

## CHAPTER 3: THE LEGISLATURE

(General Assembly)

<http://legis.delaware.gov>



Legislative Hall – Dover, Delaware

Delaware's state capitol is known as Legislative Hall. As the name implies, it is largely the domain of the legislative body with the Governor's presence consisting solely of ceremonial offices. It is a red brick building erected in 1933 to replace the old State House, which had been in use since colonial times. Expansions and renovations completed in 1998 have provided more office space and hearing rooms that better serve the needs of a present day legislative body. To schedule a tour of Legislative Hall, call 302-739-5656.

### History

Delaware's Legislature, also called the General Assembly, has always had bicameral organization (two formal bodies). Under the Constitution of 1776, the forerunners of the present Senate and House of Representatives were referred to as the "Council" and "House of Assembly," but with the Constitution of 1792, the present names were adopted. At that time, three senators and seven representatives were elected from each county. In addition to age and residency requirements, it was necessary for members to have a freehold estate (own property). Under the Constitution of 1831, the freehold requirement was dropped for representatives; it continued to be a requirement for senators until the Constitution of 1897. The constitution of 1897 also recognized the significance of Delaware's largest city by granting separate representation to Wilmington. The composition of the General Assembly was changed to give the city two of seventeen senators and five of thirty-five representatives. Other than that, equal representation for counties rather than population continued until the 1964 U.S. Supreme Court decision (one man, one vote). This altered the complexion of the General Assembly from rural to suburban domination.

## **Present Composition**

The Legislature consists of a 21-member Senate and a 41-member House of Representatives. All representatives stand for election every two years. Senators are elected to four year staggered terms. If a vacancy occurs in either chamber, a special election is held in the specific district to select a successor to finish the remaining term.

Both chambers are apportioned by population. Current law provides that districts should be compact, contiguous territory and as nearly equal in population as possible; should be bounded by roads, streams or other natural boundaries; and should not be created to unduly favor any person or political party. The conformation of the House and Senate changes every ten years when reapportionment is done by the legislature after conclusion of the new United States' census. Between each reapportionment, ten senatorial districts hold elections on a 2-4-4 basis and eleven on a 4-4-2 schedule.

Roughly two-thirds of the senators and representatives are from New Castle County but district boundaries do not adhere strictly to municipal or county lines.

## **The Legislators**

In order to be a member of the Delaware General Assembly, a person must be a citizen of the United States, have been a Delaware resident for three years, and have lived in the district at least one year preceding the election. Senators must be at least 27 years of age and representatives must be at least 24.

Legislators serve on a part-time basis and most have other employment. Dual office holding is somewhat limited by Section 14, Article II of the state constitution, but government employees and public school teachers are eligible.

The constitution provides that any legislator who has a personal and private interest in a measure before the General Assembly must disclose the fact and not vote on that measure. It should be noted that the vote for passage of legislation is based on the number of those elected to each chamber, not the number present and voting. Members are also subject to laws against receiving unlawful gratuities or bribes, profiteering, and official misconduct, and must file annual financial reports with the State Public Integrity Commission (see Boards and Commissions) on the same basis as other state officials, both elected and appointed. Each chamber is required by law to have an Ethics Committee which may look into breaches of conduct, to be followed with appropriate recommendations by the respective chamber (see Legislative Powers).

In 1975 the state constitution was amended to allow legislators to set their own salaries when adopting the budget. In 1985 the Delaware Compensation Commission was established. This commission consists of five appointed members who may not be officials or full time employees of the state. Two members are appointed by the Governor, one by the President Pro Tem of the Senate, one by the Speaker of the House and one is a member of the Delaware Business Roundtable, a non-profit group of about forty high-ranking executives who are involved in education reform, economic development and other select issues. The director of the Office of Management and Budget serves as an ex-officio and non-voting member. The purpose of the commission is to study the remuneration of all state officials, judges, and cabinet secretaries, and to establish a rate of pay for each. The rates established become effective unless rejected by the General Assembly within thirty days of its report. The last report was submitted in January 2005 and the recommendations went into effect. Between

commission reports, legislative pay rates continue to be adjusted through the budget process with increases about equal to the percentages established for state employees.

