

Senate Executive Committee Meeting

**Official Minutes
151st General Assembly
First Session**

**Committee Meeting
Wednesday, January 27, 2021
3:00 p.m.
Virtual Zoom Meeting**

Meeting Attendance

Committee Members Present:

Senator David Sokola	David.Sokola@delaware.gov
Senator Bryan Townsend	Bryan.Townsend@delaware.gov
Senator Elizabeth Lockman	Elizabeth.Lockman@delaware.gov
Senator Stephanie Hansen	Stephanie.Hansen@delaware.gov
Senator Gerald Hocker	Gerald.Hocker@delaware.gov
Senator Brian Pettyjohn	Brian.Pettyjohn@delaware.gov

Absent:

None

Staff:

Valerie McCartan	Valerie.McCartan@delaware.gov
Abigail Armstrong	Abigail.Armstrong@delaware.gov

Attendees:

Rep. Paul Baumbach
Sen. Stephanie Hansen
Sen. Sarah McBride
Sen. Trey Paradee
Shauna Barnes
Tianna Beckles
Shaku Bhaya
Matt Bittle
Bailey Brooks
Rebecca Byrd
Linda Carmichael
Kevin Carson
Jesse Chadderdon
John Cordrey

Organization:

Delaware House of Representatives
Delaware Senate
Delaware Senate
Delaware Senate
Delaware Brewer's Guild
Office of the Governor
DP Law
Delaware State News
Ruggerio Willson
Byrd Gomes
Delaware Superior Court
Sussex County Vo-Tech School District
Delaware Senate Majority Caucus
Office of the Alcoholic Beverage Control Commission

Tammy Croce	DASA
Emily Cunningham	Department of Education
Mary Davis	Ned Davis Associates, Inc.
Caitlin Del Collo	Delaware Senate Majority Caucus
Deborah Gottschalk	Delaware General Assembly
Taylor Hawk	Delaware Senate Majority Caucus
Sydney Hyer	DCADV
Lori James	Office of the Governor
Jan Jurden	Delaware Superior Court
Craig Karsnitz	Delaware Superior Court
Kathi Karsnitz	House Majority Caucus
Rebecca Kidner	Rebecca Kidner, P.A.
Deanna Killen	Delaware Senate Minority Caucus
Carolyn Martin-Pettaway	Delaware Senate Majority Caucus
Audrey Noble	Delaware State Board of Education
Jon Offredo	Office of Defense Services
Robert Overmiller	RDO Refrigeration
Nicole Polite	Office of Management and Budget
Stephanie Rash	Delaware Senate
Jeffrey Raffel	University of Delaware
Keri Rapa	Delaware General Assembly
Janet Roberson	State of Delaware
Robert Robinson	Public Defenders Office
Roger Roy	Roy Associates
Kathleen Rutherford	Rebecca Kidner, P.A.
Misty Seemans	Office of Defense Services
Read Scott	Senator Bryan Townsend/ Senator Marie Pickney
Mary Sherlock	Delaware House of Representatives
Andrew Slater	Division of the Public Advocate
Jason Smith	Delaware General Assembly
Claire Snyder-Hall	Common Caucus Delaware
Sandy Spence	League of Women Voters of Delaware
Melissa Steele	Cape Gazette
Karen Sullivan	New Castle County
Paul Thornburg	Teamsters Local 326
Nick Wasileski	Delaware Coalition for Open Government
Eric Williams	Delaware Department of Transportation
Kim Willson	Ruggerio Willson
Natalie Woloshin	Delaware House of Representatives

Agenda:

Senate Substitute for Senate Bill No. 52
House Bill No. 11
House Bill No. 35
House Bill No. 51
House Bill No. 46
House Bill No. 63
Senate Bill No. 27

Senator Sokola convened the meeting at 3:00 p.m. and conducted a roll call.

Senator Pettyjohn motioned to accept the previous meeting's minutes and **Senator Lockman** seconded that motion.

