



SPONSOR: Sen. McBride & Rep. Valihura ;
Sen. Sokola, Bonini & Reps. Maier, Wagner

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 7

AN ACT PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF DELAWARE, RELATING TO LEGISLATIVE AUTHORITY AND PROVIDING FOR INITIATIVE AND REFERENDUM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE 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 Article II of the Constitution of the State of Delaware by striking Section 1 in its entirety, and substituting in lieu thereof the following:

“§1. Legislative Authority; Initiative and Referendum

Section 1. The legislative authority of the State shall be vested in a General Assembly, consisting of a Senate and a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the General Assembly; and they also reserve, for use at their own option, the power to approve or reject at the polls any statute, law, resolution, item, or section, or any part of an Act or resolution of the General Assembly.”

Section 2. Amend Article II of the Constitution of the State of Delaware by adding thereto a new section, designated as Section 26, which new Section shall read as follows:

“§26. Initiative

Section 26.(a) Registered electors of this State may, by written petition known as an Initiative, propose legislation to the General Assembly for its consideration. An Initiative may be directed or addressed to the General Assembly or to either House thereof, and shall be filed with the State Election Commissioner; provided however, that any Initiative for the raising of revenue shall be directed only to the House of Representatives. To be valid, an Initiative shall be signed by a number of registered electors equal to not less than five percent of the total number of electors who voted in the general election immediately preceding the filing of the Initiative, and shall be filed not later than five months prior to a general election.

(b) The Commissioner, after verifying the signatures of an Initiative, shall transmit the proposed legislation to the Senate or to the House of Representatives. The Commissioner shall verify Initiative

21 signatures within two weeks after filing of the Initiative. If the Commissioner has not verified Initiative
22 signatures within two weeks from the filing of the Initiative he shall make and retain a true copy and forward
23 the original Initiative, by mail or by personal delivery, to the House to which the Initiative is directed. If
24 within a week after the Initiative has been forwarded, the Commissioner finds that the Initiative does not
25 contain the required number of valid signatures, the Initiative shall be immediately returned to its initiators for
26 correction.

27 (c) At the expiration of one week from the time the petition has been forwarded from the Commissioner,
28 all signatures not challenged and disallowed shall be deemed verified, and shall not be subject to challenge
29 thereafter. Each verified petition shall be introduced, as legislation, in the House to which it has been
30 directed. The House in which an Initiative is to be introduced shall, upon receipt, prepare it in the same
31 manner as other legislation is prepared for introduction. When introduced, the primary or principal sponsor of
32 the proposed legislation shall be "by Initiative." Any legislator may add his name as a co-sponsor, but co-
33 sponsors are not necessary. The General Assembly may enact or fail to enact an Initiative; may amend the
34 Initiative; or may enact separate legislation relating to the primary intent or subject matter contained in the
35 Initiative.

36 (d) Where the General Assembly enacts separate legislation, such separate legislation may complement
37 the Initiative, or may be enacted as a substitute to replace the Initiative. If a bill which fully and completely
38 complies with an Initiative is enacted by the General Assembly without change it shall become law, and shall
39 not be subject to ratification by the electors. The Attorney General shall determine whether or not the
40 amended form of any Initiative or any substituted legislation complies, or conflicts with, or is incompatible
41 with, the intent of an Initiative filed during the same General Assembly.

42 (e) Where initiated legislation was not enacted into law, the Initiative petition shall be placed on the
43 ballot for the next subsequent general election following the date of its filing. If it receives a majority of the
44 votes cast, it shall become law. Where the Attorney General determines that the legislation enacted by the
45 General Assembly conflicts with or does not comply with the provisions of the initiative petition, both the
46 petition and the enacted initiative legislation shall be placed before the electorate in the next general election.
47 Each conflicting proposal shall be presented on a ballot in such manner that electors can choose between
48 them, or reject all such proposals. Between those conflicting or incompatible proposals on the same subject,
49 the one which receives the largest number of affirmative votes shall become law, unless all are rejected.

(f) The total votes cast for and against competing proposals shall be counted, canvassed and returned in the same manner as is prescribed for the election of State officers. In lieu of placing competing provisions on the general election ballot as set forth above, the General Assembly may, by Act, order that a special election shall be held in the next following November following enactment, on a date determined by the Commissioner. The veto power of the Governor shall not extend to any initiated legislation enacted by the General Assembly which is ratified at a general election.”

