

Remote Voting in the Massachusetts House of Representatives

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Issue

This report describes how the Massachusetts House of Representatives recently authorized remote voting in response to the COVID-19 pandemic, including the procedures it followed and the rules it adopted.

Summary

On May 4, 2020, the Massachusetts House of Representatives passed an order adopting Temporary Emergency Rules ([H.4676](#), as amended by [H.4690](#)). The House adopted the order during an informal session. Generally, during an informal session, attendance is not taken and formal debate and roll call votes are prohibited.

Principally, the Temporary Emergency Rules authorize House members to assemble and vote remotely in formal sessions during the “state of emergency within the House,” which the order declared due to the COVID-19 pandemic and related circumstances, including the state public health emergency and stay at home advisory. Like the Massachusetts Constitution and standing House Rules, the Temporary Emergency Rules require a majority of members to establish a quorum for transacting business (Art. 33 of the Amendments to the [Mass. Constitution](#), [HR 1 & 82](#), and [ER 2 & 7](#)). They also establish various requirements for assembling, debating, and voting remotely.

Some emergency rules are the same as, or substantially similar to, the standing rules. For example, both require that consolidated amendments (i.e., amendments consolidating more than one amendment) to Ways and Means Committee bills be available to members at least 30 minutes

before they may be considered ([HR 33E](#) and [ER 8](#)). The emergency rules additionally require that the amendments be available electronically.

This report limits its focus to aspects of the emergency rules that, in order to effectuate remote sessions, are substantially different than the standing rules.

Order Adopting Temporary Emergency Rules

The order that the House of Representatives passed declares a state of emergency within the House. It also (1) sets out the authority under which the chamber acted and its reasons for doing so and (2) establishes 20 Temporary Emergency Rules for the duration of the emergency ([H.4676](#), as amended by [H.4690](#)).

Authority and Purpose

The order indicates that the House of Representatives adopted the Temporary Emergency Rules under its “exclusive constitutional authority to settle the rules and orders of proceeding” under the state constitution (Pt. II, C. 1, § 3, Art. 10 of the [Mass. Constitution](#)). It identifies several reasons for establishing the rules. Generally, these reasons relate to the COVID-19 public health emergency or the requirement that the House conduct its business.

Concerning the public health emergency, the order cites the World Health Organization’s (1) designation of COVID-19 as a Public Health Emergency of International Concern and (2) characterization of COVID-19 as a pandemic. It also cites the declaration by the president and the governor that a major disaster and state of emergency, respectively, exists in Massachusetts.

With respect to conducting House business, the order primarily provides the following reasons for establishing the rules:

1. the state constitution requires a quorum to transact business;
2. the House of Representatives must continue to meet to take additional steps to respond to, and mitigate the spread of, COVID-19 to protect the health, security, safety, and convenience of the public; and
3. consistent with guidance from federal and state public health authorities, the House must complete its business in a manner that ensures the safety of its members, officers, and employees.

Adoption of Order

Under its standing rules, the House of Representatives may meet in formal or informal sessions, with the latter designated by the House speaker ([HR 44](#)). The House of Representatives passed the order adopting the Temporary Emergency Rules on May 4, 2020, in an informal session.

During an informal session, the House may only consider “reports of committees, papers from the Senate, bills for enactment or resolves for final passage, bills containing emergency preambles and the matters in the Orders of the Day,” and it may not conduct formal debate or hold roll call votes ([HR 44](#)). In summarizing the Massachusetts legislative process, the advocacy organization MassLegal Services further [describes](#) an informal session as one where, “[o]nly non-controversial issues on which no legislator voices disagreement are considered” and “[i]f any member objects, the matter or motion does not advance. While no attendance is taken, a handful of members usually attend the session in order to object, if necessary....”

The procedure followed during the May 4 informal session aligns with this description. As the legislature’s [video](#) shows, the order passed without debate, on a voice vote (see minutes 6:00 to 7:10). Few members appeared to be in the chamber.

Temporary Emergency Rules

The Temporary Emergency Rules authorize the chamber to meet in formal sessions during the House state of emergency with members “participating remotely,” which the order defines as “participating by telephone, teleconference, video conference or other means” ([ER 1 & 2\(a\)\(1\)](#)). The emergency rules define a quorum as 81 members present (the House has 160 seats), including those present remotely, and specify members present remotely have the same rights, privileges, and responsibilities as they would if physically present in the chamber ([ER 1 & 2\(a\)\(2\)](#)). Additionally, although the House Journal may note that a session was held remotely, it cannot identify which members participated remotely ([ER 2\(a\)\(6\)](#)).

The Temporary Emergency Rules remain in effect until a majority of the House adopts an order declaring that the state of emergency has ended or until 11:59 p.m. on January 5, 2021 ([ER 20](#)). Generally, the emergency rules do the following:

1. require the speaker to e-mail members, by 5:00 p.m. on Friday of the week preceding a formal session, specifying the mode for participating remotely and specific instructions for joining the session ([ER 2\(a\)\(3\)](#));
2. require a quorum for transacting business, and thus require a quorum roll call at the start of each remote session ([ER 2\(a\)\(1\) & \(4\)](#));

