

Senate Elections and Government Affairs Committee **Meeting**

Official Minutes
151st General Assembly

Committee Meeting
Wednesday, June 9, 2021
11:30 a.m.
Virtual Meeting

Meeting Attendance

Committee Members:

Present:

Senator Kyle Evans Gay	Kyle.Gay@delaware.gov	(302) 744-4137
Senator Darius J. Brown	Darius.Brown@delaware.gov	(302) 744-4286
Senator Stephanie L. Hansen	Stephanie.Hansen@delaware.gov	(302) 744-4138
Senator Nicole Poore	Nicole.Poore@delaware.gov	(302) 744-4164
Senator Ernesto B. Lopez	Ernesto.Lopez@delaware.gov	(302) 744-4136
Senator Bryant L. Richardson	Bryant.Richardson@delaware.gov	(302) 744-4298

Attendees:

William Hentkowski
Joseph Day
Aaron Goldstein
Lincoln Willis
Alexa Adams
Michael Migliore
Brian Boyle
Randall Chase
Patty Davis
Michael Platt
Janet Kilpatrick
Roger Clark
James Nutter, Esq.
Timothy Sheldon
Bryon Short
Sara Poore
Jordan Ranji
William Lescas

Organization:

State of Delaware Department of Justice
DE League of Local Governments
Delaware State Senate
New Castle County Council
New Castle County Executive's Office

Delaware Department of Justice
City of New Castle
New Castle County Council

Parkowski, Guerke & Swayze, P.A.
New Castle County Government
Delaware Contractors Association
Delaware State Senate

Delaware State Senate

Shante Hastings
 Thomas Brewster
 Dorey Cole
 Charles Megginson
 Verity Watson
 Thomas Cook
 Carrie Cole
 Ryan Jaeger
 Schuyler L. Borton
 Holly Wagner
 Valarie Leary
 Kathleen Rutherford
 Jason Zern
 Mark Brainard Jr.
 Michael Harris
 John Flaherty
 Bernadette Ruf
 Aimee String
 William Barthel
 Dorsey Fiske
 Meaghan Barna
 Claire Snyder-Hall
 Michael J. Quaranta
 Jay Guyer
 Scott Blomquist
 Jody Roberts
 Rick Armitage
 Carla Jarosz
 Deborah Gottschalk
 Javonne Rich
 Bill Martin
 Kiki Evinger
 Lauren Vella
 Terri Hancharick
 Phil Gross
 Daniel Losco
 Sara Hutchinson
 Scott Kidner
 Timothy Sheldon
 Tracy Surles

DelDOT

Delaware Live

Ability Network of Delaware

Municipal Services Commission

Division of Research/Legislative Council
 City of New Castle

New Castle County Public Works

JLOSC

New Castle County

Delaware Coalition for Open government

DelDOT

City of New Castle

Common Cause Delaware

City of New Castle

Municipal Services Commission

Municipal Services Commission

DE DDDS

Armitage DeChene & Associates

Delaware Department of Justice

Division of Research

ACLU of Delaware

Department of Health and Social Services

DDOJ

Losco & Marconi, P.A.

DAR, CIRC, HHA

New Castle County

New Castle County Government

Agenda:

Approval of Previous Meeting Minutes (May 19, 2021)

SB 142

SB 145

SB 10
SB 162
SB 155

Senator Kyle Evans Gay, Chair, called the meeting of the Elections and Government Affairs Committee Meeting to order at 11:37 a.m. She discussed the details and procedures related to the virtual nature of the meeting, and she took attendance of the Committee members present. She invited her Taylor Hawk to further discuss the procedures of the virtual meeting.

Taylor Hawk detailed the specific process for committee member participation in the Zoom webinar. She explained that questions from Committee members would be given first priority, with non-Committee member Senators also having the opportunity to ask questions after.

Senator Gay asked if there was a motion to approve the minutes from the previous Committee meeting from May 19th, 2021.

Senator Stephanie Hansen motioned to approve the minutes; **Senator Nicole Poore** seconded the motion. There were no objections.

The minutes were approved.

Senator Gay explained that the agenda has been revised to fit the schedules of the presenters. She invited Senator Poore to present SB 142.

SB 142: AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STATE PROCUREMENT.

Sponsor: Senator Poore

***Synopsis:** This bill removes the exclusion of Community Transportation Funds from the performance-based rating system.*

Senator Nicole Poore thanked Senator Gay and the Committee. She explained that the Bill relates to the Community Transportation Funds (CTF). She detailed the history and intent of CTF noting specifically that CTF were intended to speed up the process of making small local road improvements and to allow legislators to set priorities for their local communities. She continued that more recent legislation had sought to address the selection process of contractors and that the Bill seeks to further expand on that selection process. She stated that the Bill further reforms the performance evaluations of contractors by removing the current exclusions to the performance-based rating systems included in most other DelDOT projects. She explained that the change would ensure that the CTF projects, include hired contractors with skills and performance ratings necessary to successfully carry out the projects of constituents. She welcomed any questions, and she urged the Committee to support the Bill.

Senator Gay asked if there were any questions from the Committee.

There were no questions.

Senator Gay welcomed any public comment.

There was public no comment.

SB 142 – Reported out of the Committee – Favorable = 1, On its Merits = 4, Unfavorable = 0

Senator Gay invited Senator Poore to present SB 145.

