

Remote Governing Board Meetings and Participation

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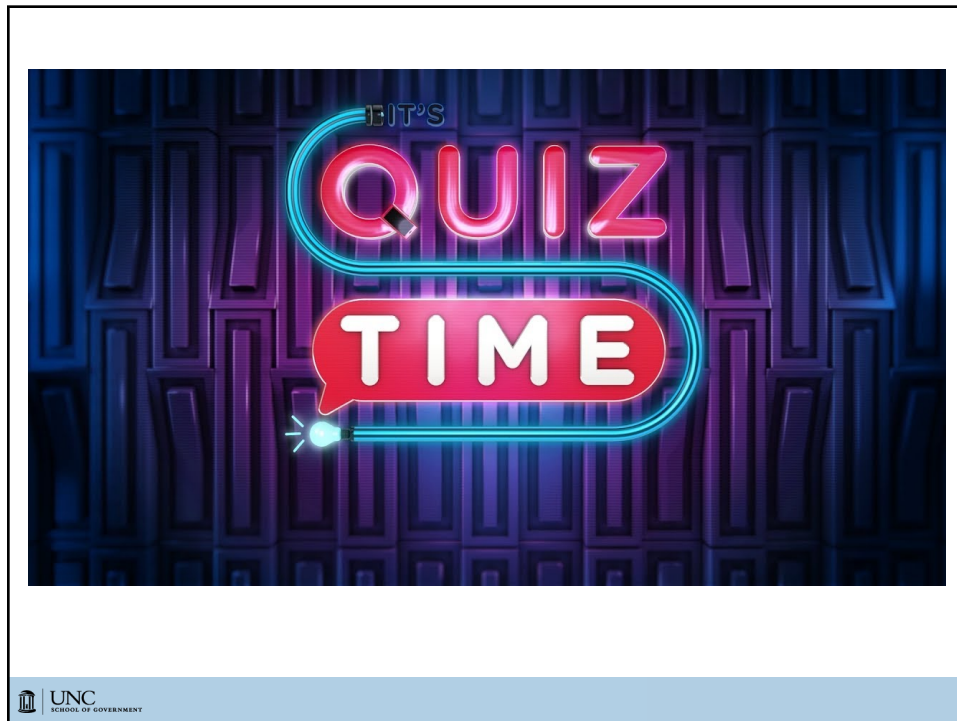
Housekeeping Items for This Session

- Please talk during this session! Let's make this an active Q&A session where you can learn from each other.
- We are all working through this uncharted territory together so share anything you have found useful on the topic.
- John Roberts has all the legal answers




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QUESTION



1. After a local destructive event the chairperson of the county board declares a state of emergency and wants to conduct a remote meeting pursuant to the new remote meetings law, [NCGS 166A-19.24](#). May the county do so?

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No. [NCGS 166A-19.24](#) only applies during states of emergency declared by either the Governor or Legislature pursuant to [NCGS 166A-19.20](#).

However, the county board may be able to conduct an electronic meeting pursuant to [NCGS 143-318.13](#), which authorizes electronic meetings for public bodies.

Quasi-judicial hearings and public hearings under this statute should probably be avoided.



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QUESTION



2. The county board is required to conduct a public hearing to apply to receive grant funds from the federal government and has determined to do so remotely. [NCGS 166A-19.24\(e\)](#) provides that boards may conduct public hearings remotely and "take action thereon, provided the public body allows for written comments on the subject of the public hearing to be submitted between publication of any required notice and 24 hours after the public hearing." The federal government set a deadline for the county board's approval of the application and that deadline is the date of the required public hearing.

May the county board approve the application on the date of the public hearing despite the 24 hour written comment period required by the statute?



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Probably No.

Pursuant to the statute, if a vote could be taken immediately after the public hearing without receipt of the information contained in whatever written public comment is received then that additional public comment has no value and the statutory 24 hour requirement would be essentially meaningless.

A basic concept of statutory construction is the legislature does not pass moot or meaningless legislation so it's reasonable to assume the 24 hour period should occur before a vote is taken. There is disagreement on whether the phrase "take action thereon" means a decision may be made immediately, however this again raises the issue of rendering the 24 hour comment period meaningless.

