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HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 410

AN ACT CONCURRING IN PROPOSED AMENDMENTS TO THE DELAWARE CONSTITUTION RELATING TO
CONTINUITY OF GOVERNMENTAL OPERATIONS.

WHEREAS, an amendment to the Delaware Constitution was proposed in the 148th General Assembly, being Chapter 399, Volume 80, Laws of Delaware, as follows:

“AN ACT PROPOSING AMENDMENTS TO THE DELAWARE CONSTITUTION RELATING TO CONTINUITY OF GOVERNMENTAL OPERATIONS.

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

Section 1. Amend Article II, § 5 of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5. Place of meeting.

Section 5. The General Assembly shall meet and sit in Dover, the capital of the State; provided, however, that in ~~ease of insurrection, conflagration or epidemic disease~~ periods of emergency resulting from enemy attack, terrorism, disease, accident, or other natural or man-made disaster the General Assembly may temporarily meet and sit elsewhere.

Section 2. Amend Article XVII, § 1 of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1. Continuity of state and local governmental operations in periods of emergency ~~resulting from disasters caused by enemy attack.~~

Section 1. The General Assembly, in order to insure continuity of State and local governmental operations in periods of emergency resulting from ~~disasters caused by enemy attack,~~ terrorism, disease, accident, or other natural or man-made disaster, shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices whose immediate succession is not otherwise provided for ~~in~~ by this Constitution, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for

insuring the continuity of governmental operations. In the exercise of the powers ~~hereby conferred~~ conferred by this section, the General Assembly shall in all respects conform to the requirements of this Constitution except to the extent that in the judgment of the General Assembly ~~so to do~~ to do so would be impracticable or would ~~admit of~~ cause undue delay.”

WHEREAS, the proposed amendment was adopted by two-thirds of all members elected to each house of the 148th General Assembly and publicized in accordance with Article II, § 5 of the Delaware Constitution.

NOW THEREFORE:

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

Section 1. Amend Article II, § 5 of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5. Place of meeting.

Section 5. The General Assembly shall meet and sit in Dover, the capital of the State; provided, however, that in ~~case of insurrection, conflagration or epidemic disease~~ periods of emergency resulting from enemy attack, terrorism, disease, accident, or other natural or man-made disaster the General Assembly may temporarily meet and sit elsewhere.

Section 2. Amend Article XVII, § 1 of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1. Continuity of state and local governmental operations in periods of emergency ~~resulting from disasters caused by enemy attack.~~

Section 1. The General Assembly, in order to insure continuity of State and local governmental operations in periods of emergency resulting from ~~disasters caused by~~ enemy attack, terrorism, disease, accident, or other natural or man-made disaster, shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices whose immediate succession is not otherwise provided for ~~in~~ by this Constitution, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations. In the exercise of the powers ~~hereby conferred~~ conferred by this section, the General Assembly shall in all respects conform to the requirements of this Constitution except to the extent that in the judgment of the General Assembly ~~so to do~~ to do so would be impracticable or would ~~admit of~~ cause undue delay.

SYNOPSIS

This Act is the second leg of a constitutional amendment that would alter the continuity of government provisions of the Delaware Constitution to enable the effective continuance of government following a variety of emergency situations. The first leg of this amendment, House Bill No. 380 of the 148th General Assembly, passed both Houses with the two-thirds vote required by, and was publicized in accordance with, the Delaware Constitution.

Currently, Article II, § 5 of the Delaware Constitution requires the General Assembly to meet in Dover, unless an emergency caused by insurrection, conflagration, or epidemic diseases occurs. And, Article XVII, § 1 of the Delaware Constitution provides the General Assembly with the power to enact laws providing for continuity of government following emergency situations, but only if the emergency results from an enemy attack.

Section 2 of this Act extends the General Assembly's authority under Article XVII, § 1 to disasters involving terrorism, disease, accident, and other natural or man-made disasters. This would authorize the General Assembly to extend the provisions of Chapter 77 of Title 29 of the Delaware Code (relating to the emergency location of government), Chapter 17 of Title 29 (relating to emergency interim legislative succession), Chapter 78 of Title 29 (relating to interim executive succession), and Chapter 18 of Title 10 (relating to emergency interim judicial succession) to emergencies involving terrorism, disease, accident, or other natural or manmade disasters, as well as those involving enemy attack. This change is consistent with the approach taken in at least four states, New York, Louisiana, Montana, and Utah, which have adopted an "all hazards" approach to continuity of government planning.

In addition, Section 2 of this Act makes changes to Article XVII, § 1 adopting the interpretation of this provision by the Delaware Supreme Court in Opinion of the Justices, 190 A.2d 521 (Del. 1963), so that it is clear that the General Assembly may provide for succession for those public offices that are not immediately filled by operation of the Constitution.

Section 1 of this Act would harmonize Article XVII, § 1 and Article § 5 so that the emergency situations exempting the General Assembly from the requirement that it meet in Dover are similar to the emergency situation in which the General Assembly may enact laws or otherwise act to provide for the continuity of government.

Finally, this Act makes technical corrections to confirm existing law to the guidelines of the Delaware Legislative Drafting Manual. Specifically, lines 17 through 19 of this Act remove unnecessary legalese in and make grammatical changes to the final sentence of Article XVII, §1.