



SPONSOR: Rep. Schwartzkopf & Rep. Longhurst & Rep. Mitchell &
Rep. D. Short & Rep. Dukes & Sen. McBride &
Sen. Poore & Sen. Townsend & Sen. Hocker &
Sen. Cloutier

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE CONCURRENT RESOLUTION NO. 85

ACCEPTING AND APPROVING THE MAY 14, 2020, ACTIONS OF THE PRESIDENT PRO TEMPORE OF THE STATE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, DECLARING AN EMERGENCY UNDER § 5, ARTICLE II AND § 1, ARTICLE XVII OF THE DELAWARE CONSTITUTION, AND ADOPTING RULES OF PROCEDURE FOR CONDUCTING VIRTUAL MEETINGS OF THE GENERAL ASSEMBLY AND ITS LEGISLATIVE COMMITTEES DURING AN EMERGENCY.

1 WHEREAS, on March 12, 2020, in response to growing concerns about the spread of COVID-19, the President
2 Pro Tempore of the Senate (“President Pro Tempore”) and the Speaker of the House of Representatives (“Speaker”) took
3 joint action to close Legislative Hall to the public and postpone legislative session until March 24, 2020, to ensure the
4 safety of legislators, staff, and the public; and

5 WHEREAS, also on March 12, 2020, Governor John C. Carney issued a state of emergency due to the public
6 health threat posed by COVID-19 and has subsequently issued modifications of the state of emergency as the public health
7 threat has continued; and

8 WHEREAS, on March 18, 2020, with the public health threat caused by COVID-19 worsening, the President Pro
9 Tempore and the Speaker jointly decided to close Legislative Hall to the public and postpone legislative session until
10 further notice; and

11 WHEREAS, on May 14, 2020, the President Pro Tempore and the Speaker issued a joint memorandum declaring
12 that because the public health threat caused by COVID-19 is expected to continue and the public health threat prevents
13 members from physically meeting in Dover, the General Assembly and certain of its legislative committees would be
14 recalled with members participating remotely through the use of audio or video technology; and

15 WHEREAS, the President Pro Tempore and the Speaker based the May 14, 2020, joint memorandum on authority
16 granted to them and the General Assembly under §§ 5 and 9, Article II and § 1, Article XVII of the Delaware Constitution,
17 Section 577 of Mason’s Manual on Legislative Procedure, and Governor John C. Carney’s Proclamation No. 17-3292
18 regarding virtual meetings of public bodies during the public health emergency caused by COVID-19; and

19 WHEREAS, the General Assembly finds the actions of, and procedures adopted by, the President Pro Tempore
20 and the Speaker to be reasonable and supported by law; and

21 WHEREAS, the General Assembly finds that it is authorized by §§ 5 and 9, Article II and § 1, Article XVII of the
22 Delaware Constitution to adopt rules of procedure for conducting a virtual meeting of the General Assembly and its
23 legislative committees to ensure the continuity of the General Assembly’s operations during the public health threat caused
24 by COVID-19 or any other emergency; and

25 WHEREAS, the General Assembly finds under § 1, Article XVII of the Delaware Constitution that if the rules of
26 procedure adopted by this Concurrent Resolution do not conform to the requirements of the Delaware Constitution, it is
27 impracticable to do so or to do so would cause undue delay.

28 NOW, THEREFORE:

29 BE IT RESOLVED by the House of Representatives of the 150th General Assembly of the State of Delaware, the
30 Senate concurring therein, that the General Assembly accepts and approves the May 14, 2020, actions of the President Pro
31 Tempore of the Senate and the Speaker of the House of Representatives, declares an emergency under § 5, Article II and §
32 1, Article XVII of the Delaware Constitution, and adopts the following rules of procedure for conducting virtual meetings
33 of the General Assembly and its legislative committees during an emergency:

34 **Virtual Meeting Rules of Procedure for the General Assembly and Legislative Committees.**

35 **Rule 1. Definitions.**

36 As used in this Concurrent Resolution:

37 (1) “Chair” means a member who presides over and maintains order and decorum of a legislative committee.

38 (2) “Emergency” means an impending or existing attack, act of terrorism, disease, accident, or other natural or
39 man-made disaster under § 5, Article II and § 1, Article XVII of the Delaware Constitution.

