

OFFICE OF STATE INSPECTOR GENERAL



PROGRAM REVIEW



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF STATE INSPECTOR GENERAL

April 28, 2021

PRIVILEGED AND CONFIDENTIAL

TO: The Honorable Veronica Degraffenreid
Acting Secretary of the Commonwealth of Pennsylvania
Department of State

FROM: Lucas M. Miller
State Inspector General

A handwritten signature in cursive script, appearing to read "Lucas M. Miller".

RE: **OFFICE OF STATE INSPECTOR GENERAL'S PROGRAM REVIEW**
Department of State's Failure to Meet its Constitutional Mandate
Concerning House Bill No. 963 of 2019
OSIG-21-0016-I-DOS

Pursuant to 71 P.S. § 213, the Office of State Inspector General (OSIG) submits this *Program Review* for appropriate action. *Program Reviews* issued by the OSIG are **PRIVILEGED** and **CONFIDENTIAL** and may not be disseminated outside of your agency without the permission of the Governor's Office of General Counsel.

SYNOPSIS

At the direction of Governor Tom Wolf, the OSIG reviewed the Department of State's (DOS) failure to advertise¹ a proposed amendment to the Pennsylvania Constitution intended to retroactively extend the timeline for child sexual abuse victims to file civil actions against their abusers (House Bill No. 963 of 2019);² and make recommendations to improve DOS' process for handling Constitutional Amendments.

¹ Article XI of the Pennsylvania Constitution requires the Secretary of the Commonwealth to "publish" proposed Constitutional Amendments. In newspaper articles and press releases describing this matter, the Secretary's failure was described as a failure to "advertise" the Constitutional Amendment as required. [OSIG Note: The OSIG uses the terms "publish" or "publication" and "advertise" or "advertisement" interchangeably throughout this *Program Review* report depending upon the context.]

² House Bill No. 963 of 2019 (HB 963) was passed by the General Assembly as a Joint Resolution and, upon its arrival and filing at DOS, was assigned Joint Resolution No. 2 of 2019 (JR-2) by DOS. For the sake of clarity, the legislation will be referred to as HB 963 throughout this *Program Review* report.

The Pennsylvania Constitution required DOS to advertise the wording of HB 963 in two newspapers in every Pennsylvania county, in the three months leading up to the November 2020 General Election. The advertisement of a proposed Constitutional Amendment is so significant that in 1937 the Pennsylvania Supreme Court stated: “[t]he Secretary [of DOS has] a grave duty to perform in this regard and his [or her] failure, or that of his [or her] clerks or deputies, to carry out this mandate subjects them to....responsibility for nonfeasance or malfeasance in office....”³ And again, in 1992, the Pennsylvania Supreme Court found that DOS’ failure to carry out what is constitutionally mandated infects the Constitutional Amendment process with an incurable defect.⁴ Specifically, in the 1992 case, the Court found that DOS’ transmission of advertisement notices (which included free shopping publications that did not legally qualify as newspapers) for publication four days (two days of which were on a weekend) before the deadline for advertisement was simply not enough time since only six of 118 newspapers met the publication deadline.⁵

Because of DOS’ failure to advertise HB 963 as constitutionally mandated, the General Assembly must either restart the Constitutional Amendment process (hence Pennsylvania citizens cannot vote on this measure until 2023 at the earliest)⁶ or take legislative⁷ or other emergency action.⁸ Following the discovery of its grave error, DOS issued a press release on February 1, 2021 attributing its failure to advertise HB 963 to “simple human error.” (See Appendix A.) Kathryn Boockvar resigned as Secretary of the Commonwealth on that day effective February 8, 2021.

The OSIG’s review found no evidence that DOS’ failure to advertise the wording of HB 963 was deliberate or the result of intentional malfeasance. Rather, the OSIG found that a combination of internal systemic failures within DOS led to its crucial error. The OSIG also found that (despite its mandate under the Pennsylvania Constitution to ensure publication of proposed Constitutional Amendments (and as articulated by the Pennsylvania Supreme Court as DOS’ “grave duty,”) DOS lacked executive oversight, written policies and procedures, proper staff training, and consistent communication of the process. Specifically, the OSIG found:

- DOS had no executive oversight of the proposed Constitutional Amendment process;
- Aside from intake and notification processes, DOS had no written policies, procedures, or guidelines concerning the internal tracking or handling of proposed Constitutional Amendments;
- DOS failed to properly train staff on how to differentiate and handle Constitutional Amendments;

³ See *Tausig v. Lawrence*, 197 A. 235, 238 (Pa. 1937).

