

# SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION

☒ FLOOR AMENDMENT

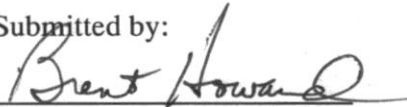
No. 1

☐ COMMITTEE AMENDMENT

(Date)

I move to amend Senate Bill No. 761, by substituting the attached floor substitute (Request #2010) for the title, enacting clause and entire body of the measure.

Submitted by:

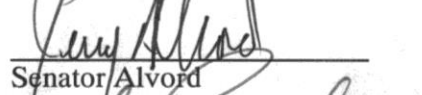


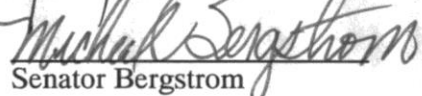
Senator Howard

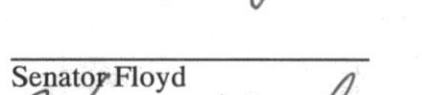
I hereby grant permission for the floor substitute to be adopted.

  
Senator Garvin, Chair (required)

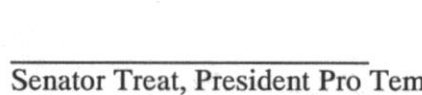
  
Senator Stewart

  
Senator Alvord

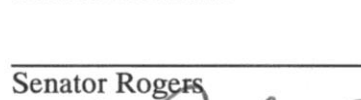
  
Senator Bergstrom

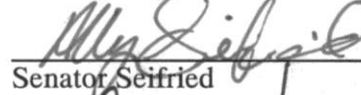
  
Senator Floyd

  
Senator Hamilton

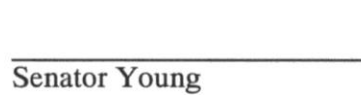
  
Senator Treat, President Pro Tempore

  
Senator Murdock

  
Senator Rogers

  
Senator Seifried

  
Senator Weaver

  
Senator Young

  
Senator McCortney, Majority Floor Leader

Note: General Government committee majority requires six (6) members' signatures.

Howard-TEK-FS-SB761

3/22/2023 12:32 PM

(Floor Amendments Only)

Date and Time Filed: 3-22-23

1:52 pm *fd*

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

FLOOR SUBSTITUTE  
FOR

SENATE BILL NO. 761

By: Howard of the Senate

and

Pae of the House

FLOOR SUBSTITUTE

An Act relating to the Oklahoma Open Meeting Act; amending 25 O.S. 2021, Sections 304, as amended by Section 1, Chapter 123, O.S.L. 2022, and 307.1, as amended by Section 2, Chapter 182, O.S.L. 2022 (25 O.S. Supp. 2022, Sections 304 and 307.1), which relate to definitions and videoconferences; modifying definitions; authorizing public bodies to conduct meetings utilizing electronic means under certain circumstances; modifying certain notice requirements; removing obsolete language; conforming language; providing exceptions to requirements for quorum in a physical location under certain circumstances; establishing requirements for meetings of public bodies conducted utilizing electronic means; establishing requirements for sharing of certain documents or materials provided to public bodies; authorizing certain public participation; requiring recording and confirmation of certain votes; establishing requirements for retention of certain recordings; authorizing members of public bodies to participate in executive sessions by electronic means under certain circumstances; requiring live stream of meetings of public bodies under certain circumstances; establishing requirements for retention of certain recordings; providing exception; requiring access by electronic means to certain meetings be provided at no cost to the public; prohibiting certain private electronic communications under certain circumstances; providing immunity from

1 liability for public body under certain  
2 circumstances; updating statutory references;  
3 providing for codification; and providing an  
4 effective date.

