



Monroe County Board of Commissioners Agenda Request Form

Date to be heard Formal Work session Department

Title to appear on Agenda: Vendor #

Executive Summary:

Ordinance 2021-23 will adopt and follow the procedures of the newly-amended HEA 1437 and Indiana Code 5-14-1.5-3.5 regarding electronic participation at public meetings. Until each governing body adopts its own policies, the Commissioners exercise their executive and legislative powers to declare that the policies in Ordinance 2021-23 shall apply to each and every governing body within the county.

Fund Name(s):	Fund Number(s):	Amount(s):
<input type="text"/>	<input type="text"/>	<input type="text"/>

Presenter:

Speaker(s) for Zoom purposes:

Name(s)	Phone Number(s)
<input type="text" value="Margie Rice"/>	<input type="text"/>

(the speaker phone numbers will be removed from the document prior to posting)

Attorney who reviewed:

Ordinance 2021-23

Electronic Attendance Policy for Public Meetings

WHEREAS, in response to the COVID-19 pandemic and in recognition that public meeting rules could be amended to take advantage of technological advances, Indiana Code 5-14-1.5-3.5 was amended by the Indiana General Assembly in 2021; and

WHEREAS, the Indiana General Assembly passed House Enrolled Act 1437, which now requires at least fifty percent of a governing body to be physically present at a public meeting, but allows for electronic participation in some public meetings by other members of a governing body provided the governing body adopt a policy that complies with the amended law; and

WHEREAS, the Monroe County Board of Commissioners (“Commissioners”) wish to adopt and follow the new electronic meeting rules for their meetings and other governing bodies and to encourage each Monroe County Government governing body to adopt their own policy consistent with this

NOW THEREFORE BE IT RESOLVED, that:

1. The Monroe County Board of Commissioners (“Commissioners”) wish to adopt and follow the procedures of newly-amended Indiana Code 5-14-1.5-3.5. Those procedures are listed in “Exhibit A”, which is attached hereto and incorporated herein. Exhibit A shows language that has been removed from the Indiana Code in a strike-through format and new language is shown in bold.
2. The Commissioners recognize that the procedures in Exhibit A are not be required if and when either the Governor declares a statewide disaster emergency or the Commissioners declare a local disaster emergency. In that event, newly enacted Indiana Code 5-14-1.5-3.7 takes effect. For clarification and public education, House Enrolled Act 1437, which contains Section 3.7, is attached hereto and incorporation herein as “Exhibit B”.
3. All members of the public shall be admitted to Commissioners’ meetings if they wish to participate electronically and shall be able to view or listen and participate in the meeting under the regular rules allowed for public participation. Meeting notices shall be posted as required by law and those notices along with information about how to attend meetings electronically will also be listed on the Monroe County Government website. The Commissioners and the Monroe County Technical Services Department have prioritized and invested in hybrid-meeting technology to allow for such participation.
3. Staff members may participate electronically in all meetings, including those listed in subsection (i) which are meetings members of the Commissioners must attend in person, provided there is no actual need for a staff member to be physically present at a particular meeting. Such need shall be determined at the sole discretion of the President of the Commissioners, unless a majority of the Commissioners votes to require a staff member to attend a particular meeting.
4. Until each governing body adopts its own policies, the Commissioners exercise their executive and legislative powers to declare that the policies they are now adopting shall apply to each and every governing body. The Commissioners encourage each governing body to adopt policies that mirror these and that conform to Indiana law at their next meeting or their earliest convenience.

Adopted this day of _____ day of _____ 2021, by the Board of Commissioners, Monroe County, Indiana.

MONROE COUNTY BOARD OF COMMISSIONERS

"AYES"

Julie Thomas, President

Lee Jones, Vice President

Penny Githens, Member

ATTEST:

Catherine Smith, Auditor

"NAYS"

Julie Thomas, President

Lee Jones, Vice President

Penny Githens, Member

EXHIBIT A

SECTION 5, IC 5-14-1.5-3.5, AS AMENDED BY P.L.154-2016, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3.5.

(a) This section applies only to a governing body of a public agency of a political subdivision, other than a governing body of an airport authority or a department of aviation as set forth in section 3.6 of this chapter.