⁴ See *Kremer v. Grant*, 606 A.2d 433, 438 (Pa. 1992).

⁵ See *Kremer*, at 438.

⁶ The Pennsylvania General Assembly began to take action to restart the Constitutional Amendment process on March 24, 2021 with passage of House Bill No. 14 of 2021 (HB 14) by the Pennsylvania House of Representatives (House) and the Pennsylvania Senate (Senate) on April 19, 2021 (the language of HB 14 is like HB 963).

⁷ On March 17, 2021, House Bill No. 951 of 2021 was introduced by the House (this legislation attempts to amend statute of limitations periods for childhood sexual abuse victims).

⁸ On March 22, 2021, the Senate opted not to join House members and take emergency action. Senate Majority Leader Kim Ward issued a statement that the matter “does not meet the emergency status criteria and does not correct the failure by the Wolf Administration as it still does not properly vet this matter with the public.” For full statement, see <https://www.senatorward.com/2021/03/22/statement-majority-leader-kim-ward-victims-of-childhood-sexual-abuse/>.

- Current DOS legislative staff (including its Director)⁹ were unclear of the Legislative Affairs Office’s responsibilities concerning its role in monitoring Constitutional Amendments with no direct impact on DOS operations; and
- Despite annual Pennsylvania Legislative Services (PLS) subscription costs and tracking of HB 963, DOS legislative staff used PLS infrequently.

During its review, the OSIG was informed by DOS that it conducted an initial review of its processes, identified errors, and was working to implement policies and procedures to prevent something similar from happening in the future. Upon its review of those proposed new procedures, however, the OSIG also found that DOS’ proposed changes do not appear sufficient to correct systemic deficiencies in DOS’ handling of proposed Constitutional Amendments. Consequently, this *Program Review* report includes recommendations addressing both DOS’ proposed changes and others which DOS failed to identify.

METHODOLOGY

The OSIG interviewed 22 current and former DOS and other Commonwealth employees, including the former DOS Secretary, and staff members of the Governor’s Office and the Governor’s Office of General Counsel (OGC), with either general knowledge of the Constitutional Amendment process or specifically the handling of HB 963. Additionally, the OSIG reviewed 227 gigabytes of electronic communications, and other documents from nine DOS staff members contained on Commonwealth information technology devices and systems. Finally, the OSIG also reviewed DOS’ internal processes, excerpts from intake procedures (effective at the time of the failure), and proposed changes and modifications drafted by DOS after its failure to advertise HB 963 to determine whether such modifications are sufficient.

BACKGROUND

Legislative Process for Amending the Pennsylvania Constitution Generally Takes a Total of Five Years

Amending the Pennsylvania Constitution generally requires 10 steps. (See Diagram 1 – Commonwealth of



⁹ DOS’ Legislative Director resigned effective May 21, 2021.

Pennsylvania Constitutional Amendment Process.) The General Assembly must propose and vote on any Constitutional Amendment twice and each time in two consecutive legislative sessions. (See Steps 1 and 2 and Steps 6 and 7 in Diagram 1.) Upon first and second passage of the measure by the General Assembly, the Secretary of DOS is responsible for advertising any proposed Constitutional Amendment in a timely, widely accessible manner. After first passage, DOS' Secretary is required to advertise a full copy of the proposed Constitutional Amendment and after second passage must advertise a plain language statement of the proposed Constitutional Amendment. (See Steps 3 and 4 and Steps 8 and 9 in Diagram 1.) Thereafter, the proposed Constitutional Amendment is presented to voters (through a ballot question that must clearly and concisely inform voters of the measure).¹⁰ (See Step 10 in Diagram 1.) If a majority of Pennsylvania voters approve, the amendment is adopted and becomes part of Pennsylvania's Constitution. Specifically, Article XI provides:

Amendments ... may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of ...each House, such proposed amendment...shall be entered on their journals with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment... shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment...shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses,... and, if such amendment...shall be approved by a majority of those voting thereon, such amendment...shall become a part of the Constitution...¹¹

The Grand Jury Report Found Child Sexual Abuse Within the Catholic Church

On August 14, 2018, the Pennsylvania Office of Attorney General (OAG) released Report I of the 40th Statewide Investigating Grand Jury (Grand Jury Report) following an investigation into child sexual abuse within the Catholic church. The Grand Jury Report found credible allegations against over 300 "predator priests," identified over 1,000 child victims and found church leaders suppressed and hid the abuse "going back decades." Because of the church leaders' concealment, the Grand Jury Report stated "...almost every instance of abuse...is too old to be prosecuted." The Grand Jury Report recommended, among other things, that Pennsylvania "create a two year 'civil window' for child sex abuse victims" to seek redress.

