



SPONSOR: Rep. Schwartzkopf & Rep. Longhurst & Rep. Mitchell &  
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Sen. Pettyjohn

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 452

AN ACT PROPOSING AMENDMENTS TO THE DELAWARE CONSTITUTION RELATING TO TECHNICAL CORRECTIONS.

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 § 3, Article II of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3. Qualifications of ~~members~~; members; commencement of terms of members.

Section 3.

(a) No person shall be a Senator who shall not have attained the age of twenty-seven years and have been a citizen and inhabitant of the State three years next preceding the day of his or her election and the last year of that term an inhabitant of the Senatorial District in which he or she shall be chosen, unless he or she shall have been absent on the public business of the United States or of this State. No person shall be a Representative who shall not have attained the age of twenty-four years, and have been a citizen and inhabitant of the State three years next preceding the day of his or her election, and the last year of that term an inhabitant of the Representative District in which he or she shall be chosen, unless he or she shall have been absent on the public business of the United States or of this State.

(b) The terms of Senators and Representatives begin on the day next after their election.

Section 2. Amend § 24, Article II of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 24. Settlement of accounts of State Treasurer; ineligibility for legislative office until settlement.

~~Section 24. The State Treasurer shall settle his or her accounts annually with the General Assembly or a joint committee thereof, which shall be appointed at every ninety legislative day session. No person who has served in the office of State Treasurer shall be eligible to a seat in either House of the General Assembly until he or she shall have made a final settlement of his or her accounts as treasurer and discharged the balance, if any, due thereon. [Repealed.]~~

Section 3. Amend § 18, Article III of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18 Approval or veto of bills, orders, resolutions or votes; repassage over veto.

Section 18.

(a) Every bill which shall have passed both Houses of the General Assembly shall, before it becomes law, be presented to the Governor; if he or she approves, he or she shall sign it; but if he or she shall not approve, he or she shall return it with his or her objections to the House in which it shall have originated, which House shall enter the objections at large on the journal and proceed to reconsider it. If, after such reconsideration, three-fifths of all the members elected to that House shall agree to pass the bill, it shall be sent together with the objections to the other House, by which it shall likewise be reconsidered, and if approved by three-fifths of all the members elected to that House, it shall become a law; but in neither House shall the vote be taken on the day on which the bill shall be returned to it. In all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor within ten days, Sundays excepted, after it shall have been presented to him or her, the same shall be a law in like manner as if he or she had signed it, unless the General Assembly shall, by final adjournment, prevent its return, in which case it shall not become a law without the approval of the Governor.

(b) For purposes of return of Bills not approved by the Governor the General Assembly shall be considered to be continuously in Session until final adjournment and the Clerk of the House of Representatives and the Secretary of the Senate shall be deemed proper recipients of such returned bills during recess or adjournment of the General Assembly other than final adjournment.

(c) No bill shall become a law after the final adjournment of the General Assembly, unless approved by the Governor within thirty days after such adjournment. The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills, over the Executive veto.

~~(d) Every order, resolution, or vote to which the concurrence of both Houses of the General Assembly may be necessary, except on a question of adjournment, shall be presented to the Governor, and before the same shall take effect be approved by him or her, or being disapproved by him or her, shall be repassed by three-fifths of all the members elected to each House of the General Assembly, according to the rules and limitations prescribed in the case of a bill. Every order and resolution to which the concurrence of both Houses of the General Assembly may be necessary, except on a question of adjournment and those matters dealing solely with the internal or administrative affairs of the General Assembly, shall be presented to the Governor, and before the same shall take effect be approved by him or her, or being disapproved by him or~~

her, shall be repassed by three-fifths of all the members elected to each House of the General Assembly, according to the rules and limitations prescribed in the case of a bill.

Section 4. Amend Article § 20, Article III of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 20. Vacancy in offices of both Governor and Lieutenant-Governor; officers eligible to act; disability of Governor.

Section 20.