(b) Subject to subsection (i), a member of the governing body of a public agency who is not physically present at a meeting of the governing body but who communicates with members of the governing body during the meeting by telephone, computer, video conferencing, or any other electronic means of communication:

~~(1) may not participate in final action taken at the meeting unless the member's participation is expressly authorized by statute; and
(2) may not be considered to be present at the meeting unless considering the member to be present at the meeting is expressly authorized by statute.~~

~~(c) The memoranda prepared under section 4 of this chapter for a meeting in which a member participates by using a means of communication described in subsection (b) must state the name of:~~

~~(1) each member who was physically present at the place where the meeting was conducted;
(2) each member who participated in the meeting by using a means of communication described in subsection (b); and
(3) each member who was absent.~~

may participate in a meeting by any electronic means of communication that does the following:

(1) Allows all participating members of the governing body to simultaneously communicate with each other.
(2) Allows the public to simultaneously attend and observe the meeting. However, this subdivision does not apply to a meeting held in executive session.

Subject to subsection (i), a governing body member who participates in the meeting by an electronic means of communication shall be considered present for purposes of establishing a quorum but may participate in any final action taken at the meeting only if the member can be seen and heard.

(c) A technological failure in an electronic means of communication that disrupts or prevents:

(1) the simultaneous communication between a member who is not physically present at the meeting and the governing body; or
(2) a member of the public who is not present at the meeting from attending and observing the meeting;

does not prevent the governing body from conducting the meeting or affect the validity of an action taken by the governing body at the meeting if the sum of the governing body members physically present at the meeting and the governing body members participating by electronic communication without technological failure satisfy the quorum and (if a final action is taken) the voting requirements of the governing body.

(d) The governing body shall adopt a written policy establishing the procedures that apply to a member's participation in a meeting by an electronic means of communication. The governing body may establish procedures that are more restrictive than the procedures established by this section. The policy adopted under this section may include:

- (1) limiting the number of members who may participate by electronic communication in any one (1) meeting;
- (2) limiting the total number of meetings that the governing body may conduct in a calendar year by electronic communication; and
- (3) requiring a member, except in the case of a meeting called to deal with an emergency under section 5(d) of this chapter, who plans to attend a meeting by any electronic means of communication to notify the presiding officer within a certain period of time before the meeting, as specified by the governing body, so that arrangements may be made for the member's participation by electronic communication.

(e) The memoranda prepared under section 4 of this chapter for a meeting in which a member participates by an electronic means of communication must:

- (1) state the name of each member of the governing body who:
 - (A) was physically present at the place where the meeting was conducted;
 - (B) participated in the meeting by using any electronic means of communication; and
 - (C) was absent; and
- (2) identify the electronic means of communication by which:
 - (A) members of the governing body participated in the meeting; and
 - (B) the public attended and observed the meeting, if the meeting was not held in executive session.

(f) All votes taken during a meeting under this section must be taken by roll call vote.

(g) At least fifty percent (50%) of the members of the governing body must be physically present at a meeting.

(h) A member of the governing body may not attend more than fifty percent (50%) of the governing body's meetings in a calendar year by means of electronic communication, unless the member's electronic participation is due to:

- (1) military service;**
- (2) illness or other medical condition;**
- (3) death of a relative; or**
- (4) an emergency involving actual or threatened injury to persons or property.**

(i) A member of a governing body may not participate in a meeting of the governing body by electronic communication if the governing body is attempting to take final action to:

- (1) adopt a budget;**
- (2) make a reduction in personnel;**
- (3) initiate a referendum;**
- (4) establish or increase a fee;**
- (5) establish or increase a penalty;**
- (6) use the governing body's eminent domain authority; or**
- (7) establish, raise, or renew a tax.**

(j) A governing body may not prohibit a member of the governing body from attending consecutive meetings by electronic communication. A member may attend two (2) consecutive meetings (a set of meetings) by electronic communication. A member shall physically attend at least one (1) meeting between sets of meetings that the member attends by electronic communication, unless the member's absence is due to:

- (1) military service;**
- (2) illness or other medical condition;**
- (3) death of a relative; or**
- (4) an emergency involving actual or threatened injury to persons or property.**

EXHIBIT B

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in this style type. Also, the word NEW will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or *this style type* reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1437

AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-1-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. For As used in the purposes of this chapter:

- (1) "electronic signature" has the meaning set forth in IC 26-2-8-102(10);
 - (2) "obligations" shall include any bond, note, warrant, or other obligation; and
 - ~~(a)~~ (3) "public entity" shall include any political subdivision as defined by IC 36-1-2, state commission, state authority, and all other public bodies corporate and politic.
- (b) "Obligations" shall include any bond, note, warrant, or other obligation:

SECTION 2. IC 5-1-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Whenever any existing statute requires the manual execution, attesting or authentication of any obligation issued by any public entity named in IC 5-1-1-1 by one (1) or more officials or persons, facsimile signatures or electronic signatures of such the officials or persons may be used instead of and with the same force and effect as manually executing such the obligations. One (1) signature on the obligation shall be manual and may be either including the signature of one (1) of the officials or

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persons or of any trustee, paying agent, registrar, co-registrar, transfer agent, or other fiduciary charged with authenticating the obligations.

