



CHAMBER VOTE REQUIREMENTS WHEN VACANCY OCCURS

1. WHAT NUMBER OF VOTES IS REQUIRED FOR PASSAGE OF LEGISLATION WHEN A VACANCY OCCURS?

When there is a vacancy in a chamber, the number of votes needed on any legislative action required to have the support of the “majority of all members elected” or “supermajority of all members elected” remains unchanged as follows:

- For the Senate, 11 for a simple majority, 13 for a three-fifths supermajority, 14 for a two-thirds supermajority, and 16 for a three-fourths majority.
- For the House of Representatives, 21 for a simple majority, 25 for a three-fifths supermajority, 28 for a two-thirds supermajority, and 31 for a three-fourths majority

This conclusion is supported by the Supreme Court’s response to Governor Russell Peterson’s question regarding the impact upon the quorum requirement (“a majority of all the members elected to each House shall constitute a quorum to do business”¹) for the House following the death of one of its members.² The Supreme Court stated:

[I]n our opinion, . . . a quorum necessary to be present in order for a House of the General Assembly to act in a valid and effective manner . . . is [a] majority of that House prescribed by law, irrespective of whether or not one or more vacancies have occurred by reason of death, resignation, or otherwise.³

¹ Del. Const. art. II, § 8.

² *Opinion of the Justices*, 251 A.2d 827 (Del. 1969).

³ *Id.* Compare *Zemprelli v. Daniels*, 436 A.2d 1165, 1172 (Pa. 1981) (Citing the Delaware Supreme Court’s conclusion that vacancies do not affect the number of votes constituting a majority and finding instead that “a majority of the members elected to the Senate’ as employed in that subsection means ‘a majority of the members elected, living, sworn, and seated.’”).

2. IF A MEMBER IS PRESENT BUT NOT VOTING, DOES THAT REDUCE THE NUMBER OF VOTES REQUIRED FOR PASSAGE OF LEGISLATION?

No. This conclusion is supported by *Mason's Manual of Legislative Procedure*, which states:

When a set number of votes or a majority or other proportion of the entire membership or of the members present is required, failure to vote does not reduce the vote required but reduces the pool of voters available to take the action and, therefore, has, in part, the same effect as a "no" vote.⁴

⁴ *Mason's Manual on Legislative Procedure*, Sec. 515(b), p. 351 (2010 ed.).