(b) Whenever the Governor transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his or her written declaration that he or she is unable to discharge the powers and duties of his or her office, and until he or she transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Lieutenant Governor as Acting Governor.

(c) Whenever the Chief Justice of the Delaware Supreme Court, the President of the Medical Society of Delaware and the ~~Commissioner of the Department of Mental Health~~, Director of the Division of Substance Abuse and Mental Health, acting unanimously, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives, their written declaration that the Governor is unable to discharge the powers and duties of his or her office because of mental or physical disability, the Lieutenant Governor shall immediately assume the powers and duties of the office as Acting Governor.

Thereafter, when the Governor transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his or her written declaration that no disability exists, he or she shall resume the powers and duties of his or her office unless the Chief Justice of the Supreme Court of Delaware, the President of the Medical Society of Delaware and the ~~Commissioner of the Department of Mental Health~~, Director of the Division of Substance Abuse and Mental Health, acting unanimously, transmit within five days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the Governor is unable to discharge the powers and duties of his or her office because of mental or physical disability. Thereupon the General Assembly shall decide the issue, assembling within seventy-two hours for that purpose if not then in session. If the General Assembly within ten days after receipt of the latter written declaration determines by two-thirds vote of all the members elected to each house that the Governor is unable to discharge the powers and duties of his or her office because of mental or physical disability, the Lieutenant Governor shall continue to discharge same as Acting Governor; otherwise, the Governor shall resume the powers and duties of his or her office.

Section 5. Amend Article § 24, Article III of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 24. Abolition of office of Clerk of Orphans' Court; transfer of functions. Date of commencement of terms of certain State and County elective officers.~~

~~Repealed 75 Del. Laws, c. §53~~ The terms of office of all State and County officers made elective by this Constitution begin on the first Tuesday in January next after their election, unless otherwise provided in this Constitution.

Section 6. Amend § 2, Article V of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2. Qualifications for voting; members of the Armed Services of the United States stationed within State; persons disqualified; forfeiture of right.

Section 2.

(a) Every citizen of this State of the age of twenty-one years who shall have been a resident thereof one year next preceding an election, and for the last three months a resident of the county, and for the last thirty days a resident of the hundred or election district in which he or she may offer to vote, and in which he or she shall have been duly registered as hereinafter provided for, shall be entitled to vote at such election in the hundred or election district of which he or she shall at the time be a resident, and in which he or she shall be registered, for all officers that now are or hereafter may be elected by the people and upon all questions which may be submitted to the vote of the people; provided, however, that no person who shall attain the age of twenty-one years after the first day of January in the year of our Lord, nineteen hundred, or after that date shall become a citizen of the United States, shall have the right to vote unless he or she shall be able to read this Constitution in the English language and write his or her name; but these requirements shall not apply to any person who by reason of physical disability shall be unable to comply therewith; and provided also, that no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no person adjudged mentally incompetent or person convicted of a crime deemed by law felony, or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector; and the General Assembly may impose the forfeiture of the right of suffrage as a punishment for crime.

(b) Any person who is disqualified as a voter because of a conviction of a crime deemed by law a felony shall have such disqualification removed upon being pardoned, or after the expiration of the sentence, whichever may first occur. The term "sentence" as used in this Section shall include all periods of modification of a sentence, such as, but not limited to, probation, parole and suspension. The provision of this ~~paragraph~~ subsection shall not apply to (1) those persons who were

convicted of any felony of murder or manslaughter, (except vehicular homicide); or (2) those persons who were convicted of any felony constituting an offense against public administration involving bribery or improper influence or abuse of office, or any like offense under the laws of any state or local jurisdiction, or of the United States, or of the District of Columbia; or (3) those persons who were convicted of any felony constituting a sexual offense, or any like offense under the laws of any state or local jurisdiction or of the United States or of the District of Columbia.

