

**JOBS CREATION COMMITTEE:
MEMBER PARTICIPATION BY ELECTRONIC MEANS**

Pursuant to Ind. Code § 5-14-1.5-3.6, the Jobs Creation Committee (hereafter, the "Committee") adopts the following Policy regarding electronic participation by Committee members during a Committee meeting. This Policy was adopted by the Committee at its public meeting of June 16, 2016, after due consideration, after a vote of 5 / 0 / 0 effective June 16, 2016.¹

**I. PREAMBLE²
POLICY CONSIDERATIONS**

This Policy is promulgated with the intent and applied so as to:

- A. Balance ease of Committee member access to and participation in orderly proceedings, especially where there are occurrences that pose impediments to physical attendance;
- B. Follow Ind. Code § 5-14-1.5-3.6, and any amendments thereto, in a manner consistent with the requirements of the Open Door Law;
- C. Aid in recruitment of Committee members on a statewide basis whose ability to participate electronically in some meetings would further enhance the attainment and maintenance of balanced geographical representation; [and]
- D. Encourage Committee members to physically attend meetings whenever possible.

II. POLICY PROVISIONS

- 1. At least three (3) Committee members must be physically present at the designated meeting site for the Committee meeting.³
- 2. Where multiple Committee members request electronic participation for a Committee meeting, and there is the possibility the Committee may not have the required number of Committee members physically present at the Committee meeting site, the Committee's Chair shall determine which Committee members may attend the Committee meeting via electronic means pursuant to this Policy.

¹ The Committee has to formally adopt the policy at one of its meetings. The policy would become effective upon approval and must be posted to the Committee's website.

² This is not a required section. Several other Committees/Commissions have utilized such a section as a means of stating the purpose for its Policy. The two I have seen referred to this as either a "Preamble" or "Policy Considerations" (actually, "Recitals: Policy Considerations"). The Committee can chose to utilize such a section and designate it however it wishes to.

³ Under the new law, 1/3 of the Committee membership would be the minimum, which for a seven member Committee is three. I.C. § 5-14-1.5-3.6(c)(1). The Committee could decide to require a quorum be physically present. This would require four (4) members be physically present, per I.C. § 25-33-1-3(a).

3. A Committee member wishing to attend a meeting via electronic means shall: **Notify the Committee Chair reasonably in advance of the Committee meeting⁴.**
4. A Committee member participating via electronic means may do so by telephone, computer, video conferencing, or any other method of communication that allows for simultaneous communication and is capable of being recorded by members of the public present at the designated meeting site.
5. A Committee member participating in a meeting via electronic means pursuant to this policy is **not required** to do so in a setting that is open to the public.⁵
6. The **Chair** is delegated to supervise and coordinate electronic participation pursuant to this Policy by Committee members.
7. Each Committee member must physically attend at least one (1) Committee meeting annually. **Physical attendance must occur⁶ during the calendar year.**
8. A Committee member **is not** precluded from attending via electronic means pursuant to this Policy until such Committee member physically attends a Committee meeting in a calendar year.⁷
9. For a Committee member appointed or designated after the beginning of a calendar year, the appointed or designated Committee member must physically attend a committee meeting **within the one-year anniversary of the Committee member's appointment or designation⁸**

⁴ Time is a difficult issue, especially as most Committee members wishing to participate via electronic means may seek to do this only where the necessity for the electronic participation is due to a natural event (*i.e.*, weather related). It is difficult to predict the weather, especially in Indiana and particularly during the winter. The Committee should endeavor to be as flexible as possible while recognizing the logistical needs should there be a member participating via electronic means.

⁵ As noted in the analysis, I recommend the Committee not require a member participating via electronic means to do so in a place open to the public. The Committee meeting itself must be open to the public (except for an executive session, discussed briefly later). It works something of a hardship on the Committee member to find a place that is open to the public *and* can provide the means for simultaneous communication. Imposing such a requirement could actually undermine the Committee's purpose in instituting such a policy (*e.g.*, increasing geographic representation).

⁶ The recommendation is to not place mandatory attendance in the first quarter of the calendar year. Due to seasonal weather, that is the prime time members may wish to avail themselves of the option to attend electronically.

⁷ As noted in the analysis, the law simply states "annually" without further clarification or qualification. Under typical statutory construction, "annually" without qualification means "calendar year." See I.C. § 1-1-4-5 ("year" means "calendar year" unless otherwise expressed).

⁸ Some necessary liberty is taken here. Footnote 8 notwithstanding, this would still be "annually." There is also a statutory provision that directs us to construe statutory provisions so as to not reach an interpretation that would be "plainly repugnant to the intent of the legislature or of the context of the statute[.]" I.C. § 1-1-4-1. The statute being applied herein refers to "annually" and did not consider the problem created by a person appointed or designated

10. A Committee member participating via electronic means under this Policy **is** considered present at the Committee meeting and **may** vote at the Committee meeting on any matter.⁹
11. A Committee member participating via electronic means **may** cast the deciding vote on any matter properly before the Committee.¹⁰
12. Where at least one (1) Committee member is participating via electronic means pursuant to this Policy, all votes of the Committee will be taken by roll call.
13. Members are encouraged, but not required, to attend in person all meetings possible, especially where oral argument is set. This Policy endeavors to balance convenience and greater membership participation with operational efficiency and quality.
14. This Policy does not create a right for the public to observe and record an executive session of the Committee conducted pursuant to I.C. § 5-14-1.5-6.1, or any other applicable law.

III. REVIEW AND AMENDMENT¹¹

This Policy shall remain in full force and effect unless amended by the Committee in an open meeting.


Chair


Date

after a calendar year has started. I believe it is possible to choose this option and still achieve the legislative intent of physically attending a meeting at least once “annually.”

⁹ Most other Committees or Commissions would also be determining whether such a member is to be considered as “present” for quorum purposes.

¹⁰ It is not advisable to limit the voting rights of a member. This could effectively prevent completion of Committee business.

¹¹ This is not a required section. This is entirely within the discretion of the Committee as to how it wishes to proceed in this regard.