SB 145: AN ACT TO AMEND THE CHARTER OF THE MUNICIPAL SERVICE COMMISSION OF THE CITY OF NEW CASTLE.

Sponsor: Senator Poore

***Synopsis:** This Act amends the Charter of the Municipal Service Commission of the City of New Castle by granting the City Council of New Castle the power to appoint two of the three Commissioners to serve on the Municipal Service Commission, with the incumbent Mayor as the third Commissioner. This Act also sets the terms of each appointed Commissioner to 4 years, and allows the City Administrator to serve as a substitute for the Mayor on the Commission in the Mayor's absence.*

Senator Poore thanked Senator Gay and the Committee. She explained the development of the Bill by detailing the history, function, and organizational structure of the Municipal Services Commission (MSC). She stated that the current MSC is comprised of three members: one appointed by the Mayor of New Castle, one appointed by the New Castle City Council, and one appointed by the Trustees of the New Castle Commons. She explained that the Bill would change the membership to include two commissioners appointed by the city council and the final commissioner being the Mayor of New Castle or the City Administrator in the Mayor's absence. She noted that the Bill would increase the term length to four years after which the city council would appoint another commissioner. She welcomed any questions.

Senator Gay asked if there were any questions from the Committee.

Senator Hansen asked Senator Poore what precipitated the change to the Municipal Services Commission.

Senator Poore stated that the City of New Castle and Lewes are the only cities in Delaware that function in this way in regard to their utility services. She explained that the trustees have voiced that they would not like to be a part of this process. She continued that the trustees discussed their desire to no longer be a part of this process with the city council, and the city council had several meetings to determine the best course of action. She emphasized that there was no public opposition at these meetings to the proposed change, and she stated that the city council passed the ordinance in March of 2021.

Senator Gay welcomed any public comment.

Dorsey Fiske thanked the Committee. She stated that she would like to preface her comments by stating that the trustees have refused to give a reason for no longer appointing a commissioner. She stated that she is a former trustee and expressed her confusion as to the current trustees' decision. She stated she had three major concerns about the charter change provided by the Bill: (1) the Bill would be harmful to both the city and MSC; (2) the Bill is not necessary, because the trustees should perform their statutory duty and appoint a commissioner to MSC. She questioned why the trustees had not provided the public with a reason for not performing this duty. She emphasized that the trustees manage the assets of the trust, and that they do not own the assets; and (3) the procedure for presenting the Bill to the public was improper. She voiced her belief that the city council was the improper means of presenting a change to the MSC structure and that the MSC must be allowed to have input on any changes, which, she explained, was not the case of the changes provided in the Bill. She thanked the Committee.

Thomas Brewster introduced himself as the President of Local 3606, the union for the employees of the Electric and Water Department of MSC. He stated that there is significant opposition to the charter change proposed by the Bill. He stated the process for the change was undertaken in the wrong way, as the change was not made known to the public until after the council voted on the intent to change the charter. He stated that union members are concerned for their future, because they view the morale and mentality of the opposite local of the city council as troubling. He stated that there was concern among union members, as the opposite union did not replace employees, and he described the performance of the opposite union as "good enough". He underscored that this was not the mentality of the members of Local 3606. He voiced his view that the Bill would be harmful to the city and the MSC if the Bill were to be adopted. He thanked the Committee.

William Barthel thanked the Committee. He introduced himself as the City Administrator for the city of New Castle, and he stated that he previously had held the position of President of the City Council. He voiced his support for the Bill. He expressed his view that that the city should be represented by an elected official, specifically the mayor, on the MSC. He continued that he felt that having the mayor as a member of the MSC would help to better coordinate and align the work of the MSC with benefit of the city's taxpayers and rate payers. He cited a recent example of a major public works project undertaken by the City of New Castle and stressed the role of the mayor to push for beneficial aspects of the project that he stated would otherwise not have been possible. He stated that this was one of many examples to underscore the potential benefit of having the mayor as a commissioner on the MSC. He stated that, to address concerns that MSC commissioners were not involved in the decision-making process, the city government had a letter from the lawyer representing MSC lawyer. This letter was addressed to Senator Poore, and it was dated March 18th, 2021. He cited a direct quote from the letter that expressed the current MSC commissioner's lack of objection to the charter change proposed by the Bill. He thanked Senator Gay and the Committee.

Michael J. Quaranta thanked the Committee, and he introduced himself as the Mayor of the City of New Castle. He stated that there were several public meetings about the charter change, including MSC public meetings as well as properly-noticed meetings made by the City of New Castle. He stressed that at the city council meeting from the day prior that there were no public comments about the proposed charter change. He continued that there were city-wide elections in

April 2021 with candidates campaigning throughout the city and there was no discussion about the changes to the MSC proposed in the Bill. He explained initial idea of the MSC relating to the commissioner appointments in which the two appointed members of the MSC would appoint the third and final commissioner; however, he stated that both he and the city council opposed this idea. He stated that the proposal set forth in the Bill was seen as a more effective means of maximizing coordination in capital projects. He voiced his appreciation for Senator Poore's efforts on the Bill, and he emphasized that the process has gone through proper channels. He emphasized that the Bill makes the commission more accountable. He requested that Mr. Losko speak.

