STATE OF NEW YORK

10266

IN ASSEMBLY

May 15, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Simone) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law and the state technology law, in relation to requirements for open meetings; and to amend part WW of chapter 56 of the laws of 2022 amending the public officers law relating to permitting videoconferencing and remote participation in public meetings under certain circumstances, in relation to making such provisions permanent

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 4 of part WW of chapter 56 of the laws of 2022 amending the public officers law relating to permitting videoconferencing and remote participation in public meetings under certain circumstances, as amended by section 1 of part KK of chapter 58 of the laws of 2024, is amended to read as follows:

§ 4. This act shall take effect immediately [~~and shall expire and be deemed repealed July 1, 2026~~].

§ 2. Subdivisions 2 and 3 of section 103-a of the public officers law, as added by section 2 of part WW of chapter 56 of the laws of 2022, paragraph (c) of subdivision 2 as amended by section 1 of part X of chapter 58 of the laws of 2023, are amended to read as follows:

2. A public body [~~may, in its discretion,~~] **shall** use **web-based** videoconferencing **with the ability to enable closed captioning** to conduct its meetings pursuant to the requirements of this article provided that **for bodies composed of elected officials,** a minimum number of members are present to fulfill the public body's quorum requirement in the same physical location or locations where the public can attend [~~and the following criteria are met:~~]**. For all appointed boards and commissions, or non-elected agencies or authorities, at a minimum, the presiding officer shall be present in person for all public meetings. A presiding officer who is unable to be present in person for any reason set forth in paragraph (b) of this subdivision may designate an alternate member of the public body to be present in such officer's place.**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(a) [~~the~~] **The** governing board of a county, city, town or village [~~has adopted a local law, or a public body has adopted a resolution, or~~] **and** the senate and assembly [~~have adopted a joint resolution, following a public hearing, authorizing the use of videoconferencing:~~

~~(i) for itself and its committees or subcommittees; or,~~

~~(ii) specifying that each committee or subcommittee may make its own determination;~~

~~(iii) provided however, each community board in a city with a population of one million or more shall make its own determination;~~

~~(b) the public body has established~~] **shall adopt** written procedures governing member and public attendance consistent with this section, and such written procedures shall be conspicuously posted on the public website of the public body[~~;~~

~~(c) members~~]**.**

(b) Members of the public body shall be physically present at any such meeting unless such member is unable to be physically present at any such meeting location due to [~~extraordinary~~] circumstances, as set forth in the [~~resolution and~~] written procedures adopted pursuant to [~~paragraphs~~] **paragraph** (a) [~~and (b)~~] of this subdivision, including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member's physical attendance at such meeting. Notwithstanding the in person quorum requirements set forth in this subdivision, the public body may determine, through its written procedures governing member and public attendance established pursuant to and consistent with this section, to allow for any member who has a disability as defined in section two hundred ninety-two of the executive law, where such disability renders such member unable to participate in-person at any such meeting location where the public can attend, to be considered present for purposes of fulfilling the quorum requirements for such public body at any meetings conducted through videoconferencing pursuant to this section, provided, however, that the remaining criteria set forth in this subdivision are otherwise met; and provided, further, that the public body maintains at least one physical location where the public can attend such meeting[~~;~~

~~(d) except~~]**.**

(c) Except in the case of executive sessions conducted pursuant to section one hundred five of this article, the public body shall ensure that members of the public body can be heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon[~~;~~

~~(e) the~~]**.**

(d) The minutes of the meetings [~~involving videoconferencing~~] shall include which, if any, members participated remotely and shall be available to the public pursuant to section one hundred six of this article[~~;~~

~~(f) if videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, where the public can view and/or participate in such meeting, where required documents and records will be posted or available, and identify the physical location for the meeting where the public can attend;~~

~~(g) the~~]**.**

(e) The public body shall provide that each meeting [~~conducted using videoconferencing~~] shall be recorded and such recordings posted or linked on the public website of the public body within five business days following the meeting, and shall remain so available for a minimum

of five years thereafter. Such recordings shall **use closed captioning and** be transcribed upon request[~~;~~

~~(h) if videoconferencing is used to conduct a meeting, the~~].

(f) The public body shall provide the opportunity for members of the public to view such meeting via video, and to participate in proceedings via videoconference in real time**, with real time closed captioning, and with American Sign Language interpretation when requested within a reasonable time prior to such meeting,** where public comment or participation is authorized and shall ensure that videoconferencing authorizes the same public participation or testimony as in person participation or testimony[~~; and~~

~~(i) a local public body electing to utilize videoconferencing to conduct its meetings must maintain an official website~~].

3. The in person participation requirements of paragraph [~~(c)~~] **(b)** of subdivision two of this section shall not apply during a state disaster emergency declared by the governor pursuant to section twenty-eight of the executive law, or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to section twenty-four of the executive law, if the public body determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the public body to hold an in person meeting.

