WEST VIRGINIA CODE CHAPTER 6 ARTICLE 9C

WV Legislature

§6-9C-1. Short title.

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

WV Legislature

§6-9C-2. Definitions.

In this article:

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

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

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

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

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

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

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

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

WV Legislature

§6-9C-3. Virtual meetings.

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

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

WV Legislature

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

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

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

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

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

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

WV Legislature

§6-9C-5. Conduct of virtual meeting.

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

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

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

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

(e) A member of a public agency who attends a virtual meeting is considered present for all

purposes, including for determination of a quorum and voting, if during the meeting, the member may:

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

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

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

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

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

WV Legislature

§6-9C-6. Public observation.

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

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

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

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

WV Legislature

§6-9C-7. Public participation.

(a) If a law of this state or a political subdivision of the state or a rule, practice, or procedure adopted by the public agency requires that members of the public be permitted to participate in a meeting of the public agency, the public agency to the extent practicable shall permit members of the public to participate in a virtual meeting, subject to the conditions that apply at an in-person meeting of the public agency.

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

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

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

WV Legislature

§6-9C-8. Notice.

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

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

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

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

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

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

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§6-9C-9. Procedural rules.

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

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

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

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

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

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

WV Legislature

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

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

WV Legislature