Daniel Losko thanked the Committee and introduced himself as the City Solicitor for the City of New Castle. He stated that he sought to dispel concerns voiced by the public over the charter change. He stated that only one other municipality in Delaware has the same level of independence of municipal utility from municipal government. He stated that most cities with municipal utilities place the utilities under the control of the city council. He stressed that there would still be three independent commissioners appointed for four-year terms to represent the municipal utility. He emphasized that the commissioners are residents of the community, that they would remain independent from the city council, and that they would act in the best interests of the residents of the city as the commissioners, as residents, are directly impacted by the choices made by the MSC. He stated that concerns about the process used to make the charter change lacked legal basis, and he cited the charter of the MSC which defines MSC as an agency of the city thereby allowing the city to make changes to MSC as needed. He stated that the trustees refused to appoint a commissioner, and they were under no obligation to provide a reason. He emphasized that the main issue is that the MSC currently lacks a third commissioner and that not having a third commissioner on MSC could cause gridlock. He thanked the Committee.

Michael Platt thanked the Committee. He introduced himself as the current President of the City Council of the City of New Castle, and he voiced his support for the Bill. He stressed that the city council has held several public deliberations over the proposed charter change. He stated that he campaigned in the spring in elections for his current office, and that only one or two individuals he encountered in his campaigning expressed interest in the proposed change. He stated that he received well-meaning comments from residents that were either uninformed or asking questions based on misinformation. He opined that New Castle residents are not bashful people, and that, if there was genuine concern about the proposed change, the public would have expressed that concern. He emphasized that there was minimal public comment, and he voiced his view that the Bill would bring about positive change for the City of New Castle. He noted that the Bill had been passed unanimously by the city council. He urged the committee to support the Bill. He thanked the Committee.

Schulver L. Borton voiced her view that the Bill would be a positive change for the City of New Castle. She stated that the City has, on numerous occasions, teetered on the verge of bankruptcy. She expressed her belief that on every one of those instances the MSC has chosen to bail the City out. She stated that while the city council may have unanimously passed the charter change, many New Castle residents were unaware of the vote. She stated that the City is looking to build a significant multimillion dollar campus outside of the City, and she expressed her view

that those moneys would come from municipal service funds if the city council were able to exercise greater influence on the MSC. She voiced her opinion that the municipal services funds would be better used within the city, as there several existing issues that are pressing and need immediate attention. She thanked the Committee.

Senator Gay voiced her appreciation for the robust discussion and public comment, and she encouraged the public to submit additional written public comment.

SB 145 – Reported out of the Committee – Favorable = 0, On its Merits = 4, Unfavorable = 1

Senator Gay noted that Senator Lopez had joined the meeting, and she asked Senator Lopez to confirm that he was present.

Senator Ernesto Lopez confirmed that he was present.

Senator Gay thanked Senator Poore for her presentations. She invited Senator Hansen to present SB 10.

SB 10: AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO STORMWATER MANAGEMENT DISTRICTS IN NEW CASTLE COUNTY.

Sponsor: Senator Hansen

***Synopsis:** This Act provides for the establishment of stormwater maintenance districts in New Castle County and for the collection and use of stormwater maintenance fees to help pay for maintenance in the districts. This Act is modeled on Chapter 52 of Title 9 that has allowed Kent County to create stormwater maintenance districts and differs only in format for clarity and to conform to the standards of the Delaware Legislative Drafting Manual. Under this Act, New Castle County will adopt an ordinance that provides the procedures and criteria related to the establishment of stormwater maintenance districts. The adoption of the ordinance is required to implement this Act. Once this Act is implemented, it is mandatory that any new subdivision or land development in any unincorporated area in New Castle County establish a stormwater maintenance district, if required to do so under the implementing ordinance. Subdivisions and land developments in existence when this Act is implemented may petition the county government to declare the area a stormwater maintenance district. A stormwater maintenance district may be established within an incorporated area, but only with the concurrence of the local governing body.*

Senator Hansen thanked Senator Gay. She stated that many Senators had been elated to see the draft legislation originate from New Castle County. She explained that drainage issues had been ongoing for years, and stormwater management had been an issue that New Castle County, as a government, has wrestled with for decades. She stated that the Bill would not solve every problem, but that it was a very good first step for putting in place a system to help to address stormwater management in New Castle County, particularly within subdivisions. She detailed the purpose of the Bill and explained that it would set up stormwater maintenance districts and collect stormwater maintenance fees from residents in the district. She noted that this was the

same system in place in Kent County, and that Kent County has had a stormwater maintenance district system since 2013 and that the system has been successful. She reiterated her support for the idea presented in the Bill, and she stressed that, while it will not solve everything, it is a significant step to addressing the problem in New Castle County. She discussed the specific process for fee collection for stormwater maintenance districts, and also a new ordinance that must be adopted by New Castle County. She stated the system would be mandatory in any new subdivision or land development in New Castle County. She continued that existing subdivisions and land development can petition New Castle County to opt in to form a district. She stated that incorporated areas could also petition to opt in, but this would need to be approved by the local governing body. She stated that a number of individuals from New Castle County were present to speak on behalf of the Bill. She noted that the New Castle County Council passed a resolution in support of the legislation. She specifically noted that Mike Migliore, Tracy Schurls, Councilwoman Janet Kilpatrick, Councilman Tim Sheldon, and Deb Gottschalk were all present to speak on behalf of the Bill and address any questions from the Committee. She reiterated her excitement to see the Bill passed. She thanked the Committee.