Section 3. Amend Article II of the Constitution of the State of Delaware by adding thereto a new section, designated as Section 27, which new section shall read as follows:

“27. Referendum

Section 27.(a) No legislation shall become effective until after the expiration of a sixty-day suspension period immediately following enactment of such legislation into law; provided however, that emergency legislation which stipulates within the legislation that it is immediately necessary for the preservation of the public health or safety, or is immediately necessary for the continuance of State government, shall not be suspended. No legislation which creates or abolishes any office or agency; which changes the compensation, term, or duties of any State officer; which grants any franchise or special privilege; which adds or which increases any fee, assessment, or civil penalty; or which creates any vested right or interest shall be enacted as emergency legislation. Although not subject to the sixty-day suspension period, emergency legislation is nevertheless subject to possible repeal by the referendum process.

(b) An act or resolution shall be subject to referendum if more than one percent of the registered electors of this State request by a referendum petition that the Act or resolution, or any part thereof, be subject to a referendum; provided however, that the referendum petition shall first be timely filed with the State Election Commissioner during the sixty-day suspension period. The Commissioner shall verify all signatures, and shall approve any referendum petition which has the required number of valid signatures. When a referendum petition has been timely filed, the legislation to which it relates shall not become effective until such legislation is approved by the electors in the next immediate general election.

(c) A petition which has been filed within the suspension period, but which is later determined by the Commissioner not to have the required number of valid signatures, has nevertheless been timely filed if it meets all other requirements. A timely petition which does not have the required number of signatures shall be returned to its sponsors for correction. If the corrected petition is filed with and approved by the Commissioner not less than one hundred and twenty days prior to the date of the next general election, the

80 legislation to which it relates shall be subject to a referendum vote at such general election. Where the Act
81 subject to a referendum is a proposed Constitutional amendment, the referendum shall be held at the general
82 election immediately following passage of either the proposing or the concurring portion of said
83 Constitutional amendment.

84 (d) When legislation submitted to the electors of this State in a referendum vote is not approved by a
85 majority of those voting in the election it shall, at the expiration of thirty days following such election, be
86 automatically repealed, and the Governor shall issue a proclamation giving notice of such repealer.
87 Otherwise, it shall become effective when the results of the general election are officially proclaimed or
88 should have been proclaimed, unless the legislation itself provides differently. Where a referendum petition
89 relates to emergency legislation, such legislation shall remain in force and effect until the election, but if
90 rejected it shall be automatically repealed thirty days thereafter.

91 (e) Referendum votes shall be counted, canvassed and returned in the same manner as is prescribed for
92 the election of State officers. Nothing in this Section shall be interpreted as limiting or restricting in any
93 manner the rights and powers of the General Assembly, through legislation, to place any specific matter
94 before the voters in a special referendum. Except as is set forth otherwise within the legislation itself, any
95 such special referendum shall conform to the provisions of this Section.”

96 Section 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such
97 invalidity shall not affect other provisions nor applications of this Act which can be given effect without the invalid
98 provision or application, and to that end the provisions of this Act are declared to be severable.

99 Section 5. After this proposed Constitutional amendment has been first agreed to by two-thirds of all members elected
100 to each House, the Governor may, at his discretion, request the Justices of Supreme Court to determine the constitutionality
101 of this proposed Constitutional amendment.

102 Section 6. The General Assembly may by appropriate legislation provide such additional laws as are necessary to
103 effectively carry out the provisions of this Act.

SYNOPSIS

This Act provides for Initiative and Referendum. There are two forms of Initiative: direct and indirect. In the direct Initiative procedure, when there is a sufficient number of signatures on the petition, the initiated proposal is automatically assigned space on the ballot for the next forthcoming election. In the indirect Initiative procedure, the proposal is first placed before the General Assembly for study and possible amendment. However, inaction or disapproval by the General Assembly does not prevent the placing of the proposal on the ballot for the public’s approval or rejection. This Act provides for an indirect Initiative.

Under this Act, the right of Referendum is confined to a 60-day period immediately following the enactment of legislation into law. Thus, except for emergency legislation, those Acts which presently become effective upon signature would become effective 60 days after signature unless made subject to a referendum. Non-emergency legislation which is affected by a valid referendum petition remains suspended until the next immediate general election, when it is approved or rejected. Legislation

subject to a referendum vote becomes effective at the same time as all other results of the general election.

Author: Senator McBride