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

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

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

10 1. "Public body" means the governing bodies of all  
11 municipalities located within this state, boards of county  
12 commissioners of the counties in this state, boards of public and  
13 higher education in this state and all boards, bureaus, commissions,  
14 agencies, trusteeships, authorities, councils, committees, public  
15 trusts or any entity created by a public trust including any  
16 committee or subcommittee composed of any of the members of a public  
17 trust or other legal entity receiving funds from the Rural Economic  
18 Action Plan Fund as authorized by Section 2007 of Title 62 of the  
19 Oklahoma Statutes, task forces or study groups in this state  
20 supported in whole or in part by public funds or entrusted with the  
21 expending of public funds, or administering public property, and  
22 shall include all committees or subcommittees of any public body.  
23 Public body shall not include:

24 a. the state judiciary,

- 1        b.    the Council on Judicial Complaints when conducting,  
2            discussing, or deliberating any matter relating to a  
3            complaint received or filed with the Council,  
4        c.    the Legislature, ~~or~~  
5        d.    administrative staffs of public bodies including<sup>7</sup> but  
6            not limited to<sup>7</sup> faculty meetings and athletic staff  
7            meetings of institutions of higher education when  
8            those staffs are not meeting with the public body, or  
9            entry-year assistance committees. ~~Furthermore, public~~  
10          ~~body shall not include the,~~  
11        e.    multidisciplinary teams provided for in Section 1-9-  
12            102 of Title 10A of the Oklahoma Statutes, in Section  
13            ~~2~~ 10-115 of ~~this act~~ Title 43A of the Oklahoma  
14            Statutes, and in subsection C of Section 1-502.2 of  
15            Title 63 of the Oklahoma Statutes or any school board  
16            meeting for the sole purpose of considering  
17            recommendations of a multidisciplinary team and  
18            deciding the placement of any child who is the subject  
19            of the recommendations. ~~Furthermore, public body~~  
20          ~~shall not include,~~  
21        f.    meetings conducted by stewards designated by the  
22            Oklahoma Horse Racing Commission pursuant to Section  
23            203.4 of Title 3A of the Oklahoma Statutes when the  
24            stewards are officiating at races or otherwise

1                   enforcing rules of the Commission. ~~Furthermore,~~  
2                   ~~public body shall not include, or~~

3                   g.     the board of directors of a Federally Qualified Health  
4                   Center;

5           2.   "Meeting" means the conduct of business of a public body by  
6   a majority of its members being personally together or, as  
7   authorized by Section 307.1 of this title, together ~~pursuant to a~~  
8   ~~videoconference~~ utilizing electronic means. Meeting shall not  
9   include informal gatherings of a majority of the members of the  
10  public body when no business of the public body is discussed;

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

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

15          5.   "Emergency meeting" means any meeting called for the purpose  
16  of dealing with an emergency including but not limited to a public  
17  health emergency. For purposes of the Oklahoma Open Meeting Act, an  
18  ~~emergency is defined as~~ "emergency" means a situation involving  
19  injury to persons or injury and damage to public or personal  
20  property or immediate financial loss when the time requirements for  
21  public notice of a special meeting would make such procedure  
22  impractical and increase the likelihood of injury or damage or  
23  immediate financial loss;

1        6. "Continued or reconvened meeting" means a meeting which is  
2 assembled for the purpose of finishing business appearing on an  
3 agenda of a previous meeting. For the purposes of the Oklahoma Open  
4 Meeting Act, only matters on the agenda of the previous meeting at  
5 which the announcement of the continuance is made may be discussed  
6 at a continued or reconvened meeting;

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

16        8. "Electronic means" means a ~~conference among~~ method of  
17 linking members of a public body remote from one another ~~who are~~  
18 ~~linked~~ by interactive telecommunication devices or technology ~~and/or~~  
19 or other technology permitting both visual and auditory  
20 communication between and among members of the public body ~~and/or~~  
21 and between and among members of the public body and members of the  
22 public. During any ~~videoconference~~ meeting conducted utilizing  
23 electronic means, both the visual and auditory communications  
24 functions shall attempt to be utilized; ~~and~~

1       ~~8. "Teleconference" means a conference among members of a~~  
2 ~~public body remote from one another who are linked by~~  
3 ~~telecommunication devices and/or technology permitting auditory~~  
4 ~~communication between and among members of the public body and/or~~  
5 ~~between and among members of the public body and members of the~~  
6 ~~public.~~