Senator Gay thanked Senator Hansen. She echoed Senator Hansen's enthusiasm for the Bill, and Senator Gay noted that the legislation is needed in both her district and New Castle County at large. She voiced her hope that individuals in her district would take advantage of the ability for existing development to opt in and move towards more sustainable stormwater management. She thanked Senator Hansen for her leadership on the Bill. She asked if there were any questions from the Committee.

There were no questions from the Committee.

Senator Gay welcomed any public comment.

Mike Migliore introduced himself as the Attorney for New Castle County, and he thanked the Committee. He praised Senator Hansen's presentation, and he described the Bill as an excellent advancement that can be used in conjunction with existing programs as another tool to address stormwater management issues as well as those related to flooding and water purification. He reiterated the other members of the New Castle County government who were present. He reiterated his appreciation to the Committee and welcomed any questions.

Councilwoman Janet Kilpatrick thanked Senator Hansen for her presentation. She stated that for years she worked for the General Assembly and noted the high frequency of CTF money being used for drainage projects. She continued that drainage issues were one of her prime focuses as a member of the County Council. She detailed the existing means of addressing stormwater management issues that places significant onus on the individual communities. She described the process as cumbersome and noted that many individuals expressed their frustration with the current and process and have wondered as to why the County had not taken a more active role. She stated that the Bill is a natural step forward from existing efforts, and she thanked the Committee for their support of the Bill.

Jason Zern introduced himself as an employee of the New Castle County Department of Public Works. He stated that Tracy Surles, the Public Works General Manager of New Castle County,

was not able to attend the meeting. He voiced his department's support for the Bill. He stressed that the public works staff would like to see the Bill passed, as the employees feel that the system will help the Department in providing better services to the community. He continued that the Bill will help the Department assist communities struggle to meet evolving regulations and green technologies. He thanked the Committee and urged them to support the Bill.

Senator Hansen asked Mr. Zern if he could elaborate on how having the County take a more active role in stormwater water management will have a positive impact on the residents.

Mr. Zern stated that many communities struggle to meet the regulations. He described that the regulations are changing, and that many residents lack the resources or education to keep up with the changes. He continued that some communities are not well organized and struggle to get all residents involved in these efforts. He explained that the County already takes on major tasks related to stormwater ponds, and that the Bill will allow the County to take on the minor maintenance as well. He voiced the Department's view that having the Department assume responsibility for these minor maintenance efforts will result in better services provided to the communities. He noted that, while the Bill does not directly address drainage, that the County having a more active role in stormwater management will have an impact on drainage issues.

Councilman Timothy Sheldon stated that the Bill was a very good bipartisan legislation. He noted that both a Republican and Democratic County Counselor were present to speak on behalf of the Bill. He extolled Senator Hansen's work on the Bill. He emphasized that stormwater is a prevailing issue throughout the County. He stated that stormwater management has been an issue as long as he has been in office, and he voiced his hope that the Bill would be passed. He thanked the Committee.

SB 10 – Reported out of the Committee – Favorable = 2, On its Merits = 3, Unfavorable = 0

Senator Gay noted that Senator Brown joined the meeting. She invited Senator Hansen to present SB 162 w/ SA 1.

**SB 162 w/ SA 1: AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE
RELATING TO THE ADVISORY COUNCIL TO THE DIVISION OF
DEVELOPMENTAL DISABILITIES SERVICES.**

Sponsor: Senator Hansen

Synopsis: *This Act is a result of the Division of Developmental Disabilities Services Task Force ("the Task Force"), which was created under Senate Concurrent Resolution No. 62 and extended by House Bill No. 345, both of the 150th General Assembly. This Act fulfills 2 of the Task Force's many recommendations, by requiring that the chair or vice chair of the Advisory Council to the Division of Developmental Disabilities Services be an individual with a developmental disability, and amending the Advisory Council membership to include the following: - 7 representatives of families, service recipients, and self-advocates who currently receive services from the Division of Developmental Disabilities Services. - 5 representatives of a cross section of service providers in the developmental disabilities community who currently operate within the Division of Developmental Disabilities Services system, including residential service providers, day*

habilitation service providers, employment service providers, clinical service providers, behavioral or mental health service providers. - 5 professional advocates, representing the following organizations: Delaware Developmental Disabilities Council, State Council for Persons with Disabilities, Disabilities Law Program at Delaware Community Legal Aid Society, Inc., The Arc of Delaware, and Center for Disabilities Studies at University of Delaware.

Senator Hansen thanked Senator Gay. She stated that the Bill is the first piece of legislation to come from SCR 62. The Division of the Developmentally Disabled Services (DDDS) Task Force. She noted that there was a disconnect between DDDS and the providers of services to developmentally disabled residents. She explained that the DDDS Task Force sought to address those issues, and that Task Force had just completed and published its final report. She praised the work of the Task Force, and she explained that one of the recommendations from the Task Force was to expand the DDDS Advisory Board to include five representatives of service providers and five representatives of professional advocates. Listed the five professional advocates (listed in the synopsis of the Bill). She stated that the Amendment addresses that an existing constraint in the Bill that states that members of the advisory board representing family members of individuals currently receiving services. She explained the current language would disqualify members of the Advisory Board if their family member were to pass, and that the Amendment would allow family members of recipients to serve until the end of their term in the event that their family member receiving services were to pass during their term. She stressed that the Bill is supported by the Task Force, by the providers, and by the families of the recipients.