Compensation rates for the fiscal year ending June 30, 2007:

Members - \$42,750 per annum plus \$7,334 expense allowance

Additional allowances:

Speaker of the House and Senate President Pro Tem - \$19,893

Majority and Minority Leaders - \$12,376

Majority and Minority Whips - \$7,794

Chair and Vice Chair, Joint Finance Committee - \$11,459

Member, Joint Finance Committee - \$9,626

Chair and Vice Chair, Capital Improvement Program Committee - \$4,578

Member, Capital Improvement Program Committee - \$3,852

Chair and Vice Chair, Joint Sunset Committee - \$4,578

Member, Joint Sunset Committee - \$3,852

### **Legislative Sessions**

Following each general election, a new General Assembly is established for the following two years. Legislation introduced but not acted upon during the first year is carried over to the second year but not beyond. Bills are marked by number for the current General Assembly. Under the state constitution, the legislature must convene annually on the second Tuesday in January and adjourn by midnight June 30. In practice, it immediately goes into "special session" until the early morning hours. Between regular sessions, either one or both chambers can be called into special session by the Governor or presiding officers. If the legislature is called into session after the November election but before January, the newly elected representatives and senators are convened.

All sessions are open and must be held in Legislative Hall except in circumstances that would make it impossible. The public may observe from the second floor gallery when the chambers are meeting, but can go onto the "floor" to talk with legislators before or after the session breaks when the doors are open.

A quorum of a simple majority (one more than half) is necessary to conduct business, but attendance is expected and legislators seldom miss a session. The vote for passage of legislation is based on the number of those elected to each chamber, not the number present and voting - 11 in the Senate and 21 in the House and higher if a super majority is required. Therefore, if a bare quorum is present unanimous agreement of those present is necessary for passage and those bills requiring a supermajority could not be passed (see Votes Required to Pass Legislation).

By House and Senate rules both chambers meet on Tuesday, Wednesday and Thursday afternoons. Additional and late night sessions are common when the press of business is urgent, particularly near the end of the session when much legislation is considered. Both chambers recess in February and early March while the Joint Finance Committee conducts hearings and studies the Governor's proposed annual budget. The committee meets again in the spring and finally for budget "mark up," usually the end of May.

The order of business is prescribed by the rules of each chamber. Sometime during each day there is usually a break for party caucuses. Wednesday (currently) is set aside for standing committee meetings, which are open to the public; caucuses are not.



The Senate starting its session with the pledge of allegiance

### **Legislative Powers**

The General Assembly has broad powers subject only to the limits imposed by the federal and state constitutions. It is the general lawmaking body of the state, controls state finances, and may investigate state agencies. By passing identical legislation in two successive General Assemblies, it can amend the state constitution. (There is no provision for popular referendum in Delaware.) It also votes on ratification of amendments to the U.S. Constitution.

Gubernatorial appointees who are paid \$500 or more per year are subject to Senate confirmation. Each chamber may determine its own rules, judge the election of its members, punish members for improper behavior, and with concurrence of two-thirds of all members, expel a member.

In the event of a tie in the popular vote for Governor or Lt. Governor, a joint committee of the House and Senate settles the election. As in the federal government, the House of Representatives has the sole power of impeachment with the trial being conducted by the Senate.

### **Legislative Organization**

Each chamber of the Legislature is organized by Democratic and Republican party affiliation. The party with the most members in either house is known as the majority party and the other as the minority party. They sit on opposite sides of the Senate and House chambers, and by tradition, the majority gets the window side. Meetings of the legislators of each party within each chamber are referred to as the party caucus. Unlike sessions of the General Assembly, caucus meetings are not open to the public except by invitation.

Both houses organize on the first day of the new General Assembly. Rules, or at least temporary rules, are adopted through resolution. The House elects one of its members to serve as Speaker. In the Senate, the Lt. Governor serves as the presiding officer, but a President Pro Tem

is elected and presides during sessions when the Lt. Governor is absent. Both the Pro Tem and the Speaker are selected by their respective majority caucuses and confirmed by resolution adopted by their entire respective bodies. These positions are considered the most significant in the Legislature. Other leadership positions, the Majority and Minority Leaders and Whips, are elected by each party. Their basic duty is to guide legislation through to either passage or defeat as determined desirable by their respective caucuses. The five people serving in these positions in each house are generally referred to as "The Leadership."

