



SPONSOR: Sen. Hansen & Sen. Poore & Sen. Delcollo & Rep. Brady
& Rep. Baumbach

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 243

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE FREEDOM OF INFORMATION ACT.

1 WHEREAS, since 2009, when video-conferencing was first permitted under the Freedom of Information Act
2 (“FOIA”) by Senate Bill No. 104 (145th General Assembly), technology has continued to evolve and the need to provide
3 more mechanisms for participation by members of public bodies and the public has grown; and

4 WHEREAS, technology can increase the ability of individuals with disabilities to serve as members of advisory
5 bodies and participate in public meetings; and

6 WHEREAS, under the Governor's March 12, 2020, Declaration of a State of Emergency for the State of Delaware
7 Due to a Public Health Threat and House Concurrent Resolution No. 85 (“HCR 85”), public bodies in Delaware have been
8 successfully holding virtual public meetings; and

9 WHEREAS, technology is available to hold a virtual public meeting in compliance with the FOIA requirements
10 for a meeting in a physical location; and

11 WHEREAS, virtual meetings allow greater public attendance and participation in public meetings, especially by
12 individuals with disabilities; and

13 WHEREAS, however, not everyone has access to technology that allows both audio and visual participation in a
14 virtual meeting; and

15 WHEREAS, it is the intent of the General Assembly, that whenever practicable, virtual meetings include the
16 ability for participants to simultaneously hear the comments of and view a member or participant recognized by a chair or
17 presiding officer of a public body; and

18 WHEREAS, the General Assembly encourages advisory bodies to use technology to hold virtual meetings, in
19 conjunction with a meeting at a physical location, to increase opportunities for public participation in civic affairs.

20 NOW, THEREFORE:

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

22 Section 1. Amend § 10004, Title 29 of the Delaware Code by making deletions as shown by strike through and
23 insertions as shown by underline as follows:

§ 10004 Open meetings.

(e)(1) This subsection concerning notice of meetings shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to the General Assembly.

(2) All public bodies shall give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings, including whether such meeting will be conducted ~~by video conferencing~~ under § 10006 or § 10006A of this title; however, the agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.

Section 2. Amend Chapter 100, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10006A. Open meetings; virtual meetings; reasonable accommodations for members with a disability.

(a) For purposes of this section:

(1) "Advisory body" means an entity that is impliedly or specifically charged by a public body or public official to provide advice to a public body or public official or make reports or general recommendations to the public body or public official, or another public body or public official. "Advisory body" does not mean an entity that has authority to make a legally binding decision regarding a specific person's right, privilege, or remedy, including a case decision under § 10102 of this title.

(2) "Anchor location" means the physical location within the geographic jurisdiction of the public body that is open to the public and at which 1 or more members of a public body attend a virtual meeting.

(3) "Disability" means as defined in § 4502 of Title 6.

(4) "Electronic" means as defined in § 12A-102 of Title 6.

(5) "Public meeting" means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business.

(6) "State of emergency" means as defined in § 3102 of Title 20.

(7) "Virtual meeting" means a public meeting of a public body that 1 or more members attend through the use of an electronic means of communication and that meets the requirements under this section.

(b)(1) All actions taken by a public body during a virtual meeting conducted under this section have the same legal effect as if the members were physically present at the same location.

53 (2) For the purposes of determining quorum for a virtual meeting, a member participating in a virtual meeting
54 is considered present as if the member were physically present at the public meeting.

55 (3) For the purposes of voting during a virtual meeting, a member participating in a virtual meeting is able to
56 vote as if the member were physically present at the public meeting.

57 (4) A technological failure that prevents, or a technological limitation that limits, public access otherwise
58 required under this chapter does not invalidate a virtual meeting or an action taken at a virtual meeting.

59 (c) If a public body holds a public meeting under this section, all of the following must occur:

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

62 (2) All participating members and witnesses can simultaneously do 1 of the following regarding each member
63 or witness who is recognized by the presiding officer or chair:

64 a. Hear the comments of each member or witness.

65 b. Hear the comments of and view each member or witness.

66 (3) A document used during the public meeting by a member or witness, and that is accepted by the presiding
67 officer or chair, is provided to each member participating in the public meeting and made available to the public under
68 § 10003 of this title.