Senator Gay asked if there were any questions from the Committee.

There were no questions from the Committee.

Senator Gay asked if there was any public comment.

Thomas Cook thanked Senator Gay. He praised Senator Hansen for her work and leadership on the DDDS Task Force. He voiced sentiments shared in the DDDS Task Force that participation from service providers had always been helpful, and he emphasized that the Bill will remove barriers for participation for service providers. He stated that the Task Force viewed the expansion of the Advisory Council to as beneficial, and that the Bill does so in balanced fashion by also including professional advocates. He described the professional advocates as having a systemic view of the issues from an advocacy perspective. He stressed that the mix of stakeholders on the expanded Advisory Council would provide a more well-rounded group of individuals to address issues along with DDDS. He voiced his view on a specific aspect of the Bill relating to the chair or vice-chair needing to be an individual with a developmental disability. He requested that DDDS be prepared to provide support if the chair or vice-chair need support.

Senator Gay thanked Mr. Cook for his comments, and she stated that specific recommendations can be submitted via writing.

Terri Hancharick thanked Senator Gay, and she introduced herself as the chair of the DDDS Advisory Council. She voiced her support for the Bill, and praised Senator Hansen and Representative Johnson's work on the DDDS Task Force. She voiced the Advisory Council's support for the Bill. She also stated that the Advisory Council is supportive of lifting self-advocates into a position of leadership, and she voiced her hope to mentor more self-advocates in Delaware. She thanked the Committee.

Senator Hansen thanked Ms. Hancharick and Mr. Cook for joining the meeting. She stated that they were both stalwart original members of the Task Force, and they had worked tirelessly as members of the Task Force. She voiced her appreciation for Ms. Hancharick and Mr. Cook, as well as the other members of the Task Force for their efforts.

SB 162 w/ SA 1 – Reported out of the Committee – Favorable = 1, On its Merits = 4, Unfavorable = 0

Senator Gay introduced SB 155.

SB 155: AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE FREEDOM OF INFORMATION ACT.

Sponsor: Senator Gay

Synopsis: *This Act revises the Delaware Freedom of Information Act (FOIA) to address how public bodies may respond to FOIA requests that are unreasonable, disruptive, or abusive; requires all public bodies to post notice of meetings electronically; and clarifies and simplifies how a citizen may challenge a public body's failure to comply with FOIA requirements. This Act does not change the definition of "public record." Specifically, this Act does all of the following:*

- 1. It amends the examination and copying of public records provisions of FOIA to alleviate the significant time, resources, and financial burdens imposed on public bodies by FOIA requests that are unreasonable, disruptive, or abusive. This Act allows a public body to deny a request from a requestor whose intent is to disrupt the essential functions of the public body or abuse the process and allows a public body to charge administrative fees for all reviews, including the review and redaction of information exempt from FOIA. The review and redaction of information is often performed by non-attorney staff in conjunction with necessary review for exceptions and exclusions.*
- 2. Allows a public body to post electronic notice of a meeting on a website maintained, or designated, by the public body.*
- 3. It clarifies, simplifies, and makes uniform the remedies available to citizens when a public body fails to comply with FOIA obligations as follows:*
 - Clarifies that Attorney General or Chief Deputy determinations are advisory and not appealable.*
 - Clarifies the timeframes in which a citizen may file a FOIA petition with the Attorney General.*
 - Eliminates the need for citizens to petition the Attorney General before initiating a lawsuit against an individual or entity that the Attorney General is obliged to represent because this appeal right was under utilized and of limited utility given the limited record produced in the petition process.*
 - Gives citizens 120 days to bring suit after a FOIA violation, except in that when a petition is filed, a petitioner may file a lawsuit the later of 120 days after the violation occurred or 30 days after issuance of the determination on the petition.*
 - Provides the Superior Court with exclusive jurisdiction over all FOIA disputes, except that lawsuits involving claims for temporary, preliminary, or permanent injunctive relief when there*