(b) Any obligation executed by the facsimile signature or electronic signature of officials or persons is valid and binding, if the officials or persons satisfied the provisions of the statute under which the obligation is issued on the date that the signature was printed on the obligation, even if the obligation is delivered after the official or person whose facsimile signature or electronic signature appears thereon no longer satisfies the provisions of the statute.

SECTION 3, IC 5-1-14-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. As used in this chapter, "obligations" has the meaning set forth in IC 5-1-3-1(b); IC 5-1-3-1(2).

SECTION 4, IC 5-1-14-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. In connection with the issuance by the issuer of any obligation described in IC 5-1-1-1(b), the execution of the obligation (including any contract, certificate, or other document executed on behalf of the issuer in connection with the execution of the obligation) using electronic signatures rather than manual signatures shall be considered fully legal and valid for all purposes with the same force and effect as if the execution were performed with manual signatures.

SECTION 5, IC 5-14-1.5-3.5, AS AMENDED BY P.L.154-2016, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3.5. (a) This section applies only to a governing body of a public agency of a political subdivision, other than a governing body of an airport authority or a department of aviation as set forth in section 3.6 of this chapter.

(b) Subject to subsection (i), a member of the governing body of a public agency who is not physically present at a meeting of the governing body but who communicates with members of the governing body during the meeting by telephone, computer, video conferencing, or any other electronic means of communication:

- (1) may not participate in final action taken at the meeting unless the member's participation is expressly authorized by statute; and
- (2) may not be considered to be present at the meeting unless considering the member to be present at the meeting is expressly authorized by statute.

(c) The memoranda prepared under section 4 of this chapter for a meeting in which a member participates by using a means of communication described in subsection (b) must state the name of:

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- (1) each member who was physically present at the place where the meeting was conducted;
- (2) each member who participated in the meeting by using a means of communication described in subsection (b); and
- (3) each member who was absent.

may participate in a meeting by any electronic means of communication that does the following:

- (1) Allows all participating members of the governing body to simultaneously communicate with each other.
- (2) Allows the public to simultaneously attend and observe the meeting. However, this subdivision does not apply to a meeting held in executive session.

Subject to subsection (i), a governing body member who participates in the meeting by an electronic means of communication shall be considered present for purposes of establishing a quorum but may participate in any final action taken at the meeting only if the member can be seen and heard.

(c) A technological failure in an electronic means of communication that disrupts or prevents:

- (1) the simultaneous communication between a member who is not physically present at the meeting and the governing body; or
- (2) a member of the public who is not present at the meeting from attending and observing the meeting;

does not prevent the governing body from conducting the meeting or affect the validity of an action taken by the governing body at the meeting if the sum of the governing body members physically present at the meeting and the governing body members participating by electronic communication without technological failure satisfy the quorum and (if a final action is taken) the voting requirements of the governing body.

(d) The governing body shall adopt a written policy establishing the procedures that apply to a member's participation in a meeting by an electronic means of communication. The governing body may establish procedures that are more restrictive than the procedures established by this section. The policy adopted under this section may include:

- (1) limiting the number of members who may participate by electronic communication in any one (1) meeting;
- (2) limiting the total number of meetings that the governing body may conduct in a calendar year by electronic communication; and

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(3) requiring a member, except in the case of a meeting called to deal with an emergency under section 5(d) of this chapter, who plans to attend a meeting by any electronic means of communication to notify the presiding officer within a certain period of time before the meeting, as specified by the governing body, so that arrangements may be made for the member's participation by electronic communication.

(e) The memoranda prepared under section 4 of this chapter for a meeting in which a member participates by an electronic means of communication must:

- (1) state the name of each member of the governing body who:
 - (A) was physically present at the place where the meeting was conducted;
 - (B) participated in the meeting by using any electronic means of communication; and
 - (C) was absent; and
- (2) identify the electronic means of communication by which:
 - (A) members of the governing body participated in the meeting; and
 - (B) the public attended and observed the meeting, if the meeting was not held in executive session.

(f) All votes taken during a meeting under this section must be taken by roll call vote.