Each chamber has standing committees consisting of members of both parties. The chairman of each committee is always a member of the majority party. Committee assignments are made by the Pro Tem or Speaker in consultation with the majority and minority leadership. Lists of committees and their membership can be obtained from the Office of Legislative Council. The committees review legislation as assigned to them by their presiding officers, work with cabinet departments on legislation, and take up any other related matters deemed appropriate.

There are also four standing joint committees (chairmanship alternates between chambers):

**Joint Finance Committee** (see also Legislative Procedure) consists of six members of the House Appropriations Committee and 6 members of the Senate Finance Committee. The committee holds hearings and reviews the operating budget proposed by the Governor. After deliberation, the committee prepares the final budget bill and the grants-in-aid bill for presentation to and vote by the full membership of the General Assembly.

[http://www.legis.state.de.us/Legislature.nsf/Lookup/CGO\\_JFCDescription](http://www.legis.state.de.us/Legislature.nsf/Lookup/CGO_JFCDescription)

**Bond Bill Committee** (Joint Committee on the Capital Improvements Program) consists of members appointed from both the House and Senate. The committee holds hearings and reviews the capital improvements program proposed by the Governor and prepares a final program for presentation to and vote by the full membership of the General Assembly.

**Joint Sunset Committee** consists of the Senate Sunset Committee and the House Policy Analysis and Government Accountability Committee. It is a ten-member legislative body composed of 5 members of each committee. Its basic function is to provide periodic review of the performance and activities of various state boards, commissions, and other agencies as determined by law. The committee must determine whether or not there is a genuine need for the agency under review, and if needed, determine if the agency is correctly performing to meet the need. The committee recommends continuance, termination or changes for the agencies reviewed.

[http://www.legis.state.de.us/Legislature.nsf/Lookup/JSC\\_Home](http://www.legis.state.de.us/Legislature.nsf/Lookup/JSC_Home)

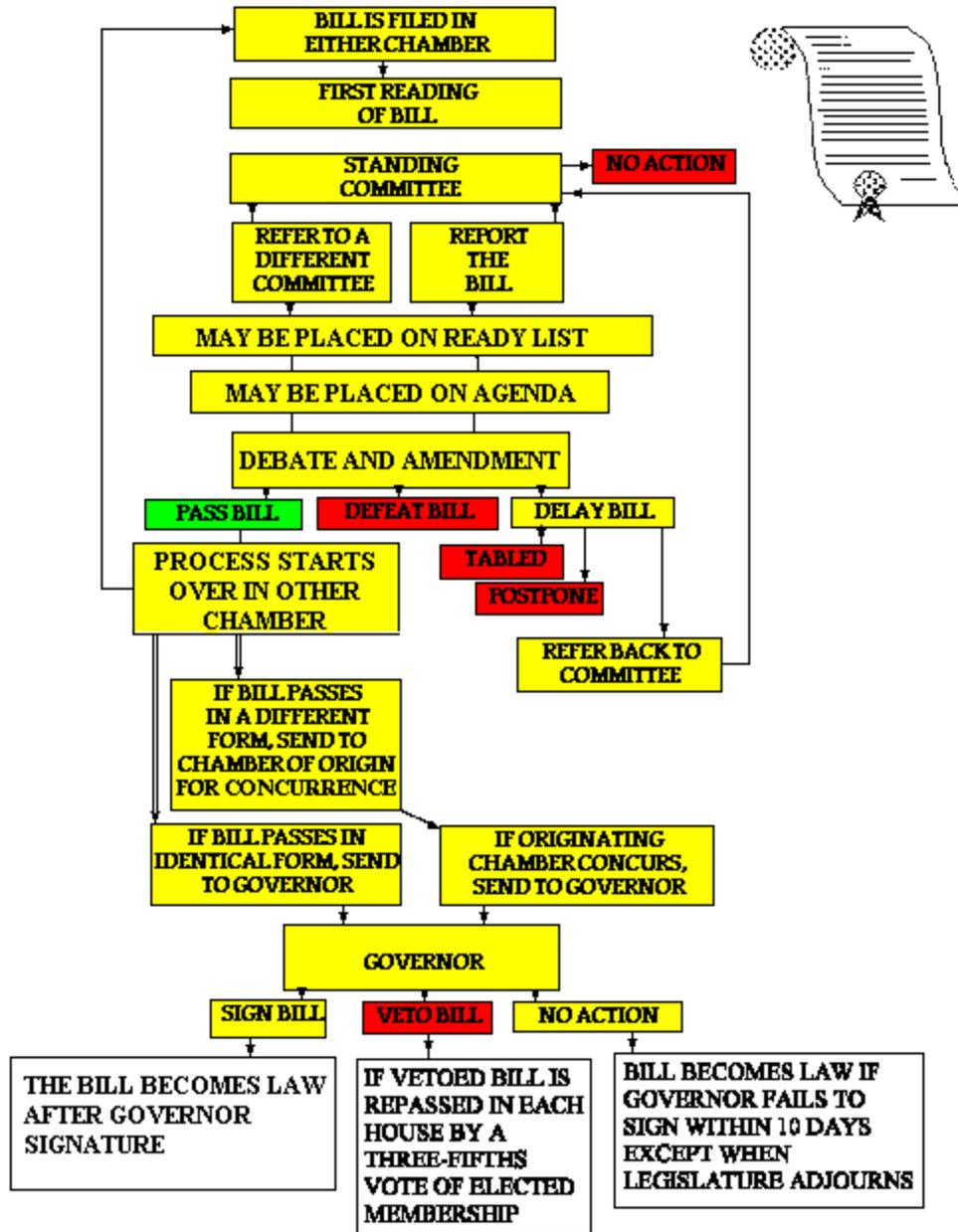
**Legislative Council** consists of the leaders of the House and Senate, provides for technical and clerical assistance to the General Assembly and distributes legislative information to the public through a full time staff (see following Legislative Council for further information).