In 2016, the General Assembly Attempted to Reform Statutes Relating to Liability of Child Sexual Abuse Perpetrators

In 2016, House Bill No. 1947 (HB 1947) (an attempt to expand the statute of limitations for childhood sexual abuse victims) was introduced but subsequently failed following passage in the

¹⁰ See e.g., *Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969).

¹¹ In *Wolf v. Scarnati*, the Pennsylvania Supreme Court held that amending the Pennsylvania Constitution requires strict adherence to the language of Article XI, Section 1: "[w]e have characterized the process of amending our Constitution as standing alone and entirely unconnected with any other subject. Nor does it contain any reference to any other provision of the Constitution as being needed. . . It is a system entirely complete in itself; requiring no extraneous aid, either in matters of detail or of general scope, to its effectual execution." *Wolf v. Scarnati*, 233 A.3d 679, 688 (Pa. 2020) (quoting *Commonwealth ex rel. Att'y Gen. v. Griest*, 46 A. 505, 506 (Pa. 1900).

Pennsylvania House of Representatives (House) and amendment by the Pennsylvania Senate (Senate). The Senate sought to create an unlimited statute of limitations period for childhood sexual abuse victims. However, the legality of this legislation was questioned.¹²

Still, in response to the Grand Jury Report and after addressing legal questions, HB 963 was introduced on March 27, 2019. HB 963 retroactively (for those whom statutory limitations periods already expired) extended the window, for two years, for childhood sexual abuse victims to bring civil suit against their abusers. HB 963 was signed by the House and the Senate on November 21, 2019 following its first joint

HB 963 Legislative Timeline

- Introduced in the House on March 27, 2019;
- Passed by the House on April 10, 2019;
- Introduced in the Senate on April 22, 2019;
- Passed by the Senate on November 20, 2019;
- Signed in both the House and Senate on November 21, 2019; and
- Filed in the Office of the Secretary of the Commonwealth on November 25, 2019.

TABLE 1. SUMMARY OF DOS’ INFORMAL PAST PRACTICES FOR HANDLING ADVERTISEMENT OF JOINT RESOLUTIONS

- First passage by the General Assembly and filing of Joint Resolution in DOS.
- BEN clerical staff assign a Joint Resolution number and sends an email notification of its filing.
- OLA sends communication to DOS executive staff regarding first passage of the Joint Resolution. [OSIG Note: Single point of failure for HB 963.]
- BFO works with vendors to ensure the Joint Resolution is published in two newspapers in every Pennsylvania county.
- The publication is advertised in each of the three months prior to the next general election.
- The newly elected General Assembly decides whether to proceed with the legislative process.
- Second Passage by the General Assembly and filing of Joint Resolution in DOS.
- BEN clerical staff assign a Joint Resolution number and sends an email notification of its filing.
- OLA sends communication to DOS executive staff regarding second passage of the Joint Resolution.
- OCC and OAG work together to develop a plain language statement of the Joint Resolution.
- BFO works with vendors to ensure the plain language statement is published in two newspapers in every Pennsylvania county.
- The publication is advertised in each of the three months prior to the next designated election.

passage. (See Appendix B for the full text of HB 963.) HB 963 was then physically delivered to, and filed with, the Secretary of the Commonwealth on November 25, 2019.

First Passage of HB 963 Prompted DOS Action in the Constitutional Amendment Process (See Steps 3 and 4 of Diagram 1)

DOS “encourages the highest standards of ethics and competence in elections, campaign finance, lobbying disclosure, notarization, [and] professional and occupational licensure...”¹³ According to its website, DOS “protects the public’s health and safety by licensing more than one million business and health professionals; promotes the integrity of the electoral process; supports...corporate registrations and transactions; maintains registration and financial information for thousands of charities, and sanctions professional boxing, kick-boxing, wrestling and mixed martial arts.”¹⁴

DOS has numerous bureaus and offices, approximately 500 employees, and an annual operating budget of about \$125 million dollars. Multiple DOS bureaus and offices including, but not limited to, its Office of Legislative Affairs (OLA), Bureau of Elections and Notaries (BEN), Office of Chief Counsel (OCC), and Bureau of Finance and Operations (BFO), are intimately involved in the tracking, intake, and publication of Constitutional Amendments. (See Table 1.) Other DOS bureaus and offices

¹² Specifically, there was discussion whether retroactively expanding the statute of limitations period violated the Pennsylvania Constitution’s Remedies Clause. For a summary of the legislative history of HB 1947 and Amendment 6694 of 2016, See: <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2015&body=H&type=B&bn=1947>.