40 (3) “Legislative committee” means 1 of the following:

41 a. A standing committee of the House of Representatives or Senate.

42 b. A joint committee of the General Assembly.

43 c. A task force or similar entity created by resolution of the General Assembly.

44 d. An entity within the legislative branch created by an act of the General Assembly.

45 (4) “Member” means an individual elected to the General Assembly, the individual’s emergency interim
46 successor, and an individual appointed to an entity under paragraph (3)c. or (3)d. of this rule.

47 (5) “Presiding officer” means the Speaker of the House of Representatives, President of the Senate, or a
48 member who presides over and maintains order and decorum of the Senate or House of Representatives.

49 (6) “Virtual meeting” means a meeting that meets the requirements under Rule 3 of this Concurrent
50 Resolution.

51 (7) “Witness” means a non-member permitted to address a virtual meeting.

52 **Rule 2. Authorization to hold virtual meetings due to an emergency.**

53 (a) The Senate or House of Representatives or a legislative committee may convene and conduct a virtual meeting
54 if the President Pro Tempore of the Senate and the Speaker of the House of Representatives issue a public notice that
55 members of the Senate or House of Representatives or a legislative committee are authorized to convene and conduct a
56 virtual meeting due to an emergency.

57 (b) The President Pro Tempore and the Speaker shall include in the notice a list of legislative committees
58 permitted to conduct virtual meetings under this rule.

59 (c) The notice is valid until rescinded by the President Pro Tempore and the Speaker.

60 **Rule 3. Virtual meeting requirements.**

61 If a public notice under Rule 2 of this Concurrent Resolution is issued, the Senate or House of Representatives or a
62 legislative committee may conduct a meeting and transact public business at which members participate through the use of
63 any means of communication by which all of the following occur:

64 (1) The identity of a member or witness is verified, and the actions of a member are authenticated, in a manner
65 satisfactory to the presiding officer or chair.

66 (2) During the meeting, all participating members or witnesses simultaneously hear or read the comments of
67 each member or witness who is recognized by the presiding officer or chair.

68 (3) A document that is used during the meeting by a member or witness and that is accepted by the presiding
69 officer or chair is immediately transmitted to each member or witness participating in the meeting.

70 (4) Except as provided under Rule 4 of this Concurrent Resolution, the public is able to do the following:

71 a. Contemporaneously access materials presented at the meeting.

72 b. Monitor the proceedings.

73 c. For a meeting of a legislative committee under this rule, provide public comment, if the committee is
74 required to accept, or provides an opportunity for, public comment.

75 d. Review a recording of the meeting within a reasonable time after the meeting concludes.

76 **Rule 4. Exceptions to virtual meeting requirements.**

77 (a) Rule 3(4) of this Concurrent Resolution does not apply if, under § 11, Article II of the Delaware Constitution,
78 “the business is such as ought to be kept secret”.

79 (b) A technological failure that prevents, or a technological limitation that limits, public access otherwise required
80 under Rule 3(4) of this Concurrent Resolution does not invalidate a virtual meeting or an action taken at a virtual meeting.

81 **Rule 5. Legal effect of virtual meeting.**

82 A virtual meeting complies with § 5, Article II of the Delaware Constitution and, thus, all actions taken during a
83 virtual meeting have the same legal effect as if the members were physically present at the seat of government.

84 **Rule 6. Quorum requirements; voting requirements; procedures for participating and voting at a virtual**
85 **meeting.**

86 (a) For the purposes of determining quorum for a meeting of Senate or House of Representatives or a legislative
87 committee, a member participating in a virtual meeting is considered present as if the member were physically present at
88 the meeting.

89 (b) For the purposes of voting during a meeting of the Senate or House of Representatives or a legislative
90 committee, a member participating in a virtual meeting is able to vote as if the member were physically present at the
91 meeting.

92 (c) Notwithstanding a rule of the Senate or House of Representatives to the contrary, the following procedures
93 apply:

94 (1) Members participating in a virtual meeting should join the meeting at least 30 minutes before the
95 scheduled start time of the meeting. The presiding officer or chair, or their designee, shall make reasonable efforts to
96 contact a member who has not joined the meeting 30 minutes before the scheduled start time to determine if the
97 member is having technical difficulties joining the meeting and shall work with the member to provide a solution to
98 enable the member to join the meeting. If a member is unable to join the meeting the presiding officer or chair shall
99 announce the reason to other members, if known.