### **Legislative Procedure**

How a bill becomes a law:

[http://legis.state.de.us/Legislature.nsf/Lookup/Bill\\_Process?open&nav=leginfo](http://legis.state.de.us/Legislature.nsf/Lookup/Bill_Process?open&nav=leginfo)

# How A Bill Becomes A Law



**RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES PROVIDE FOR OCCASIONAL EXCEPTIONS TO THIS PROCESS**

The steps that legislation must follow from introduction to passage are set forth in the House and Senate rules adopted for each biennium. Normally all legislation is assigned for review by a standing committee in its chamber of origin. Any bill which authorizes expenditures not previously authorized within the annual budget for the fiscal year in which the expenditure is to be incurred includes a three-year fiscal projection, called a "fiscal note," prepared by the Controller General's office.

The time and place of most committee meetings is announced in advance and posted in Legislative Hall. They usually appear on the General Assembly's web page - <http://www.legis.state.de.us> - and in the newspaper's Legislative Record. This posting includes a listing of bills and other matters to be considered. The public may attend and normally has an opportunity to testify. If a bill has a great deal of public interest widely publicized hearings may be held.

After a bill has been reviewed, it can be "reported" by a vote of the majority of the members of the committee and is placed on the "Ready List." The daily agenda of bills to be considered by the entire membership of the House or Senate is developed from this list. If the majority of committee members do not agree to release the bill, it remains in committee. It cannot be considered by the full chamber except by a vote to suspend rules, or by a little used procedure known as "petitioning" which requires a majority of signatures of all members of the chamber. Bills that have been passed are delivered to the other chamber where they follow the same procedure. When a bill reaches the full House or Senate for debate, any amendments that have been introduced are considered first and voted upon. Then the bill as amended is debated and voted by roll call in both houses. Uncontested bills or resolutions listed on a Consent Agenda can be voted on as a unit to save time.

#### **Legislative Role in the Budget Process**

When the Governor gives the budget address to the General Assembly in late January, it begins a process that does not end until late June when the final financial package is adopted. During the intervening months, attention is paid to revenue estimates presented by the Delaware Economic and Financial Advisory Council (DEFAC). This is a high level council consisting of economists from academia and members of the legislature, administration, and business community. It is their duty to prepare estimates of revenues and expenses for the current and next fiscal years and to submit reports to the Governor not later than the 25th of September, December, March, April, May, and the 20th of June. The Governor submits these reports to the Legislature, and the June 20th report, made official by Resolution of the General Assembly, becomes the basis for the final financial package, developed by the Joint Finance and Bond Bill Committees in consultation with the leadership and the Governor's office.