¹³ See <https://www.dos.pa.gov/about-us/Pages/default.aspx>.

¹⁴ *Id.*

also play a role in the publication of Constitutional Amendments like its Deputy Secretary for Elections and Commissions, Bureau of Campaign Finance and Civic Engagement, Office of Communications and Press, and Office of Policy (others outside of DOS also play a role like OGC and OAG).

When the General Assembly passes a Joint Resolution, it is delivered, *via courier*, to DOS and is formally accepted by BEN where it is received, date stamped, assigned a number, and filed (all tasks usually completed by DOS clerical staff). Based on past practices of DOS’ former OLA Director, OLA sent communication to DOS executive staff regarding first and second passage of Joint Resolutions and their expected arrival in DOS. Upon first passage and filing, BFO works with vendors to ensure the Joint Resolution is published in two newspapers in every Pennsylvania county in each of the three months prior to the next general election. (See Table 1.) Upon second passage and filing of a Joint Resolution, OCC in collaboration with the OAG develops a plain language statement of the Joint Resolution for publication in newspapers in the same fashion as previously noted prior to the next designated election (See Table 1)¹⁵ and a ballot question is posed to voters (See Step 10 in Diagram 1 on page 3 of this *Program Review* report).

FACTUAL SUMMARY

(1) THE OSIG FOUND NO EVIDENCE THAT DOS’ FAILURE TO ADVERTISE HB 963 WAS DELIBERATE OR THE RESULT OF INTENTIONAL MALFEASANCE.

The OSIG conducted interviews with, and reviewed the Commonwealth email accounts of, current and former Commonwealth employees and found no evidence that DOS’ failure to advertise HB 963 was deliberate or the result of intentional malfeasance.

Of the 22 individuals interviewed by the OSIG, 17 were employed by DOS at the time HB 963 was filed with the agency. Additionally, the OSIG retrieved and conducted an analysis of the Commonwealth email accounts of nine DOS executive staff (containing 227 gigabytes of data). Based on interviews, document reviews and email analyses, the OSIG found no evidence suggesting the failure to advertise HB 963 was the result of outside influence or intentional acts; and found no evidence suggesting the intentional, purposeful, or deliberate sabotage of HB 963’s publication. For example, the following statements were made:¹⁶

“...saw no evidence of intentional or deliberate acts from...anyone’.... ‘Also did not see any evidence of outside or undue pressure put on... or any other [DOS] staff member...”	“...[do] not believe anything was done intentionally or deliberately. [DOS] internal review did not indicate anything like that at all and if it had, ...would have [discovered] it right away.”	“There was no intent here. I [do not] think – I mean I am certainly not a supporter of the Catholic Church and obviously not of child sex abuse...but [there was] no intent. Like... [that is] just absurd.”	“That is the farthest thing from the truth... [do not] know a single person that found out about this who [was not] absolutely sick over it... no way [it] was intentional, and I [cannot] think of a reason why it would [be] intentional. [But] it’s a horrible mistake.”
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¹⁵ The purpose of publishing plain language statements is to guarantee that the Pennsylvania electorate is fully informed of the proposed amendment before voting on it. See *e.g., Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969).

¹⁶ See Appendix F for full statements of individuals when asked by the OSIG – “Was there any evidence suggesting intentional, deliberate or purposeful acts from anyone to make HB 963 fail?”

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<p><i>“I have no reason to believe that it was anything other than a -- you know, an administrative mistake, an administrative failure.”</i></p>	<p><i>“I think it was an honest mistake...I know in some of the last hearings that [we] had, some legislators have brought up that they thought that it was intentional malfeasance and I definitely do not believe that at all...”</i></p>	<p><i>“...was an honest mistake... [and] pure oversight...this particular Bill... -- it [did not] scream Constitutional Amendment...[and]...was embedded in a lot of other things... It was just missed, but it was a big miss and [that is] my understanding of it, which is unfortunate.”</i></p>	<p><i>“...I really [do not] think so. I think this was just a pathetic failure on the -- on the part of an office that led to this terrible outcome and all of the dominoes that fell all at one time. My personal perspective is this was not outside pressure, this was just a failure.”</i></p>
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(2) DESPITE ITS MANDATE UNDER THE PENNSYLVANIA CONSTITUTION TO ENSURE PUBLICATION OF PROPOSED CONSTITUTIONAL AMENDMENTS, DOS LACKED EXECUTIVE OVERSIGHT, WRITTEN POLICIES AND PROCEDURES, PROPER STAFF TRAINING, AND CONSISTENT COMMUNICATION OF THE PROCESS.

