

## Examples of Other Legislative Chambers' Alternative Voting Provisions

### *I. Overview*

Alternative voting provisions—whereby a legislator is able to cast a vote in a method other than in-person—appears to have been unusual, pre-pandemic.

Prior to the pandemic, Congress allowed in committees proxy voting, whereby a member assigns another member to vote for them if the member was absent on official business or otherwise unable to be present. Two states also permitted remote voting in cases of emergency. But otherwise, alternative voting methods were apparently not permitted.

Since the pandemic, multiple chambers have allowed different forms of alternative voting, many being remote voting.

### *II. Pre-Pandemic*

#### **A. Congress.**

(1) *House*. The U.S. House has never allowed proxy voting on the floor. It has allowed proxy voting in certain committees: 1) in writing and signed by the member; 2) when a member was absent on official business or otherwise unable to be present; and 3) for specific questions (with blanket proxies only for procedural motions. This practice was first authorized by rule in the 1970s, and was prohibited by rule in 1995.<sup>1</sup>

(2) *Senate*. The Senate has not allowed proxy voting on the floor, but its rules allow all Senate committees to determine the use of proxy voting.<sup>2</sup>

**B. State legislatures, generally.** Per NCSL: “In normal circumstances, legislatures typically operate under a ‘you must be present’ rule—that is, legislators must be physically present in committee or on the chamber floor to participate in debate or voting. The rationale for this rule centers on the integrity of the legislative process. Requiring

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<sup>1</sup> CRS, [“The Prior Practice of Proxy Voting in House Committee.”](#)

<sup>2</sup> CRS, [“Proxy Voting and Polling in Senate Committee.”](#)

members' physical presence creates a comfort level that procedures can more easily be controlled and the public can witness debate and voting. State legislatures, however, more often allow the use of technology to facilitate public input into committee meetings. Prior to 2020, two states—Oregon and Wisconsin—had specific provisions allowing the remote or virtual meeting of the legislature in an emergency.”<sup>3</sup>

(1) *Oregon*. In 2012, Oregon amended its constitution re: catastrophic disasters (incl. terrorism, natural disasters, public health emergencies, and war). [Art. X-A](#), Sec. 5 authorized legislators to participate in session “through electronic or other means that enable the member to hear or read the proceedings as the proceedings are occurring and enable others to hear or read the member’s votes or other contributions as the votes or other contributions are occurring” if the legislators “cannot be physically present” during the catastrophic disaster.

(2) *Wisconsin*. In 1961, Wisconsin amended its constitution to add [Ch. IV, Sec. 34](#) (continuity of civil government), which allowed, during “periods of emergency resulting from enemy action in the form of an attack,” the Legislature to adopt necessary measures for continuity of government. [Wisc. Law 13.42](#) allows during a disaster (a severe or prolonged, natural or human-caused occurrence that threatens or negatively impacts life, health, property, infrastructure, environment, security, or critical systems) the Legislature or its committees to operate “through the use of any means of communication” when it is “prevented from physically meeting at the seat of government due to an emergency resulting from a disaster or the imminent threat of a disaster.”

### ***III. Pandemic***

#### **A. State legislatures, generally.**

(1) *Chambers*. “Absent specific authorization by the constitution or adopted rules of the body, remote participation in floor sessions by members of the legislative body is prohibited.” *Mason’s* Sec. 786.

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<sup>3</sup> NCSL, [“Continuity of Legislature During Emergency,”](#) > Remote Participation.

(2) *Committees*. “Authorization for remote participation is derived from specific rules or statutes.” *Mason’s* Sec. 633-1.

B. **Vermont Senate.** The Senate adopted permanent [Senate Rules 9A and 32A](#), which allows the Senate Rules Committee to authorize the Senate and its committees to operate remotely when a Governor’s Declaration of Emergency is in effect.

C. **AR House.** Temporary proxy authority for members who are “unable or unwilling to be physically present when the House is in session due to concerns regarding the COVID-19 public health emergency[.]” The member submits a proxy request in writing to the Speaker; the member’s caucus leader then assigns another member to vote for the member; the member’s voting preference must be submitted in writing. [AR H.R. 1001](#).

D. **CA House.** House members allowed to proxy vote during the gubernatorial state of emergency if the members are at a “higher risk from the COVID-19 virus.” [CA H.R. 100](#). The member was required to state in writing their vote on each action that could be offered by the proxy member. A physical quorum was required.

E. **CA Senate.** Remote participation in sessions and committees allowed during a state of emergency. [CA S.R. 86](#).

F. **Other states.** A sampling of specific language can be found in NCSL’s [Continuity of Government webpage](#), under “Remote Participation in 2020.”