



Mailing It In: House of Representatives Passes Contested Voting Bill

JUNE 18, 2020 -- The State House of Representatives passed a bill late this evening that would allow voters concerned about exposure to COVID-19 to cast their ballots by mail.

Under [House Bill 346](#), every registered voter in the state would be sent an application for a mail-in ballot for the state primary in September and the general election in November.

The measure passed on a contested vote split along party lines: 25 yes, 13 no, two not voting, and one absent. All the votes approving the legislation came from House Democrats.

Republicans offered three amendments to the bill, all of which were defeated:

- **House Amendment 1**, sponsored by State Rep. [Lyndon Yearick \(R-Camden-Wyoming\)](#), sought to require all voters to provide identification.
- **House Amendment 2**, sponsored by State Rep. [Rich Collins \(R-Millsboro\)](#), sought to require the Department of Elections to open all election polling places. *(In later testimony, State Election Commissioner Anthony J. Albence said he intends to open all polling places for the state primary and the general election).*
- **House Amendment 3**, sponsored by State Rep. [Ruth Briggs King \(R-Georgetown-Long Neck\)](#), sought to amend the voter's oath to include a statement that a voter casting a mail-in ballot had voted only once.

"I had no problem with giving voters options in September and November, should the coronavirus still be a significant health threat," said [State House Minority Leader Danny Short \(R-Seaford\)](#). "Our caucus members took issue with this bill for several reasons. First, there was a much simpler, less expensive approach that could have been used to accomplish the same goal. Additionally, there was a total disregard for due process and public participation."

The bill was introduced less than a week ago and had been pending consideration in the House Administration Committee, which is set to meet publicly on Monday at DelTech's Terry Campus in Dover.

Rep. Short asked that the bill be set aside until then, so the committee could evaluate it and citizens could offer their comments. He said with the House meeting Wednesday (6/24), the proper process could have been followed without creating any significant delay.

State House Majority Leader Valarie Longhurst (D-Bear, Delaware City) refused the request, calling to suspend House Rules and circumvent the required committee hearing. The move succeeded solely on the votes of House Democrats.

Should the bill become law, the Delaware Department of Elections estimates that approximately 221,000 ballots will be cast by mail in November -- around 50% of expected voters. The legislation carries a total estimated cost of \$829,000, which will reportedly be paid using federal COVID-19 relief funds received by the state.

State Rep. Bryan Shupe (R-Milford South) argued a more straightforward approach would have been to temporarily amend existing law to allow citizens concerned about COVID-19 to request an absentee ballot. He said this method would have been less expensive and more efficient, placing a reduced burden on election officials and allowing the COVID-19 relief funds to be directed to other pressing needs.

Another concern is the state's notoriously flawed voter registration records. The 13-page measure approved by the House relies on the Department of Elections to use this list to send the mail-in ballot applications.

Under a State of Emergency order issued by Gov. John Carney earlier this spring, the Department of Elections sent applications for mail-in ballots to every registered Republican and Democrat for the upcoming presidential primary election on July 7th. Of the nearly 544,000 applications distributed, Election Commissioner Albence said his agency has so far received back about 55,000 as deliverable.

During later debate, State Rep. Rich Collins (R-Millsboro) questioned whether the bill was constitutionally compliant. He noted that Article V of the constitution contains a short list of acceptable reasons for casting a ballot by mail. Generally, these exceptions are limited to a voter being unable to appear at a polling place due to public or military service, illness, vacation, occupational obligations, or religious conflict.

The supporters of the bill cite a separate part of the constitution, Article XVII, as justification. It allows the General Assembly to take actions to ensure the continuity of governmental operations during an emergency.

"We heard testimony that the Department of Elections is going to be operating all polling

places," Rep. Collins said, adding that he believes this occurrence fatally undermines the contention the General Assembly can use its emergency powers to thwart a constitutional mandate.

"Article XVII was adopted because of the fear of nuclear war in the 1950s," he said. "The federal government asked states to adopt this language because they believed there might be a need to deal with a sudden and catastrophic emergency."

Rep. Collins said Delaware is not in such a situation and that should the bill become law, a legal challenge could be launched on these grounds.

The bill now heads to the Senate for consideration.