

1 **SENATE FLOOR VERSION**

2 April 4, 2023

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2108

By: Pae, Fugate, Schreiber, and
Hefner of the House

6 and

7 Howard of the Senate

8
9 [public meetings - Oklahoma Open Meeting Act -
10 public health emergency - meetings and executive
11 sessions utilizing digital means - private electronic
12 communications - codification - effective date]

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 25 O.S. 2021, Section 304, as
15 amended by Section 1, Chapter 123, O.S.L. 2022 (25 O.S. Supp. 2022,
16 Section 304), is amended to read as follows:

17 Section 304. As used in the Oklahoma Open Meeting Act:

18 1. "Public body" means the governing bodies of all
19 municipalities located within this state, boards of county
20 commissioners of the counties in this state, boards of public and
21 higher education in this state and all boards, bureaus, commissions,
22 agencies, trusteeships, authorities, councils, committees, public
23 trusts or any entity created by a public trust including any
24 committee or subcommittee composed of any of the members of a public

1 trust or other legal entity receiving funds from the Rural Economic
2 Action Plan Fund as authorized by Section 2007 of Title 62 of the
3 Oklahoma Statutes, task forces or study groups in this state
4 supported in whole or in part by public funds or entrusted with the
5 expending of public funds, or administering public property, and
6 shall include all committees or subcommittees of any public body.

7 Public body shall not include:

8 a. the state judiciary,

9 b. the Council on Judicial Complaints when conducting,
10 discussing, or deliberating any matter relating to a
11 complaint received or filed with the Council,

12 c. the Legislature, ~~or~~

13 d. administrative staffs of public bodies including, but
14 not limited to, faculty meetings and athletic staff
15 meetings of institutions of higher education when
16 those staffs are not meeting with the public body, or
17 entry-year assistance committees. ~~Furthermore, public~~
18 ~~body shall not include the,~~

19 e. multidisciplinary teams provided for in Section 1-9-
20 102 of Title 10A of the Oklahoma Statutes, in Section
21 ~~2~~ 10-115 of ~~this act~~ Title 43A of the Oklahoma
22 Statutes, and in subsection C of Section 1-502.2 of
23 Title 63 of the Oklahoma Statutes or any school board
24 meeting for the sole purpose of considering

1 recommendations of a multidisciplinary team and
2 deciding the placement of any child who is the subject
3 of the recommendations. ~~Furthermore, public body~~
4 ~~shall not include,~~

5 f. meetings conducted by stewards designated by the
6 Oklahoma Horse Racing Commission pursuant to Section
7 203.4 of Title 3A of the Oklahoma Statutes when the
8 stewards are officiating at races or otherwise
9 enforcing rules of the Commission. ~~Furthermore,~~
10 ~~public body shall not include, or~~

11 g. the board of directors of a Federally Qualified Health
12 Center;

13 2. "Meeting" means the conduct of business of a public body by
14 a majority of its members being personally together or, as
15 authorized by Section 307.1 of this title, together ~~pursuant to a~~
16 ~~videoconference~~ utilizing electronic means. Meeting shall not
17 include informal gatherings of a majority of the members of the
18 public body when no business of the public body is discussed;

19 3. "Regularly scheduled meeting" means a meeting at which the
20 regular business of the public body is conducted;

21 4. "Special meeting" means any meeting of a public body other
22 than a regularly scheduled meeting or emergency meeting;

23 5. "Emergency meeting" means any meeting called for the purpose
24 of dealing with an emergency including but not limited to a public

1 health emergency. For purposes of the Oklahoma Open Meeting Act, an
2 ~~emergency is defined as~~ "emergency" means a situation involving
3 injury to persons or injury and damage to public or personal
4 property or immediate financial loss when the time requirements for
5 public notice of a special meeting would make such procedure
6 impractical and increase the likelihood of injury or damage or
7 immediate financial loss;

8 6. "Continued or reconvened meeting" means a meeting which is
9 assembled for the purpose of finishing business appearing on an
10 agenda of a previous meeting. For the purposes of the Oklahoma Open
11 Meeting Act, only matters on the agenda of the previous meeting at
12 which the announcement of the continuance is made may be discussed
13 at a continued or reconvened meeting;

14 7. ~~"Videconference"~~ "Public health emergency" means an
15 occurrence of imminent threat of an illness or health condition that
16 poses a high probability of a large number of deaths or serious or
17 long-term disabilities in the affected population, or widespread
18 exposure to an infectious or toxic agent that poses a significant
19 risk of harm to a large number of people in the affected population,
20 for which the Governor or an elected official or officials of a
21 political subdivision are authorized by law to declare an emergency;
22 and