69 (4) Except during an executive session under § 10004 of this title, the public is able to do all of the following:

70 a. Monitor the proceedings.

71 b. Provide public comment, if the public body is required to accept, or provides an opportunity for, public
72 comment.

73 (5) Minutes of the virtual meeting are maintained under § 10004 of this title.

74 (d)(1) A public body shall allow a member with a disability to attend a meeting of the public body through the use
75 of an electronic means of communication instead of at a physical location as a reasonable accommodation under § 4504 of
76 Title 6.

77 (2) Paragraph (d)(1) of this section does not apply to a public body if all of the members of the public body
78 are elected by the public to serve on the public body.

79 (e) An advisory body may hold a virtual meeting to conduct public business with 1 or more members participating
80 through the use of an electronic means of communication if, in addition to the requirements under subsection (c) of this
81 section, all of the following occur:

(1) The virtual meeting is preceded by the same public notice as would be required if the public meeting were to be held only at a physical location.

(2) The public meeting notice includes information on how the public can attend, and, if appropriate, provide public comment, at the virtual meeting.

(3) The virtual meeting includes an anchor location.

(f) During a state of emergency, a public body may hold a virtual meeting to conduct public business at which members participate through the use of an electronic means of communication if, in addition to the requirements under subsection (c) of this section, all of the following occur:

(1) The virtual meeting is preceded by the same public notice, or substantially equivalent public notice, as would be required if the meeting were to be held only at a physical location.

(2) The public meeting notice includes all of the following information:

a. How the public can monitor the public meeting.

b. If the public body is required to accept, or provides an opportunity for public comment, how the public may participate in the meeting.

(3) If required by law, the public body must maintain a verbatim transcript of the public meeting.

(4) If all of the members of the public body are elected by the public to serve on the public body, all of the following must occur:

a. A document that is used during the public meeting by a member or witness, and that is accepted by the presiding officer or chair, is immediately transmitted to each member or witness participating in the public meeting.

b. The public is able to review a recording of the public meeting within a reasonable time after the public meeting concludes.

(g) A public body may adopt rules regarding the conduct of virtual meetings that do not conflict with the requirements under this section.

(h) If necessary to prevent a public health emergency, as defined in § 3132 of Title 20, the Governor may issue an executive order allowing public bodies to hold virtual meetings at which any or all members may participate through the use of an electronic means of communication. A virtual meeting held under this subsection must comply with the requirements under subsection (c) and paragraphs (f)(1) through (f)(3) of this section.

Section 3. Section 10006A(h) of Title 29 of this Act expires on June 30, 2021 unless terminated or extended by subsequent action of the General Assembly.

SYNOPSIS

Since 2009, when video-conferencing was first permitted under the Freedom of Information Act ("FOIA") by Senate Bill No. 104 (145th General Assembly), technology has continued to evolve and the need to provide more mechanisms for participation by members of public bodies and the public has grown. In addition, under the Governor's March 12, 2020, Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat and House Concurrent Resolution No. 85 ("HCR 85"), public bodies in Delaware have been successfully holding virtual public meetings.

This Act amends FOIA to allow a public body to hold a public meeting electronically if specific notice and public access requirements are met. The notice and access requirements follow the guidelines established under HCR 85. Specifically, this Act permits all of the following:

1. An advisory body that makes reports or recommendations may hold a virtual meeting at any time, if there is an anchor location that is open to the public and at which 1 or more members of the public body attend the meeting.

2. During a state of emergency, any public body may hold a virtual meeting. If all members of a public body are elected by the public to serve on the public body, there are requirements to ensure that members have contemporaneous access to documents.

This Act also clarifies that if its members are not all elected by the public to serve on the public body, a public body must allow a member with a disability to attend a meeting electronically as a reasonable accommodation under § 4504 of Title 6.

Finally, this Act permits the Governor to allow public bodies to hold virtual meetings if necessary to prevent a public health emergency, through June 30, 2021.

This Act does not revise § 10006 of Title 29, the existing video-conferencing section, because § 10006 permits more types of public bodies to conduct a meeting through video-conferencing than are permitted to conduct a virtual meeting under this Act in the absence of a state of emergency.

Author: Senator Hansen