
OLR Bill Analysis

sHB 6651

AN ACT RESPONDING TO ISSUES RELATED TO COVID-19 AND GOVERNMENT ADMINISTRATION.

SUMMARY

This bill codifies parts of five different executive orders issued by the governor during the COVID-19 pandemic related to government administration.

The bill allows public agencies to hold meetings remotely through conference call, videoconference, or other technology. It specifies that public agency meetings held remotely in compliance with its requirements satisfy the Freedom of Information Act's (FOIA's) requirement that these meetings be open to the public. It makes numerous conforming changes, including allowing public agencies to go into executive session during a remote meeting for the same reasons that they may do so for an in-person meeting (e.g., to discuss pending litigation).

Additionally, the bill exempts appeals filed or pending with the Freedom of Information Commission (FOIC) between the bill's effective date and December 31, 2021, from certain FOIA deadlines. It also allows executive branch agency heads, within these same dates, to modify or suspend any of their agency's regulatory requirements as they deem necessary to protect the public health and reduce COVID-19's spread (§ 7). (The latter provision codifies Executive Order 7QQ (§ 6), which the governor issued on May 20, 2020, effective for the duration of the declared public health and civil preparedness emergencies.)

The bill requires officials administering certain district or town meetings or elections to use their best efforts to conduct them remotely. Generally, this applies to meetings or elections scheduled to

occur from July 1, 2021, through December 30, 2021, to appoint officials to local or regional offices and boards.

The bill also allows notaries public and Superior Court commissioners (collectively, “notaries”) to perform notarial acts electronically until December 31, 2021. It requires notaries who do so to (1) use an electronic device or process that allows a notary and a remotely located individual to communicate with each other simultaneously by sight and sound and (2) comply with specified requirements.

Lastly, the bill makes technical changes.

EFFECTIVE DATE: Upon passage

§§ 1-5 — REMOTELY HELD MEETINGS

Under current law, FOIA’s definition of “meeting” includes those held by electronic equipment, but it does not explicitly authorize, or establish procedures for, telephone or other remotely held meetings (see BACKGROUND).

The bill explicitly allows remotely held meetings under FOIA, subject to specified conditions. (In doing so, it codifies Executive Order 7B (§ 1), which the governor issued on March 14, 2020, effective for the duration of the declared public health and civil preparedness emergencies.)

The conditions are as follows:

1. The public must be able to view or listen to the meeting (other than executive sessions) in real-time through telephone, video, or other technology.
2. With the exception of an executive session, the meeting must be recorded or transcribed, with the recording or transcript posted on the agency’s website within seven days after the meeting and made available in the agency’s office within a reasonable period of time. (The bill does not specify a deadline for making the

recording or transcript available in the office.)

3. The meeting notice and agenda must be posted on the agency's website and include information about how the public can access the meeting and what technology it will use.
4. Materials relevant to the agenda must be (a) submitted to the agency at least 24 hours before the meeting and (b) posted on the agency's website for inspection before, during, and after the meeting.
5. Exhibits submitted by the public must, to the extent feasible, be (a) submitted to the agency at least 24 hours before the meeting and (b) posted on the agency's website for inspection before, during, and after the meeting.
6. Meeting participants must state their name and title (if applicable) each time before speaking.

The bill requires that agendas for remotely held meetings comply with FOIA's existing deadlines for making meeting agendas (e.g., posted at least 24 hours in advance of a regular meeting). Current law requires public agencies, other than those of political subdivisions (e.g., municipalities), to post meeting minutes on their website within seven days after the meeting. The bill subjects public agencies of political subdivisions to the online posting requirement for any remotely held meetings.

Notices of a Special Meeting

The bill allows notices of a special meeting to be electronically sent to a public agency's members rather than delivered to their homes as current law requires. Current law also allows members to waive delivery of the notice by filing a written waiver with the agency's clerk or secretary. The bill allows members to submit these waivers electronically. (A special meeting is one that is held to consider business that (1) was unforeseen when scheduling regular meetings and (2) should be addressed before the next regular meeting.)

Notices of Adjournment

The bill also allows public agencies, when a remote meeting is adjourned because all members are absent, to post a notice of adjournment in a conspicuous place on their websites. Current law requires that this notice be posted on or near the door of the meeting's location.

§ 6 — FOIC DEADLINES

By law, a person alleging a FOIA violation generally must appeal to FOIC within 30 days after being denied a right conferred by FOIA (e.g., inspecting or copying public records or attending a public agency's meeting). FOIC must hear and decide the appeal within one year after its filing date.

The bill establishes deadline exemptions for appeals filed or pending on or after its effective date until December 31, 2021. Specifically, it exempts (1) appeals filed within this timeframe from both the filing deadline and FOIC's adjudication deadline and (2) appeals pending within this timeframe from FOIC's adjudication deadline.