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

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

- 15       1.   a.   except as provided for in ~~subparagraph~~ subparagraphs b  
16           and c of this paragraph, no less than a quorum of the  
17           public body shall be present in person at the physical  
18           meeting site as posted on the meeting notice and  
19           agenda,  
20       b.   a virtual charter school approved and sponsored by the  
21           Statewide Virtual Charter School Board pursuant to the  
22           provisions of Section 3-145.3 of Title 70 of the  
23           Oklahoma Statutes shall maintain a quorum of members  
24           for the entire duration of the meeting whether using

1 an in-person site, ~~videoconference sites~~ electronic  
2 means, or any combination of such sites to achieve a  
3 quorum, ~~and~~

- 4 c. the board of a community action agency established  
5 pursuant to Sections 5035 through 5040 of Title 74 of  
6 the Oklahoma Statutes shall maintain a quorum of  
7 members for the entire duration of the meeting whether  
8 using an in-person site, electronic means, or any  
9 combination of such sites to achieve a quorum, and  
10 d. each public meeting held ~~by videoconference or~~  
11 ~~teleconference~~ utilizing electronic means shall be  
12 recorded either by written, electronic, or other  
13 means;

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

- 17 a. the location, address, ~~and~~ website or link, or  
18 telephone number of each available ~~videoconference~~  
19 physical or electronic site, if applicable, and  
20 b. the identity of each member of the public body and the  
21 specific physical or electronic site from which each  
22 member of the body shall be physically or  
23 electronically present and participating in the  
24 meeting; and

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

5        ~~4. In order to allow the public the maximum opportunity to~~  
6 ~~attend and observe each public official carrying out the duties of~~  
7 ~~the public official, a member or members of a public body desiring~~  
8 ~~to participate in a meeting by videoconference shall participate in~~  
9 ~~the videoconference from a site and room located within the district~~  
10 ~~or political subdivision from which they are elected, appointed, or~~  
11 ~~are sworn to represent;~~

12        ~~5. Each site and room where a member of the public body is~~  
13 ~~present for a meeting by videoconference shall be open and~~  
14 ~~accessible to the public, and the public shall be allowed into that~~  
15 ~~site and room. Public bodies may provide additional videoconference~~  
16 ~~sites as a convenience to the public, but additional sites shall not~~  
17 ~~be used to exclude or discourage public attendance at any~~  
18 ~~videoconference site;~~

19        ~~6. The public shall be allowed to participate and speak, as~~  
20 ~~allowed by rule or policy set by the public body, in a meeting at~~  
21 ~~the videoconference site in the same manner and to the same extent~~  
22 ~~as the public is allowed to participate or speak at the site of the~~  
23 ~~meeting;~~

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

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

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

11       ~~C. Upon the effective date of this act and until February 15,~~  
12 ~~2022, or until thirty (30) days after the expiration or termination~~  
13 ~~of the state of emergency declared by the Governor to respond to the~~  
14 ~~threat of COVID-19 to the people of this state and the public's~~  
15 ~~peace, health and safety, whichever date first occurs, the~~  
16 ~~provisions of this subsection and subsection D shall operate as law~~  
17 ~~in this state.~~

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

23           ~~a. for a~~

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

4        2. Any meeting conducted by the board of a community action  
5 agency established pursuant to Sections 5035 through 5040 of Title  
6 74 of the Oklahoma Statutes;

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

15        4. If the physical location designated on the meeting notice  
16 has become unsafe or otherwise inaccessible to the members of the  
17 public body and the public due to circumstances including but not  
18 limited to a gas leak, electrical failure, or structural damage to  
19 the physical location.