100 (2) The presiding officer or chair shall cause members or witnesses participating in a virtual meeting to be
101 muted on entry into the meeting.

102 (3) To be recognized to speak by the presiding officer or chair, a member or witness shall use a technological
103 function that enables the member or witness to be recognized. If a technological failure occurs, the presiding officer or
104 chair may adopt an alternative method for members or witnesses to be recognized.

105 a. The presiding officer or chair shall cause the member or witness recognized to speak to be unmuted.

106 b. On being recognized to speak, the recognized member or witness shall state their name each time
107 before addressing the virtual meeting.

108 (4) Votes must be taken by roll call.

109 **Rule 7. Notice requirements for a virtual meeting.**

110 (a) A virtual meeting must be preceded by the same or substantially equivalent public notice as would be required
111 if the meeting were to be held at a physical location.

112 (b) The notice must include information on how the public can monitor a meeting of the Senate or House of
113 Representatives or a legislative committee or participate in a meeting of a legislative committee that is required to accept,
114 or provides an opportunity for, public comment.

115 **Rule 8. Interpretation of rule of Senate, House of Representatives, or legislative committee.**

116 (a) The presiding officer or chair presiding over a virtual meeting shall interpret and apply all rules of the Senate
117 or House of Representatives or the legislative committee that presume or require the physical presence or act of members or
118 witnesses in such a manner to accomplish the same purposes for which the rules were adopted.

119 (b) For purposes of affixing signatures required under rules of the Senate or House of Representatives, a member
120 may, in lieu of a wet signature, authorize, in writing or electronically, the Secretary of the Senate or Chief Clerk of the
121 House of Representatives, as appropriate, to affix the member's signature.

122 **Rule 9. Process for considering legislation at a virtual meeting.**

123 Legislation considered by the Senate or House of Representatives at a virtual meeting must first be placed on 1 of
124 the following:

125 (1) An agenda, by the President Pro Tempore of the Senate under Senate Rule 9 or the Speaker of the House
126 of Representatives under House Rule 10.

127 (2) A consent agenda, by the President Pro Tempore of the Senate under Senate Rule 31 or the Speaker of the
128 House of Representatives under House Rule 46.

129 (3) A consent calendar, by the President Pro Tempore of the Senate under Senate Rule 27 or the Speaker of
130 the House of Representatives under House Rule 47.

131 **Rule 10. Convening of the General Assembly and limitations on length of legislative sessions.**

132 Notwithstanding § 1711(a), (b), and (d) of Title 29 of the Delaware Code, the following apply:

133 (1) The method for convening the General Assembly is as provided under § 4, Article II and § 16, Article III
134 of the Delaware Constitution and the rules of the Senate or House of Representatives adopted under § 9, Article II of
135 the Delaware Constitution.

136 (2) The limitations on the length of legislative session are as provided under § 4, Article II of the Delaware
137 Constitution.

SYNOPSIS

This Concurrent Resolution accepts and approves the May 14, 2020, actions of the President Pro Tempore of the Senate ("President Pro Tempore") and the Speaker of the House of Representatives ("Speaker"), declares an emergency under § 5, Article II and § 1, Article XVII of the Delaware Constitution, and adopts rules of procedure for conducting virtual meetings of the General Assembly and its legislative committees during an emergency. Specifically, this Concurrent Resolution:

(1) Authorizes the Senate or House of Representatives or a legislative committee to convene and conduct a virtual meeting if the President Pro Tempore and the Speaker issue a public notice that the Senate or House of Representatives or a legislative committee is authorized to convene and conduct a virtual meeting due to an emergency.

(2) Provides protections to ensure the integrity of the legislative process and public access and transparency for meetings held virtually.

(3) Requires legislation considered at a virtual meeting be first be placed on an agenda, consent agenda, or consent calendar by the President Pro Tempore under Senate Rules or the Speaker under House Rules.

(4) Notwithstanding § 1711 of Title 29 of the Delaware Code, makes clear that the method of convening the General Assembly and the limitations on the length of legislative session are as provided under the Delaware Constitution and the rules of the Senate or House of Representatives adopted under § 9, Article II of the Delaware Constitution.