



# The First Virtual Meeting of the Wisconsin State Legislature

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In April 2020, members of the Wisconsin State Legislature made history by being among the first American legislators to enact legislation virtually, with the Assembly convening in virtual session on April 14, 2020, to consider legislation to address the COVID-19 pandemic<sup>1</sup> and the Senate meeting in virtual session the very next day, on April 15, 2020, to concur in the Assembly's action. These two meetings are among the first instances in the United States when state legislative bodies met virtually to enact legislation.<sup>2</sup>

This paper documents these virtual meetings. It begins by discussing the statutory framework for virtual legislative sessions, the challenges the two houses faced in organizing and conducting their virtual sessions, and the proceedings of these virtual sessions. The paper concludes with an examination of the limits and possibilities of virtual legislative sessions under Wisconsin's virtual meeting law. As this examination suggests, Wisconsin's virtual meeting law enabled the Wisconsin Legislature to reach bipartisan agreement on emergency legislation to address the COVID-19 pandemic while preserving the health and safety of members and staff.

## Virtual meetings of the legislature: the statutory framework

Wisconsin's virtual meeting law was created in 2009 Wisconsin Act 363. The legislation was drafted by the Special Committee on Emergency Management and Continuity of Government, which was established by the Joint Legislative Council on April 9, 2008. The committee, chaired by Senator Robert Jauch (D-Poplar) and Representative Joan Ballweg (R-Markesan), was directed to recodify Wisconsin's emergency management chapters, review uniform legislation on emergency volunteer health practitioners, and make recommendations on matters relating to continuity of legislative operations in an emergency, including "participation of legislators through alternative means from remote locations."<sup>3</sup>

On June 30, 2008, the special committee met and heard testimony from Senate Chief Clerk Robert Marchant and Assembly Chief Clerk Patrick Fuller, whose expertise and advice guided the special committee's deliberations throughout the year.<sup>4</sup> These delib-

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1. Madeline Kasper and Jillian Slight, "The COVID-19 Public Health Emergency in Wisconsin," *LRB Reports*, vol. 4, no. 9 (Madison, WI: Legislative Reference Bureau, May 2020).

2. The COVID-19 pandemic and the necessity of state legislation to address the crisis forced several state legislatures to consider virtual legislative sessions or to allow legislators the option of voting remotely. Some recent examples include the following: the Delaware General Assembly held a virtual session on May 26, 2020, while the Delaware Senate held a virtual session on May 27, 2020; the Massachusetts House of Representatives allowed members to vote remotely in a session held on May 6, 2020; the Pennsylvania House and Senate held virtual sessions on March 25, 2020; the Utah House and Senate held virtual sessions on April 16, 2020; the Vermont Senate conducted a virtual session during the week of April 6, 2020; and the New York Assembly and Senate allowed members to vote remotely in a session held on May 27, 2020.

3. Wis. Legis. Council, Report to the Legislature, *Special Committee on Emergency Management and Continuity of Government* (June 19, 2009).

4. Legislative Reference Bureau Digital Archives include contemporaneous articles and commentary on the committee meetings. See, e.g., "Editorial: Tweak Disaster Codes, Then on to Prevention," *Oshkosh Northwestern*, July 9, 2008, <https://thenorthwestern.com>; Stacy Forster, "Legislature's Readiness Faulted," *Milwaukee Journal Sentinel*, August 14, 2009, <https://jsonline.com>.

erations included the appointment of a subcommittee to study continuity of legislative operations during an emergency, whose recommendations were ultimately incorporated in the committee's proposed legislation. On May 18, 2010, Senate Bill 227 was passed by the legislature and became law as 2009 Wisconsin Act 363 on June 2, 2010. Wisconsin's virtual legislative session law, Wis. Stat. § [13.42](#), was the first of its kind in the nation.<sup>5</sup>

The special committee and the Joint Legislative Council did not provide direction for applying Wis. Stat. § 13.42. Hence, there was no clear legislative intent to guide the legislature in implementing the statute. That said, the statute is a remarkable example of economy and simplicity.<sup>6</sup> Wis. Stat. § 13.42 creates a legal structure for each house of the legislature to meet in virtual session, but leaves the details of convening and conducting the session to each house to set under its rules of proceeding. In other words, the statute lays out the minimum conditions for a lawful virtual session of the legislature, but does not instruct the Assembly or Senate on how to act on these conditions. In this respect, the law recognizes the autonomy of each house of the legislature to conduct its business.

