SPONSOR: Sen. Sokola & Sen. Townsend & Sen. Lockman
Rep. Baumbach

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE CONCURRENT RESOLUTION NO. 128

PROVIDING NOTICE OF A HEARING ON, AND THE ALLEGED REASONABLE CAUSE FOR, THE REMOVAL, UNDER § 13 OF ARTICLE III OF THE DELAWARE CONSTITUTION, OF KATHLEEN K. MCGUINESS, AUDITOR OF ACCOUNTS.

WHEREAS, on July 1, 2022, Kathleen K. McGuiness, Auditor of Accounts, ("Auditor") was found guilty, by a jury of her peers, of violating § 5805 of Title 29 of the Delaware Code [the State Employees', Officers' and Officials' Code of Conduct], § 6903 of Title 29 of the Delaware Code [Structuring: Noncompliance with Procurement Law], and § 1211 of Title 11 of the Delaware Code [Official Misconduct] ("the Jury Verdict"); and

WHEREAS, § 13 of Article III of the Delaware Constitution ("Section 13") authorizes the General Assembly, by a two-thirds vote of all the members elected to each House of the General Assembly, to address the Governor to request the Governor remove an officer of this State for reasonable cause; and

WHEREAS, the Jury Verdict presents the question whether reasonable cause exists for the Governor to remove the Auditor under Section 13, especially in light of the General Assembly's previous finding, under § 5802(1) of Title 29 of the Delaware Code, that "[i]n our democratic form of government, the conduct of officers and employees of the State must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated."; and

WHEREAS, the Delaware Supreme Court, in response to a request for an advisory opinion under § 141 of Title 10 of the Delaware Code made by Senate Concurrent Resolution No. 63, advised the 151st General Assembly that under Section 13 the General Assembly must provide, by concurrent resolution, notice of a hearing on, and the alleged reasonable cause for, the removal of an officer; and

WHEREAS, the General Assembly finds it is appropriate at this time to begin proceedings under Section 13.

NOW, THEREFORE:

BE IT RESOLVED by the Senate of the 151st General Assembly of the State of Delaware, the House of Representatives concurring therein, that Kathleen K. McGuiness, Auditor of Accounts, is provided notice that the General Assembly intends to hold a hearing, in the form of a joint session of the General Assembly, on a date on or after 10 days following final passage of this Concurrent Resolution, on the removal of the Auditor under § 13 of Article III of the Delaware Constitution based on the Jury Verdict that the Auditor violated the following:

(1) § 5805 of Title 29 of the Delaware Code [the State Employees', Officers' and Officials' Code of Conduct].

(2) § 6903 of Title 29 of the Delaware Code [Structuring: Noncompliance with Procurement Law].

(3) § 1211 of Title 11 of the Delaware Code [Official Misconduct].

BE IT FURTHER RESOLVED that the 151st General Assembly directs the President Pro Tempore of the Senate and Speaker of the House of Representatives to set the specific date and time of the hearing and to provide adequate notice of the hearing to the Auditor and members of the General Assembly.

BE IT FURTHER RESOLVED that, as contemplated by the Delaware Supreme Court in its advisory opinion, the 151st General Assembly shall adopt procedural rules for the hearing before it convenes in joint session.

BE IT FURTHER RESOLVED that the 151st General Assembly directs the Secretary of the Senate to send a copy of this Concurrent Resolution to the Auditor immediately following final passage of this Concurrent Resolution.

SYNOPSIS

This Concurrent Resolution provides notice of a hearing on, and the alleged reasonable cause for, the removal, under § 13 of Article III of the Delaware Constitution, of Kathleen K. McGuiness, Auditor of Accounts, following the July 1, 2022 jury verdict of Guilty on counts that include misconduct in office.

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