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Rep. Longhurst & Rep. Viola & Rep. Mitchell &
Rep. M. Smith & Rep. Wilson
Sens. Delcollo, Lopez, McDowell, Pettyjohn, Walsh;
Reps. Baumbach, Briggs King, Collins, Jaques, Kenton,
Osienski, Outten, D. Short

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 25

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE IV OF THE DELAWARE CONSTITUTION
RELATING TO THE APPOINTMENT OF JUDGES.

1 WHEREAS, an amendment to the Delaware Constitution was proposed in the 148th General Assembly, being
2 Chapter 345, Volume 80, Laws of Delaware, as follows:

3 "AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV OF THE DELAWARE CONSTITUTION
4 RELATING TO THE APPOINTMENT OF JUDGES.

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

7 Section 1. Amend Article IV, § 3 of the Delaware Constitution by making deletions as shown by
8 strike through and insertions as shown by underline as follows:

9 § 3. Appointment of judges; terms of office; vacancies; political representation; confirmation of
10 appointment.

11 Section 3. The Chief Justice and Justices of the Supreme Court, the Chancellor and ~~the Vice-~~
12 ~~Chancellor or~~ Vice-Chancellors of the Court of Chancery, the President Judge and Judges of the Superior
13 Court, the Chief Judge and Judges of the Family Court, the Chief Judge and Judges of the Court of
14 Common ~~Pleas~~ Pleas, and the Chief Magistrate of the Justice of the Peace Court shall be appointed by the
15 Governor, by and with the consent of a majority of all the members elected to the Senate, for ~~the~~ a term of
16 12 years each, and the persons so appointed shall enter upon the discharge of the duties of their respective
17 offices upon taking the oath of office prescribed by this Constitution. The Governor shall submit his or
18 her appointment within ~~60 days~~ a period from 30 days before to 90 days after the occurrence of a vacancy
19 howsoever caused. If a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate
20 shall not be in session, the Governor shall within ~~60 days~~ a period from 30 days before to 90 days after
21 the happening of any such vacancy convene the Senate for the purpose of confirming his or her

22 appointment to fill said vacancy and the transaction of such other executive business as may come before
23 it. Such vacancy shall be filled as aforesaid for the full term. Notwithstanding a vacancy, whether
24 occurring when the Senate is or is not in session, an incumbent whose term has expired ~~shall~~ may hold
25 over in office until the incumbent, or a new appointee, is confirmed and takes the oath of office for the
26 next term, but in no event shall an incumbent whose term has expired hold over in office for more than ~~60~~
27 90 days after the expiration of the term. In all ~~instances~~ instances, the term of a new or reappointed
28 Chief Justice or Justice of the Supreme Court, Chancellor or Vice-Chancellor of the Court of Chancery,
29 President Judge or Judge of the Superior Court, Chief Judge or Judge of the Family Court, Chief Judge or
30 Judge of the Court of Common Pleas Pleas, or ~~the~~ Chief Magistrate of the Justice of the Peace Court shall
31 begin after the occurrence of the vacancy and on the date the oath of office is taken, thus qualifying the
32 individual to serve, but the appointment shall be ~~forfeit~~ forfeited if such oath is not taken within 30 days
33 of confirmation.”; and

34 WHEREAS, the proposed amendment was adopted by two-thirds of all members elected to each house of the 148th
35 General Assembly and publicized in accordance with Article XVI, § 1 of the Delaware Constitution.

36 NOW THEREFORE:

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

39 Section 1. Amend Article IV, § 3 of the Delaware Constitution by making deletions as shown by strike through
40 and insertions as shown by underline as follows:

41 § 3. Appointment of judges; terms of office; vacancies; political representation; confirmation of appointment.