What are these conditions? First, the legislature may meet in virtual session only in the event of an emergency resulting from a disaster or imminent threat of a disaster.<sup>7</sup> A disaster is defined as

a severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or critical systems, including computer, telecommunications, or agricultural systems.<sup>8</sup>

This condition means that virtual sessions may occur only under exceptional circumstances, determined entirely by the legislature. Second, each house must issue notice "under its rules or joint rules" that it is unable to meet physically at the seat of government due to the emergency.<sup>9</sup> This provision acknowledges that the details of convening a virtual session will be left to the determination of each house. Finally, the following additional conditions must be met:

- Members' identities must be verifiable and their actions authenticated in a manner satisfactory to the presiding officer.

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5. A variety of constitutional provisions, laws, and rules across the states had permitted emergency legislative sessions convened in alternate locations, but these presumed that the legislators would all still meet together in one physical location. Wisconsin's virtual legislative session law was the first to explicitly permit legislative sessions to take place virtually over the Internet.

6. The full text of Wis. Stat. § 13.42 is fewer than 600 words long. Few similar laws or rules of other states are shorter, while most are considerably longer and complex. At the extreme, the Massachusetts House of Representatives' emergency rule document ([H. 4690](#)) has ten times as much text as Wisconsin's law.

7. Wis. Stat. § 13.42 (2).

8. Wis. Stat. § 13.42 (1) (a).

9. Wis. Stat. § 13.42 (2). Under Wis. Stat. § 13.42 (7), the notice must be "the same or substantially equivalent public notice as would be required if the members were physically present at the seat of government."

- Members must be able to simultaneously hear or read the comments of other members recognized by the presiding officer.
- Documents used by members and accepted by the presiding officer must be transmitted immediately to other members.
- Within technological limits, the public must be able to monitor the proceedings.<sup>10</sup>
- The manner of satisfying these conditions is left to each house to determine and primarily in the hands of its presiding officer.

These are the only conditions for a lawful virtual session of the legislature. If the conditions are met, a virtual session of the legislature is “considered to have occurred at the seat of government and all actions taken during the meeting shall have the same legal effect as if the members were physically present at the seat of government.”<sup>11</sup> Also, for the purpose of determining whether a quorum exists, a member is “considered present as if the member were physically present at the seat of government.”<sup>12</sup> Importantly, the statute directs the presiding officer of each house to apply rules that presume members to be physically present in a way that accomplishes “the same purposes for which the rules were adopted.”<sup>13</sup>

Thus, Wis. Stat. § 13.42 sets out six conditions for a legal virtual session, establishes two legal effects of a properly convened virtual session, and directs that legislative rules of proceedings of each house be applied as though the virtual session actually occurred at the seat of government with all members physically present. The statute establishes a simple regulatory framework for the legislature to meet virtually during emergency situations, allowing each house to fill in the necessary details under its rules and practices to effectively convene and conduct the virtual session.

## Conducting the virtual sessions of the legislature

On April 13, 2020, the organization committees of each house adopted motions to convene the legislature the following day in extraordinary session to take up legislation relating to the state government’s response to the COVID-19 pandemic.<sup>14</sup> The committees also, for the first time, invoked Wis. Stat. § 13.42 to provide notice that the legislature would conduct the extraordinary session as a virtual meeting of the legislature. In addition, for the purpose of conducting business in extraordinary session, both organization committees adopted motions to provide for special virtual session rules.

By legislative rule, an extraordinary session is convened for the purpose specified in

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10. Wis. Stat. § 13.42 (3).

11. Wis. Stat. § 13.42 (5).

12. Wis. Stat. § 13.42 (6).

13. Wis. Stat. § 13.42 (9).

14. Governor Tony Evers had declared a public health emergency on March 12, 2020, in [Executive Order 72](#), in response to the COVID-19 coronavirus.

the session call and the legislature may consider legislation only if offered by certain committees, typically bills introduced by the organization committee of each house.<sup>15</sup> There are special legislative rules for extraordinary session that differ from regular session rules, and each house also may adopt additional rules that apply only to a specific extraordinary session.<sup>16</sup> Generally, the effect and intent of extraordinary session rules are to allow a simple majority of each house to advance legislation at every stage of the legislative process, thereby allowing bills to be taken up, passed, and messaged to the other house all on the same legislative day. Extraordinary sessions are therefore better designed for expeditious consideration and passage of legislation.