23 8. "Electronic means" means a ~~conference among~~ method of
24 linking members of a public body remote from one another ~~who are~~

1 ~~linked~~ by interactive telecommunication devices or technology ~~and/or~~
2 or other technology permitting both visual and auditory
3 communication between and among members of the public body ~~and/or~~
4 and between and among members of the public body and members of the
5 public. During any ~~videoconference~~ meeting conducted utilizing
6 electronic means, both the visual and auditory communications
7 functions shall attempt to be utilized; ~~and~~

8 8. ~~"Teleconference" means a conference among members of a~~
9 ~~public body remote from one another who are linked by~~
10 ~~telecommunication devices and/or technology permitting auditory~~
11 ~~communication between and among members of the public body and/or~~
12 ~~between and among members of the public body and members of the~~
13 ~~public.~~

14 SECTION 2. AMENDATORY 25 O.S. 2021, Section 307.1, as
15 amended by Section 2, Chapter 182, O.S.L. 2022 (25 O.S. Supp. 2022,
16 Section 307.1), is amended to read as follows:

17 Section 307.1. A. ~~Except as provided in subsections C and D of~~
18 ~~this section,~~ a A public body may hold meetings ~~by videoconference~~
19 utilizing electronic means where each member of the public body is
20 visible and audible to each other and the public through a video
21 monitor, subject to the following:

22 1. a. except as provided for in ~~subparagraph~~ subparagraphs b
23 and c of this paragraph, no less than a quorum of the
24 public body shall be present in person at the physical

1 meeting site as posted on the meeting notice and
2 agenda,

3 b. a virtual charter school approved and sponsored by the
4 Statewide Virtual Charter School Board pursuant to the
5 provisions of Section 3-145.3 of Title 70 of the
6 Oklahoma Statutes shall maintain a quorum of members
7 for the entire duration of the meeting whether using
8 an in-person site, ~~videoconference sites~~ electronic
9 means, or any combination of such sites to achieve a
10 quorum, and

11 c. the board of a community action agency established
12 pursuant to Sections 5035 through 5040 of Title 74 of
13 the Oklahoma Statutes shall maintain a quorum of
14 members for the entire duration of the meeting whether
15 using an in-person site, electronic means, or any
16 combination of such sites to achieve a quorum, and

17 d. each public meeting held ~~by videoconference or~~
18 ~~teleconference~~ utilizing electronic means shall be
19 recorded either by written, electronic, or other
20 means;

21 2. The meeting notice and agenda prepared in advance of the
22 meeting, as required by law, shall indicate if the meeting will
23 include ~~videoconferencing~~ electronic locations and shall state:
24

1 a. the location, address, ~~and~~ website or link, or
2 telephone number of each available ~~videoconference~~
3 physical or electronic site, if applicable, and

4 b. the identity of each member of the public body and the
5 specific physical or electronic site from which each
6 member of the body shall be physically or
7 electronically present and participating in the
8 meeting; and

9 3. After the meeting notice and agenda are prepared and posted,
10 as required by law, no member of the public body shall be allowed to
11 participate in the meeting ~~from any location other than the specific~~
12 ~~location posted on the agenda in advance of the meeting;~~

13 4. ~~In order to allow the public the maximum opportunity to~~
14 ~~attend and observe each public official carrying out the duties of~~
15 ~~the public official, a member or members of a public body desiring~~
16 ~~to participate in a meeting by videoconference shall participate in~~
17 ~~the videoconference from a site and room located within the district~~
18 ~~or political subdivision from which they are elected, appointed, or~~
19 ~~are sworn to represent;~~

20 5. ~~Each site and room where a member of the public body is~~
21 ~~present for a meeting by videoconference shall be open and~~
22 ~~accessible to the public, and the public shall be allowed into that~~
23 ~~site and room. Public bodies may provide additional videoconference~~
24 ~~sites as a convenience to the public, but additional sites shall not~~

1 ~~be used to exclude or discourage public attendance at any~~
2 ~~videoconference site;~~

3 ~~6. The public shall be allowed to participate and speak, as~~
4 ~~allowed by rule or policy set by the public body, in a meeting at~~
5 ~~the videoconference site in the same manner and to the same extent~~
6 ~~as the public is allowed to participate or speak at the site of the~~
7 ~~meeting;~~