**Proposed Budget:** Immediately after the budget address, the operating portion of the Governor's proposed budget is introduced as a bill and assigned to the Joint Finance Committee (JFC) for review. Public hearings are held in which departmental and agency officials explain their financial needs. The public may also attend and comment. In late May, the committee begins "mark up" sessions to develop the final version of the annual operating appropriations bill which will be presented to the full General Assembly for adoption. The latter sessions are not generally open meetings.

**Bond Bill:** The bill authorizing the long term capital improvement program is known as the Bond Bill, so named because it authorizes the sale of general obligation and revenue bonds. A large portion of capital expense is funded from special funds and current revenues. It is initially the Governor's proposal and is then reviewed by the Bond Bill Committee which follows a procedure similar to that of the JFC but does not meet until after the JFC has completed the major portion of its deliberations.

**Grants-in-Aid:** A third piece of legislation associated with the budget process is the Grants-in-Aid bill, which appropriates funds to support specific non-governmental projects that the

Legislature considers of value to the state. It originates in the Joint Finance Committee. The total amount of all grants may not exceed 1.2 percent of the revenue anticipated by the March DEFAC estimates, but there is no obligation to appropriate that amount. A formula is used to set aside portions for senior centers, fire companies and veterans' groups. About half of the total amount is allocated to social service and cultural organizations. Agencies requesting funds are required to submit detailed application and financial data and are subject to performance audits by the Controller General's office (see Legislative Council).

### **Types of Legislation**

A bill is a proposed law presented to the legislature but not yet enacted. After it has passed both houses and received approval of the Governor, it becomes law and is called an act or a statute. Bills originating in the Senate are designated SB, and those originating in the House, HB. They are numbered consecutively (SB 1, SB 2), have the date of introduction and sponsor and co-sponsor name(s) in the upper right hand corner. The following are types of bills:

**General bill** (SB or HB) is a bill having uniform application to all persons or entities in the same category (a bill regarding counties must apply to all counties, etc.).

**Special bill** (SB or HB) relates to particular persons or things rather than to a whole class (used to cover a pension situation for one person, granting a municipal charter change, etc.).

**Appropriation bill** (SB or HB) earmarks certain sums of money for specified purposes. In Delaware only bills appropriating money for public purposes may cover more than one subject.

**Substitute bill** (SS for SB or HS for HB) is the replacement for a bill with some changes. It is used when adjustments resulting from committee or public hearings or discussions have produced so many changes that it is clearer to rewrite the legislation rather than make changes via amendments. It retains the number of the original bill.

**Amendment** (SA 1 or HA 1) is a separate piece of legislation having the limited objective of changing a bill that has not yet been enacted into law. Amendments are also numbered consecutively and designated HA and SA. Because either chamber can amend a bill, it is not unusual to see, for example, SA 1 and SA 2 to HB 345.

**Resolution** is a formal expression of opinion or deals with the internal affairs of the General Assembly. As in the case of bills, they are numbered consecutively, and contain the date of introduction and sponsors. Some significant resolutions follow the deliberate procedure described above for passage of bills, but many are voted on without being assigned to committee. The following are resolutions:

**Simple resolution** (SR or HR) deals with the internal affairs of either chamber (organizing, rules of business, etc.) or expresses the opinion of that chamber. It is frequently used to send congratulations to someone in the state. It is voted upon only by that chamber.

**Concurrent resolution** (SCR or HCR) deals with the internal affairs of the entire General Assembly. It is initiated in either chamber and concurred in by the other. It is a tool for initiating joint ad hoc committees (for a specific purpose). It is used to formally recognize a person for an honor received. A concurrent resolution's most important use is to ratify amendments to the U.S. Constitution. It is not signed by the Governor.

**Joint resolution** (SJR or HJR) is employed to provide temporary measures and has the force of law when in effect. It is often used to set up committees for special purposes such as to study a problem and recommend a solution. It must be signed by the Governor to become law.