(This section codifies Executive Order 7M (§ 2), which the governor issued on March 25, 2020, effective for the duration of the declared public health and civil preparedness emergencies.)

§ 8 — MEETINGS TO APPOINT LOCAL OR REGIONAL OFFICIALS

The bill requires officials administering certain district or town meetings or elections to use their best efforts to conduct the meeting or election remotely and implement measures to safeguard the integrity of the process. It applies to municipalities where (1) a town meeting, annual town meeting, district meeting, or election is the authority for appointing or electing members or officials to any municipal or regional governmental office, board, agency, commission, or quasi-municipal corporation and (2) the appointments require that a district or town meeting or election be held that is scheduled to occur from July 1, 2021, through December 30, 2021.

Under the bill, if the officials determine that the meeting or election cannot be conducted safely and accurately by remote means, then they must take all reasonable measures to protect public health (e.g., conduct the meeting or election in a way that significantly reduces the COVID-19 transmission risk).

(This section codifies Executive Order 700 (§ 1), which the governor issued on May 14, 2020, effective for the duration of the declared public health and civil preparedness emergencies.)

§ 9 — REMOTE NOTARIZATION

Current law does not permit remote notarization in Connecticut. For example, it defines “acknowledgement” as “a notarial act in which a notary public certifies that a signatory...has admitted, in the notary’s presence, to having signed a document for its stated purpose” (CGS § 3-94a(1)).

The bill instead allows remote notarizations until December 31, 2021, subject to the following requirements:

1. A signatory who is not personally known to the notary must present satisfactory evidence of identification while communicating with the notary and may not transmit it before or after the transaction (evidence of identification includes two specified forms of ID or an affirmation by a person known to both the notary and signatory).
2. The electronic device or process must be capable of recording the complete notarial act.
3. The notary must retain a recording of the complete notarial act for at least 10 years.
4. The signatory must affirmatively represent that he or she is physically present in Connecticut during the transaction.
5. The signatory must transmit to the notary, by fax or electronic means, a copy of the signed document on the same date it was

executed.

6. The notary may notarize the transmitted copy and send it back to the signatory by fax or electronic means.
7. The notary may repeat the notarization of the original signed document as of its execution date as long as the notary receives the original signed document, together with the electronically notarized copy, within 30 days after the execution date.

Under the bill, only an attorney in good standing and admitted to practice law in Connecticut may remotely administer a self-proving affidavit to a last will or conduct a real estate closing. The bill suspends all witness requirements for notarizations, except for those concerning a last will. It allows witnessing requirements for a last will to be satisfied remotely, using the communication technology described above, if a Superior Court commissioner (generally, an attorney admitted to the Connecticut bar and in good standing) supervises its completion and certifies his or her supervision.

The bill requires town clerks to accept remotely notarized documents for recording on their town's land records. Remotely notarized documents submitted to the clerks for this purpose must be accompanied by a one-page certification confirming the use of remote notarization.

(This section codifies Executive Order 7Q (§ 3), which the governor issued on March 30, 2020, and subsequently extended for the duration of the declared public health and civil preparedness emergencies.)

BACKGROUND

Related Bills

sSB 1074, reported favorably by the Government Administration and Elections (GAE) Committee, is identical to this bill.

sSB 183 (File 441), reported favorably by the GAE Committee, authorizes remote meetings under nearly identical conditions as those in the bill.

sHB 6604 (File 311), reported favorably by the Commerce Committee, allows remote notarization under similar conditions until June 30, 2022.

sHB 6448, reported favorably by the Planning and Development Committee, authorizes remote meetings under similar conditions as those in the bill while also requiring public agencies to make their meetings (including in-person meetings) accessible to the public through electronic equipment.

HB 6641, reported favorably by the Planning and Development Committee, authorizes remote meetings under similar conditions as those in the bill.

Telephone Meetings Under FOIA

Although FOIA currently does not explicitly authorize telephone or other remotely held meetings, its definition of “meeting” includes those held by electronic equipment (CGS § 1-200(2)).

In its only advisory opinion on the subject, FOIC advised that public agencies conducting business over the phone must comply with FOIA’s open meeting requirements. According to FOIC, agencies must make sure that the public has “access to the entire proceedings taking place during the course of a meeting.”

Specifically, the commission advised that the meeting must comply with at least the following:

1. members of the public who want to attend the meeting must be accommodated at a place where the greatest number of participating agency members are located;
2. people attending the meeting, including members of the public, must be able to see and inspect copies of any physical or demonstrable materials presented or used; and
3. all those attending the meeting, at whatever location, must be able to hear and identify adequately all participants in the

proceedings, including individual remarks and votes (Advisory Opinion 41, 1980).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 16 Nay 3 (03/31/2021)