

## 2021 Board of Directors



May 22, 2021

### **Re: Proposed Constitutional Amendment on Disaster Emergency Declarations**

Dear Chamber Member:

On May 18, 2021, all Pennsylvania voters, regardless of party affiliation, may vote on statewide ballot questions during the primary elections. Two of the ballot questions pertain to a proposed constitutional amendment that could have a substantial impact upon business owners in the event the governor imposes a disaster emergency declaration. If the ballot questions are approved by a majority of the people voting for them, the amendments will become law.

While there have been politically-charged interpretations of the measures in the media, the purpose of this letter is to provide you with the actual text of the proposed amendments so that you may make an informed decision.<sup>1</sup>

The ballot question that pertains to the proposed amendments to **Article III, Section 9** of the Pennsylvania Constitution relating to the termination or extension of disaster emergency declarations will appear on your ballot as follows:

#### **Ballot Question**

Shall the Pennsylvania Constitution be amended to change existing law and increase the power of the General Assembly to unilaterally terminate or extend a disaster emergency declaration—and the powers of Commonwealth agencies to address the disaster regardless of its severity pursuant to that declaration—through passing a concurrent resolution by simple majority, thereby removing the existing check and balance of presenting a resolution to the Governor for approval or disapproval?

Pursuant to Pennsylvania law, “whenever a proposed constitutional amendment or other State-wide ballot question shall be submitted to the electors of the Commonwealth in referendum, the Attorney General shall prepare a statement in plain English which indicates the purpose, limitations and effects of the ballot question on the people of the Commonwealth.”<sup>2</sup> The Attorney General’s plain statement of the proposed amendment is as follows:

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<sup>1</sup> The content of this letter and more information on the subject may be found on the Pennsylvania Department of State website at <https://www.dos.pa.gov/VotingElections/Pages/Joint-Resolution-2021-1.aspx>

<sup>2</sup> 25 Pa.C.S.A. sec. 2621.1

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## Plain English Statement of the Office of Attorney General

Joint Resolution No. 2021-1 proposes to amend Article III, Section 9 of the Pennsylvania Constitution to provide a new exception to traditional legislative procedure by allowing the General Assembly to terminate or extend a disaster emergency declaration or a portion of such declaration without needing the Governor's approval.

Currently, Article III, Section 9 establishes a general rule that all orders, resolutions or votes requiring approval by both the House of Representatives and Senate must be presented to the Governor for his approval or veto. Resolutions for the adjournment of the General Assembly are exempted from this process. If the order, resolution or vote is approved by the Governor, it becomes law. If the Governor vetoes the resolution, it does not become law unless two-thirds of the House and Senate vote to override the veto. The proposed amendment would create an additional exception to this customary legislative procedure for concurrent resolutions to terminate or extend, in whole or in part, a disaster emergency declaration issued by the Governor.

The proposed amendment will also have the effect of reversing a recent ruling of the Pennsylvania Supreme Court which held the Pennsylvania Constitution prohibited the General Assembly from passing a concurrent resolution to terminate the Governor's Covid-19 disaster emergency declaration without presenting it to the Governor for his approval. It will change the law to allow the General Assembly to terminate or extend a disaster emergency declaration through a concurrent resolution approved by only a majority of the members of the House and Senate, without having to present the resolution to the Governor for his approval or veto.

The proposed amendment is limited in that it only changes the traditional legislative process for terminating or extending disaster emergency declarations issued by the Governor. The amendment will not alter the current legislative procedure with respect to which orders, resolutions or votes of the General Assembly must be presented to the Governor for his approval on any other subject matter.

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The ballot question that pertains to the proposed amendments to Article IV of the Pennsylvania Constitution relating to disaster emergency declaration and management will appear on your ballot as follows:

### Ballot Question

Shall the Pennsylvania Constitution be amended to change existing law so that: a disaster emergency declaration will expire automatically after 21 days, regardless of the severity of the emergency, unless the General Assembly takes action to extend the disaster emergency; the Governor may not declare a new disaster emergency to respond to the dangers facing the Commonwealth unless the General Assembly passes a concurrent resolution; the General Assembly enacts new laws for disaster management?