Section 7. Amend § 6, Article V of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 6. Certificate of election and ballots; delivery to Prothonotary; duties and composition of court; quorum~~ Voting machine recording tapes, voting machine certificate, and absentee ballots; delivery to Prothonotary; duties and composition of court; quorum.

~~The presiding election officer of each hundred or election district, on the day next after the general election, shall deliver one of the certificates of the election, made and certified as required by law, together with the ballot box or ballot boxes, containing the ballots, and other papers required by law to be placed therein, to the Prothonotary of the Superior Court of the county, who shall at twelve o'clock noon on the second day after the election present the same to the said Court, and the election officer or officers having charge of any other certificate or certificates of the election shall at the same time present the same to the said Court, and the said Court shall at the same time convene for the performance of the duties hereby imposed upon it; and thereupon the said Court, with the aid of such of its officers and such sworn assistants as it shall appoint, shall publicly ascertain the state of the election throughout the county, by calculating the aggregate amount of all the votes for each office that shall be given in all the hundreds and election districts of the county for every person voted for for such office.~~

~~In case the certificates of election of any hundred or election district shall not be produced, or in case the certificates produced do not agree, or in case of complaint under oath of fraud or mistake in any such certificate, or in case fraud or mistake is apparent on the face of any such certificate, the Court shall have power to issue summary process against the election officers or any other persons to bring them forthwith into Court with the election papers in their possession or control, and to open the ballot boxes and take therefrom any paper contained therein, and to make a recount of the ballots contained therein, and to correct any fraud or mistake in any certificate or paper relating to such election.~~

(a) The presiding election officer of each election district, following the close of the polls on the day of the general election, shall deliver all of the following to the Department of Elections:

(1) The copy of each voting machine recording tape containing the signatures of the election officers present at the opening and closing of the polls from each voting machine assigned to the presiding election officer's district.

141 (2) One copy of the voting machine certificate, made and certified by law.

142 (3) Any other document or item required by law to be provided to the Department of Elections.

143 (b) The Department of Elections shall deliver all of the following to the Prothonotary of the Superior Court:

144 (1) The documents or items provided to the Department of Elections under subsection (a) of this section.

145 (2) The absentee ballots.

146 (3) Any other document or item required by law to be provided to the Prothonotary of the Superior Court.

147 (c) At 10 o'clock a.m. on the second day after the election the Prothonotary of the Superior Court shall present the  
148 documents or items provided under subsection (b) of this section to the Superior Court for the appropriate county, and the  
149 Court shall, at the same time, convene for the performance of the duties imposed on the Court under this section. After  
150 convening, the Court, with the aid of the officers and sworn assistants as the Court shall appoint, shall publicly ascertain the  
151 state of the election throughout the county, by determining the aggregate number of votes in each office given in the  
152 election districts of the county and for every person who received votes for each office.

153 (d) If a document or item required under subsection (a) or (b) of this section is not produced, or if there is a  
154 complaint, under oath, of fraud or mistake in a document or item, or if fraud or mistake is evident on the face of a document  
155 completed by the election officers, the Court may do any of the following:

156 (1) Issue summary process against an election officer, or any other person, to bring the election officer, or  
157 person, forthwith into Court with the election papers in their possession or control.

158 (2) Open the absentee ballot boxes and take there from any paper contained in the absentee ballot boxes.

159 (3) Recount the absentee ballots.

160 (4) Correct any fraud or mistake on the voting machine recording tapes or on any document completed by the  
161 election officers relating to the election.

162 (e) ~~The said Court shall have~~ The Court has all the other jurisdiction and powers now vested by law in the boards  
163 of canvass, and such other powers as ~~shall be~~ provided by law.

164 (f) After the state of the election ~~shall have been~~ is ascertained as aforesaid, under this section, the said the Court  
165 shall make certificates thereof, of the election, under the seal of said the Court in the form required by law, and transmit,  
166 ~~deliver~~ deliver, and lodge the same certificates of the election as required by this Constitution or by law, and deliver the  
167 ballot boxes to the sheriff of the county, to be by him or her kept and delivered by the sheriff as required by law.