In addition to the extraordinary session rules in [Assembly Rule 93](#), the special extraordinary session rules for conducting the assembly virtual session, which the Assembly Committee on Organization adopted unanimously, consisted of the following:

1. The presiding officer shall determine which members may be physically present in the room from which the virtual session of the assembly is conducted.
2. Assembly rule 56 relating to recognition shall apply notwithstanding any member appearing virtually or otherwise displaced from their assigned seat. In addition, the presiding officer may recognize members by name to facilitate virtual session.
3. Assembly rule 26 relating to conduct in the chamber shall apply to both those in the chamber and those virtually present.
4. Assembly rule 59 (1) relating to conduct during debate shall apply notwithstanding any member appearing virtually or otherwise displaced from their assigned seat due to the virtual session.
5. Assembly rule 76 (5) relating to voting is suspended for any member appearing virtually.
6. Assembly rules 83 through 88 relating to a call of the assembly are suspended due to social distancing concerns.
7. Except as provided in # 8, all amendments to bills on a daily calendar must be introduced before 9:00 a.m. on the day of the session to which the calendar applies.
8. Upon the request of the presiding officer, he or she may permit the LRB to draft and a member to introduce, while the assembly is in session, an amendment that addresses technical issues in a proposal.
9. Privileged resolutions may not be offered during the session.<sup>17</sup>

In addition to the extraordinary session rules in [Senate Rule 93](#), the special extraordinary session rules for conducting the senate virtual session, which the Senate Committee on Organization adopted on a 3–2 vote, consisted of the following:

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15. Assembly Rule 93 (2); Senate Rule 93 (1p); Joint Rule 81 (2) (c).

16. Assembly Rule 93 (intro.); Senate Rule 93 (intro.). For more information about regularly scheduled floor periods, special sessions, and extraordinary sessions, see the forthcoming paper by Madeline Kasper, “Extraordinary Sessions of the Wisconsin Legislature,” *Reading the Constitution*, vol. 5, no. 2 (Madison, WI: Legislative Reference Bureau, 2020).

17. Assembly Journal (April 14, 2020), 746.

1. Members shall cast votes and answer roll calls through electronic means, in the manner determined by the presiding officer.
2. Except as provided in 3., all amendments to bills on a daily calendar must be introduced before 9:00 am on the day of the session to which the calendar applies.
3. Upon request of the presiding officer, the presiding officer may permit the LRB to draft and a member to introduce, while the senate is in session, an amendment that addresses technical issues in a proposal.
4. Upon completion of the Second Reading of a proposal, a member may offer one motion that both orders a proposal to its Third Reading and gives a proposal its Third Reading.
5. The president shall determine which members may be physically present in the room from which the virtual session of the senate is conducted.
6. Privileged resolutions may not be offered during the session.
7. Any proposal contained in a message from the assembly shall be taken up immediately, unless otherwise referred by the presiding officer.<sup>18</sup>

Many of the special assembly rules dealt with how regular session voting, recognition, and conduct in debate rules would apply to a virtual environment. Whereas the assembly rules did not introduce substantive procedural changes, the senate rules required electronic voting—a major departure from tradition. During in-person sessions, the Senate does not use electronic voting; instead, the chief clerk calls the roll for all votes and motions. For the special rules, the Assembly and Senate both generally required that all amendments to proposals be introduced by 9 a.m. on the floor session day, a rule change aimed at ensuring that members had electronic access to all amendments and avoiding any delay in the proceedings.<sup>19</sup> Moreover, the special rules gave the assembly and senate presiding officers the power to determine which members could be physically present in the chamber or hearing room from which the session was conducted. Finally, the special senate rules allowed the Senate to take up legislation passed in the Assembly immediately without the requirement of referral to a standing committee and a public hearing.