DOS Had No Executive Oversight of the Proposed Constitutional Amendment Process

DOS had no executive office, bureau, or singular executive staff member with exclusive responsibility for overseeing internal processes (from intake through, and including, publication) related to proposed Constitutional Amendments. The OSIG notes that this lack of executive oversight was not commensurate with the level of authority needed to ensure that internal processes were assigned to direct reports and completed. Further, the lack of executive oversight created internal confusion regarding roles, responsibilities, and accountability. While DOS has intake and initial notification processes (viewed as routine administration functions within BEN), those internal processes functioned from the “bottom up,” rather than from the “top down” and were not *in any way* linked to DOS’ other bureaus and offices responsible for actual publication. Furthermore, without executive level oversight, there is no fail safe in place to prevent future occurrences.

DOS is unique among Commonwealth executive agencies because it takes custody of all Bills, [concurrent and joint] Resolutions and [statutory and constitutional] Amendments passed by the General Assembly. The OSIG, however, found no evidence that one single bureau, executive office or executive staff member was assigned responsibility for distinguishing between the varying types of legislation filed in DOS nor any accompanying action(s) required by DOS after intake or with the ability to assign duties to direct reports. For example, at least four Commonwealth employees stated that there was a general lack of understanding within DOS about the differences between legislative documents and their implications or importance among BEN staff. In addition, while some legislation requires no action by DOS or directly impacts DOS program areas, Joint Resolutions that propose to amend the Pennsylvania Constitution demand constitutionally required actions by DOS. Though several DOS bureaus and/or offices are involved in the publication of Constitutional Amendments, the OSIG also found no evidence of any central management of its internal publication process by DOS.

DOS’ former Secretary told the OSIG that he or she received no communication about HB 963 “*whatsoever*” and that there was also no communication from DOS’ OLA to DOS’ Chief Counsel, staff within DOS’ OCC, or any other pertinent member of the former Secretary’s executive staff. For example,

the OSIG reviewed Cabinet Reports prepared by DOS submitted to the Governor’s Office¹⁷ from November 22, 2019, December 6, 2019, and December 12, 2019 (during and following passage of HB 963). None of the Cabinet Reports reviewed by the OSIG contain any information concerning HB 963.

Besides failing to differentiate the types of legislation received by the agency, DOS also failed to possess or produce any written policy or procedure that prioritized or documented a communication or tracking scheme to ensure executive notification and/or proper oversight of the publication process. For example, a DOS Executive Staff Member told the

**STATEMENT OF
OCC STAFF MEMBER**

“... the notification process broke down... members of my [Executive] team... had no idea that there was a Joint Resolution 2 of 2019... but [that is] the issue... *nobody knew about it.*”

OSIG that he or she believed staff from DOS’ OCC and BFO (the two business units directly involved in DOS’ publication of proposed Constitutional Amendments) should [at the very least] be included on the pre-populated email distribution list that served as BEN’s notification of HB 963’s filing in DOS. Though the former DOS Secretary explained that the notification and announcement email sent by BEN is one thing, he or she compared HB 963 to previous successful publications of amendments and said the former lacked multiple back and forth communications between appropriate DOS staff.

**STATEMENT OF DOS
EXECUTIVE STAFF MEMBER**

“I [do not] -- seriously, I [am] sort of – I [am]...totally shocked all over again because I [do not] understand how there are **100** people on the email distribution list and [most of] them are not actually involved in the process.”

The OSIG found that, based on unwritten past practices, DOS staff involved in the publication process relied almost exclusively on email communications to communicate required actions. For example, OCC staff told the OSIG that they previously received notifications from DOS’ OLA to initiate the advertising process for Constitutional Amendments. OCC staff also stated that once they received an email notification from DOS’ OLA [following second passage of Joint Resolutions], OCC in collaboration with OAG draft plain language statements and ballot questions. BFO told the OSIG that it received email notifications from both DOS’ OLA and OCC (the email from OCC was considered a courtesy) to begin the publication process. [OSIG Note: Although both OCC and BFO staff were clear of their individual roles, the OSIG found these understandings were from memory and not cemented in any written procedures.] In addition, a DOS Executive Staff Member stated that they are not on BEN’s email distribution list nor are they involved in drafting the plain language statement of proposed Constitutional Amendments (including the back and forth between DOS’ OCC and the OAG). In fact, the same DOS Executive Staff Member stated they did not see anything but the final plain language statement to be published and could not recall who sends the final language for publication to them.