(g) At least fifty percent (50%) of the members of the governing body must be physically present at a meeting.

(h) A member of the governing body may not attend more than fifty percent (50%) of the governing body's meetings in a calendar year by means of electronic communication, unless the member's electronic participation is due to:

- (1) military service;
- (2) illness or other medical condition;
- (3) death of a relative; or
- (4) an emergency involving actual or threatened injury to persons or property.

(i) A member of a governing body may not participate in a meeting of the governing body by electronic communication if the governing body is attempting to take final action to:

- (1) adopt a budget;
- (2) make a reduction in personnel;
- (3) initiate a referendum;
- (4) establish or increase a fee;
- (5) establish or increase a penalty;



- (6) use the governing body's eminent domain authority; or
- (7) establish, raise, or renew a tax.

(f) A governing body may not prohibit a member of the governing body from attending consecutive meetings by electronic communication. A member may attend two (2) consecutive meetings (a set of meetings) by electronic communication. A member shall physically attend at least one (1) meeting between sets of meetings that the member attends by electronic communication, unless the member's absence is due to:

- (1) military service;
- (2) illness or other medical condition;
- (3) death of a relative; or
- (4) an emergency involving actual or threatened injury to persons or property.

SECTION 6, IC 5-14-1.5-3,6, AS AMENDED BY P.L.237-2017, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3.6. (a) This section applies only to a governing body of the following:

- (1) A charter school (as defined in IC 20-24-1-4).
- (2) A public agency of the state, including a body corporate and politic established as an instrumentality of the state.
- (3) An airport authority or a department of aviation under IC 8-22.

(b) A member of a governing body who is not physically present at a meeting of the governing body may participate in a meeting of the governing body by electronic communication only if the member uses a means of communication that permits:

- (1) the member;
- (2) all other members participating in the meeting;
- (3) all members of the public physically present at the place where the meeting is conducted; and
- (4) if the meeting is conducted under a policy adopted under subsection (g)(7), all members of the public physically present at a public location at which a member participates by means of electronic communication;

to simultaneously communicate with each other during the meeting.

(c) The governing body must fulfill both of the following requirements for a member of the governing body to participate in a meeting by electronic communication:

- (1) This subdivision does not apply to committees appointed by a board of trustees of a state educational institution, by the commission for higher education, by the board of the Indiana economic development corporation, or by the board of directors

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of the Indiana secondary market for education loans, as established, incorporated, and designated under IC 21-16-5-1. This subdivision does not apply to a governing body if at least fifty-one percent (51%) of the governing body membership consists of individuals with a disability (as described in IC 12-12-8-3.4) or individuals with a significant disability (as described in IC 12-12-8-3.6), or both. The minimum number of members who must be physically present at the place where the meeting is conducted must be the greater of:

- (A) two (2) of the members; or
- (B) one-third (1/3) of the members.

(2) All votes of the governing body during the electronic meeting must be taken by roll call vote.

Nothing in this section affects the public's right under this chapter to attend a meeting of the governing body at the place where the meeting is conducted and the minimum number of members is physically present as provided for in subdivision (1).

(d) Each member of the governing body is required to physically attend at least one (1) meeting of the governing body annually. This subsection does not apply to a governing body if at least fifty-one percent (51%) of the governing body membership consists of individuals with a disability (as described in IC 12-12-8-3.4) or individuals with a significant disability (as described in IC 12-12-8-3.6), or both.

(e) Unless a policy adopted by a governing body under subsection (g) provides otherwise, a member who participates in a meeting by electronic communication:

- (1) is considered to be present at the meeting;
- (2) shall be counted for purposes of establishing a quorum; and
- (3) may vote at the meeting.

(f) A governing body may not conduct meetings using a means of electronic communication until the governing body:

- (1) meets all requirements of this chapter; and
- (2) by a favorable vote of a majority of the members of the governing body, adopts a policy under subsection (g) governing participation in meetings of the governing body by electronic communication.

(g) A policy adopted by a governing body to govern participation in the governing body's meetings by electronic communication may do any of the following:

- (1) Require a member to request authorization to participate in a meeting of the governing body by electronic communication

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within a certain number of days before the meeting to allow for arrangements to be made for the member's participation by electronic communication.

(2) Subject to subsection (e), limit the number of members who may participate in any one (1) meeting by electronic communication.

(3) Limit the total number of meetings that the governing body may conduct in a calendar year by electronic communication.

(4) Limit the number of meetings in a calendar year in which any one (1) member of the governing body may participate by electronic communication.