§ 3. Subdivisions 2, 4 and 5 of section 104 of the public officers law, subdivision 2 as amended and subdivision 5 as added by chapter 302 of the laws of 2016, subdivision 4 as added by chapter 289 of the laws of 2000, are amended and a new subdivision 7 is added to read as follows:

2. Public notice of the time and place of every other meeting shall be given or electronically transmitted[~~, to the extent practicable,~~] to the news media and shall be conspicuously posted in one or more designated public locations**, including the public body's webpage and social media accounts,** at a reasonable time prior thereto.

4. [~~If videoconferencing is used to conduct a meeting, the~~] **The** public notice for the meeting **required by this section** shall inform the public that videoconferencing will be used, identify the locations for the meeting, **state where the public can view and/or participate, including how they may participate, in such meeting, identify where required documents and records will be posted or available,** and state that the public has the right to attend the meeting at any of the locations.

5. [~~If a meeting will be streamed live over the internet, the~~] **The** public notice for the meeting shall inform the public of the internet address of the website streaming such meeting.

7. Every public body shall maintain a page on an official government internet website.

§ 4. Subdivisions (e) and (f) of section 103 of the public officers law, subdivision (e) as amended by chapter 481 of the laws of 2021, subdivision (f) as amended by chapter 319 of the laws of 2016, are amended to read as follows:

(e) Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, [~~to the extent practicable~~] at least twenty-four hours prior to the meeting during which the records will be discussed. Copies of such records may be made available for a reasonable fee, determined in the same manner as provided therefor in article six of this chapter. If the agency in which a public body functions main-

tains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website [~~to the extent practicable~~] at least twenty-four hours prior to the meeting. An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision.

(f) Open meetings of an agency or authority shall be[~~, to the extent practicable and within available funds,~~] broadcast to the public and maintained as records of the agency or authority. [~~If the agency or authority maintains a website and utilizes a high speed internet connection, such~~] **Such** open [~~meeting~~] **meetings** shall be[~~, to the extent practicable and within available funds,~~] streamed on such website in real-time, and posted on such website within and for a reasonable time after the meeting. [~~For the purposes of this subdivision, the term "agency" shall mean only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor. For purposes of this subdivision, the term "authority" shall mean a public authority or public benefit corporation created by or existing under any state law, at least one of whose members is appointed by the governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.~~]

§ 5. Subdivision (c) of section 103 of the public officers law, as amended by section 1 of part WW of chapter 56 of the laws of 2022, is amended to read as follows:

(c) A public body shall provide an opportunity for the public to attend, listen and observe meetings in at least one **accessible** physical location at which a member participates. **A public body shall provide an American Sign Language interpreter at such meetings upon request.**

§ 6. Section 102 of the public officers law, as added by chapter 511 of the laws of 1976 and such section as renumbered by chapter 652 of the laws of 1983, subdivision 1 as amended by chapter 289 of the laws of 2000, and subdivision 2 as amended by chapter 115 of the laws of 2022, is amended to read as follows:

§ 102. Definitions. As used in this article: 1. "Meeting" means the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing **or other electronic means** for attendance and participation by the members of the public body.

2. "Public body" means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body consisting of members of such public body, or an entity created or appointed to perform a necessary function in the decision-making process for which a quorum is required in order to conduct public business and which consists of two or more members[~~. A necessary function in the decision-making process shall not include the provision of recommendations or guidance which is purely advisory and which does not require further action by the state or agency or department thereof or public corporation as defined in section sixty-six of the general construction law~~] **including any formally chartered entity which has officially delegated duties and organizational attributes of a substantive nature**.

3. "Executive session" means that portion of a meeting not open to the general public.

4. "Videoconferencing" means any method of conducting a meeting involving participants at two or more locations through the use of equipment which allows participants at each location to hear and see each meeting participant at each location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

§ 7. Section 103-d of the state technology law is amended by adding a new closing paragraph to read as follows:

The office shall facilitate use of widely available, low-cost, platform responsive, web-based videoconferencing applications that meet or exceed federal accessibility guidelines and international standards, allowing for an equivalent experience to in-person access, including for materials and public comment, for the broadcast of public meetings by state agencies and local public bodies, as defined in article seven of the public officers law.

§ 8. Subdivision 2 of section 105 of the public officers law, as added by chapter 511 of the laws of 1976, and such section as renumbered by chapter 652 of the laws of 1983, is amended to read as follows:

2. Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body **and held either at a physical location, via videoconferencing, or both**.

§ 9. Section 106 of the public officers law is amended by adding a new subdivision 4 to read as follows:

4. The minutes of a meeting shall reflect the type of electronic means used, which, if any, members participated by electronic means, when each member participating by electronic means joined and left the meeting, and any interruption in or suspension of the meeting due to a technical problem.

§ 10. This act shall take effect immediately, provided that sections two, three, four, five, six, eight and nine of this act shall take effect on the sixtieth day after it shall have become a law; provided, however, that if chapter 734 of the laws of 2023 shall not have taken effect on or before such date then section seven of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2023 takes effect.