8 ~~7. Any materials shared electronically between members of the~~
9 ~~public body, before or during the videoconference, shall also be~~
10 ~~immediately available to the public in the same form and manner as~~
11 ~~shared with members of the public body; and~~

12 ~~8. All votes occurring during any meeting conducted using~~
13 ~~videoconferencing shall occur and be recorded by roll call vote by~~
14 ~~electronic means unless such remote participation was specifically~~
15 ~~authorized in the meeting notice.~~

16 ~~B. Except as provided for in subsection E of this section, no~~
17 ~~public body shall conduct an executive session by videoconference.~~

18 ~~C. Upon the effective date of this act and until February 15,~~
19 ~~2022, or until thirty (30) days after the expiration or termination~~
20 ~~of the state of emergency declared by the Governor to respond to the~~
21 ~~threat of COVID-19 to the people of this state and the public's~~
22 ~~peace, health and safety, whichever date first occurs, the~~
23 ~~provisions of this subsection and subsection D shall operate as law~~
24 ~~in this state.~~

1 ~~1.~~ A public body may hold meetings by ~~teleconference or~~
2 ~~videoconference if each member of the public body is audible or~~
3 ~~visible to each other and the public, subject to~~ electronic means
4 without a quorum at a physical location open to the public in the
5 following circumstances:

6 a. ~~for a~~

7 1. Any meeting conducted by a virtual charter school approved
8 and sponsored by the Statewide Virtual Charter School Board pursuant
9 to the provisions of the Oklahoma Statutes, ~~the;~~

10 2. Any meeting conducted by the board of a community action
11 agency established pursuant to Sections 5035 through 5040 of Title
12 74 of the Oklahoma Statutes;

13 3. During a declared state of emergency in which the public
14 body is unable to utilize the physical meeting location. A state of
15 emergency declared by an elected official or officials of a
16 political subdivision as authorized by law shall not be a sufficient
17 reason to suspend the use of a physical location open to the public
18 for more than three (3) consecutive meetings unless a state of
19 emergency covering the political subdivision is concurrently
20 declared by the Governor; or

21 4. If the physical location designated on the meeting notice
22 has become unsafe or otherwise inaccessible to the members of the
23 public body and the public due to circumstances including but not
24

1 limited to a gas leak, electrical failure, or structural damage to
2 the physical location.

3 The public body shall maintain a quorum of members for the entire
4 duration of the meeting whether using an in-person site,
5 ~~teleconference, or videoconference~~ electronic means, or any
6 combination of such sites to achieve a quorum, ~~and~~

7 ~~b. if the meeting is held using either teleconference or~~
8 ~~videoconference capabilities, and at any time the~~
9 ~~audio connection is disconnected, the meeting shall be~~
10 ~~stopped and reconvened once the audio connection is~~
11 ~~restored;~~

12 ~~2. The meeting notice and agenda prepared in advance of the~~
13 ~~meeting, as required by law, shall indicate if the meeting will~~
14 ~~include teleconferencing or videoconferencing and shall also state:~~

15 ~~a. each public body member appearing remotely and the~~
16 ~~method of each member's remote appearance, and~~

17 ~~b. the identity of the public body member or members who~~
18 ~~will be physically present at the meeting site, if~~
19 ~~any;~~

20 ~~3. After the meeting notice and agenda are prepared and posted~~
21 ~~as required by law, public body members shall not be permitted to~~
22 ~~alter their method of attendance; provided, however, those members~~
23 ~~who were identified as appearing remotely may be permitted to~~
24 ~~physically appear at the meeting site, if any, for the meeting;~~

1 ~~4. The public body shall be allowed to participate and speak,~~
2 ~~as allowed by rule or policy set by the public body, in a meeting~~
3 ~~which utilizes teleconference or videoconference in the same manner~~
4 ~~and to the same extent as the public is allowed to participate or~~
5 ~~speak during a meeting where all public body members are physically~~
6 ~~present together at the meeting site;~~

7 ~~5. Any documents or other materials provided to members of the~~
8 ~~public body or shared electronically between members of the public~~
9 ~~body during a meeting utilizing teleconferencing or~~
10 ~~videoconferencing shall also be immediately available to the public~~
11 ~~on the website of the public body, if the public body maintains a~~
12 ~~website; and~~

13 ~~6. All votes occurring during any meeting utilizing~~
14 ~~teleconference or videoconference shall occur and be recorded by~~
15 ~~roll call votes.~~