### **Votes Required to Pass Legislation**

Simple majority:

Most bills and resolutions are passed by a simple majority vote of all members elected to each chamber (Senate 11, House 21). Some notable exceptions requiring a higher percentage vote or a “super majority” are:

Three-fifths vote of members elected to each chamber:

To override the Governor's veto except if a higher percentage is required for the initial legislation (see below);

To impose a new tax or license fee or to increase one already in existence;

To appropriate a portion of the estimated general fund revenue beyond 98 percent of estimated revenues (permitted for emergencies);

To appropriate funds from the budget reserve account.

Two-thirds vote of members elected to each chamber:

To expel a member for disorderly conduct;

To design, open, alter or maintain roads and highways extending through the three counties;

To create courts other than constitutional courts;

To add to jurisdiction of lower courts on criminal matters;

To amend a municipal charter;

To initiate impeachment proceedings;

To enact or amend the general corporation law;

To enact any special act of incorporation;

To amend the state constitution (must pass in two consecutive General Assemblies).

Three-fourths vote of members elected to each chamber:

To borrow money or create debt - includes the Bond Bill;

To appropriate public money for any county, municipality or corporation (includes Grants-in-Aid bill);

To issue or loan bonds to the state, county, municipality or corporation;

To pledge the credit of the state by guaranteeing or endorsing bonds for other undertakings by any Delaware county, municipality or corporation.

### **Legislative Council**

A permanent staff consisting of professional and clerical employees is provided through the Legislative Council, a policymaking body composed of the leadership of both chambers. There are two major divisions, the Division of Research and the Office of the Controller General. Both the director of research and controller are appointed by the council with the consent of the majority of legislators; they report directly to the council. The staff is employed on a nonpartisan basis and most are under the Delaware merit system.

#### **Division of Research**

The Division of Research acts as a reference bureau for information relating to or pertaining to subjects of interest to the House and Senate. Its chief functions are legislative research, bill drafting, committee staffing and development, production and distribution of public information concerning the General Assembly. It publishes the *Delaware Register of Regulations*, which contains all of the regulations proposed by any state agency. The division also operates a full service print shop, a legislative library, and public bill service, which answers inquiries about the status of legislation, provides individual copies of bills for a fee (1-800-282-8545 in state or 1-302-744-4114). Bills can also be downloaded from the state web site.

### **Office of the Controller General**

The Office of the Controller General provides analyses of the operating and capital budgets to the Joint Finance Committee and the Joint Legislative Committee on the Capital Improvement Program (Bond Bill Committee). It also prepares fiscal notes about all legislation, participates on the Delaware Economic and Financial Advisory Committee (see Legislative Role in the Budget Process), provides staff for legislative committees, represents the General Assembly on numerous ad hoc committees and task forces, and operates the internet Legislative Information Service. <http://www.legis.state.de.us>

### **House and Senate Staff**

A Secretary of the Senate and Clerk of the House, whose chief functions are custody of bills and maintenance of the agenda, are appointed by their respective chambers. They are not members of either chamber.

Each chamber also provides its own staff consisting of attorneys, research personnel, sergeant-at-arms, secretaries, pages, etc. These appointments are based on party affiliation, and persons holding the positions generally work only while the legislature is in session. In recent years the staffs have been augmented by interns from the College of Urban Affairs and Public Policy at the University of Delaware.

### **Lobbyists**

Under Delaware law a lobbyist is defined as any individual, other than a government employee, who seeks to influence any matter pending before the General Assembly by direct communication with the General Assembly or any matter pending before a state agency by direct communication with that agency. While most lobbyists interact primarily with legislators and are frequently in Legislative Hall, the broader definition should be noted. The Delaware Code requires the registration of these persons with the State Public Integrity Commission. Included are those lobbyists authorized to represent other groups (such as a corporation, labor union, citizen's group, government agency) whether or not they receive compensation. Also included is anyone who spends funds (even their own money) directly on government officials in pursuit of their objective. Those who merely express their own opinion and make no direct expenditures, or for whom lobbying is an insignificant part of their employment duties, do not need to register. Reports of expenditures for food, entertainment, lodging, travel, recreation, and gifts to legislators, employees or members of a state agency must be filed quarterly with the State Public Integrity Commission.



Tatnall Building at Dover – Offices of the Governor and Lt. Governor