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HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 380

AN ACT PROPOSING AMENDMENTS TO THE DELAWARE CONSTITUTION RELATING TO CONTINUITY OF
GOVERNMENTAL OPERATIONS.

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

1 Section 1. Amend Article II, § 5 of the Delaware Constitution by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 5. Place of meeting.

4 Section 5. The General Assembly shall meet and sit in Dover, the capital of the State; provided, however, that in
5 ~~case of insurrection, conflagration or epidemic disease~~ periods of emergency resulting from enemy attack, terrorism,
6 disease, accident, or other natural or man-made disaster the General Assembly may temporarily meet and sit elsewhere.

7 Section 2. Amend Article XVII, § 1 of the Delaware Constitution by making deletions as shown by strike through
8 and insertions as shown by underline as follows:

9 § 1. Continuity of state and local governmental operations in periods of emergency ~~resulting from disasters caused~~
10 ~~by enemy attack.~~

11 Section 1. The General Assembly, in order to insure continuity of State and local governmental operations in
12 periods of emergency resulting from ~~disasters caused by enemy attack, terrorism, disease, accident, or other natural or man-~~
13 made disaster, shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the
14 powers and duties of public offices whose immediate succession is not otherwise provided for ~~in~~ by this Constitution, of
15 whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for
16 carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for
17 insuring the continuity of governmental operations. In the exercise of the powers ~~hereby conferred~~ conferred by this
18 section, the General Assembly shall in all respects conform to the requirements of this Constitution except to the extent that
19 in the judgment of the General Assembly ~~so to do to do so~~ would be impracticable or would ~~admit of~~ cause undue delay.

SYNOPSIS

This Act is the first leg of a constitutional amendment that would alter the continuity of government provisions of the Delaware Constitution to enable the effective continuance of government following a variety of emergency situations.

Currently, Article II, § 5 of the Delaware Constitution requires the General Assembly to meet in Dover, unless an emergency caused by insurrection, conflagration, or epidemic diseases occurs. And, Article XVII, § 1 of the Delaware Constitution provides the General Assembly with the power to enact laws providing for continuity of government following emergency situations, but only if the emergency results from an enemy attack.

Section 2 of this Act extends the General Assembly's authority under Article XVII, § 1 to disasters involving terrorism, disease, accident, and other natural or man-made disasters. This would authorize the General Assembly to extend the provisions of Chapter 77 of Title 29 of the Delaware Code (relating to the emergency location of government), Chapter 17 of Title 29 (relating to emergency interim legislative succession), Chapter 78 of Title 29 (relating to interim executive succession), and Chapter 18 of Title 10 (relating to emergency interim judicial succession) to emergencies involving terrorism, disease, accident, or other natural or manmade disasters, as well as those involving enemy attack. This change is consistent with the approach taken in at least four states, New York, Louisiana, Montana, and Utah, which have adopted an "all hazards" approach to continuity of government planning.

In addition, Section 2 of this Act makes changes to Article XVII, § 1 adopting the interpretation of this provision by the Delaware Supreme Court in *Opinion of the Justices*, 190 A.2d 521 (Del. 1963), so that it is clear that the General Assembly may provide for succession for those public offices that are not immediately filled by operation of the Constitution.

Section 1 of this Act would harmonize Article XVII, § 1 and Article II, § 5 so that the emergency situations exempting the General Assembly from the requirement that it meet in Dover are similar to the emergency situations in which the General Assembly may enact laws or otherwise act to provide for the continuity of government.

Finally, this Act makes technical corrections to conform existing law to the guidelines of the *Delaware Legislative Drafting Manual*. Specifically, lines 17 through 19 of this Act remove unnecessary legalese in and make grammatical changes to the final sentence of Article XVII, § 1.