is no adequate remedy at law must be brought in the Court of Chancery. • Clarifies that monetary damages may not be awarded for FOIA violations and requires that an award of attorney fees be reasonable. • Clarifies that a citizen may not file a petition with the Attorney General regarding a FOIA violation that is the subject of a pending lawsuit and that a pending petition is deemed withdrawn if the FOIA violation becomes the subject of a lawsuit. • Imposes a deadline for citizens to submit petitions to the Attorney General to ensure that citizens have sufficient time to pursue judicial remedies after the issuance of a written determination. • Requires the Attorney General or Chief Deputy to issue a written determination within 30 business days of receiving a petition, unless there are exceptional circumstances. 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 or educational corporation and this Act may amend a municipal or educational charter. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Senator Gay thanked the Committee. She stated that Aaron Goldstein, the State Solicitor, was present to be a witness. She described her experience with the Freedom of Information Act (FOIA) and noted that she had worked with FOIA as a requestor, a representative for requestors, and as a representative of public bodies who received FOIA requests. She noted that there could be improvements made to that process to streamline the process requestors and provide government bodies protection from disruptive conduct. She detailed some of the changes provided in the Bill, and she voiced her hope that the Bill would strike the balance between respecting requestors' rights and the ability for the government bodies to not be overly encumbered by these requests. She stated that there had been significant discussions that led to an amendment. She stated that an Amendment had been filed, but that it had not been attached to the Bill in time for the Committee meeting. She explained that the amendment looks to provide clarification of the obligations of a public body should that body rely on new language introduced in the Bill to allow them to deny a FOIA request that is unduly burdensome or abusive. She stated that this would entail the body providing a factual record that explains why a particular request rose to the level of unduly burdensome or abusive. She stated that there is case law to guide the Amendment. She reiterated that she felt that the Bill struck a balance between transparency and accountability, and the continuation of essential government functions. She highlighted aspects of the Bill including clarifying the process to appeal to the chief deputy and to the courts, the timeframe of the petitions, and it also makes uniform deadlines for appeal in the hope that consistent deadlines will help requestors navigate the process. She explained that the Bill also provides the Superior Court with exclusive jurisdiction over FOIA disputes, clarifies the monetary damages language, and puts requirements on the Attorney General's Office regarding timelines regarding appeals and petitions that requestors can file if they, the requestor, are unsatisfied with the information provided. She invited Mr. Goldstein to speak further on the Bill.

Aaron Goldstein thanked Senator Gay. He introduced himself as the State Solicitor of the Delaware Department of Justice (DOJ). He voiced DOJ's support of the Bill. He stated that the Bill modernizes the FOIA law to make the law simpler to understand, codifies current practice, addresses current problems with abusive filers, and allows DOJ to address the real heart of legal issues by providing more time for responses. He underscored that DOJ takes FOIA requests very

seriously, and he noted that there have been significant increases in the number of FOIA requests. He stressed that the public always have the right to dispute a FOIA denial by a public body to DOJ, and he explained how the Bill provides DOJ thirty days to respond to petitions. He expanded on the timeline of DOJ addressing a petition, and he underscored that there is only a small amount of time to perform a legal review and analysis. He noted that the Bill also allows petitioners to go directly to the Superior Court. He continued that there are a small amount FOIA requests that are abusive that undermine the intent of FOIA. He explained that the good intentions of FOIA are turned into a weapon to burden the government or attempt to harass or stalk specific public employees. He stated that, despite the fact that these requests are removed from the intent of FOIA, there are no legal bases to reject these requests without the Bill. He thanked the Committee, and he expressed his willingness to address any questions.

Senator Gay welcomed any questions from the Committee.

Senator Hansen voiced her appreciation of Mr. Goldstein's discussion of abusive FOIA requests. She expressed her shock that such abusive requests were being made, and she stated that she was glad that the Bill was addressing these issues. She thanked Senator Gay for her leadership on the Bill, and Mr. Goldstein for shedding light on an issue of using FOIA to harass to state employees.

Senator Gay thanked Senator Hansen. She noted that there is some concern from certain stakeholders around the language relating to abusive requests, and she underscored that the Amendment seeks to provide clarification for the petitioning process by requiring a factual record of the rejection. She stated that abusive requests represent a small fraction of requests, but that the issue was nevertheless important. She continued that the Bill will help to distinguish between these abusive requests and the genuine requests, and to further strengthen the FOIA process. She recognized that there may be concern as to the meaning of the language used in the Bill, and she voiced her willingness to provide case law to help the public interpret the language used in the Bill. She underscored that the Bill uses intentional language to create a very narrow interpretation to prevent FOIA requests being wrongly rejected. She welcomed any public comment.

Javonne Rich thanked the Committee. She introduced herself as the Policy and Advocacy Director of the ACLU of Delaware. She voiced her organization's opposition to the Bill. She stated that the Bill contradicts the purpose and spirit of FOIA. She explained that, considering the intent of FOIA, laws should maximize efforts to make data available to the public. She stated that the language of the Bill would allow public bodies to hide behind vague language to deny FOIA requests. She continued that the Bill is redundant as current the legislation prescribes that individuals must be reasonable and that requests must adequately describe the records so that the public can reasonably locate the records. She urged the Committee to oppose the Bill, as it provides public bodies more reasons to decline FOIA requests. She stressed concern that public bodies would repeat reasons to decline as well as repeat justifications for the rejection. She thanked the Committee.

John Flaherty thanked the Committee and introduced himself as the Director of the Delaware Coalition for Open Government. He explained that his organization is a state affiliate of a

national FOIA coalition, and he voiced his organization's opposition to the Bill. He stated that, through his organization's reading of the Bill, that the Bill would allow for a range of new burdens for FOIA requests, including new legal fees, scanning fees, broad FOIA exemptions, prohibitions on monetary compensation, shorter times to seek court relief. He stressed that the new legal fees would make Delaware's process for ordinary citizens and the media to request legal information one of the costliest in the nation. He expanded that the process would charge the requestor the entire cost for redactions, and the exemptions were overly narrow to apply. He noted that, since 1995, no requests were labelled unreasonable, disruptive, or abusive, and he asserted that the proponents of the Bill had not provided any Delaware examples of requests that had been fulfilled under the current law, but denied under the provisions of the Bill.