42 Section 3. The Chief Justice and Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-
43 Chancellors of the Court of Chancery, the President Judge and Judges of the Superior Court, the Chief Judge and Judges of
44 the Family Court, the Chief Judge and Judges of the Court of Common Pleas Pleas, and the Chief Magistrate of the Justice
45 of the Peace Court shall be appointed by the Governor, by and with the consent of a majority of all the members elected to
46 the Senate, for ~~the a~~ term of 12 years each, and the persons so appointed shall enter upon the discharge of the duties of their
47 respective offices upon taking the oath of office prescribed by this Constitution. The Governor shall submit his or her
48 appointment within ~~60 days~~ a period from 30 days before to 90 days after the occurrence of a vacancy howsoever caused. If
49 a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate shall not be in session, the Governor
50 shall within ~~60 days~~ a period from 30 days before to 90 days after the happening of any such vacancy convene the Senate
51 for the purpose of confirming his or her appointment to fill said vacancy and the transaction of such other executive

52 business as may come before it. Such vacancy shall be filled as aforesaid for the full term. Notwithstanding a vacancy,
53 whether occurring when the Senate is or is not in session, an incumbent whose term has expired ~~shall~~ may hold over in
54 office until the incumbent, or a new appointee, is confirmed and takes the oath of office for the next term, but in no event
55 shall an incumbent whose term has expired hold over in office for more than ~~60 days~~ 90 days after the expiration of the
56 term. In all ~~instances~~ instances, the term of a new or reappointed Chief Justice or Justice of the Supreme Court, Chancellor
57 or Vice-Chancellor of the Court of Chancery, President Judge or Judge of the Superior Court, Chief Judge or Judge of the
58 Family Court, Chief Judge or Judge of the Court of Common ~~Pleas~~ Pleas, or ~~the~~ Chief Magistrate of the Justice of the Peace
59 Court shall begin after the occurrence of the vacancy and on the date the oath of office is taken, thus qualifying the
60 individual to serve, but the appointment shall be ~~forfeit~~ forfeited if such oath is not taken within 30 days of confirmation.

SYNOPSIS

This Act is the second leg of a Constitutional amendment to lengthen the time period during which the Governor must appoint a judicial officer following the occurrence of a vacancy, thereby giving the Governor and State Senate more flexibility in the consideration of vacancies occurring when the State Senate is not in session while preserving the Delaware tradition of quickly filling judicial vacancies. The first leg, Senate Bill No. 275 from the 148th General Assembly, was adopted by two-thirds of the members elected to the General Assembly and publicized in accordance with Article XVI, § 1 of the Delaware Constitution.

From 1897 until 1983, the Delaware Constitution provided that the Governor shall submit his or her appointment to fill a vacancy to a constitutional court within 30 calendar days of a vacancy when the State Senate was not in session. In 1983, the timeframe for the Governor to make an appointment when the State Senate was not in session was lengthened to 60 days, a timeframe for the Governor to make an appointment when the State Senate was in session was added and set at 60 days, and a provision permitting judges to hold over in office for 60 days after their term expired was added. Since 1897, the number of constitutional courts and the number of judges on those courts has increased. As a result, the Governor must now call special sessions of the State Senate for the consideration of judicial nominees more frequently than in the past.

This Act provides more flexibility to the Governor and State Senate in two respects. First, it extends the 60 day period after the occurrence of a vacancy to a 90 day period. The 90 day period strikes a balance between the need to have judicial positions filled quickly to avoid operational disruptions in the court system and the desire to have more flexibility when the General Assembly is not in session. Second, the Act clarifies that the Governor and State Senate may consider a nomination 30 days prior to the occurrence of the vacancy. The Constitution was previously silent on the consideration of nominations prior to the occurrence of a vacancy.

This Act also modifies the time period during which an incumbent judicial officer whose term has expired may hold over in office after the expiration of his or her term from 60 days to 90 days to match the vacancy timeframes. This Act confirms that an incumbent judge whose term has expired has the option to hold over in office for that 90 day period, but is not required to do so.

Finally, this Act makes additional technical corrections to conform existing law on lines 42 through 44, line 46, lines 56 through 58, and line 60 to the guidelines of the Delaware Legislative Drafting Manual.

Author: Senator Henry