168 (g) No act or determination of the Court in the discharge of the duties imposed ~~upon it~~ on the Court by this section  
169 shall be conclusive in the trial of any contested election.

(h) For the purposes of this section the Superior Court shall consist in New Castle County of the President Judge and resident Judge; in Kent County of the resident Judge and ~~an~~ a Judge designated by the President Judge; and in Sussex County of the resident Judge and a Judge designated by the President Judge.

(i) Two ~~shall~~ Judges constitute a quorum. The Governor ~~shall have power to~~ may commission a Judge for the purpose of constituting a quorum when by reason of legal exception to any Judge, or for any other cause, a quorum could not otherwise be had.

Section 8. Amend § 3, Article VIII of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3. Borrowing money; specification of purpose; surplus borrowed money.

Section 3. No money shall be borrowed or debt created by or on behalf of the State but pursuant to an Act of the General Assembly, passed with the concurrence of ~~three-fourths~~ three-fourths of all the members elected to each House, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debts; and any law authorizing the borrowing of money by or on behalf of the State shall specify the purpose for which the money is to be borrowed, and the money so borrowed shall be used exclusively for such purpose; but should the money so borrowed or any part thereof be left after the abandonment of such purpose or the accomplishment thereof, such money, or the surplus thereof, may be disposed of according to law.

Section 9. Amend Article § 4, VIII of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4. Restrictions on loan of public money or bonds and credit of State.

Section 4. No appropriation of the public money shall be made to, nor the bonds of this State be issued or loaned to any county, ~~municipality~~ municipality, or corporation, nor shall the credit of the State, by the guarantee or the endorsement of the bonds or other undertakings of any county, ~~municipality~~ municipality, or corporation, be pledged otherwise than pursuant to an Act of the General Assembly, passed with the concurrence of ~~three-fourths~~ three-fourths of all the members elected to each House.

Section 10. Amend § 7, Article XV of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7. Offenses excepted from prohibition against prosecuting by information and jury trial.

Section 7. The matters within ~~Section 30~~ Section 28 of Article IV and Sections 7 and 8 of Article V are excepted from the provision of the Constitution that "No person shall for any indictable offense be proceeded against criminally by information," and also from the provisions of the Constitution concerning trial by jury.

Section 11. Amend § 1, Article XVI of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1. Proposal of Constitutional amendments in General Assembly; procedure.

Section 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by ~~two-thirds~~ two-thirds of all the members elected to each House, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and the Secretary of State shall cause such proposed amendment or amendments to be published three months before the next general election in at least three newspapers in each county in which such newspapers shall be published; and if in the General Assembly next after the said election such proposed amendment or amendments shall upon yeas and nays vote be agreed to by ~~two-thirds~~ two-thirds of all the members elected to each House, the same shall thereupon become part of the Constitution.

Section 12. Amend § 4 of the Schedule of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4. Commencement of terms of members of General Assembly.

~~Section 4. The terms of Senators and Representatives shall begin on the day next after their election. [Transferred to § 3 of Article II].~~

Section 13. Amend § 8 of the Schedule of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8. Date of commencement of terms of elective officers.

~~Section 8. The terms of office of all State and County officers made elective by this amended Constitution shall commence on the first Tuesday in January next after their election, unless otherwise provided in this amended Constitution or Schedule. [Transferred to § 24 of Article III.]~~

#### SYNOPSIS

This Act is the first leg of an amendment to the Delaware Constitution to make necessary technical corrections identified by the General Assembly's Division of Research. Specifically, these technical corrections consist of the following:

Section 1 and Section 12 of this Act work in concert to transfer the date of the commencement of the terms of the members of the General Assembly from the Constitution's Schedule to Article II (relating to the General Assembly) to avoid confusion and for ease of locating this information.