The Committee approved the minutes from the previous meeting (01/19/2021).

I. SS 1 for SB 52 – Sen. Hocker – AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE SUSSEX COUNTY VOCATIONAL-TECHNICAL HIGH SCHOOL DISTRICT.

SYNOPSIS: This Act revises Chapter 26 of Title 14, regarding the Sussex County Vocational-Technical High School District ("District") by doing all of the following: 1. Revises the tax rate for the District and clarifies the acceptable use for the tax revenue. 2. Repeals § 2602(b) of Title 14 because the Tax Rate Review Committee has not been active in decades and it has effectively been replaced by the citizen budget oversight committee created under § 1508 of Title 14. 3. Revises the number of students who may be enrolled in the District. 4. It creates a preference for student admissions for children of members of the District's Board of Education. 5. Revises academic eligibility by requiring that accepted students remain academically eligible for promotion under the standards established by the Department of Education. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Senator Hocker, the prime sponsor of the legislation, stated that Sussex County legislators frequently meet with Sussex County Vocational-Technical High School and Dr. Kevin Carson, Superintendent of the School District. The school has made efforts to return to its original purpose. This legislation allows the school to add 50 students per year for four years and increases the tax rate by 1 cent per year for three years. The tax rate would eventually be 29.5 cents per \$100 of assessment, which is less than the original 30 cents. This legislation allows the school to fulfill its role and provide contractors with skillful employees.

Senator Sokola recognized Senator Pettyjohn.

Senator Pettyjohn explained that many conversations occurred the past week regarding concerns and the proper formation of the legislation. Senator Pettyjohn thanked Senator Hocker for his work on the legislation and suggested that Dr. Kevin Carson can answer any questions.

Senator Sokola commented that there was concern about the legislation due to the history. Fortunately, Senator Lockman raised some legitimate questions and Senator Sokola is glad they were addressed. Senator Sokola noted there will be lingering apprehensions because of how quickly the legislation is moving, but he is thankful for those concerns and questions being addressed. Senator Sokola recognized Senator Lockman.

Senator Lockman thanked Senator Pettyjohn for being receptive to certain issues and quick to remediate them.

Senator Sokola recognized Robert Overmiller.

Robert Overmiller is in full support of the legislation. He stated that since the issues at Sussex Technical School District were addressed, the school can move forward.

Senator Sokola thanked Dr. Kevin Carson for his efforts and recognized him.

Dr. Kevin Carson, Superintendent of Sussex Technical School District, thanked the legislation's sponsors and those involved in conversations to form the legislation. Sussex Technical School District needs to move forward. This legislation is a gradual way to proceed and to continue to meet the needs of employers in Sussex County.

SS 1 for SB 52 – Reported out of the Committee – 2= Favorable 4= on its Merits 0= Unfavorable

II. HB 11 – Rep. Baumbach – AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO NEW CASTLE COUNTY PROPERTY TAX RATES.

SYNOPSIS: This Act represents the work and recommendations of the Local Service Functions Task Force created by House Concurrent Resolution No. 54 of the 150th General Assembly (“Task Force”). The Task Force held 17 meetings during 2019 and 2020 and after considerable research and discussion, the members of the Task Force unanimously approved recommending these changes to the New Castle County budgeting process. In order to implement these changes for the Fiscal Year 2023 budget (“FY 23 Budget”), the first deadline in this Act that New Castle County must meet is January 31, 2021. This Act revises the process by which the New Castle County tax rate for owners of real property in municipalities is calculated so that the tax rate more fairly attributes the cost of services to property owners in municipalities and the unincorporated area. This Act is modeled on the process that has been used successfully