16 ~~D. Public bodies are permitted to conduct an executive session~~
17 ~~by teleconference or videoconference. For such executive sessions,~~
18 ~~no public body member is required to be physically present so long~~
19 ~~as each public body member is audible or visible to each other. The~~
20 ~~meeting notice and agenda prepared in advance of the meeting as~~
21 ~~required by law shall indicate if the executive session will include~~
22 ~~teleconferencing or videoconferencing and shall also state the~~
23 ~~identity of each public body member appearing remotely, the method~~
24 ~~of each member's remote appearance, and whether any member will be~~

1 ~~physically present at the meeting site, if any, for the executive~~
2 ~~session.~~

3 ~~E. C.~~ The Oklahoma Tax Commission may conduct executive
4 sessions with the taxpayer at issue attending using ~~videoconference~~
5 ~~technology~~ electronic means to discuss confidential taxpayer matters
6 as provided for in Section 205 of Title 68 of the Oklahoma Statutes.
7 During executive sessions, the Commission is required to be
8 physically present while taxpayers may appear using ~~videoconference~~
9 ~~technology~~ electronic means. The technology selected and utilized
10 by the Commission shall ensure taxpayer confidentiality including
11 compliance with safeguards as provided for in Internal Revenue
12 Service Publication 1075.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 307.2 of Title 25, unless there
15 is created a duplication in numbering, reads as follows:

16 A. A public body may conduct regular and special meetings
17 utilizing electronic means subject to the following requirements:

18 1. A quorum of members must be physically present in the
19 physical meeting location of the public body as provided in the
20 meeting notice; provided, however, a public body may conduct an
21 emergency meeting utilizing electronic means without a quorum
22 present at the physical location pursuant to Section 307.1 of Title
23 25 of the Oklahoma Statutes;

24

1 2. No member of a public body may participate in a regular or
2 special meeting utilizing electronic means for more than one-fourth
3 (1/4) of such meetings in a rolling one-year period;

4 3. A member of a public body participating in a meeting
5 utilizing electronic means shall be confirmed by audio or visual
6 affirmation to the public to be the actual member of the governing
7 body and may only participate from a fixed physical location;

8 4. Documents or other materials provided to members of the
9 public body or shared electronically between members of the public
10 body during a meeting utilizing electronic means shall be made
11 immediately available to the public on the website of the public
12 body if the public body maintains a website, or through distribution
13 or viewing on the site streaming the meeting;

14 5. The public shall be allowed to participate in meetings
15 conducted utilizing electronic means to the extent such
16 participation is consistent with current law or adopted rules or
17 policy of the public body;

18 6. All votes occurring during any meeting by members utilizing
19 electronic means shall be recorded by roll call vote with visual and
20 auditory confirmation of the member casting the vote;

21 7. Recordings of the meetings conducted through electronic
22 means shall be maintained by the public body until minutes of the
23 proceedings are open to public inspection, including but not limited
24

1 to posting on a website of the public body, as required by Section
2 312 of Title 25 of the Oklahoma Statutes; and

3 8. A member of a public body participating in a meeting by
4 electronic means may participate in executive sessions of the public
5 body provided all notice and agenda requirements for the member's
6 remote participation have been met.

7 B. To the extent practicable, if a public body maintains a
8 website, has dedicated information technology employees, and has
9 immediate access to a high-speed internet connection, meetings shall
10 be streamed live on the public body's website, made available by
11 telephonic means, or video of the meeting shall be made available
12 through an alternative website. Video of such meetings shall be
13 maintained by the public body and available to the public for a
14 period of at least seven (7) business days after the adoption of the
15 meeting minutes. The provisions of this subsection shall not apply
16 if a public body determines that the implementation of this
17 subsection would create a significant financial burden to the public
18 body.

19 C. Meetings held without a physical meeting place open to the
20 public shall be streamed or otherwise made available to the public
21 at no charge by utilizing electronic means, the website of the
22 public body, the internet, or any other free subscription digital
23 service or application.

24

1 D. No private electronic communications concerning public
2 business may occur between members of the public body during a
3 public meeting.

4 E. A public body that makes a good faith effort to comply with
5 the provisions of this section shall be immune from liability for
6 court costs and attorney fees in a civil action brought for a
7 violation of the requirements of this section.

8 SECTION 4. This act shall become effective November 1, 2023.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
10 April 4, 2023 - DO PASS AS AMENDED BY CS

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