### **The Assembly goes first**

The Assembly met on April 14, 2020. It was a virtual session, but one in which the presiding officer permitted members, if they wished, to be physically present in the chamber. Forty-two members chose to attend the session in person, while the rest—more than half of the 99 total members—participated virtually. The members participating virtually were logged in through their Skype for Business accounts. Most of the members in the chamber were not seated in their usual places but rather dispersed for social distancing purposes throughout the chamber and visitor gallery. The assembly parlor was closed.

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18. Senate Journal (April 14, 2020), 820.

19. Both houses also prohibited the offering of privileged resolutions.

Members in the assembly chamber could watch and hear their remote colleagues on video screens set up in the chamber, while remote members could follow and participate in the proceedings through their computers. The proceedings were streamed live on the Internet and broadcast on cable network through WisconsinEye, a private, nonprofit vendor that offers regular access to many Wisconsin government proceedings.<sup>20</sup> Several members wore masks and most seemed at ease in the chamber, given the crisis environment. With the exception of Minority Leader Gordon Hintz (D-Oshkosh), all of the members in the assembly chamber were Republicans.

Aside from Legislative Technology Services Bureau staff providing technical support, fewer nonpartisan staff members were in the chamber than on a typical floor session day. Legislative Reference Bureau staff and the Joint Legislative Council staff director were in the room. Capitol reporters had arranged a pool system so that only a couple of reporters could provide content for multiple publications. Staff in the sergeant at arms office had marked the chamber floor with blue tape to indicate six-foot increments for social distancing purposes, and members and staff were instructed to enter and leave via specified doorways. Assembly chief clerk staff were at their normal stations at or near the podium. The doors of the capitol were open, and the Department of Administration had set up a large screen monitor in the capitol rotunda for the public to watch the assembly proceedings.

Unlike typical floor session days, with long and varied calendars, only one bill was scheduled for that day—2019 Assembly Bill 1038, a package of measures to address the effects of the COVID-19 pandemic.<sup>21</sup> No resolutions were considered and no other legislative business was conducted. Only four amendments were offered to the bill—three by Democrats, which were tabled, and one by Speaker Robin Vos (R-Rochester), which was adopted.<sup>22</sup> All votes proceeded via an individual roll call in a modified order such that remote members voted first via video and audio, followed by each member in the chamber voting aloud. Members physically present in the room were not at their usual seats and could not use the customary electronic voting system. Polling each member allowed the presiding officer to validate the action of each member. There were six roll call votes, with the longest taking 14 minutes to complete. The chief clerk polled each member individually. At this pace, it would have been difficult for the Assembly to complete a normal full calendar in virtual session.

It would have been a daunting task for a full-fledged debate to take place on Assembly Bill 1038, had the bill been contentious. Members who appeared remotely had Inter-

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20. [Archived video](#) of the April 14, 2020, assembly session is available on the WisconsinEye website.

21. For a summary of 2019 AB 1038, see the following memo prepared by Bob Lang, "[Summary of Provisions of SB 932 and AB 1038](#)" (Madison, WI: Legislative Fiscal Bureau, April 13, 2020), <https://docs.legis.wisconsin.gov>.

22. See the following memos prepared by Bob Lang: "[Summary of Assembly Amendments 1, 2, and 3 to AB 1038](#)" and "[Summary of Assembly Amendment 4 to AB 1038](#)" (Madison, WI: Legislative Fiscal Bureau, April 14, 2020), <http://docs.legis.wisconsin.gov>.



net connections that differed in quality and speed, and members present in the chamber were not near microphones. In this crucial respect, technology and other factors limit the quality and length of debate during a virtual session. Given these limitations, Minority Leader Hintz and Speaker Vos stood for their parties and spoke of the impact of the pandemic crisis confronting Wisconsin and the need for state government to act.

Standing at his desk, Minority Leader Hintz emphasized that “government has a role to play . . . [and] nobody else can provide that role in many cases,” citing government entities ranging from local first responders and public health agencies to the federal government. Against this backdrop, he argued that “state government needs to step up and play its role too.” Hintz called not only for government action, but also for unity. He underscored the importance of “Democrats and Republicans coming together to make sure that we can try to get those resources, to intervene, to manage this crisis.”