in Prince George's County Maryland for several decades. This Act does not affect mutual aid agreements because mutual aid agreements do not impact property tax rates. This Act creates 2 processes to determine the degree that a local service function ("LSF") is fully or partially performed or financially supported by a municipality instead of New Castle County and to calculate the property tax rate for real property in each municipality based on that determination. There is 1 process for fire company contributions and 1 process for all other local service functions. The process for fire company contributions was enacted by House Bill No. 264 of the 150th General Assembly ("HB 264") and is already in effect. This Act creates the process for all other local service functions, which will be implemented beginning for New Castle County's FY 23 Budget and allows time for the necessary calculations and the development of forms and procedures. There are 3 different effective dates in this Act. The sections that are effective immediately and on January 1, 2022, keep current law in effect for the Fiscal Year 2022 budget ("FY 22 Budget") process while allowing the new process to be developed and implemented for the FY 23 Budget. The sections that are effective July 1, 2022 reorganize and revise provisions for clarity and to apply to future budgets. Specifically, this Act does all of the following: Section 1 takes effect immediately and revises current law to update definitions and make technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual beginning for the FY 23 Budget. Sections 2 and 4 take effect immediately and create new subparts of Subchapter III of Chapter 11 of Title 9 to create a clear subpart for local service function calculations and a clear subpart for general budget sections. Section 3 takes effect immediately and creates a new process to calculate the property tax rate for real property in municipalities for local service functions other than fire protection beginning for the FY 23 Budget. The range of services that can be local service functions is substantively unchanged, but where current law anticipates that a municipality provides all or none of a service, this Act recognizes that there are different degrees of performance of a service, some of which may be provided by a municipality, and some which are provided by New Castle County. The new process to calculate the property tax rate for local service functions is similar to the process for fire protection but does not consider the municipality's cost and is based on New Castle County's cost to provide the local service function, reduced by fees, grants, and other revenue that supports the specific service and increased by applicable indirect costs. This Act creates specific calculations that New Castle County will use to determine the county property tax for real property in a municipality based upon the municipality's degree of performance of a service that New Castle County would provide if the municipality did not. This Act also creates a specific process, with deadlines, that New Castle County and municipalities will use during each budget cycle to determine the individual LSF tax rate for real property in each municipality. This Act also creates a binding, non-appealable dispute resolution process for disputes regarding New Castle County's level of service determinations. Sections 5 through 9 take effect on January 1, 2022. Sections 5 through 8 revise current sections of Title 9 to be consistent with the new process and terminology enacted in Sections 1 and 3 of this Act. Under this Act, New Castle County must adopt the individual LSF tax rates for real property in municipalities as part of the annual budget

process. These Sections also make technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. Section 9 creates the Local Service Function Review Committee. The Local Service Function Review Committee will meet annually to review the LSF calculation procedure and prepare a report that includes any recommendations for improvements. Section 10 takes effect on July 1, 2022, and revises Chapter 11 of Title 9 to remove the interim provisions and provide for all of the following: 1. Revises and clarifies how to determine if performance of a LSF should be used to calculate the property tax rate in a municipality. There are no changes to current law regarding how responsibility for starting or stopping a specific LSF is transferred between a municipality and New Castle County. This Section updates whether a municipality or New Castle County is responsible for all or part of a LSF by setting the baseline as how responsibility is set forth in New Castle County's approved budget for FY 23 Budget, which is based on agreement between New Castle County and each municipality or the arbitration panel's determination of any dispute. Future changes in whether a municipality or New Castle County perform all or part of a LSF, other than fire protection which is financially supported but not directly performed by a municipality, are handled as follows: A. If New Castle County performs the LSF under the FY 23 Budget and a municipality subsequently begins performing the LSF, then the municipality and New Castle County may pass ordinances transferring responsibility for performance of the LSF to the municipality. B. If a municipality performs the LSF under the FY 23 Budget and later desires to stop performing the service, then the municipality and New Castle County may pass ordinances transferring responsibility for performance of the LSF to New Castle County. C. If a municipality performs the LSF under the FY 23 Budget and later desires to increase or decrease its degree of performance, then the municipality provides notice to New Castle County by August 1 to be effective for New Castle County's next fiscal year. D. If a municipality performs a service that is included in the New Castle County General Operating Budget, the municipality may request that the service be classified as a LSF and the municipality may demand arbitration if New Castle County and the municipality cannot reach agreement. E. If New Castle County establishes a new LSF, the annual negotiation and dispute resolution process will apply if a municipality performs that service. 2. Transfers the fire service provisions from § 1102(e) of Title 9 to § 1126(c) of Title 9 so that all local service function calculations are in the same section. 3. Revises deadlines in § 1128 of Title 9. The deadlines enacted in Section 3 of this Act reflect the additional time needed to transition to the new process. This section revises the deadlines so they are appropriate for the budget process once this new process is established. This section also revises §§ 1101A, 1125, 1126, and 1128 of Title 9 to repeal the language providing that provisions are effective beginning for the FY 2023 budget that was necessary to keep current law in effect for the FY 22 Budget process while allowing the development and implementation of the new process.

