

communications with an employee attorney does not apply to the governing board of an institution of higher education or the Texas Higher Education Coordinating Board.²⁰⁶

2. Videoconference Call Meetings

The Act also authorizes governmental bodies to conduct meetings by videoconference call and, unlike with telephone meetings, does not limit that authority to emergency circumstances.²⁰⁷ Section 551.127 authorizes a member or employee of a governmental body to participate remotely in a meeting of the governmental body through a videoconference call if there is live video and audio feed of the remote participant that is broadcast live at the meeting and the feed complies with the other provisions of section 551.127.²⁰⁸

As a preliminary matter, a meeting held by videoconference call must meet the regular notice requirements of the Act.²⁰⁹ In addition, section 551.127 authorizes two logistical scenarios depending on the territorial jurisdiction of the governmental body and requires that the notice specify a particular location of the meeting and who will be physically present there, as follows:

A state governmental body or a governmental body that extends into three or more counties may meet by videoconference call only if the member of the governmental body presiding over the meeting is physically present at one location of the meeting.²¹⁰ The notice must specify that location, which must be open to the public during the open portions of the meeting, as well as state the intent to have the member of the governmental body presiding over the meeting present there.²¹¹

For all other governmental bodies, the Act authorizes a meeting by videoconference call only if a full quorum of the governmental body is physically present at one location of the meeting.²¹² In that instance, the notice must specify that location, as well as the intent to have a quorum present there.²¹³

The location where the presiding member is physically present must be open to the public during the open portions of the meeting.²¹⁴

Beyond notice and location, the Act specifies certain technical requirements. The meeting location where the quorum or presiding member is present as well as each remote location from which a

²⁰⁶ *Id.* § 551.129(f).

²⁰⁷ *Id.* § 551.127.

²⁰⁸ *Id.* § 551.127(a-1); *see also id.* § 551.127(a) (“[T]his chapter does not prohibit a governmental body from holding an open or closed meeting by videoconference call.”). Subsection 81.001(b) of the Local Government Code, which provides that the county judge, if present, is the presiding officer of the county commissioners court, does not apply to a meeting held by videoconference. *See* TEX. LOC. GOV’T CODE § 81.001(b). The subsection ensures that a county judge may remotely participate in a videoconference meeting while another member of the commissioners court presides over the meeting at the physical location accessible to the public.

²⁰⁹ TEX. GOV’T CODE § 551.127(d).

²¹⁰ *Id.* § 551.127(c).

²¹¹ *Id.* § 551.127(e).

²¹² *Id.* § 551.127(b).

²¹³ *Id.* § 551.127(e).

²¹⁴ *Id.*

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member participates “shall have two-way audio and video communication with each other location during the entire meeting.”²¹⁵ The Act requires that, while speaking, each participant’s face must be clearly visible and the voice audible to each other participant and to the members of the public in attendance at the location where the quorum or presiding member is present and any other location of the meeting that is open to the public.²¹⁶ The Act additionally requires that each open portion of the meeting is to be visible and audible to the public at the meeting location where the quorum or presiding member is present and that at any time that the meeting is no longer visible and audible to the public, the meeting must be recessed until the problem is resolved.²¹⁷ The meeting must be adjourned if the problem is not resolved in six hours.²¹⁸ The Act tasks the Department of Information Resources to specify minimum standards for the audio and video signals required at a videoconference meeting and the quality of the signals at each location of the meeting must meet or exceed those standards.²¹⁹

Generally speaking, a remote participant “shall be counted as present at the meeting for all purposes.”²²⁰ However, if the audio or video communication is lost for any portion of the meeting, the remote participant is considered absent during that time.²²¹ Should this occur, the governmental body may continue the meeting only as follows: (1) If the meeting is being held by a statewide body or one that extends into three or more counties, there must continue to be a quorum participating in the meeting. (2) If the meeting is held by another governmental body, a full quorum must remain physically present at the meeting location.²²²

Section 551.127 also requires the governmental body to “make at least an audio recording of the meeting” and to make the recording available to the public.²²³ And section 551.127 expressly permits a governmental body to allow a member of the public to testify at a meeting from a remote location by videoconference call.²²⁴

Relating to certain special districts subject to specific chapters of the Water Code and with a population of 500 or more, subsection 551.1283(e) provides that “[n]othing in this chapter shall prohibit a district from allowing a person to watch or listen to a board meeting by video or telephone conference call.”²²⁵

²¹⁵ *Id.* § 551.127(h). Furthermore, “[t]he audio and video signals perceptible by members of the public at each location of the meeting described by Subsection (h) must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.” *Id.* § 551.127(j).

²¹⁶ *Id.* § 551.127(h).

²¹⁷ *See id.* § 551.127(f).

²¹⁸ *Id.*

²¹⁹ *Id.* § 551.127(i); *see also* 1 TEX. ADMIN. CODE §§ 209.1–.33. The Department of Information Resources has published guidelines at <https://dir.texas.gov/resource-library-item/videoconferencing-guidelines>.

²²⁰ *See* TEX. GOV’T CODE § 551.127(a-2).

²²¹ *See id.* § 551.127(a-3).

²²² *See id.*

²²³ *Id.* § 551.127(g).

²²⁴ *See id.* § 551.127(k).

²²⁵ *See id.* § 551.1283(e).