Aside from Intake and Notification Processes, DOS Had No Written Policies, Procedures, or Guidelines Concerning the Internal Tracking or Handling of Proposed Constitutional Amendments

Although DOS’ BEN has written procedures for intake and notification of legislation physically

¹⁷ The Cabinet Reports explain what DOS - and each of its individual Bureaus – worked on at the time reports were created.

delivered to the agency, DOS (as a whole) lacked any other written policies, procedures or guidelines *linking* intake and notification to other DOS administrative functions (including publication) concerning proposed Constitutional Amendments. Despite its critical importance and the planning required for, and costs associated with, publication, DOS also failed to produce any written policies or procedures detailing the roles and responsibilities of bureaus or offices (including DOS’ OLA, OCC and BFO) or individuals responsible for DOS actions concerning the publication process itself.

DOS employees told the OSIG that once legislation was physically delivered to DOS, DOS determined which clerk had “bill duty” by referring to a rotating schedule created by a BEN supervisor.¹⁸ A BEN clerk stamps the Bill on the left side, records it, and sends an email to approximately 100 people. (See Figure 1.)

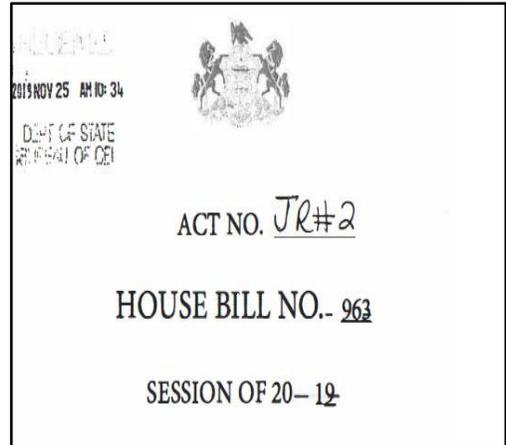


Figure 1 - Capture of Date, Time Stamp and Assignment of Joint Resolution Number for HB 963

Concerning the general handling of Bills, following the placement of a **green routing cover sheet** by BEN clerical staff (to ensure proper routing at OGC by administrative staff), the Bill is hand delivered by BEN to the Governor’s Office for consideration. Once action is taken by the Governor, the Bill, in hardcopy (if signed), is returned to BEN, stamped on the right side, and assigned an Act number.¹⁹ BEN then sends a second notification email using its 100-person email distribution list, and files the Bill in the office.

TABLE 2. THE BUREAU OF ELECTIONS & NOTARIES’ 10-STEP PROCESS FOR JOINT RESOLUTIONS	
1.	Sign the receipt.
2.	Date stamp the bill.
3.	Time stamp the Log Sheet.
4.	OGC advises us when it is a joint resolution.
5.	Wait for joint resolution from [OGC].
6.	Assign JR#s, i.e., Jr-1 of 2019, JR-2 of 2019 (assign in a separate message from act numbers).
7.	Send the assignment of act numbers/Joint Resolution message.
8.	Type JR#1 on Bill and Log sheet.
9.	Certify the Joint Resolution (if it is requested).
10.	File in S:/drive/Notaries 2019/Legislation/Joint Resolution folder.
SOURCE: See Appendix D	
[OSIG Note: OGC administrative staff advised, however, that Steps 4 and 5 above are not required.]	

Though BEN also has a single written procedure governing intake of Joint Resolutions (See Table 2), the OSIG found no similar color coding or demarcation used by DOS (like Bills sent to the Governor) to ensure proper routing and tracking of its movement within DOS [though the General Assembly delivers Joint Resolutions to DOS using a color-coded scheme that are maintained by BEN]. To the contrary, because Constitutional Amendments do not require action by the Governor, after a Joint Resolution is received, recorded, and assigned a number by BEN’s clerical staff, a copy is made for the file, and the Joint Resolution is referred to a supervisor. **[OSIG Note:** Based on its review, it was unclear to the OSIG what, if anything, the “supervisor” did with Joint Resolutions.] A notification email is sent to a distribution list and the

¹⁸ However, Bureau staff reported that one employee typically handles all Bills because he or she is most familiar with BEN’s two intake processes and that BEN’s staff are cross trained so that others within BEN can receive legislation if the designated individual is not available. **[OSIG Note:** The staff member who handled HB 963 was not the employee who typically handled legislation.]