Representative Baumbach, the prime sponsor of the legislation, thanked the Committee and Senator Sokola for participating in the task force which led to the legislation's creation. This legislation revises the calculation process for the New Castle County tax rate for owners of property in municipalities. This is to ensure the tax rate

more fairly attributes the cost of services to property owners in municipalities and unincorporated areas. Except for fire protection, the new process will determine the degree to which the services provided as a local service function, such as police protection, are fully or partially performed or financially supported by a municipality. This determination is used to calculate the tax rate for real property in each municipality. This process will apply credit to the municipality's monetary or in-kind contributions for volunteer fire companies' operating expenses against the share of property tax grants New Castle County provides.

Senator Sokola noted that this legislation does not change tax rates. This sets forth the process in which you calculate what is a fair allocation from a municipality that performs a service at a local level and is also performed at the County level. Senator Sokola recognized Senator Hocker.

Senator Hocker asked if this legislation came from the elected officials of New Castle County.

Representative Baumbach stated elected officials were included in the task force membership. The task force included county administration, specifically the county executive, whose staff they heavily relied on. The County administration and council provided a resolution in support of the legislation.

HB 11 – Reported out of the Committee – 1= Favorable 5= on its Merits 0= Unfavorable

III. HB 35 – Rep. Longhurst – AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE BEHAVIORAL HEALTH PROFESSIONAL OF THE YEAR.

SYNOPSIS: This Act establishes a Behavioral Health Professional of the year award program throughout the State. Through this legislation, the state will formally honor and recognize the work behavioral health professionals, such as, school counselors, social workers, licensed clinical social workers, school psychologists, and school nurses.

Senator Sarah McBride, a sponsor of the legislation, stated the legislation would provide an award to honor the amazing work of behavioral health workers in Delaware. Senator Pinkney and Representative Longhurst are leading this legislation. We have witnessed behavioral health workers on the front lines addressing the ongoing challenges Delaware is facing. This legislation seeks to honor behavioral health workers' contributions to Delaware and its residents.

Senator Sokola recognized Robert Overmiller.

Robert Overmiller supports the legislation and believes it is a good idea to finally honor the hard work of behavioral health workers in Delaware.

HB 35 – Reported out of the Committee – 4= Favorable 2= on its Merits 0= Unfavorable

IV. HB 51 – Rep. Lynn – AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO DRIVING A VEHICLE WHILE UNDER THE INFLUENCE.

