



SPONSOR: Rep. Lynn

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 5
TO
HOUSE RESOLUTION NO. 10

1 AMEND House Resolution No. 10 by adding after line 78 and before line 79 the following:

2 65. – Removal of an Officer by Bill of Address.

3 FURTHER AMEND House Resolution No. 10 by adding after line 982 the following:

4 Rule 65 – REMOVAL OF AN OFFICER BY BILL OF ADDRESS.

5 (a) Article III, § 13 of the Delaware Constitution provides: “The Governor may for any reasonable cause remove
6 any officer, except the Lieutenant-Governor and members of the General Assembly, upon the address of two-thirds of all
7 the members elected to each House of the General Assembly. Whenever the General Assembly shall so address the
8 Governor, the cause for removal shall be entered on the journals of each House. The person against whom the General
9 Assembly may be about to proceed shall receive notice thereof, accompanied with the cause alleged for his or her removal,
10 at least ten days before the day on which either House of the General Assembly shall act thereon.”

11 (b) In order to proceed with a bill of address seeking to remove an officer, all of the following procedures must be
12 followed.

13 (1) A concurrent resolution must be filed and must include all of the following:

14 a. The name of the officer.

15 b. The cause or causes for removal of the officer.

16 c. The date, time, and place of the hearing to be held wherein the officer may respond to the assertion of
17 reasonable cause.

18 d. The rules and procedure by which the hearing will be conducted.

19 (2) The concurrent resolution must pass both the House and the Senate by a majority vote before a hearing
20 occurs.

21 (3) Notice must be given to the officer no less than 10 days prior to the hearing. The notice must include all of
22 the following:

23 a. The causes for the officer’s removal.

b. The date, time, and place of the hearing.

(4) The hearing must provide the officer with all of the following procedural protections:

a. The right to be represented by counsel.

b. The right to offer and respond to evidence, including witnesses.

c. The opportunity, but not the obligation to testify.

(5) The hearing may be held in either the House or the Senate, or the hearing may be a joint hearing of both the House and the Senate.

(c) The concurrent resolution must specify the parameters of the procedures and rules which will be used at any hearing held in connection with the resolution. The resolution may allow for a predicate investigatory hearing.

(d) Procedures for a predicate investigatory hearing.

(1) Scope and Authority--Hearings shall be governed by the Delaware Constitution and House Rules, and the Committee conducting the hearing may prescribe additional rules not inconsistent with House Rules or the Delaware Constitution.

(2) Notice of Meetings, Meetings and Quorum--The Committee conducting the hearing shall meet at the call of the Committee Chair. Notice of the date, time and place of any hearing shall be provided to the officer subject to the resolution no less than 10 days before the hearing will be held. Notice to an officer subject to the address process shall reference the specific cause or causes alleged for removal. A majority of the members of the Committee conducting the hearing shall constitute a quorum.

(3) Disclosure of Evidence produced at the Hearing--The Chair of the Committee shall establish rules of procedure pertaining to the disclosure of evidence presented to the Committee and may consider the interest of the officer, the nature of the evidence and any other relevant consideration in determining such rules. The Chair shall consult with each Committee member in developing procedures pertaining to disclosure. Consideration shall include whether the provisions of §10004(b) of Title 29 apply.

(4) Special Procedures--Any special procedure the Committee deems necessary to conduct a proper hearing may be adopted by the Committee. Such special procedures shall be transmitted in a timely manner to the officer and any person expected to present evidence.

(5) Preliminary Inquiry into Reasonable Cause for Removal

a. Upon convening, the Committee shall consider whether the cause for removal stated in the resolution constitutes reasonable cause for removal. Reasonable cause means the officer's conduct in connection with the office the officer holds which is: 1) contrary to the public interest; 2) includes misconduct, nonfeasance,

misfeasance, malfeasance, or an act or failure to act when duty requires; or 3) any conduct which reflects the unwillingness or inability of the officer to faithfully discharge the duties of the office. Reasonable cause may also include conduct which has a significant adverse effect on public confidence in the trustworthiness of the officer.

b. The Committee may consider any evidence it deems probative in its deliberations regarding whether the cause stated constitutes reasonable cause to seek removal of the officer.

c. The officer shall be permitted to provide evidence contesting the cause or causes alleged for removal.

d. The Committee shall order witnesses to testify under oath; the oath may be administered by a member of the Committee. The Committee may compel witness attendance and production of documentary evidence pursuant to a subpoena as provided by Rule 11 and § 705 of Title 29.

e. If evidence is produced which supports a finding of a cause for removal not specified in the resolution, the Committee may consider any probative evidence offered in connection with such cause and shall provide the officer notice of such cause and an opportunity to challenge that cause, which may be at an additional hearing.

f. Upon motion, the Committee shall close the record of the preliminary hearing and deliberate on whether the cause for removal stated in the resolution or other cause has been sufficiently established to move forward with an Article III, § 13 hearing on the cause or causes found by a majority of the members of the Committee.

g. If a majority of the Committee members determines that reasonable cause exists to support removal of the officer from office, the Committee shall cause a notice consisting of all the following to be delivered to the officer:

1. The cause or causes found to support removal of the officer.
2. The date, time, and place of the hearing.

h. If a majority of the Committee members fails to agree that reasonable cause exists for removal of the officer, the Committee shall deliver to the Speaker a report indicating that the Committee failed to find reasonable cause for removal of the officer thereby concluding the matter.

(e) The Article III, § 13 Hearing.

(1) The purpose of the hearing is both of the following:

- a. To make specific findings of reasonable grounds for removal of the officer.
- b. Afford the officer the right to challenge the asserted grounds for removal

(2) The Speaker shall open the hearing by stating the authority to conduct the hearing, the purpose of the hearing and the alleged cause or causes for removal.

84 (3) Testimony from witnesses and other evidence directly going to the cause or causes alleged shall first be
85 presented by House counsel. The officer or counsel for the officer may cross-examine those witnesses.

86 (4) If the officer choses to submit testimonial or documentary evidence, the officer may do so. The officer
87 may testify but cannot be compelled to do so.

88 (5) House counsel may be permitted to provide rebuttal evidence in response to evidence produced by the
89 officer.

90 (6) Witnesses shall be examined first by House counsel. House members may then question the witness. The
91 officer or counsel for the officer may cross-examine. Counsel for the Committee and Committee members may cross-
92 examine witnesses offered by the officer. Re-direct and re-cross may be permitted in the Speaker's discretion.

93 (7) Testimony of all witnesses shall be under oath.

94 (f) The burden of proof is on the proponent for removal to demonstrate that the facts alleged are proven clearly and
95 convincingly.

96 (g) Whether the facts proved constitutes a reasonable cause for removal rests with each member.

97 (h) At the conclusion of the hearing, upon motion, the Committee shall vote on the question of whether reasonable
98 cause has been shown to support removal of the officer from office. If a majority of the Committee finds that reasonable
99 cause exists to support removal, the House shall prepare a report setting forth the specific cause for removal, the evidence
100 in support of the cause (including transcripts and other evidence admitted during the hearing) and the recommendation that
101 a joint resolution be introduced requesting the Governor remove the officer from office.

102 (i) A joint resolution requesting that the Governor remove the officer from office must be passed by 2/3 of each House of
103 the General Assembly.

SYNOPSIS

This Amendment adds Rule 65 to the Permanent Rules of the House of Representatives of the 152nd General Assembly. Rule 65 sets forth the procedure by which an officer may be removed from office by a Bill of Address pursuant to Article III, § 13 of the Delaware Constitution.