Claire Snyder-Hall thanked the Committee, and she introduced herself as the Director of Common Cause Delaware. She emphasized the role of information in a well-functioning democratic society. She voiced her organization's support for transparency and concerns about the Bill. She explained that the Bill would add four new exemptions to FOIA, and that allow public agencies to deny FOIA requests that agencies find inconvenient or embarrassing. She described the new language presented in the Bill as expansive and potentially open to wide interpretations. She elaborated that the Bill may have been written with noble intentions to eliminate frivolous or destructive requests, but she stressed her concern that the language in the Bill is too broad and could be used by corrupt officials to hide information. She emphasized that the new categories of exemption are expansive, and the Bill will need to be changed to correspond to the intended meaning. She underscored the fallibility of public officials, and the need for checks and balances, such as FOIA, to have a functioning government. She reiterated her organization's opposition to the Bill. She thanked the Committee.

SB 155 – Reported out of the Committee – Favorable = 1, On its Merits = 4, Unfavorable = 0

Senator Gay thanked the attendees and Committee members. She stated that the Bills will circulate via email, and she urged the Committee to respond as soon as possible with their votes on the Bills discussed in the meeting. She adjourned the meeting at 12:42 p.m.

Written Public Comment

SB 145

There is no good reason for the Municipal Services Commission Charter of New Castle to be changed by passing Senate Bill 145. The MSC is extremely well run, providing excellent service with reasonable rates. However, the Trustees of the New Castle Common suddenly announced that, because they have a conflict of interest they won't explain, they refuse to appoint one of the Commissioners. (I was a Trustee until December 2018, and I can think of no Trustee "conflict" that would apply.) This gave the New Castle City Council an opening to take control of the MSC by claiming that they have the right to submit a Charter change rather than the MSC Commissioners, who had always previously done so.

Council has not asked for an explanation of the Trustees' "conflict" because they want this Charter change. When asked, Council has claimed that the Trustees are a private foundation, and thus don't have to give a reason. This is false: In a July 28, 2017, letter, the Delaware Attorney General's Office has determined that the Trustees are a public body, subject to the Freedom of Information Act. I might add that the Trustees continue to flout this decision, to the detriment of the Trust's beneficial owners.

The MSC has come to the aid of City Council on a number of occasions when the city has been in financial straits, and currently hands over roughly \$600,000 annually, up from \$400,000 on record before 2016. Until the Commissioners sent a Charter change request to the Legislature in 2016, a line in the Charter read " ... The Commission is hereby authorized, from time to time and in the Commissioners' sole discretion, to make payments out of surplus earnings to the Mayor and Council of New Castle."

Senator Poore and the local leadership emphasize that only the Lewes and New Castle public services commissions "enjoy such independence." The signers of my petition argue that only Lewes and New Castle enjoy the stellar service, concentrated expertise, and commitment that this structure provides. The head of Local 3606, Thomas Brewster, spoke to this today in committee. He mentioned that the City has recently tried to eliminate the Local that handles trash and recycling removal in town in order to hire contractors. Many residents saw this as foolhardy. Would Council do the same at the MSC?

We contend the reason for the Charter change is that Council wants control of the MSC and its assets, and the Trustees are happy to oblige with a "reason" written in air.

Dorsey Fiske

As a citizen of New Castle, I am very much against SB 145, which would allow the City of New Castle to modify the charter of the Municipal Services Commission (MSC) of New Castle. The MSC supplies water and electricity to the city of New Castle. I do not understand how the MSC, which has its own 'MSC Charter' and has independently managed itself under that charter for over one hundred years, can have its charter modified by the City Council of New Castle; it does not seem to be logical or reasonable. The MSC is a true 'stand-alone' entity.

While securing signatures for the petition against SB 145, I was surprised by some people volunteering that they actually '...like the MSC,' and '...if it's not broke, don't fix it.' People cited that the MSC fixes outages quickly (compared to some other utilities) and their rates are reasonable. To maintain its good services and rates the MSC must be kept independent! Please do not vote for SB 145.

Very truly yours,

Roderick Gillespie
24 W. 4th St.
New Castle, DE 19720

302-322-5730 (h)

Dear Committee Members:
June 10, 2021

As a concerned resident of the City of New Castle, I am submitting to you this letter of opposition to SB-145. I found it curious yesterday at your committee's meeting, during the public forum portion, that there was a parade of city officials, starting with the City Administrator, the City Solicitor, the Mayor and finally the Council President that read from a similar script, stating that by your passing SB-145, the city would benefit. The City Administrator and City Council would ultimately benefit but the residents, MSC and their workers and families wouldn't! It seems like Nicole Poore would like you to believe that SB-145 is good for the residents but in reality, it's NOT!

The City Solicitor misrepresented a few facts. The main one, was that the MSC Commissioners were not opposed to the Charter change and SB-145, when in fact that's NOT true! As a matter of fact, Danial Knox, one of the MSC Commissioners is so adamantly against the Charter change and SB-145 and was not happy about being misrepresented by Mr. Lasco. I understand that Mr. Knox is submitting a letter to your committee for review this morning. If passed, SB-145 would effectively take away MSC's ability to be autonomous from the city which is the way it's meant to be!

I'm not sure what election Council President Platt ran in, when he stated that he didn't hear any negative comments regarding the Charter change. I ran in the same most recent city election for a council seat and I logged over 18 comments against the charter change. Also, different from what Council President Platt made you believe, there were comments of opposition by people at public meetings in opposition to the charter change!

The consistent point made by fellow residents and potential voters was, because of the distrust of the city officials and their having a controlling vote as sitting commissioners which would lead to misuse of funds and rate hikes to indirectly help defray the cost for city projects including the \$10.5 million dollar Municipal Campus which the residents oppose but the City Administrator, The Mayor and City Council are ACTIVELY trying to push through. By the way, if the charter change was good for everyone, why would the union, the workers and an MSC commissioner oppose it?

By passing SB-145, you would effectively allow not just the Mayor or his designee and a member of council to sit in as a voting commissioner but you would be adding another member of council to replace the Trustee spot. This would effectively give The city administrator and council the ability to take control of MSC and it's bank account. I can tell you that's NOT how it is meant to be or it would have been set up that way originally.

In closing, I ask you to VOTE AGAINST SB-145 thus upholding the integrity of our city. Please remember this City Administration and Council that voted to get rid of requiring bidding on ANY city projects or products procured no matter what the value and continuously voted for zoning changes to appease certain developers that wish to build in our historical town are the ones asking for this charter change. If you have any further questions, please don't hesitate to

contact me. Thank you for your careful consideration of the letters of opposition to SB-145 and I pray that you vote against it, which is a vote against continued shady city practices.

Sincerely,

Philip D. Gross

One point: In the Senate Committee Meeting on Tuesday, the Council asserted that the Trustees are not required to give any reason for changing the charter for appointing commissioners. The Trustees work for the City and should be beholden to the City, therefore the Council should have asked for a reason in the interests of transparency and it should have been made public record.

Senator Poore introduced Bill 145 on the strength of the fact that the Trustees have refused to honor their long standing commitment to name one of three commissioners. However, the Trustees themselves have not yet had a unanimous vote on this issue according to the latest Minutes (May 2021). The issue was last discussed in the September 2020 meeting (ref. para below from September 2020 minutes) and continuing through the later minutes up to the present day, there has been no further discussion on this issue. The Trustees web address is <https://www.trusteesncc.org/minutes>.

Excerpt from September 2020 minutes: Quote: Mr. Castagno explained the Municipal Services Commission (MSC) has three (3) commissioners. Commissioners are appointed by the Mayor, City Council and the Trustees of the New Castle Common. Mr. Castagno is making a recommendation to relinquish the Trust's appointment. The Trust's next appointment is March 2021.unquote.

Faye Harbottle

SB145 is ill-conceived, ill-advised, detrimental to the town, and must be defeated. Please vote "No" in SB 145, which grants "the City of New Castle the power to appoint two of the three Commissioners to serve on the Municipal Service Commission, with the incumbent Mayor as the third Commissioner".

New Castle has to date enjoyed fully superior, reliable, efficient services from the Municipal Services Commission. Your vote against this attempted take-over will ensure that our community continues to be well served.

The MSC's success is attributable to the concentration of expertise under their roof, their relative autonomy, and their dedication to the highest standards. We here believe that all of this is at risk if the change proposed is approved.

Respectfully submitted,

Schuyler Borton

42 East 4th Street

New Castle, DE 19720

+1 202 966-0966 mobile

+1 302 322-6062 land

I am a satisfied customer of the Municipal Services Commission in the City of New Castle and am opposed to SB145, which would change the charter of MSC, allowing the Mayor and City to control the MSC through Commissioner appointments.

Please share my opposition and allow MSC to remain independent of the City and to continue providing stellar service. They should remain under the professional and responsible management they have enjoyed for the decades my family have been residents and their customers.

Robert J Parker and Family

City of New Castle Homeowner

49 W Third Street

Customer of the Municipal Services Commission.

A more independent MSC is in the best interests of all New Castle residents. I oppose the SB145 proposed charter change and I hope you will convey my strong opposition, and that of many New Castle voters, to the hearings and Senate.

Anthony Parker

105 West 6th Street

New Castle, DE. 19720

Senator Gay, Senator Poore, and Ms. Colonna,

Having heard people testify yesterday in committee regarding the above-referenced bill, it is evident that its intent is misunderstood.

Quite simply, the Trustees of the New Castle Common are not a governing body and while they have traditionally appointed a third commissioner, it is within their rights to choose not to do so in the future. They are a private land management organization.

This decision, of course, left open the question as to “who” would select the third commissioner. Currently, the council has one appointment with the Mayor having the other appointment. The Mayor is not a member of the council as he is independently elected.

Without going into the long story which took place over several council meetings, we felt that the independence of the Mayor as the third commissioner would provide an independent vote separate from the council.

Thank you for your time and attention.

Valarie Leary
Councilwoman, City of New Castle

Russ Smith
Councilman, City of New Castle

Please add our names, Dorothy and Robert Colburn, to the list of residents of the City of New Castle who oppose SB 145, that will turn our hitherto excellent-performing MSC and its FUNDS over solely to the power and politics of City Council.

Please urge everyone involved to pay utmost attention to the words of Ms. Fiske and especially to those of Mr. Brewster, who speaks for our MSC workers. Since we bought our New Castle house in '03, these dedicated, courteous, thoughtful people have served us so well, so attentively, whenever needed, in such good spirit. THEY make New Castle a nice place to live. We support them wholeheartedly in their hope to remain a separate entity.
Respectfully submitted,
Dorothy and Robert Colburn