SYNOPSIS: This Act clarifies Delaware’s driving under the influence (“DUI”) law related to intensive inpatient or outpatient drug and alcohol treatment for felony DUI offenders. The current law has resulted in differing interpretations regarding treatment; specifically, whether treatment must be completed while incarcerated (Level V) or at home confinement (Level IV), rather than at community supervision (Level III or Level II). This has resulted in extending incarceration for some offenders or requiring out-of-state offenders to reside in Delaware to complete the mandated drug and alcohol abstinence program and drug and alcohol treatment program under § 4177(d)(9) of Title 21. Specifically, this Act clarifies when the required intensive inpatient or outpatient drug and alcohol treatment, as approved by the Court or the Department of Correction, can take place. The required program may be completed while the offender is on any level of supervision, not just Level V or IV. The treatment program may also be completed by an offender after arrest and prior to adjudication. permits the Superior Court to sentence felony DUI offenders to commence intensive treatment at any level of supervision, including community supervision. This Act also requires offenders to complete treatment within 9 months of the date of sentence or the date of release from Level V or Level IV, unless the Superior Court has granted the offender an extension for good cause. If an offender does not complete the treatment as required, the Superior Court must impose the portion of the minimum sentence suspended by the Court for the offender’s participation in the program.

Senator Hansen, a sponsor of the legislation, noted this legislation came from the Public Defender’s office and suggested Misty Seemans, an Assistant Public Defender in Wilmington, could provide commentary and information. This legislation applies to those who are both incarcerated at a level 4 or 5 and enrolled in a substance abuse treatment plan, and who have to continue their completed sentencing to finish their treatment. This legislation would allow offenders to continue treatment but at a lower level of supervision. This would also allow offenders to complete the treatment before an arrest and after adjudication. This is to help those individuals who are incarcerated for no other reason than that their treatment has not ended.

Senator Sokola recognized Senator Pettyjohn.

Senator Pettyjohn asked if there would be any discontinuity or interruption in an offender’s treatment when decreasing from level 5 to a level 4 program.

Senator Hansen requested Misty Seemans to testify.

Senator Sokola recognized Misty Seemans.

Misty Seemans, an Assistant Public Defender in Wilmington, stated this legislation focuses on those who are arrested for DUI, but more specifically those who are DUI third offenders and have to serve a mandatory 90 days. Those 90 days do not allow a DUI offender time to complete a DUI treatment at level 5 so this legislation allows them to complete it in the community. This legislation will also allow offenders to complete their treatment before or after adjudication or after sentencing. This will not disrupt any treatment because it can be completed before or after an actual conviction. For those most affected by this legislation, DUI third offenders, this provides treatment under community supervision following their 90-day sentencing. Also, it is dependent on the Judge's discretion to determine what level of Department of Correction treatment the offender would receive. Level 5 is incarceration, Level 4 is home confinement center, and Levels 2 and 3 are community-level probation. The Judge will have more discretion regarding at what level the offender will complete the program, but Misty Seemans does not believe this would disrupt any treatment at Level 5. This legislation provides an opportunity to complete treatment at a lot of different stages in the criminal justice process.

HB 51 – Reported out of the Committee – 2= Favorable 4= on its Merits 0= Unfavorable

V. HB 46 – Rep. Bush – AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO ALCOHOLIC LIQUORS.

SYNOPSIS: Currently the Delaware Code does not permit alcoholic beverage license holders to brew hard seltzers or other non-malt-based products that they are otherwise allowed to brew as a result of obtaining a Federal Brewer's Notice. This Act permits Delaware brewery-pub and microbrewery license holders to brew, bottle and sell hard seltzers and other fermented beverages made from malt substitutes and includes specific tax on fermented beverages. The language of the Act also mirrors the federal definition of a malt-substitute product.

Senator Paradee, a sponsor of the legislation, noted the increase in popularity of seltzer alcoholic beverages in liquor stores. Most of these products are being made outside of Delaware. The current language of the Delaware Code specifies Delaware brewing companies are not allowed to produce these products. Some Delaware brewers are interested in producing these products.

Senator Sokola recognized Kim Willson.

Kim Willson, deferred her time to Shauna Barnes stating she is an expert in this space. Ruggerio Willson works closely with the Delaware Brewers Guild and this is a great thing for Delaware breweries.

Senator Sokola recognized Shauna Barnes.

