



**STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES**

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The Honorable John Carney
Governor

John A. McNeal
Director

MEMORANDUM

DATE: April 29, 2019

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Mr. J. Todd Webb, Chairperson
State Council for Persons with Disabilities

RE: H.B. 73 (Constitutional Amendment Eliminating Limitations on Absentee Voting)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 73 which is the first leg of a constitutional amendment that will remove the limitations on who can vote by absentee ballot from Article V, Section 4A of the Delaware Constitution and empower the General Assembly to “enact general laws providing the circumstances, rules, and procedures by which registered voters may vote by absentee ballot.” H.B. 73, lines 10-11. Currently, the Constitution lists specific circumstances that enable a person to request an absentee ballot. Of particular relevance are “because of his or her sickness or physical disability” and “because of the nature of his or her business or occupation.” Del. Const. Art. V § 4A. Although this change nominally eliminates the need for persons requesting absentee ballots to specify a reason for the request, it permits the General Assembly to enact statutes to set the “circumstances, rules and procedures” for absentee ballots. The SCPD is unaware of any efforts in the General Assembly to impose restrictions similar to those that now exist. Regardless, the amendment, if it ultimately passes, will allow more flexibility in Delaware’s absentee ballot system.

If the Legislature intends to introduce absentee ballot restrictions by statute that are functionally identical to the current constitutional restrictions, removing the existing constitutional language still provides an opportunity to improve the current language as it relates to persons with disabilities and persons who provide care for persons with disabilities.

The current provision permits absentee ballots for persons who need them “because of his or her sickness or physical disability.” Del. Const. Art. V § 4A. Although the SCPD is not aware of any instances persons with a disability requesting an absentee ballot and having that request

denied because the person's disability was not considered "physical," the term should be removed. The presence of the term "physical" in the constitutional text might discourage some persons with disabilities who need absentee ballots from requesting them. Moreover, a distinction between "physical" and "mental" disabilities (or however else one might categorize "non-physical" disabilities) serves no practical purpose here. If a person's disability causes them to require an absentee ballot, the type of disability should be irrelevant.

The current provision also permits absentee ballots for persons due to "the nature of his or her business or occupation." Del. Const. Art. V § 4A. This provision, which is intended to permit persons who are either away from their district on Election Day due to work or are otherwise unable to get to their polling place on Election Day, appears to also cover "persons providing care to a parent, spouse or child who is living at home and requires constant care."

https://elections.delaware.gov/pubs/pdfs/absentee_ballot_application.pdf. It does not appear that this broad interpretation of "business or occupation" has ever been challenged, but it could be argued that the interpretation is too broad. It is likely that the State wants to permit caregivers to obtain absentee ballots and shoehorn them into this section because they do not fit anywhere else. Also, this definition does not cover caregivers who are not parents, spouses, or children (e.g., grandparents, grandchildren, aunts and uncles, close family friends, etc.) If the Legislature were able to set the rules for absentee ballots by statute instead of having to amend the constitution, it would be much easier to create a specific rule for caregivers that would cover all caregivers.

The preceding paragraphs assume that, after the proposed amendment becomes part of the Constitution, the Legislature will seek to enact restrictions on absentee voting similar to what we have now. This may not be the case. While it is possible that the Legislature will seek to impose limits that are different from what we have now, it is impossible to analyze every possible form that those restrictions might take. If the amendment becomes part of the Constitution, and if the Legislature proposes restrictions on absentee voting, the SCPD will comment on those proposed restrictions as the bills that contain them are introduced. It is also possible that the Legislature will decide to permit any voter who requests an absentee ballot to receive one without that voter having to provide a reason for the request.

According to the National Conference of State Legislatures, only nineteen states, including Delaware, require voters requesting absentee ballots to provide a reason for the request. <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>. Of those nineteen, only eleven, including Delaware, require a reason to request an absentee ballot and lack any form of early voting (i.e., either in-person early voting or "in-person absentee voting" wherein a person can apply for an absentee ballot and immediately cast that ballot in one trip to an election official's office). Eliminating the requirement to provide a reason for requesting an absentee ballot will benefit persons with disabilities and caregivers in multiple ways. It will simplify the application, remove any doubt from caregivers as to whether they are entitled to request absentee ballots, and ensure that all caregivers that need them are able to request absentee ballots. Additionally, even though we have no evidence that the Department of Elections has required proof of a disability prior to allowing someone to get an absentee ballot, eliminating the

need to provide a reason for the request will eliminate any fear that persons with disabilities may have about a possible need to “prove” that they have disabilities.

For the reasons stated above, the SCPD endorses H.B. 73 and further recommends that the Legislature permit any voter to request an absentee ballot without the need to provide a reason for the request.

Although not directly related to this bill, there is another voting mechanism worth mentioning while changes to voting are being discussed. At least one state (Indiana), has a mechanism whereby persons who need absentee ballots, but who require assistance completing the ballot and affidavit, can vote by absentee ballot with the assistance of a “traveling board.”

<https://www.in.gov/sos/elections/2402.htm>. The traveling board, which includes members of both major political parties, travels to the voter, brings the ballot, and assists voter with filling out the ballot (similar to the way in which a person in Delaware who requires assistance at the polls). Because the assistance is provided by people from both political parties, the risk of improper influence over the voter is minimized. Also, because the traveling board brings the ballot, helps the voter fill out the ballot, and takes the ballot, the process is very simple for the voter. A system like this would benefit persons with disabilities who cannot get to their polling sites and who lack adequate assistance in their homes to be able to complete absentee ballots. SCPD encourages the Department of Elections to investigate the Indiana system to see if something similar might be able to be implemented in Delaware.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: Ms. Elaine Manlove, Commissioner of Elections
Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

P&L/H.B. 73 constitutional amendment absentee voting 4-18-19