(5) Provide that a member who participates in a meeting by electronic communication may not cast the deciding vote on any official action. For purposes of this subdivision, a member casts the deciding vote on an official action if, regardless of the order in which the votes are cast:

(A) the member votes with the majority; and

(B) the official action is adopted or defeated by one (1) vote.

(6) Require a member participating in a meeting by electronic communication to confirm in writing the votes cast by the member during the meeting within a certain number of days after the date of the meeting.

(7) Provide that in addition to the location where a meeting is conducted, the public may also attend some or all meetings of the governing body, excluding executive sessions, at a public place or public places at which a member is physically present and participates by electronic communication. If the governing body's policy includes this provision, a meeting notice must provide the following information:

(A) The identity of each member who will be physically present at a public place and participate in the meeting by electronic communication.

(B) The address and telephone number of each public place where a member will be physically present and participate by electronic communication.

(C) Unless the meeting is an executive session, a statement that a location described in clause (B) will be open and accessible to the public.

(8) Require at least a quorum of members to be physically present at the location where the meeting is conducted.

(9) Provide that a member participating by electronic communication may vote on official action only if, subject to

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subsection (e), a specified number of members:

(A) are physically present at the location where the meeting is conducted; and

(B) concur in the official action.

(10) Establish any other procedures, limitations, or conditions that govern participation in meetings of the governing body by electronic communication and are not in conflict with this chapter.

(h) The policy adopted by the governing body must be posted on the Internet web site of the governing body, the charter school, the airport, or the public agency.

(i) Nothing in this section affects a public agency's or charter school's right to exclude the public from an executive session in which a member participates by electronic communication.

SECTION 7. IC 5-14-1.5-3.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]; Sec. 3.7. (a) This section applies only if:

(1) the governor declares a disaster emergency under IC 10-14-3-12; or

(2) the executive (as defined in IC 36-1-2-5) of a political subdivision declares a local disaster emergency under IC 10-14-3-29.

(b) Notwithstanding section 3.5 or 3.6 of this chapter, the members of a governing body are not required to be physically present at a meeting until the disaster emergency or local disaster emergency is terminated. The members of a governing body may meet by any means of electronic communication, if the following are satisfied:

(1) At least a quorum of the members of the governing body participate in the meeting by means of electronic communication or in person.

(2) The public is able to simultaneously attend and observe the meeting. However, this subdivision does not apply to a meeting held in executive session.

(c) The memoranda for a meeting prepared under section 4 of this chapter for a meeting held under this section must:

(1) state the name of each member of the governing body who:

(A) participated in the meeting by using any electronic means of communication; and

(B) was absent; and

(2) identify the electronic means of communication by which:

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(A) members of the governing body participated in the meeting; and

(B) the public attended and observed the meeting, if the meeting was not held in executive session,

(d) All votes taken during a meeting under this section must be taken by roll call vote.

SECTION 8. IC 6-9-38-9, AS ADDED BY P.L.214-2005, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]; Sec. 9. As used in this chapter, "obligations" has the meaning set forth in ~~IC 5-1-3-1(b)~~; IC 5-1-3-1(2).

SECTION 9. IC 8-1-2.2-31, AS ADDED BY P.L.179-2007, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]; Sec. 31. (a) Except as provided in subsection (e), this section applies to a meeting of the board of commissioners of a joint agency at which at least a quorum of the board is must be physically present at the place where the meeting is conducted; a meeting of the board of commissioners of a joint agency is conducted.

(b) A member of the board of commissioners of a joint agency may participate in a meeting of the board of commissioners by using a means of electronic communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member of the board of commissioners of a joint agency who participates in a meeting by using a means of communication described in subsection (b) is considered to be present at the meeting.

(d) The memoranda of a meeting of the board of commissioners of a joint agency prepared under IC 5-14-1, 5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

(3) each member who was absent.

(e) This subsection applies if the governor declares a disaster emergency under IC 10-14-3-12, or a local disaster emergency is declared under IC 10-14-3-29. The board of commissioners of a joint agency may meet without any members of the board of commissioners being physically present at the meeting until ninety (90) days after the disaster emergency or local disaster emergency is terminated, if the members participate by means of electronic

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communication in the manner set forth in subsection (b). A member of the board of commissioners of a joint agency who participates in a meeting in accordance with this subsection is considered to be present at the meeting. The board shall prepare a memoranda of the meeting as set forth in subsection (d).

SECTION 10. An emergency is declared for this act.