Shauna Barnes, Delaware Brewers Guild, provided information on the legislation. Under the current Delaware Code, breweries are only allowed to make drinks made from malted barley and hard seltzers are made from fermented sugar. Under the federal code, brewers are allowed to make those drinks, but they are not under the state code. This legislation uses the federal definition and applies it to the rights regarding Delaware's legal brewing rules. This legislation allows brewers to make anything that would be a future malt substitute. As long as brewers are federally allowed to brew the product, they would be allowed to brew it in Delaware. This legislation will provide more revenue for Delaware brewing companies, which is especially important during the pandemic.

Senator Townsend asked about the production process and timeline for this product.

Shauna Barnes stated production would begin as soon as possible. Once the brewers can source the ingredients, it is fermented and flavored and sent to distributors within a month. This will help revenues during the pandemic, and the sooner the legislation is passed the sooner they can provide this product.

Senator Sokola recognized Eric Williams.

Eric Williams, Legislative Chair for the Brewers Guild and owner of Elk River Brewing Company and Brick Works Brewing and Eats, supports the legislation. This allows all breweries to grow their business.

HB 46 – Reported out of the Committee – 4= Favorable 2= on its Merits 0= Unfavorable

I. HB 63 – Rep. Matthews – AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE CHILDHOOD LEAD POISONING PREVENTION ACT.

SYNOPSIS: This Act requires the Department of Health and Social Services to provide staff support for the Childhood Lead Poisoning Advisory Committee. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Senator Sarah McBride, a sponsor of the legislation, provided a summary. HB 87 in the 150th General Assembly reinstated the Childhood Lead Poisoning Advisory Committee which has met since August 2019. That legislation did not specify which agency would

staff the Committee and as a result, a House aide has staffed the Committee since its start. An attorney determined the Committee is an executive branch body and so this legislation corrects that technical oversight in the original legislation and identifies the Department of Health and Social Services as the staffing agency.

Senator Sokola recognized Sandy Spence.

Sandy Spence, a member of the Childhood Lead Poisoning Advisory Committee, thanked Senator McBride for the legislation. The Advisory Committee had wonderful staffing and the members are looking forward to working with someone in DHSS. She pointed out that Delaware does not provide any direct support for dealing with childhood lead poisoning. Delaware is the only state on the east coast that does not have state funding for childhood lead poisoning. This is further discussed in the Committee's upcoming report. Currently, there is no funding available for a staff person to do this, and the Committee will have to use someone who is paid for under some other source. The Committee does have two federal grants that support what they do under childhood lead poisoning but wanted to point this out as a potential request to the Joint Finance Committee.

HB 63 – Reported out of the Committee – 4= Favorable 2= on its Merits 0= Unfavorable

VI. SB 27 – Sen. Sokola – AN ACT PROPOSING AN AMENDMENT TO ARTICLE II OF THE DELAWARE CONSTITUTION RELATING TO THE COMPOSITION OF THE HOUSE AND SENATE.

SYNOPSIS: This Act is the first leg of a constitutional amendment that repeals the provisions regarding legislative districts that were found unconstitutional in the 1960s by the Supreme Court of the United States and the United States District Court for the District of Delaware. Sections 2 and 2A of Article II of the Delaware Constitution are unconstitutional because these sections do not apportion seats in the General Assembly so that each vote is equal. This constitutional amendment also repeals § 2B of Article II of the Delaware Constitution because the only purpose of § 2B is to clarify that § 2A of Article II does not impact how delegates are elected to a Constitutional Convention under § 2 of Article II. This Act replaces the unconstitutional provisions with the existing redistricting requirements established under Chapter 8 of Title 29, which meet the requirements under the Constitution of the United States. Specifically, the requirements for legislative districts are as follows: 1. The House of Representatives is comprised of 41 members, chosen for 2-year terms. 2. The Senate is comprised of 21 members, chosen for 4-year terms, except that terms are staggered at the first biennial general election following redistricting so that 10 Senators are elected for 2-year terms and 11 Senators are elected for 4-year terms. 3. The General Assembly must determine the boundaries of legislative districts using the following criteria: contiguous territory; nearly equal in population; bounded by major roads, streams, or other natural boundaries; and do not