3. require a roll call to act on a bill or resolve ([ER 2\(a\)\(5\)](#));
4. except for the budget act, require that bills and resolves be available, no later than 12:00 p.m. on the day before consideration, to members electronically and to the public on the Internet in a format that the speaker determines in consultation with the clerk ([ER 3\(a\)](#));
5. require that regular amendments to a bill or resolve be filed by 5:00 p.m. on the day the bill is made available to members, in a format the clerk determines ([ER 3\(c\)\(1\)](#));
6. with the speaker's approval, authorize members and employees to take photographs or videos in the chamber to facilitate a member's remote participation ([ER 10](#));
7. require that remote sessions be publicly available on the General Court's (i.e., legislature's) website by live webcast, and broadcast on House television, with audio or video recordings made available on the General Court's website ([ER 12](#));
8. specify that no technical failure that breaks a member's remote connection invalidates any action taken by the House ([ER 13](#));
9. allow for the suspension of a standing or emergency rule concerning House procedures if an alternative method is approved by a two-thirds majority of the Rules Committee and approved, in writing, by the speaker and minority leader ([ER 18](#)); and
10. specify that the standing rules remain in effect, except to the extent that they conflict with the emergency rules ([ER 19](#)).

Presence in Chamber

The Temporary Emergency Rules limit who may be physically present in the chamber for a formal session during the state of emergency in the House ([ER 2](#)). Specifically, they do the following:

1. require the speaker to preside from within the House chamber over any formal session where members participate remotely;
2. authorize certain members, or their designees, to be present in the chamber, including the minority leader; chairperson and ranking member of the Ways and Means Committee; and chairperson and ranking member of any committee with jurisdiction over a bill being debated;
3. strongly encourage all other members to participate remotely;
4. authorize officers and employees to be in the chamber if they are essential to conducting the session, but only with the express authorization of the speaker in consultation with the minority leader;
5. authorize the speaker and minority leader to each have one employee present; and

6. require anyone physically present in the chamber to maintain social or physical distancing (e.g., maintain a six-foot buffer zone from each person) and undertake any other mitigation measures ordered by the speaker.

Debate and Voting

The standing rules require the speaker to appoint two monitors for each House division (the House has four divisions) to ensure that the rules are followed and to help return votes ([HR 8](#)). Under the Temporary Emergency Rules, these division monitors play a significant role in facilitating remote sessions, especially with respect to debate and the voting process.

Table 1 provides a brief overview of their role and the rules related to remote debate and voting.

Table 1: Debate and Voting During Remote Sessions

<i>Action</i>	<i>Temporary Emergency Rules</i>
Motions and Points of Order, Personal Privilege, or Parliamentary Inquiry (ER 5)	<ul style="list-style-type: none"> • Members participating remotely may make any motion authorized by the standing rules, raise a point of order, raise a point of personal privilege, or raise a point of parliamentary inquiry, by notifying their division monitor • Division monitors must immediately notify the speaker after receiving the notification, and the speaker must recognize the member
Compiling List of Speakers for Debate (ER 6)	<ul style="list-style-type: none"> • Members who participate remotely and want to speak on a question before the House must notify their floor division monitor as follows: <ul style="list-style-type: none"> - for a bill, resolve, or amendment, by 10:00 a.m., on the day of consideration, including whether speaking for or against - for a consolidated amendment, no later than 45 minutes after its filing with the clerk • Division monitors must prepare lists of members who wish to speak, arranged in order of when the notifications were received, and transmit them to the speaker and minority leader • The speaker, in consultation with the minority leader, must prepare two consolidated lists: one of members seeking to speak in favor of a question and the other of members seeking to speak in opposition • The speaker must electronically distribute the consolidated lists of speakers to members as soon as practicable before the start of session • During debate, the speaker must recognize members in the order they appear on the lists, alternating between proponents and opponents to the extent practicable

Table 1 (continued)

<i>Action</i>	<i>Temporary Emergency Rules</i>
Written Remarks in Lieu of Oral Remarks for Debate (ER 6)	<ul style="list-style-type: none"> • Members participating remotely may electronically submit written remarks to the clerk instead of speaking on a bill, resolve, amendment, or conference committee report • The clerk must include the remarks in the House Journal
Participating in Debate (ER 11)	<ul style="list-style-type: none"> • With certain exceptions, members may not be recognized on any question more than once, or for more than 10 minutes, without unanimous consent • Restriction does not apply to the minority leader, member introducing a bill in the chamber, or ranking member of a committee reporting a bill • After all members wishing to speak have been recognized, the following may occur: <ul style="list-style-type: none"> - the primary sponsor or a designee may be recognized to provide a rebuttal or further explanation - if this happens, a member of the other political party may also be recognized - in neither case may a member speak for more than five minutes without unanimous consent
Voice Votes (ER 7(b))	<ul style="list-style-type: none"> • If the speaker is unable to determine the outcome of a voice vote, or a member questions the results, the division monitors must ascertain the number of “yes” and “no” votes in their division and report the results to the speaker • After receiving the division monitor reports, the speaker must tally the votes and announce the vote
Roll Call Votes (ER 7(c))	<ul style="list-style-type: none"> • Division monitors must call the roll of the members in their division and record the votes on a form prescribed by the clerk • After completing the roll call, the monitors must sign the form and submit it to the clerk • The clerk must tally the votes and enter them into the electronic roll call machine and notify the speaker • Upon instruction from the speaker, the clerk must display the tally on the House chamber monitors, and the speaker announces the vote

Rules Violations

The Temporary Emergency Rules authorize the House to punish members for certain violations. Specifically, the House must report a member to the Ethics Committee, and may further punish that member as it determines appropriate, for taking any of the following actions:

1. voting or attempting to vote for another member,
2. willfully tampering with or attempting to impair or destroy the House voting equipment, or
3. willfully tampering with or attempting to change the House voting records ([ER 7\(f\)](#)).

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