¹⁹ If the Bill is vetoed by the Governor, OGC provides a “veto message” that is transmitted back to BEN.

intake process is complete. (See Appendix C (copy of "Assignment of joint resolution number" notification.)) [OSIG Note: The notification email for HB 963 (which contained a hyperlink to the Bill) was generic (not descriptive) and lacked formal grammar or sentence structure.] Bureau staff indicated to the OSIG that BEN has no further interaction with a Joint Resolution after the email is sent and the Joint Resolution is filed. Bills, including Joint Resolutions for proposed Constitutional Amendments, are physically maintained at DOS before being archived. [OSIG Note: Bureau staff provided the OSIG with different record retention ranges (i.e., from one year to five years) and were unclear of what was required.]

Several DOS staff members interviewed by the OSIG indicated that DOS received a significantly higher number of Bills than Joint Resolutions proposing Constitutional Amendments, although the number of Joint Resolutions has increased in recent years. While DOS fulfilled its constitutionally required advertisement responsibilities for other proposed Constitutional Amendments in 2019 and 2020 without incident (See pages 16 and 17 of this *Program Review* report), the OSIG found these successes were the result of internally understood processes of a few staff members but never memorialized.

DOS Failed to Properly Train Staff on How to Differentiate and Handle Constitutional Amendments

Besides lacking written policies and procedures aside from intake and notification, DOS failed to properly train (not only clerical but other DOS) staff on the handling and routing of Constitutional Amendments to ensure publication. Because of this lack of staff training, the OSIG found that DOS may repeat the failures associated with HB 963 in the future.

DOS staff members directly involved in the agency's current processes for handling and routing legislation told the OSIG that they received no formal training concerning Bills and/or Joint Resolutions. Without any formal training, DOS staff members reported that they learned through on-the-job training and generally referred to intake procedures that detailed BEN's intake processes. One staff member stated further that they did not know the difference between a Bill and a Joint Resolution, just did their job, and "bigger people" handled Joint Resolutions after the clerical process was completed. Similarly, former, and current Commonwealth employees told the OSIG that staff within DOS' OLA did not receive formal training from either DOS or the Governor's Office of Legislative Affairs on the importance of tracking Joint Resolutions. Equally, a DOS OCC staff member (who discovered DOS' failure to advertise HB 963) indicated that he or she did not understand the Constitutional Amendment process, and that he or she never received any written training materials related to the process.

BEN's Use of Inconsistent Email Distribution Lists Served as DOS' Formal Notification of Filing

The email distribution lists used by BEN clerical staff are not consistent. Rather, the OSIG found that email distribution lists were created individually by each clerical staff member and are specific to the **individual** sending the notification. [OSIG Note: At the time of HB 963, one list contained **138** individuals while the other list contained **113** individuals (the latter used for HB 963) but neither list included DOS' Secretary, or OCC and BFO staff.] Additionally, one staff member maintained their list using the Notepad program on their desktop computer while another staff member created their list through Microsoft Outlook. According to one Bureau staff member, there is **one** "email distribution list" maintained by a clerk who receives communications from the Governor's Office when a recipient is added,

or messages are returned as undeliverable. After the clerk updates the list, they distribute it to BEN staff who handle the intake of legislation. Again, when speaking with BEN staff members; however, one employee told the OSIG that they do not know who should be included on the list while another employee advised that they do not have authority to alter the “list.”

The OSIG reviewed the “email distribution list” used by BEN staff concerning HB 963 and identified only eight individuals (out of more than 100) who were employees of DOS at the time the email notification was sent. Of those eight individuals, **none** of these individuals are involved in the publication process. Since discovery of DOS’ failure to publish HB 963, the email distribution list was reconciled and updated by BEN; however, BEN staff were unable to recall the last time the email distribution list was updated prior to this latest reconciliation.

Despite its Critically Assigned Role, DOS’ BEN Staff Lacked Basic Knowledge of the Legislative Process and Professionalism

Despite the critical *administrative role* DOS assigned to BEN staff both before and after HB 963, the OSIG found that BEN staff seemed to lack basic knowledge of the legislative process. A non-DOS Commonwealth employee reported to the OSIG that they received questions concerning internal DOS processes from various DOS staff. For example, a staff member within OGC reported that there seemed to be “a lot of confusion as a whole” within DOS’ BEN (which included BEN’s Director). The same OGC staff member told the OSIG that they received questions from

**STATEMENT FROM
DOS STAFF MEMBER**

“... [DOS’ BEN] is a functioning **dysfunctional** office.”