Section 2 of this Act deletes § 24 of Article II of the Delaware Constitution to remove antiquated language to conform the Delaware Constitution to existing practice. This Section dates back to the Delaware Constitution of 1792 when the State Treasurer was also considered what we now know as the State Accountant, the Budget Director, the Director of Revenue, and the Secretary of Finance. The purpose of this Section was to provide the General Assembly with one, detailed report indicating that the State's books were balanced and finances were being managed properly. Over time, as other, more specific roles were created within State government, the State Treasurer's role in these aspects were shifted to other



executive branch officers. Today, this constitutional requirement is now being met by several different state agencies in several different forms, all culminating in final products overseen by entities like the Delaware Economic and Financial Advisory Council (DEFAC), the Cash Management Policy Board, and the General Assembly itself, and take the form of final reports issued to the General Assembly, administrative paperwork, and legislation like the annual appropriations act and annual capital improvement act.

Section 3 of this Act corrects a codification error. The sentence stricken in Section 3 of this Act was originally to be struck by Chapter 607, Volume 50 of the Laws of Delaware in 1956. However, the sentence remains in the Delaware Constitution to this day. See Opinion of the Justices, 405 A.2d 694, 697 fn. 6 (1979).

Section 4 of this Act updates the name of the State officer and State agency involved in determining whether the Governor is able or unable to discharge the Governor's duties, which has changed since the adoption of this Section in 1969.

Section 5 and Section 13 of this Act work in concert to transfer the date of the commencement of the terms of certain State and County elective executive branch officers from the Constitution's Schedule to Article III (relating to the Executive) to avoid confusion and for ease of locating this information.

Section 6 of this Act designates § 2 of Article V to make an internal reference clear.

Section 7 of this Act makes changes to ensure the accurate adoption of an amendment to the Constitution proposed in 1998 by 71 Del. Laws, ch. 398. The amendment proposed in 1998 was proposed by Senate Bill No. 277 of the 139th General Assembly, which was later replaced by Senate Substitute No. 1 to Senate Bill No. 277. Senate Substitute No. 1 to Senate Bill No. 277 passed the General Assembly. When the 140th General Assembly concurred in the proposed amendment, the General Assembly used the language of Senate Bill No. 277 instead of Senate Substitute No. 1 to Senate Bill No. 277. See 72 Del. Laws, ch. 437 (Senate Bill No. 394 of the 140th General Assembly). This change ensures the original intent to concur in the language of Senate Substitute No. 1 to Senate Bill No. 277 is achieved. To properly achieve this change, the version of § 6 of Article V that existed before the passage of 72 Del. Laws, ch. 437 is shown as struck through in this Section. Section 7 of this Act also makes additional technical corrections to conform existing law to current practice and to the standards of the Delaware Legislative Drafting Manual.

Sections 8 and 9 of this Act hyphenates "three fourths" to ensure consistent hyphenation of the supermajority vote requirements throughout the Constitution. Section 10 also makes additional technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual; specifically, to ensure use of the serial comma in two places in this Section.

Section 10 of this Act corrects an incorrect reference to another provision of the Delaware Constitution. The reference to "Section 30" has existed in Section 7 of Article XV of the Delaware Constitution since its adoption in 1897; however, in 1951, a constitutional amendment was adopted to reorganize Delaware's Judiciary. See 48 Del. Laws, ch. 109. That reorganization resulted in deletion and renumbering of Sections originally contained in Article IV of the Delaware Constitution, as adopted in 1897, but did not account for the internal reference to Section 30.

Section 11 of this Act hyphenates "two thirds" to ensure consistent hyphenation of the supermajority vote requirements throughout the Constitution. House Bill No. 130 of the 151st General Assembly proposes an amendment to this Section and makes a technical correction to the first "two thirds" but not the second. This Section is intended to ensure that, on the 152nd General Assembly's concurrence in House Bill No. 130 and this Act, the correct hyphenation of "two thirds" is achieved throughout this Section.

This Act requires a greater than majority vote for passage because § 1 of Article XVI of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the Delaware Constitution.