SPONSOR: Sen. Hansen & Rep. Baumbach & Rep. Griffith
Sens. Ennis, Gay, S. McBride, Richardson, Sokola; Reps. Heffernan, K. Johnson, Lambert, Morrison, Ramone, Michael Smith, K. Williams, Yearick

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 94

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE AND CHAPTER 265, VOLUME 82 OF THE LAWS OF DELAWARE RELATING TO THE FREEDOM OF INFORMATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 10002, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 10002. Definitions.

(b) "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.

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

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

~~(c)~~ (f) "FOIA" means the Freedom of Information Act ~~[this chapter].~~ under this chapter.

~~(g)~~ (j) "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 either in person or by video conference.~~ business.

~~(n) "Video-conferencing" means any system permitting interaction among all participants in 2 or more noticed public locations in compliance with § 10006 of this title.~~

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

(r) "Virtual meeting" means a meeting of a public body that 1 or more members attend through the use of an electronic means of communication.

Section 2. Amend § 10004, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10004. Open meetings.

(e)(1) This subsection concerning notice of meetings ~~shall~~ does not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, ~~health~~ 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.~~ of the meeting. The notice ~~shall~~ must include ~~the~~ all of the following:

a. The agenda, if ~~such~~ the agenda has been ~~determined at the time, and the~~ determined. ~~dates, times and places of such meetings,~~

b. The date, time, and place of a meeting, including whether ~~such~~ the meeting will be conducted ~~by video-conferencing; however, the~~ under § 10006A of this title.

(3) An agenda ~~shall be~~ provided under paragraph (e)(2) of this section is subject to ~~change to~~ change. Changes to an agenda may include ~~additional items~~ any of the following:

a. Additional items, including an executive ~~sessions~~ session, ~~or the deletion of items including executive sessions~~ which arise at the time of the public body's meeting.

b. The deletion of items, including an executive session.

Section 3. Amend Chapter 100, Title 29 of the Delaware Code by repealing § 10006 in its entirety.

Section 4. 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)(1) A public body shall allow a member with a disability to attend a meeting of the public body through the use of an electronic means of communication, instead of being required to attend in-person at a physical location, as a reasonable accommodation under § 4504 of Title 6. A member attending a meeting through the use of an electronic means of communication as a reasonable accommodation is considered present for all purposes as if the member is physically attending, including for quorum and voting.

(2) Paragraph (a)(1) of this section does not apply to a public body whose members are all elected by the public to serve on the public body if it imposes an undue burden under Chapter 45 of Title 6.

(b) At the discretion of the chair or presiding officer, a public body may allow the public to monitor or provide public comment through the use of an electronic means of communication at any meeting.

(c) A public body may hold a virtual meeting if all of the following occur:

(1) The meeting notice under § 10004 of this title includes information regarding how the public can monitor or participate in the meeting under paragraph (c)(6) of this section.

(2) The meeting has an anchor location.

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

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

a. Hear the comments of each member or witness.

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

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

(6) Except during an executive session under § 10004 of this title, the public is able to do all of the following through an electronic means of communication:

a. Monitor the meeting.

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

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

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

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

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

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

(e) During a state of emergency, a public body may hold a virtual meeting at which members participate through the use of an electronic means of communication without an anchor location 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 as required under § 10004 of this title, except that notice of the public meeting does not need to be conspicuously posted at the principal office of the public body holding the meeting or where meetings of the public body are regularly held.

(2) 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 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 meeting.

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

(f) 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 all members may participate through the use of an electronic means of communication without an anchor location. A virtual meeting held under this subsection must comply with the requirements under subsection (e) of this section.

Section 5. Amend Section 5, Chapter 265, Volume 82 of the Laws of Delaware by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 5. This Act expires ~~on June 30, 2021, unless terminated or extended by subsequent action of the General Assembly.~~ upon the enactment of Senate Bill No. 94 of the 151st General Assembly.

SYNOPSIS

Senate Substitute No. 1 for Senate Bill No. 243 (150th General Assembly) enacted § 10006A of Title 29, which allows an advisory body to hold a virtual meeting, if there is an anchor location that is open to the public, allows any public body to hold public meetings during a state of emergency, and clarified that public bodies must allow a member with a disability to attend a meeting electronically as a reasonable accommodation under § 4504 of Title 6, unless doing so would present an undue burden. Senate Substitute No. 1 for Senate Bill No. 243 sunsets on June 30, 2021.

During the last year, citizens and members of public bodies have become comfortable with virtual meetings and attendance and participation in public meetings has increased because virtual meetings are more convenient and accessible to many citizens. Thus, this Act makes permanent changes to the Freedom of Information Act ("FOIA"), Chapter 100 of Title 29, that allow any public body to hold a virtual meeting if there is a physical anchor location where the public can attend the meeting in person and other notice and access requirements are met.

Specifically, this Act does all of the following:

1. Repeals the current video-conferencing provision of § 10006 of Title 29 and the temporary provisions of § 10006A of Title 29 and replaces these sections with permanent virtual meeting requirements.
2. Maintains the requirement that a public body must allow a member with a disability to attend a meeting electronically as a reasonable accommodation except if doing so imposes an undue burden on a public body whose members are all elected by the public.
3. Requires that a virtual meeting conform to all requirements under FOIA, including adequate notice that includes information on how the public may view and provide comment, if public comment is accepted.
4. Provides that during a state of emergency, or to prevent a public health emergency, all public bodies may hold virtual meetings without an anchor location.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

This Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend a charter issued to a municipal corporation.

Author: Senator Hansen