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

1           ~~b. if the meeting is held using either teleconference or~~  
2           ~~videoconference capabilities, and at any time the~~  
3           ~~audio connection is disconnected, the meeting shall be~~  
4           ~~stopped and reconvened once the audio connection is~~  
5           ~~restored;~~

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

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

11           ~~b. the identity of the public body member or members who~~  
12           ~~will be physically present at the meeting site, if~~  
13           ~~any;~~

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

19           ~~4. The public body shall be allowed to participate and speak,~~  
20           ~~as allowed by rule or policy set by the public body, in a meeting~~  
21           ~~which utilizes teleconference or videoconference in the same manner~~  
22           ~~and to the same extent as the public is allowed to participate or~~  
23           ~~speak during a meeting where all public body members are physically~~  
24           ~~present together at the meeting site;~~

1       ~~5. Any documents or other materials provided to members of the~~  
2 ~~public body or shared electronically between members of the public~~  
3 ~~body during a meeting utilizing teleconferencing or~~  
4 ~~videoconferencing shall also be immediately available to the public~~  
5 ~~on the website of the public body, if the public body maintains a~~  
6 ~~website; and~~

7       ~~6. All votes occurring during any meeting utilizing~~  
8 ~~teleconference or videoconference shall occur and be recorded by~~  
9 ~~roll call votes.~~

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

21       ~~E.~~ C. The Oklahoma Tax Commission may conduct executive  
22 sessions with the taxpayer at issue attending using ~~videoeconference~~  
23 ~~technology~~ electronic means to discuss confidential taxpayer matters  
24 as provided for in Section 205 of Title 68 of the Oklahoma Statutes.

1 During executive sessions, the Commission is required to be  
2 physically present while taxpayers may appear using ~~videoconference~~  
3 ~~technology~~ electronic means. The technology selected and utilized  
4 by the Commission shall ensure taxpayer confidentiality including  
5 compliance with safeguards as provided for in Internal Revenue  
6 Service Publication 1075.

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

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

12 1. A quorum of members must be physically present in the  
13 physical meeting location of the public body as provided in the  
14 meeting notice; provided, however, a public body may conduct an  
15 emergency meeting utilizing electronic means without a quorum  
16 present at the physical location pursuant to Section 307.1 of Title  
17 25 of the Oklahoma Statutes;

18 2. No member of a public body may participate in a regular or  
19 special meeting utilizing electronic means for more than one-fourth  
20 (1/4) of such meetings in a rolling one-year period;

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

1        4. Documents or other materials provided to members of the  
2 public body or shared electronically between members of the public  
3 body during a meeting utilizing electronic means shall be made  
4 immediately available to the public on the website of the public  
5 body if the public body maintains a website, or through distribution  
6 or viewing on the site streaming the meeting;

7        5. The public shall be allowed to participate in meetings  
8 conducted utilizing electronic means to the extent such  
9 participation is consistent with current law or adopted rules or  
10 policy of the public body;

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

14       7. Recordings of the meetings conducted through electronic  
15 means shall be maintained by the public body until minutes of the  
16 proceedings are posted as required by Section 312 of Title 25 of the  
17 Oklahoma Statutes; and

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

22       B. To the extent practicable, if a public body maintains a  
23 website, has dedicated information technology employees, and has  
24 immediate access to a high-speed internet connection, meetings shall

1 be streamed live on the public body's website, made available by  
2 telephonic means, or video of the meeting shall be made available  
3 through an alternative website. Video of such meetings shall be  
4 maintained by the public body and available to the public for a  
5 period of at least seven (7) business days after the adoption of the  
6 meeting minutes. The provisions of this subsection shall not apply  
7 if a public body determines that the implementation of this  
8 subsection would create a significant financial burden to the public  
9 body.

10 C. Meetings held without a physical meeting place open to the  
11 public shall be streamed or otherwise made available to the public  
12 at no charge by utilizing electronic means, the website of the  
13 public body, the internet, or any other free subscription digital  
14 service or application.

15 D. No private electronic communications concerning public  
16 business may occur between members of the public body during a  
17 public meeting.

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

22 SECTION 4. This act shall become effective November 1, 2023.  
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24 59-1-2010 TEK 3/23/2023 12:18:42 AM

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