unduly favor any person or political party. 4. The General Assembly must redistrict whenever necessary after each federal decennial census. This Act also repeals the obsolete process in the Constitution that has the Governor and chairs of 2 political parties conduct the redistricting. Current law does not provide a specific process by which the General Assembly redistricts legislative districts, so this Act provides the General Assembly with the power to enact general laws establishing rules and procedures for redistricting. This Act requires a greater than majority vote for passage because § 1 of Article XVI of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the Delaware Constitution. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Senator Sokola, the prime sponsor of the legislation, provided a summary. It was recognized that Delaware has a process of reapportionment for legislative districts that were ruled unconstitutional in the 1960s. This legislation would remove the unconstitutional language and substitute language that is constitutional and accurately reflects what the General Assembly does. Senator Sokola tabled the bill, and a committee meeting on the bill will be scheduled for after the Joint Finance Break. Senator Sokola is reviewing testimonies that have been submitted for any revisions that may be necessary for the legislation. (Submitted testimonies are attached to these minutes.)

Attached, please find testimony on SB 27 submitted by the following:

- Sandy Spence, LWV
- Dwayne Bensing, ACLU
- Claire Snyder-Hall, Common Cause of DE
- Nick Wasileski, DE Coalition for Open Gov't submitted this statement: "Adding 'transparent process' or 'transparency' in the bill might be a good idea. For example, future redistricting laws will provide public transparency in the decision making processes so the public understands how the legislative boundaries are determined."

Senator Townsend motioned to adjourn the meeting and **Senator Lockman** seconded that motion.

Senator Sokola adjourned the meeting at 3:58 p.m.

*Meeting minutes approved on Wednesday, March 10, 2021 on a motion by Sen. Pettyjohn, seconded by Sen. Lockman, and with no objection from members of the Committee



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Testimony on SB 27 Redistricting

Background. Partisan and racial gerrymandering distorts and undermines representative democracy by allowing officials to select their voters rather than voters to select their officials. When done for purposes of racial discrimination or to ensure the dominance of one political party, or even to ensure the election of a specific legislator, gerrymandering runs counter to equal voting rights for all.

For much of the League's history, redistricting has been considered a state and local issue, but as state Leagues have become more active -- and the political gerrymandering of the U.S. Congress and state legislative districts have become more apparent -- LWVUS has provided assistance and, in the 2014- 2016 biennium, developed a nationwide position statement.

Even before that, the National Board affirmed that Leagues should work to achieve three goals consistent with a variety of existing positions: "(1) Congressional districts and government legislative bodies should be apportioned substantially on population ("one person, one vote", which is a federal constitutional requirement in any case); (2) Redistricting should not dilute the effective representation of minority citizens; and (3) Efforts that attempt or result in partisan gerrymandering should be opposed."

Since 2006, LWVUS has been active in seeking additional reforms to meet various measures of fairness and transparency, including participation in several legal cases that are transforming many redistricting practices around the country.

In response to the unfortunate Supreme Court determination in 2019 that the high court had no role in partisan redistricting, the LWVUS initiated a 50-state plus D.C. campaign for "People Powered Fair Maps." LWVDE is an active participant in that campaign and you will be hearing from us throughout the current redistricting process here in Delaware.

Comments on SB 27. The League of Women Voters of Delaware applauds those parts of SB 27 that repeal arcane provisions of the state's constitution that were found unconstitutional by the Supreme Court of the U.S. in the 1960's. We believe, "it's about time!"

Aside from the total disregard for population standards in the districts defined in the current Constitution, the references to "hundreds" as the basis for legislative districts is an anachronism that currently has no meaningful use or purpose except as a geographical point of reference. The reference to "hundreds" as they are called, comes from the times when Delaware and Maryland were colonial holdings of Great Britain. Delaware alone retains the use of "hundreds", but they have no relevance in the procedures for redistricting.¹

¹ https://en.wikipedia.org/wiki/List_of_hundreds_of_Delaware



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January 27, 2020

Members of the Senate Executive Committee:

I write on behalf of the ACLU of Delaware in response to SB 27 which would amend the Delaware Constitution regarding redistricting. While the ACLU does not endorse any specific redistricting proposal, we believe the following two general principles should guide any redistricting process:

PRINCIPLE 1: Redistricting reforms should encourage transparency to reduce the risk of undue partisanship in the redistricting process.

Therefore:

- The redistricting body should create opportunities for public hearing and comment, both during the redistricting process and after the final district map has been adopted; and
- The redistricting body should develop a report that summarizes the redistricting process, specific line-drawing decisions, and the basis for those decisions—particularly the redistricting criteria used and any deviations from those criteria. That report should incorporate the views of the members of the redistricting body itself, staff, and the public.

PRINCIPLE 2: Redistricting reforms must be structured to prevent minority vote dilution. Therefore:

- Any proposal to place redistricting decision-making in the hands of a particular body should include procedures designed to encourage diversity within that body, in a manner that reflects the diversity of Delaware as a whole;
- Opportunities for public hearing and comment should include multilingual outreach to minority communities; and,
- Any list of redistricting criteria must prioritize minority voting rights principles – including the prevention of minority vote dilution – above “neutral” redistricting criteria such as compactness or adhering to political subdivision lines.

The General Assembly should consider these principles and recommendations as it moves forward on redistricting reform. We look forward to working with the General Assembly to ensure that implementing legislation reflects these principles.

Sincerely,

Dwayne J. Bensing

Staff Attorney*

*Not yet admitted to practice law in DE

Public Comment for Senate Executive Committee Meeting on SB 27

Jan. 27, 2021

From: Common Cause Delaware

Contact: Claire Snyder-Hall, Director, CSnyder-Hall@commoncause.org, 302-604-1647

For more than 50 years, Common Cause has been a nonpartisan, grassroots organization seeking to protect and strengthen our democracy at all levels. We now have more than 1.5 million members nationwide and over 6600 in Delaware.

Common Cause believes that redistricting should be fair, transparent, non-discriminatory, and politically impartial, and we want to ensure that those values are reflected in any redistricting amendment. In our democracy, voters should choose their representatives, not the other way around. That is why we strongly support an independent redistricting process. We also believe that during this tumultuous time, when everyday people have lost trust in government, it is important to have a redistricting process that reassures voters that districts are not rigged to favor incumbent politicians, but instead respect the integrity of communities and the value of every voice being heard on election day.

Common Cause Delaware supports amending the Constitution to bring Delaware redistricting criteria in line with the requirements laid out by the United State Supreme Court, which SB 27 does. However, we do have two concerns about the current language of the bill.

First, because this is a constitutional amendment, we want to ensure that the language in this amendment does not preclude the option of future redistricting reform. While the current language does not necessarily bar the General Assembly from delegating the redistricting function to an independent redistricting commission, it could be interpreted that way in years to come. We worry about the possibility that a future decision by the US Supreme Court might remove some of the authority of state legislatures to delegate or that the amendment might be exploited by opponents of independent redistricting, who could misinterpret the proposed language in a way not intended by the sponsors of SB 27. Thus, we recommend revisiting this language to ensure that this constitutional amendment cannot be used to tie the hands of future legislators.

Second, it is important that the criteria be expanded to include protections to keep communities together. Communities should be the building blocks of districts and holding them together will make it more likely that voters can elect representatives who share their lived experience and values. Inclusion of this criteria will ensure that lines would not be drawn in a way that divides authentic communities, such as the college community around UD or the small town of Rehoboth, because those areas are authentic communities with shared interests and their boundaries should be respected.