Unfortunately the federal government has not taken into account the state's remote meeting statute and wants its approval now! One way to address this may be to vote on what is likely a noncontroversial item immediately after the public hearing in order to meet the federal deadline, keep the post public hearing 24 hour written comment period open as required, and hold another vote at a subsequent meeting to satisfy the statute. This potential solution may not work for controversial items.



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My Governing Board Wants to Hold A Remote Public Meeting...

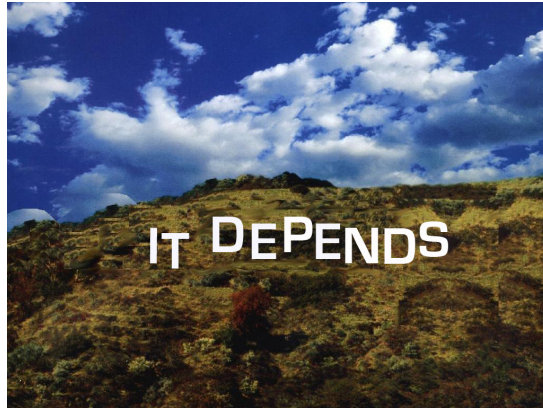


- Is it allowed?
- How can I make it happen from a legal standpoint?
- How can I make it happen from a technical standpoint (and maintain some level of control)?



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Is It Allowed?



[Act to Provide Aid To North Carolinians In Response to the Coronavirus Disease 2019 \(COVID-19\) Crisis](#)

(S.L. 2020-3, SB 704)

- Law allows remote public meetings only when there is a declaration of a state of emergency by the Governor or General Assembly under GS 166A-19.20.
- Also notes that any electronic meeting undertaken via remote participation between March 10, 2020 and May 4, 2020, is not deemed invalid due to the use of the use of electronic communication to conduct that meeting.

Legal Definitions

- “Remote meeting” is defined as: *An official meeting, or any part thereof, with between one and all of the members of the public body participating by simultaneous communication.*
- “Simultaneous communication” is defined as: *Any communication by conference telephone, conference video, or other electronic means.*



A Few Key Details

- When meeting using simultaneous communication in an official meeting, the method must allow for
 - any member of the public body to hear what is said by the other members of the public body;
 - hear what is said by any individual addressing the public body;
 - be heard by the other members of the public body when speaking to the public body

How can I make it happen from a legal standpoint?

Featuring John Roberts



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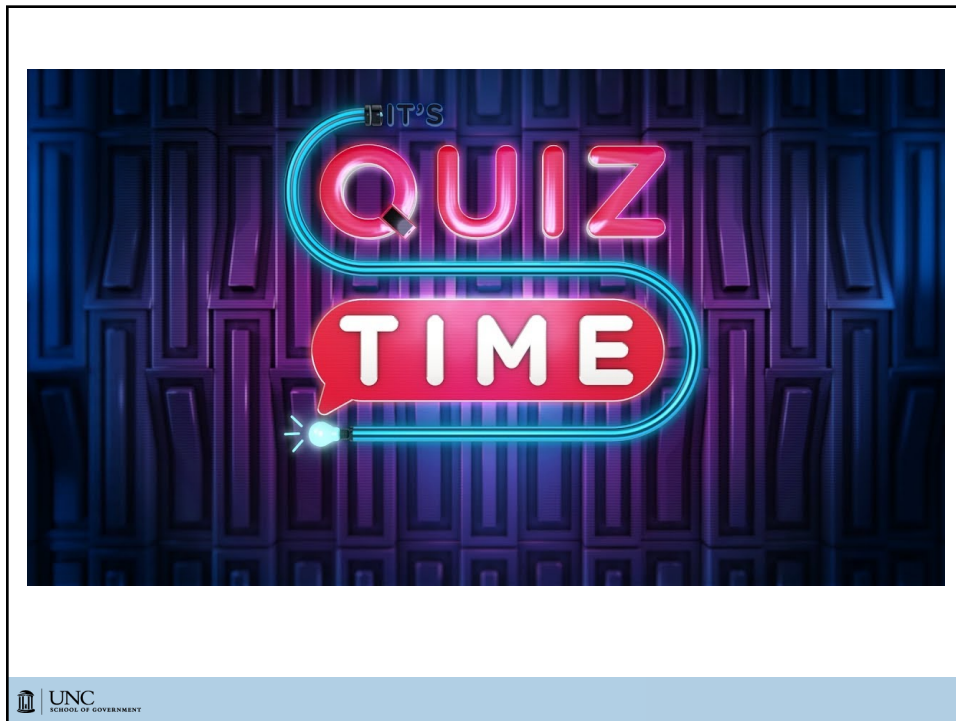
Legal Requirements