Speaker Vos commented on the difficulties facing members and all Wisconsinites, noting that “by and large, people are trying to do the best they can.” Like Hintz, he urged collaborative government in the service of all of Wisconsin:

A lot of the things that we’re going through don’t know party; they don’t know region; they don’t know ethnicity; they’re just all of us going through it as one humanity. So what we’re doing today, like every day, is the good work for the people of Wisconsin.

Citing the historical example of President Abraham Lincoln assembling a “team of rivals” in the wake of the Civil War, Speaker Vos encouraged all members to “listen to the best ideas, and sift through those.”<sup>23</sup>

On final passage, Assembly Bill 1038 received 97 votes, with two members voting in the negative. The bill was immediately messaged to the Senate, and the Assembly then adjourned. The virtual session lasted fewer than three hours. After adjournment, prompted by Speaker Vos, members in the chamber stood to recognize and applaud the Legislative Technology Services Bureau and other staff for their efforts in making the virtual session a reality. Then the members quietly exited through the front doors of the chamber.

### **The Senate goes next**

On April 15, 2020, the Senate convened its first virtual session. The session was not held in the senate chambers, but was conducted from room 411-South in the capitol, a senate hearing room already equipped with audio-visual and teleconferencing technology. Two senators were in the room: Senate President Roger Roth (R-Appleton), who presided over the proceedings, and Minority Leader Jennifer Shilling (D-La Crosse). All other senators participated remotely from their homes or offices. In the hearing room were four staff

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23. This term has been broadly popularized by the work of historian Doris Kearns Goodwin. See Doris Kearns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Penguin, 2009).

from leadership offices, the senate chief clerk and several chief clerk staff, Legislative Technology Services Bureau staff, the Legislative Reference Bureau chief, a reporter, a news photographer, and a legislative photographer. The sergeant at arms and his staff manned the doors. Everyone was spread out at assigned seats throughout the hearing room. The Capitol Police were stationed outside the room. No members of the public were in the room, but viewing areas had been set up in the capitol.

Before the start of the virtual session, staff from the Legislative Technology Services Bureau checked equipment to make sure that everything was working properly;<sup>24</sup> it helped greatly that there had been several practice virtual sessions before that day.<sup>25</sup> Majority Leader Scott Fitzgerald (R-Juneau) was in the room speaking with other senate leaders. Partisan and nonpartisan staff talked amongst themselves, making sure that all preparations were made and set for session, as well as going over possible last-minute issues and events that could arise during the session. The atmosphere in the room was calm and congenial. All present attempted to maintain appropriate social distancing; no legislators or staff in the room wore masks.

At 11:01 a.m., President Roth gavelled in the session and instructed the chief clerk to call the roll. Appearing on screen from locations throughout Wisconsin, members answered the roll; a quorum was present.<sup>26</sup> The first virtual session of the Senate was underway. To open the session, President Roth led the prayer with an adaptation of the first prayer offered by the Reverend Jacob Duché during the Continental Congress in 1774.<sup>27</sup> All in the room stood for the Pledge of Allegiance, and senate consideration of Assembly Bill 1038 began.

In his opening remarks, Senate Majority Leader Fitzgerald emphasized that the legislation under consideration was carefully crafted, “taking input from the governor . . . from Republican and Democrat legislators . . . from agencies and stakeholders.” He thanked Assembly Minority Leader Hintz and Senate Minority Leader Shilling for their contributions and hard work. Fitzgerald said that these were “extraordinary times” and noted that the bill “might be the first of a number.” He urged the Senate to support the bill. In response, Minority Leader Shilling said that “in times of crisis, individuals’ character shines through,” and praised the persistence, strength, generosity, and “moxie” of Wisconsinites. She called on the legislature to act urgently to provide “immediate relief and assistance to communities” and address future challenges as they arise.

Unlike in the Assembly, where only the Speaker and minority leader spoke to the bill,

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24. Legislative Technology Services Bureau staff had also contacted all members to ensure that computer connections were in good working order.

25. Riley Vetterkind, “[State Senate Holds Dress Rehearsal in Anticipation of Wisconsin’s First-Ever Virtual Session](#),” *Wisconsin State Journal*, March 26, 2020, <https://madison.com>.

26. [Archived video](#) of the April 15, 2020, senate session is available on the WisconsinEye website.

