



DIVISION OF RESEARCH

MEMORANDUM

To: Interested Parties
From: Mark Cutrona, Director of the Division of Research
Date: 10/20/20
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Re: Veto Override Procedures

While veto overrides were common in the 1950s, with 55 overridden vetoes out of a total of 59 vetoes issued in the mid-1950s,¹ a vote on a veto override has not occurred since 1990.² This memorandum explores the appropriate procedures to be used by the General Assembly following the Governor's return of a bill with objections, which constitutes a veto under the Delaware Constitution.

Article III, § 18 of the Delaware Constitution governs the veto and veto override process. Section 18 provides, in pertinent part:

Every bill which shall have passed both Houses of the General Assembly shall, before it becomes law, be presented to the Governor; if he or she approves, he or she shall sign it; but if he or she shall not approve, he or she shall return it with his or her objections to the House in which it shall have originated, which House shall enter the objections at large on the journal and proceed to reconsider it. If, after such reconsideration, three-fifths of all the members elected to that House shall agree to pass the bill, it shall be sent together with the objections to the other House, by which it shall likewise be reconsidered, and if approved by three-fifths of all the members elected to that House, it shall become a law; but in neither House shall the vote be taken on the day on which the bill shall be returned to it. In all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each House respectively.

¹ Carol Hoffecker, *Democracy in Delaware: The Story of the First State's General Assembly* 203 (Cedar Tree Books 2004).

² Del. H.J., 135th Gen. Assem. 199-200 (1990). Our librarian, Sara Zimmerman, found information relating to the last known successful veto override, which occurred on July 6, 1977, when the House and the Senate voted to override Governor Pierre S. du Pont's veto of House Bill No. 300, as amended by House Amendment No. 27 and Senate Amendment No. 1 (the Fiscal Year 1978 Budget).

A reading of § 18, as supplemented by Delaware case law, House and Senate Rules, and *Mason's Manual of Legislative Procedure* (“*Mason's*”), reveals that the reconsideration of a vetoed bill by the house in which a vetoed bill originated (“house of origin”) should proceed as follows:

1. The house of origin may not take a vote to override a Governor’s veto “on the day on which the bill shall be returned to it.”³ In 1963, § 18 was amended to include a provision stating:

For purposes of return of Bills not approved by the Governor the General Assembly shall be considered to be continuously in Session until final adjournment and the Clerk of the House of Representatives and the Secretary of the Senate shall be deemed proper recipients of such returned bills during recess or adjournment of the General Assembly other than final adjournment.⁴

Thus, when the General Assembly is in recess or adjournment, other than final adjournment, “the day on which the bill shall be returned to it” likely means the calendar day on which the bill is returned to the Chief Clerk of the House or the Secretary of the Senate.⁵ The vetoed bill may then be considered on any calendar day between the calendar day after it is received and the statewide general election day falling during the second session of a General Assembly, which is the date of final adjournment unless the General Assembly has adjourned *sine die*.⁶ In addition, it should be noted that § 18’s requirement that “in neither house shall the vote [to override a veto] be taken on the day on which the bill shall be returned to it” covers only the house of origin; it has no application to the House to which the bill is sent once the house origin votes to override the veto (“second house”).⁷ Thus, the second house could consider a bill the house of origin has overridden the veto of immediately after a vote by the house of origin to override a veto.

³ Del. Const. art. III, § 18.

⁴ See 54 Del. Laws, c. 11 (1963). This provision was enacted in response to *Opinion of the Justices*, 175 A.2d 405 (Del. 1961), sometimes referred to as the “First Pocket Veto Opinion.”

⁵ See *Opinion of the Justices*, 405 A.2d 694, 698 (Del. 1979) (Finding that “the General Assembly is always in session for ‘veto purposes,’ until ‘final adjournment.’”).

⁶ See *Id.* (Final adjournment occurs by the “adjournment sine die of the second regular session, or, in the absence of such adjournment, the extinguishment of the particular General Assembly by reason of the expiration of the terms of office of the members, whichever is earlier in point of time”) and *Opinion of the Justices*, 330 A.2d 764, 768 (Del. 1974) (Where the Court stated that the terms of office of members begins on the day next after their election, so the terms of those previously holding the position expire simultaneously.).

⁷ *Seeney v. State*, 277 A.2d 670, 674 (Del. 1971)(citing *In re Session Laws*, 121 A. 736 (N.J. 1923), in which the New Jersey Supreme Court construed a similar provision of the New Jersey Constitution and found that the use of the word “returned” in reference to the Governor’s action and “sent” in reference to the House of origin’s action in transmitting notice of its override to the other House indicated an intention on the part of the Framers that the House of origin be prevented from voting to override the veto on the day it was returned by the Governor and that no such limitation applied to the other House upon receipt of the notice of the veto override by the House of origin.).

2. The House of Representatives and the Senate should read the Governor’s entire veto message in open session, especially when a veto override is contemplated. As indicated in § 18, “the house shall enter the [Governor’s] objections at large on the journal.”⁸ While this provision contemplates only publication in the journal, during the override of House Bill No. 300 in July 1977, both the House of Representative and the Senate read the entire veto message from the Governor in open session. The House of Representatives, the house in which House Bill No. 300 originated, read the veto message twice; once on the legislative day it first convened following the Governor’s veto (the day the Governor’s veto was actually returned to it)⁹ and once on the legislative day it voted to override the Governor’s veto.¹⁰ The Senate read the entire veto message once; on the legislative day it voted to override the Governor’s veto.¹¹ A review of veto override procedures in Maine and Minnesota, states with the similar constitutional provisions as Delaware’s Article III, § 18, indicates that the General Assemblies in those states also read the Governor’s veto message in open session. Therefore, it is recommended that both the house of origin and the second house read the Governor’s entire veto message in open session, especially when a veto override is contemplated.

