purposes if the member is participating and “able to communicate” electronically.
- [JR 7-1-407](#) – a “participating” remote member is included in calculating a quorum.



Photo by [Chris Montgomery](#) on [Unsplash](#)



Voting

- [Arkansas](#) and [California](#) have allowed proxy voting in some circumstances. California requires that each remote participant “shall certify each vote in writing.”
- [Delaware](#) – the actions of a member must be “authenticated, in a manner satisfactory to the presiding officer or chair.”
- [Alabama](#), [Alaska](#), [Maine](#), [Massachusetts](#), [Michigan](#), [Minnesota](#), [New Mexico](#), [Ohio](#), [Oklahoma](#), [South Dakota](#), [Tennessee](#), [Vermont](#), and [Virginia](#) require/recommend that all votes taken during an electronic meeting be taken by roll call.
- [Missouri](#) – members may vote only if physically present or participating via videoconference, except in emergency.
- [Nebraska](#) – roll call voting may be accomplished by an “electronic voting device” that allows the yeas and nays of each member to be “readily seen by the public.”
- [Vermont](#) and [Hawaii](#) - any vote that is not unanimous must be taken by roll call.



Photo by [Usman Yousaf](#) on [Unsplash](#)



Public Participation



- [Connecticut](#), [Delaware](#), and [New Mexico](#) – all speakers taking part in an electronic meeting must state their name and title, if applicable, each time that they speak.
- [Louisiana](#) - at the start of the meeting, a public body should “read aloud the items on the agenda with reasonable specificity, including the matter to be discussed and potential action to be taken. Pause the proceeding for 30 minutes or a reasonable time to allow for public comments to be submitted to the public body by way of phone calls, emails, or comments on the live stream, etc.”
- [Michigan](#) – a public body may allow typed public comments that “may be read to or shared with members of the public body and other participants.”
- [Montana](#) – the public must be able to comment “through participation via the remote communication system or by other reasonable means.”
- [New Jersey](#) – public comments may be accepted by text, email, tweet, live-stream call-in number, Facebook post, or other means.
- [Oklahoma](#) – each site where a member of the body is present by videoconference shall be open and accessible to the public.
- [Wisconsin](#) – “appropriate accommodations should be made to facilitate reasonable access” for individuals without telephone or internet access, or who are deaf or hard of hearing.

Closed Meetings

- [Alabama](#) – only those members who are physically present may participate in a closed session.
- [Hawaii](#) – members must be audible but are not required to be visible to other participants. Person running IT shall confirm that no unauthorized person is accessing the meeting.
- [Massachusetts](#) – at the beginning of a closed meeting, each member participating remotely must “state that no other person is present or able to hear the discussion at the remote location, unless the public body has approved the presence of that individual.”
- [Oklahoma](#) – no executive sessions by videoconference except in an emergency.



Tech Support/Issues

- [Hawaii](#) – automatic recess up to 30 min. if audiovisual communication is lost.
- [Kentucky](#) and [Oklahoma](#) – with any interruption in the connection, the meeting shall be stopped and reconvened when the connection is restored.
- [Massachusetts](#) – the chair of the meeting may decide how to address technical difficulties, which may include suspending discussion while efforts are taken to resolve any issue.
- [New Hampshire](#) – the public body must provide a mechanism for the public to alert the body during the meeting if there are problems with access.
- [New Mexico](#) and [Oklahoma](#) – the chair should suspend discussion if audio or video are interrupted.





Miscellaneous

- **Training**
- **Notice requirements**
- **Interruptions**
- **Enforcement/Penalties**
- **OPMA/Legislative Rules**



OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL
