



SPONSOR: Rep. Schwartzkopf & Rep. Longhurst & Rep. Mitchell &
Rep. D. Short & Rep. Dukes & Sen. Sokola &
Sen. Townsend & Sen. Lockman

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE CONCURRENT RESOLUTION NO. 1

ACCEPTING AND APPROVING THE JANUARY 8, 2021, ACTIONS OF THE PRESIDENT OF THE SENATE AND THE SPEAKER PRO TEMPORE 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 151ST 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 then-
2 President Pro Tempore of the Senate (“then-President Pro Tempore”) and then-Speaker of the House of Representatives
3 (“then-Speaker”) took joint action to close Legislative Hall to the public and postpone legislative session, keeping
4 Legislative Hall closed and postponing legislative session until it resumed virtually on May 27, 2020, to ensure the safety
5 of legislators, staff, and the public; and

6 WHEREAS, also on March 12, 2020, Governor John C. Carney issued a state of emergency due to the public
7 health threat posed by COVID-19 and has subsequently issued multiple modifications of the state of emergency as the
8 public health threat has continued with the State currently under the Governor’s Tenth Extension of the Declaration of a
9 State of Emergency, issued December 24, 2020; and

10 WHEREAS, to resume session virtually, the then-President Pro Tempore and then-Speaker issued a joint
11 memorandum declaring that because the public health threat caused by COVID-19 was expected to continue and the public
12 health threat prevented members from physically meeting in Dover, the 150th General Assembly and certain of its
13 legislative committees were recalled with members participating remotely through the use of audio or video technology;
14 and

15 WHEREAS, the then-President Pro Tempore and then-Speaker based the joint memorandum on authority granted
16 to them and the General Assembly under §§ 5 and 9 of Article II and § 1 of 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 150th General Assembly found that the actions of, and procedures adopted by, the then-President
20 Pro Tempore and then-Speaker were reasonable and supported by law and found the General Assembly was able to meet
21 virtually; and

22 WHEREAS, with the 151st General Assembly set to convene on Tuesday, January 12, 2021, the President of the
23 Senate and Speaker Pro Tempore of the House of Representatives issued a joint memorandum on January 8, 2021,
24 declaring that because the public health threat caused by COVID-19 has continued and the public health threat prevented
25 members from physically meeting in Dover, the 151st General Assembly was called to convene with members participating
26 remotely through the use of audio or video technology; and

27 WHEREAS, the President of the Senate and Speaker Pro Tempore of the House of Representatives based the joint
28 memorandum on authority granted to them and the General Assembly under §§ 5 and 9 of Article II and § 1 of Article
29 XVII of the Delaware Constitution, Section 577 of Mason's Manual on Legislative Procedure, and § 10006A of Title 29 of
30 the Delaware Code; and

31 WHEREAS, the General Assembly finds the January 8, 2021, actions of, and procedures adopted by, the President
32 of the Senate and the Speaker Pro Tempore of the House of Representatives to be reasonable and supported by law; and

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

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

40 NOW, THEREFORE:

41 BE IT RESOLVED by the House of Representatives of the 151st General Assembly of the State of Delaware, the
42 Senate concurring therein, that the General Assembly accepts and approves the January 8, 2021, actions of the President of
43 the Senate and the Speaker Pro Tempore of the House of Representatives, declares an emergency under § 5 of Article II and
44 § 1 of Article XVII of the Delaware Constitution, and adopts the following rules of procedure for conducting virtual
45 meetings of the 151st General Assembly and its legislative committees during an emergency:

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

47 **Rule 1. Definitions.**

48 As used in this Concurrent Resolution:

49 (1) "Chair" means a member who presides over and maintains order and decorum of a legislative committee.

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

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

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

b. A joint committee of the General Assembly.

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

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

(4) “Member” means an individual elected to the General Assembly, the individual’s emergency interim successor, an individual appointed to an entity under paragraph (3)c. or (3)d. of this rule, and the President of the Senate for purposes of the use of the casting vote when the Senate is equally divided.

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

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

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

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

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

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

Rule 3. Virtual meeting requirements.

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

(1) 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.

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

(3) 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.

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

- 82 a. Contemporaneously access materials presented at the meeting.
- 83 b. Monitor the proceedings.
- 84 c. For a meeting of a legislative committee under this rule, provide public comment, if the committee is
- 85 required to accept, or provides an opportunity for, public comment.
- 86 d. Review a recording of the meeting within a reasonable time after the meeting concludes.

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

88 (a) Rule 3(4) of this Concurrent Resolution does not apply if, under § 11 of Article II of the Delaware

89 Constitution, “the business is such as ought to be kept secret”.

90 (b) A technological failure that prevents, or a technological limitation that limits, public access otherwise required

91 under Rule 3(4) of this Concurrent Resolution does not invalidate a virtual meeting or an action taken at a virtual meeting.

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

93 A virtual meeting complies with § 5 of Article II of the Delaware Constitution and, thus, all actions taken during a

94 virtual meeting have the same legal effect as if the members were physically present at the seat of government.

95 **Rule 6. Quorum requirements; voting requirements; procedures for participating and voting at a virtual**

96 **meeting.**

97 (a) For the purposes of determining quorum for a meeting of Senate or House of Representatives or a legislative

98 committee, a member participating in a virtual meeting is considered present as if the member were physically present at

99 the meeting.

100 (b) For the purposes of voting during a meeting of the Senate or House of Representatives or a legislative

101 committee, a member participating in a virtual meeting is able to vote as if the member were physically present at the

102 meeting.

103 (c) Notwithstanding a rule of the Senate or House of Representatives to the contrary, the following procedures

104 apply:

105 (1) Members participating in a virtual meeting should join the meeting at least 30 minutes before the

106 scheduled start time of the meeting. The presiding officer or chair, or their designee, shall make reasonable efforts to

107 contact a member who has not joined the meeting 30 minutes before the scheduled start time to determine if the

108 member is having technical difficulties joining the meeting and shall work with the member to provide a solution to

109 enable the member to join the meeting. If a member is unable to join the meeting the presiding officer or chair shall

110 announce the reason to other members, if known.

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

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

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

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

(4) Votes must be taken by roll call.

Rule 7. Notice requirements for a virtual meeting.

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

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

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

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

(b) Except as otherwise provided by a rule of the Senate or House of Representatives, for purposes of affixing signatures required under rules of the Senate or House of Representatives, a member may, in lieu of a wet signature, authorize, in writing or electronically, the Secretary of the Senate or Chief Clerk of the House of Representatives, as appropriate, to affix the member's signature. The Secretary of the Senate and Chief Clerk of the House of Representatives shall maintain records of authorizations made under this subsection.

Rule 9. Convening of the General Assembly and limitations on length of legislative sessions.

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

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

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

SYNOPSIS

This Concurrent Resolution accepts and approves the January 8, 2021, actions of the President of the Senate and the Speaker Pro Tempore of the House of Representatives, declares an emergency under § 5 of Article II and § 1 of Article XVII of the Delaware Constitution, and adopts rules of procedure for conducting virtual meetings of the 151st 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 of the Senate and the Speaker of the House of Representatives 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) 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 of Article II of the Delaware Constitution.