3. A veto message received should be read during the communications portion of the order of business on the next legislative day the house of origin is in session.¹²

4. After the veto message is read, the vetoed bill may be brought before the house of origin.¹³ To bring the vetoed bill before the house of origin, a member should seek recognition by the presiding officer.¹⁴ If the day on which the veto message is read in the house of origin is a day after the veto message was received by it, the member should seek recognition immediately following the reading of the veto message. If the day on

⁸ Del. Const. art. III, § 18.

⁹ Del. H.J., 129th Gen. Assem. 377-381 (1977).

¹⁰ *Id.* at 383-387.

¹¹ Del. S.J., 129th Gen. Assem. 341-345 (1977).

¹² *Mason’s Manual of Legislative Procedure*, Sec. 755-3., at 526 (National Conference of State Legislatures 2010 ed.) (“Legislation returned by the executive with objections is usually considered promptly . . .”).

¹³ *Id.*, Sec. 148-4. at 116 (“When a communication . . . is received, it may be acted upon as any other business.”).

¹⁴ *Id.*, Sec. 155-1. at 119 (“Generally, any member who has been recognized by the presiding officer may present a motion or other proposal to the body.”). See also House Rule 14(a) (150th Gen. Assem.) and Senate Rule 17(a) (150th Gen. Assem.).

which the veto message is read in the house of origin is the day it was received by it, the member should wait until the next calendar day and then should seek recognition at an appropriate time during the order of business.

When recognized, the member should: (1) begin by indicating that he or she would like to propose the following question to the Chamber: “Shall the [House or Senate] repass [insert legislation type and number] notwithstanding the objections of the Governor?” and (2) request that the legislation be read by title only prior to debate or a vote on the question.

Once the legislation has been read by title only, the question is before the house of origin for consideration, and, as a main motion,¹⁵ is debatable.¹⁶ During this time, it is appropriate to make certain other motions, including motions to adjourn, recess, table, postpone to a day certain, or commit to committee, as these motions take precedence over the question.¹⁷ Alternatively, it would be in order for a member to make other motions regarding the vetoed bill, including a motion to commit the vetoed bill to committee, a motion to table consideration of the vetoed bill, or a motion to postpone consideration of the vetoed bill until a day certain.

It should be noted that a suspension of the House or Senate Rules is not required, as the House and Senate Rules are directed at the initial passage of legislation, not its repassage following a veto. Further, the Delaware Constitution specifically calls for the body to reconsider a vetoed bill.¹⁸ Finally, other states do not suspend rules prior to overriding a veto. However, in 1977, both Chambers of the General Assembly suspended their rules prior to the override of the Governor’s veto of House Bill No. 300. The suspension of rules required during the 1977 veto override was erroneous, counter to the Constitution, and should not be required in the future.

¹⁵ The question to override a Governor’s veto is a main question because “[a]ll general questions of a substantive are main questions” and “[m]ain questions or main motions before a legislative body usually relate to the final disposition of bills or certain resolutions that, upon approval, become law” See *Mason’s*, Sec. 179-1. and 2. at 141.

¹⁶ *Mason’s*, Sec. 63-3. and 4. at 54. (“3. Members have a right to debate main questions subject to the right of the body itself to limit or restrict debate. 4. All main questions, amendments, and appeals are debatable because they represent substantive questions requiring the judgment of the group.”).

¹⁷ *Id.*, Sec. 175-6 at 134, Secs. 176 to 178 at 134-141, and Sec. 187 at 146-149 (Regarding the type of motions that take precedence over a main motion.). See also House Rule 40 (150th Gen. Assem.).

¹⁸ See Del. Const. art. III, § 18 (The Governor “shall return [the vetoed bill] with his or her objections to the House in which it shall have originated, which House shall enter the objections at large on the journal and proceed to reconsider it.”). Absent a specific House or Senate Rule governing the handling of vetoed legislation, or a specific requirement in the rules that the rules for passage apply on repassage, one can argue that the House and Senate Rules do not apply.

Additionally, it should be noted that *Mason's* states, "the further consideration of [a vetoed bill] is not itself a reconsideration in the parliamentary sense"¹⁹ This means that a motion to reconsider is not the appropriate mechanism by which to reconsider the vetoed legislation.²⁰

5. The vote on the motion to repass, or override the Governor's veto, must be taken by "the yeas and nays" and passage requires the affirmative vote of three-fifths of all the members elected to that House.²¹ A three-fifths vote equates to 25 affirmative votes in the House of Representatives and 13 affirmative votes in the Senate.

6. If the vetoed bill repasses in the house of origin, that house must send the bill with the Governor's objections to the second house, which must then follow many of the same procedures outlined in this memorandum to override the Governor's veto.²² If the second house concurs, the vetoed bill becomes law.²³ If the house of origin fails to override the veto, the second house may not consider it.

¹⁹ *Id.*, Sec. 458 at 305.

²⁰ However, as also provided by *Mason's*, "a vote taken on further consideration of [a vetoed bill], whether in the affirmative or negative, can be reconsidered." *Id.* In Delaware, such a vote to reconsider would be subject to House Rule 41 or Senate Rule 12 regarding motions for reconsideration.

²¹ Del. Const. art. III, § 18. See also *Mason's*, Sec. 530-4. at 362 (Indicating that the "yeas and nays" means a roll call vote.).

²² *Id.*

²³ *Id.*