27. Reverend Jacob Duché, “[First Prayer of the Continental Congress](#)” (Philadelphia, PA: Office of the Chaplain, U.S. House of Representatives, September 7, 1774), <https://chaplain.house.gov>.

a number of senators addressed the legislation and the necessity of a legislative response to the crisis. Democratic senators introduced a substitute amendment, which included Governor Tony Evers's proposals to address the COVID-19 crisis, and two simple amendments: one relating to registration and absentee voting in elections, and the other to removing changes made to Assembly Bill 1038 by Republicans in the Assembly.<sup>28</sup> All were tabled on partisan votes.

The Senate, which had never before used electronic voting, elected to record its virtual session votes electronically. Whereas, in the Assembly, all roll call votes were conducted by video and audio, in the Senate, only the initial call of the roll was done by video and audio in order to authenticate the identity of the senator. After that, all other votes were recorded and authenticated by electronic means, in which senators clicked on-screen buttons to cast their votes. For voice votes, the votes were recorded via the on-screen buttons and the president announced the result of the vote. For roll call votes, the senators used on-screen buttons to indicate their vote, after which the chief clerk read aloud each senator's vote for verification purposes.

Before the vote on passage, Minority Leader Shilling remarked that Assembly Bill 1038 "is not a one and done." She called for "collaboration and communication" and hoped "that the legislature realizes that our work is not done. Today is not the end. This is just the beginning." Majority Leader Fitzgerald then called the question, ending debate, and the bill passed unanimously.<sup>29</sup> The bill was messaged immediately to the Assembly. President Roth adjourned the virtual session. The session lasted just over 75 minutes. Once the video and audio feeds were turned off, all members and staff present in the room clapped and applauded. Partisan and nonpartisan staff, especially the Legislative Technology Services Bureau, were thanked for organizing the session and making it a success. Members and staff exited the hearing room.

The Senate's virtual session was not without controversy. Two Democratic senators claimed they were denied their right to speak on the bill despite repeated requests.<sup>30</sup> Senator Tim Carpenter (D-Milwaukee) also charged that President Roth had refused him entry to the hearing room despite "multiple" requests to do so.<sup>31</sup> Senator Lena Taylor (D-Milwaukee) likewise alleged that President Roth did not permit her to vote or speak.<sup>32</sup> In an interview, President Roth referred to the claims as "a load of malarkey," saying that

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28. For a summary of senate amendments, see the following memos prepared by Bob Lang: "[Summary of Provisions of SSA1 to AB 1038](#)" and "[Summary of Senate Amendments 1 and 2 to AB 1038](#)" (Madison, WI: Legislative Fiscal Bureau, April 15, 2020), <http://docs.legis.wisconsin.gov>.

29. The vote was initially 31–0. Senator Tim Carpenter was later recorded in the Senate Journal as voting "aye," thereby raising the final count to 32–0. Senator Lena Taylor's vote was not recorded.

30. Todd Richmond, "[Evers Signs Pandemic Relief Package despite Misgivings](#)," *AP News*, April 15, 2020, <https://apnews.com>.

31. Senator Tim Carpenter, "[Sen. Carpenter: I Was Elected to Do a Job](#)," Press Release, April 15, 2020, <https://www.wispolitics.com>.

32. Richmond, "Evers Signs Pandemic Relief Package despite Misgivings."

Senator Carpenter tried to speak during times when member comments were not allowed, and that Senator Taylor did not unmute her phone line to speak.<sup>33</sup>

Later that afternoon, on April 15, 2020, Governor Evers signed the bill into law.<sup>34</sup>

## Concluding comments: conducting virtual sessions of the legislature

When Wisconsin's virtual session law was enacted in 2010, it would have been technologically difficult, if not impossible, for the legislature to meet in virtual session. Devices, Internet speeds, software, and the capitol's equipment and infrastructure have all improved drastically in the intervening decade. In hindsight, it is clear Wis. Stat. § 13.42 was well crafted to allow for virtual meetings of the legislature at a future date when technology would permit the success of such meetings. The statute does not presume any form of technology or prescribe the details of how each house should conduct its business. Nor does it bind any future legislature to procedural or administrative requirements. In short, the statute sets the conditions for convening and conducting a virtual session, but does not stifle legislative innovation.

