SPONSOR: Rep. Lynn & Rep. Longhurst & Rep. Mitchell & Rep. Baumbach & Rep. Bennett & Rep. Bentz & Rep. Bolden & Rep. Brady & Rep. Bush & Rep. Carson & Rep. Chukwuocha & Rep. Cooke & Rep. Griffith & Rep. Heffernan & Rep. K. Johnson & Rep. Kowalko & Rep. Lambert & Rep. Matthews & Rep. Minor-Brown & Rep. S. Moore & Rep. Morrison & Rep. Osienski & Rep. K. Williams & Rep. Wilson-Anton

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE CONCURRENT RESOLUTION NO. 42

REQUESTING AN ADVISORY OPINION OF THE JUSTICES OF THE DELAWARE SUPREME COURT REGARDING THE PROPER CONSTRUCTION OF § 13 OF ARTICLE III OF THE DELAWARE CONSTITUTION AND ENABLING A JOINT COMMITTEE TO DETERMINE THE PROCESS TO BE USED TO REMOVE AN ELECTED OFFICIAL PURSUANT TO § 13 OF ARTICLE III OF THE DELAWARE CONSTITUTION.

WHEREAS, the General Assembly does not believe a General Assembly has ever made a bill of address to the Governor under § 13 of Article III of the Delaware Constitution ("Section 13"); and

WHEREAS, the General Assembly desires the opinion of the Justices of the Delaware Supreme Court on the proper construction of Section 13; and

WHEREAS, § 141 of Title 10 of the Delaware Code authorizes the General Assembly, by a vote of a majority of the members elected to each House, to request an opinion of the Justices of the Delaware Supreme Court regarding the proper construction of any provision of the Delaware Constitution to enable the General Assembly to discharge its duties; and

WHEREAS, the General Assembly needs to develop the procedure to be used to determine if reasonable cause exists for the removal of an elected official pursuant to § 13 of Article III of the Delaware Constitution.

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives of the 151st General Assembly of the State of Delaware, the Senate concurring therein, that the General Assembly requests the opinion of the Justices of the Delaware Supreme Court as to the following:

(1) May "reasonable cause" under Section 13 include an indictment returned by a grand jury?

(2) Does the authority under Section 13 to remove a public official implicitly include the authority to take a lesser action, such as suspension of that public official? If Section 13 does implicitly include the authority to take a lesser action, must the General Assembly address the Governor on the lesser action or can the Governor choose to take a lesser action than that addressed to the Governor?

(3) Does the application of Section 13 require a hearing on the matter prior to a vote in either House to address the Governor to remove an officer?

a. If the application of Section 13 requires a hearing, must each House hold a hearing prior to its respective vote to address the Governor, or does a hearing in the first House satisfy the requirement?

b. If the application of Section 13 requires a hearing in each House, would a joint hearing satisfy the requirement?

c. If the application of Section 13 requires a hearing, what are the elements that must be satisfied? For example, must the person against whom each House seeks to proceed be provided the opportunity to attend the hearing, to be represented at the hearing by counsel, to testify at the hearing, to call witnesses, or to introduce evidence at the hearing?

(4) Does Section 13 require a 10-day notice for only the first House to take action, or are separate notices required for each House? If Section 13 requires separate 10-day notices for each House's action, may those notices be issued concurrently, or must the second House issue its notice only after the first House has acted pursuant to its respective notice?

(5) Is there a mechanism for an appeal of the decision by the Governor to remove a public officer under Section 13?

BE IT FURTHER RESOLVED that the General Assembly directs the President Pro Tempore of the Senate and the Speaker of the House of Representatives to forward a copy of this Concurrent Resolution to the Justices of the Delaware Supreme Court within 5 days of final passage of this Concurrent Resolution.

BE IT FURTHER RESOLVED that the General Assembly directs the President Pro Tempore of the Senate and the Speaker of the House of Representatives to forward a copy of this Concurrent Resolution to the Governor within 5 days of forwarding a copy of this Concurrent Resolution to the Justices of the Delaware Supreme Court.

BE IT FURTHER RESOLVED that the Delaware Supreme Court is requested to provide answers to the General Assembly's specific requests on or before December 17, 2021.

BE IT FURTHER RESOLVED that on or before December 17, 2021, the Judiciary Committee of both the House of Representatives and Senate shall meet jointly to determine all of the following:

(a) The process to be used by the House of Representatives and the Senate pursuant to Article III, § 13 for the General Assembly to decide if reasonable cause exists for the removal of an elected official.

(b) The procedural due process the House of Representatives and the Senate must afford to an elected official subject to Article III, § 13 removal.

(c) A suitable date for a hearing for removal of any elected official subject to Article III, § 13 proceedings, which shall include the issuance of proper notice.

SYNOPSIS

This Concurrent Resolution requests an advisory opinion of the Justices of the Delaware Supreme Court regarding the proper construction of § 13 of Article III of the Delaware Constitution. This Resolution also tasks the Judiciary Committee of the House and Senate who shall meet jointly on or before December 17, 2021 to determine the process to be used to decide if reasonable cause exists for the removal of an elected official pursuant to § 13 of Article III of the Delaware Constitution.