The Attorney General's plain statement of the proposed amendment is as follows:

Joint Resolution No. 2021-1 proposes adding a new section to Article IV of the Pennsylvania Constitution. This amendment incorporates disaster emergency declaration and management powers directly into the Constitution by:

- Granting the Governor authority to declare a disaster emergency declaration by proclamation or executive order;
- Requiring each declaration to indicate the nature, location and type of disaster;
- Granting the General Assembly authority to pass laws providing for the manner in which each disaster shall be managed;
- Limiting the duration of a Governor's declaration to 21 days, unless otherwise extended, in whole or in part, by a concurrent resolution of the General Assembly;
- Preventing the Governor, upon the expiration of a declaration, from issuing a new declaration based upon the same or substantially similar facts, unless the General Assembly passes a concurrent resolution expressly approving a new declaration.

Currently, disaster emergency declaration and management powers are delegated by statute to the Governor. The Governor has the sole authority to issue and manage all disaster emergency declarations, which cannot extend beyond 90 days unless renewed by the Governor. The General Assembly may override a Governor's disaster emergency declaration by concurrent resolution that must be presented to the Governor for his approval or veto.

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If approved, the amendment would transfer certain of the Governor's existing authority to respond to and manage disaster emergencies to the General Assembly. The Governor would retain the authority to issue an initial disaster emergency declaration but the declaration's permissible length would be reduced from 90 to 21 days. The sole authority to extend a declaration would lie with the General Assembly; presently, this power rests with the Governor.

Upon expiration of the initial declaration, the amendment prohibits the Governor from issuing a new declaration based upon the same or substantially similar facts without the approval of the General Assembly. The Governor would no longer have unilateral authority to manage disasters, but would have to do so consistent with the laws passed by the General Assembly.

If approved, the General Assembly would be required to pass new laws establishing the manner in which each type of disaster shall be managed. If added to the Pennsylvania Constitution, the proposed amendment cannot be modified or repealed except by a judicial decision finding all or part of the proposed amendment unconstitutional or by the approval of a subsequent constitutional amendment.

The actual proposed text to **Section 9 of Article III** and **Article IV** is as follows:

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following separate and distinct amendments to the Constitution of Pennsylvania are proposed in accordance with Article XI:

(1.1) That section 9 of Article III be amended to read:

§ 9. Action on concurrent orders and resolutions.

Every order, resolution or vote, to which the concurrence of both Houses may be necessary, except on the **question of adjournment** **questions of adjournment or termination or extension of a disaster emergency declaration as declared by an executive order or proclamation, or portion of a disaster emergency declaration as declared by an executive order or proclamation.** shall be presented to the Governor and before it shall take effect be approved by him, or being disapproved, shall be repassed by two-thirds of both Houses according to the rules and limitations prescribed in case of a bill.

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(2) That Article IV be amended by adding a section to read:

**§ 20. Disaster emergency declaration and management.**

**(a) A disaster emergency declaration may be declared by executive order or proclamation of the Governor upon finding that a disaster has occurred or that the occurrence or threat of a disaster is imminent that threatens the health, safety or welfare of this Commonwealth.**

**(b) Each disaster emergency declaration issued by the Governor under subsection (a) shall indicate the nature, each area threatened and the conditions of the disaster, including whether the disaster is a natural disaster, military emergency, public health emergency, technological disaster or other general emergency, as defined by statute. The General Assembly shall, by statute, provide for the manner in which each type of disaster enumerated under this subsection shall be managed.**

**(c) A disaster emergency declaration under subsection (a) shall be in effect for no more than twenty-one (21) days, unless otherwise extended in whole or part by concurrent resolution of the General Assembly.**

**(d) Upon the expiration of a disaster emergency declaration under subsection (a), the Governor may not issue a new disaster emergency declaration based upon the same or substantially similar facts and circumstances without the passage of a concurrent resolution of the General Assembly expressly approving the new disaster emergency declaration.**

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We at the Chamber hope that this information allows you to make an objective assessment of whether the proposed constitutional amendments should become law.

Very truly yours,

Donna Steltz, Executive Director