Wis. Stat. § 13.42 also grants the legislature flexibility in determining when a virtual session should be held. Some states require a declared public health emergency or action by the governor to meet in virtual session.<sup>35</sup> In Wisconsin, the legislature alone determines whether there is a disaster or imminent threat of a disaster and whether to meet in virtual session. Similarly, the statute does not specify which members or committee may convene a virtual session. For the April 2020 virtual session, the organization committee of each house made this call with unanimous support from committee members.

Wisconsin's virtual session law also granted each house flexibility in determining how to conduct its virtual session, which resulted in markedly different proceedings. The Assembly allowed members to physically attend the virtual session because the size of the chamber permitted proper social distancing. The Senate, conducting its session from a smaller hearing room, did not. The Assembly required all votes to be cast on both video and audio, while the Senate required its members to cast all votes electronically. Debate in the Assembly was limited to remarks by the Speaker and the minority leader, while debate in the Senate included many members. Finally, the Assembly and Senate adopted different special rules for the virtual session.

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33. Richmond, "Evers Signs Pandemic Relief Package despite Misgivings."

34. Patrick Marley and Molly Beck, "[Gov. Tony Evers Signs Wisconsin Coronavirus Relief Bill, Though There Is Criticism of How It Treats First Responders](https://www.jsonline.com)," *Milwaukee Journal Sentinel*, April 15, 2020, <https://www.jsonline.com>. For a summary of 2019 Act 185, see the following memo prepared by Bob Lang: "[Summary of Provisions of 2019 Wisconsin Act 185](http://docs.legis.wisconsin.gov)" (Madison, WI: Legislative Fiscal Bureau, April 20, 2020), <http://docs.legis.wisconsin.gov>.

35. See, e.g., [Louisiana Senate Resolution 45](#), which applies "during a gubernatorially declared state of emergency or a gubernatorially declared state of public health emergency" and automatically expires "upon the termination of the declared state of emergency"; [New York Assembly Resolution 854](#), which applies "during a period of declared state or national state of emergency"; [Oregon Constitution](#), article X-A, sections 1 and 5, which, following the declaration that a catastrophic disaster has occurred, permit the governor to "issue a proclamation convening the Legislative Assembly" for limited disaster-related business, during which members "who cannot be physically present" can participate electronically.

In all the ways enumerated above, Wis. Stat. § 13.42 recognizes that there are different and legitimate ways to conduct legislative business that are affected by the culture, partisan composition, leadership styles, and institutional practices of the two houses. The Assembly and Senate conducted their virtual sessions differently just as they conduct ordinary sessions differently. The statute allows for adaptability and is thus well-suited for unpredictable and unprecedented circumstances. The statute encourages and requires legislative innovation.

Of course, virtual sessions under Wis. Stat. § 13.42 are by no means comparable to in-person floor sessions. During an ordinary legislative session, members rise when they wish to speak, address each other formally, hear immediately one another's comments, and observe one another's body language and manner. A virtual session tries to replicate this mode of democracy in action, but does so with various limitations. Computer audio and video hamper legislative debate. Members speak from seats huddled in front of computers, cannot always hear clearly, sometimes speak past one another, and cannot easily discern body language or nuance. For these reasons, virtual debate remains a pale imitation of live debate.

Moreover, a virtual session lacks the spontaneity and political drama of an in-person session. Legislative floor sessions are political and social events, with activity occurring throughout the chamber, parlor, conference rooms, and leadership offices. Members confer in corners and the parlors, amendments to bills are negotiated and quickly drafted, and partisan caucuses are called. In other words, ordinary sessions allow for a degree of unpredictability and improvisation. By contrast, negotiations surrounding a virtual session must occur before, rather than during, the session itself. This practical limitation might render it difficult to enact any legislation during a virtual session other than legislation with broad political support.

While not ideal, virtual sessions of the legislature are necessary when disaster strikes. The COVID-19 pandemic threatened the health of Wisconsinites, risked overwhelming health care systems, strained local governments, and resulted in widespread unemployment. The crisis called for legislative action, but made convening at the seat of government difficult and potentially dangerous for many legislators. Future disasters may have a similar effect. For this reason, Wisconsin's virtual session law will remain a crucial mechanism enabling the legislature to act decisively and effectively in times of crisis. ■