- Notice
 - Special attention to “as that meeting occurs.”
- Simultaneous stream/live and real-time access
- Minutes requirements
- Must comply with GS 143-318.13(c)
- Closed sessions
- Public hearings: new requirements
- Quorum
- Voting
- Default “yes”




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QUESTION



3. The county board determines it must conduct a quasi-judicial meeting regarding a special use permit remotely. [NCGS 166A-19.24\(f\)](#) provides that everyone with standing must consent to a remote quasi-judicial hearing. County staff takes appropriate steps to post notice on the property, publish required public notice, and meet all other required notifications.

May the county board conduct the quasi-judicial hearing remotely?

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Yes. But because of the consent requirement for remote quasi-judicial hearings standing should be the first determination for each of the participants and a record should be made of the consent of all those at the hearing with standing. Unfortunately, this affirmative consent requirement applies even for those persons who have standing and who don't attend the hearing. This leaves any decision of the board open to appeal on the consent issue and it's not clear when this right to appeal would arise. It could be years after the hearing. This is among several reasons why it may be best to avoid remote quasi-judicial hearings even though they are specifically authorized by the statute.

QUESTION



4. NCGS 166A-19.24(i) defines a remote meeting as a meeting “with between one and all of the members of the public body participating by simultaneous communication.” The county board determines it wants to avoid the remote meetings law by having the entire board meet in person but have the public access and participate in the meeting remotely to minimize the risk of COVID-19 exposure.

May the county board conduct the meeting in this manner?



We need enlightenment so please discuss.

How about pursuant to [NCGS 143-318.13](#)?



**How can I make it happen from a
technical standpoint
(& maintain some level of control)?**

The Wild World of Remote Meetings



Proper Settings Are Essential!

- Passcodes for access
- Waiting rooms
- Only hosts can share their screen
- Disable video
- Disable the chat feature
- Enable the ability to remove participants and disallow their re-entry
- Turn off file transfer and annotation
- Mute all participants



How can we hold closed sessions during remote/virtual board meetings?

- Option 1: You hold the open meeting in Zoom/WebEx/Teams Live and then stop it for a set period of time for the closed session, with proper notification to the attendees about moving to closed session. Then, you start a separate meeting in your virtual environment of choice that is password protected just for the board members. Once the closed session ends, you reopen the original virtual meeting to continue the open session.
- Option 2: You can also do the same with a simple conference call line. Hold regular public meeting in Zoom/WebEx/Teams Live, then recess for closed session*. All board members join via conference call for the duration of the closed session. After closed session ends, all members rejoin the virtual public meeting.
- Option 3: When Council moves into closed session, move all the participants (other than elected officials and required staff) into the waiting room for the duration of closed session. If there is anyone still in the waiting room when the Board emerge from closed session, they are readmitted.



Do we have to provide a toll-free conference calling number for the public to use?

- No. GS 143-318.13 (a) allows a fee of up to twenty-five dollars (\$25.00) may be charged each such listener to defray in part the cost of providing the necessary location and equipment.

Would it be acceptable to establish a phone line that a citizen would call in and be directed to a voicemail to record their public comment and then play those recordings during the Board meeting as a way of providing opportunity to comment?

- Yes. Recorded voicemails, emails, mailed letters, web form submissions, etc are all ways to gather public comment.
- Word limits and time limits are encouraged.



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Can we use a form with specific deadlines for registering citizens to speak during public comment periods?

- Yes. You can use methods to register speakers for public comment periods, as long as you are providing notice of that method.

What other questions do you have?



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