DOS’ legislative staff concerning DOS internal legislative processes. Based on their firsthand experience, the OGC staff member also believed BEN’s clerks may

**STATEMENT FROM
OGC STAFF MEMBER**

“... I am just being honest, but [there is] a lot of **confusion** coming out of DOS.”

not know the difference between a Bill and a Joint Resolution or understand how a Bill moves through the legislative process. According to the OGC employee, despite the Governor having no formal role in the handling of Joint Resolutions, DOS staff attempted to deliver Joint Resolutions to OGC **at least twice**: once for HB 963; and another time in February 2021 (even after DOS staff were informed it was not required). The fact that DOS still tried to deliver OGC a Joint Resolution was “a little disturbing” to the OGC employee.

On at least one occasion, OGC also received a Bill from DOS with a food stain on the cover according to an OGC staff member. The OGC staff member was surprised given the historic nature of these documents, and subsequently requested a replacement cover from the Senate Parliamentarian because he or she was too embarrassed to present the food-stained document to the Governor. After educating DOS’ BEN staff about the importance of Bills and how to address these situations, BEN staff contacted the General Assembly to replace another cover sheet for a different piece of legislation during the Winter 2019-2020.

Statements from DOS’ BEN Staff

Despite a DOS Executive Staff Member informing the OSIG that BEN is “the keeper of legislation,” a DOS Bureau Staff Member said there is no formalized training for processing Bills and Joint Resolutions. One BEN employee told the OSIG that their failure to receive training was not for lack of wanting, and further advised that they did not know whether other BEN employees (who handle Bills and Joint Resolutions) received any training on intake processing. According to BEN employees, the fear of not knowing how to properly do something makes them nervous, and training would help alleviate the stress. Because Joint Resolutions are not handled every day, the process does not “stick” in their head.

**EXCERPT FROM INTERVIEW OF DOS
STAFF MEMBER**

“[T]his is the worst part of my job. I hate doing Bills. They make me nervous ... I [do not] like all the steps. It just -- the whole process of the Bills and being responsible for that just makes me so nervous and gives me a pain in my gut and makes me cry, and they all know that but, you know, that comes with the job. You got to do it... so you [must] learn it. And, eventually, probably between now and the next two years... I may master it.”

Some DOS staff members also told the OSIG that handling legislation was stressful. For example, one staff member stated he or she struggled with handling legislation. Another staff member stated it made them physically ill and allegedly previously complained to Governor’s Office staff that it gave them “bubble guts.” When asked about the process of certifying Bills and its implication, a DOS staff member responded to the OSIG, “I [do not] follow the election stuff and campaign finance. I just do my job.”

Statements from DOS’ OLA Staff

The Director of DOS’ OLA told the OSIG they had a 20 to 30 minute “conversation” with their predecessor which constituted the “entirety” of their training at DOS. For example, the current Director said he or she received “nothing in terms of training, or who to go to” with questions, and was not left any notes or guidance from a prior Director of OLA. On their first day at DOS, the current Director felt like “...just jump in with both feet ... [and] figure it out on your own.”

A former employee within DOS’ OLA told the OSIG that they also did not receive any specific or formal training either when he or she first started with DOS. According to the former OLA employee, they learned through on-the-job training as they watched their supervisor. The former OLA employee also was not given any instructions or guidance nor was there a manual or policies or procedures available for them to reference. Consequently, the former OLA employee said it took them some time to feel comfortable and confident they were going in the “right direction.”

Another current DOS OLA employee told the OSIG that when they started with the office, the only training they received was from the Director on use of DOS’ Pennsylvania Licensing System (PALS), with other training occurring “on the job ... case-by-case sort of thing.” As an OLA employee, 80-85% of their time is spent on PALS and the remaining 15-20% is spent on “a mishmash of random things” for DOS’ Bureau of Corporations and Charities.

Yet another former DOS OLA employee also told the OSIG that they did not receive any training aside from the normal Commonwealth employee onboarding and/or online training modules. In addition, the former OLA employee said they received some on-the-job training from the Director(s) on handling constituent work, but there was no "tutorial" on the legislative aspect of the office.

Statements from DOS' OCC Staff

A staff member within DOS' OCC (who discovered DOS' failure to advertise HB 963) told the OSIG that they did not understand the Constitutional Amendment process when they were hired, and they, too, received no formal written training materials on the subject. The staff member stated further that when they first started at DOS another senior staff member (within DOS' OCC who knew the "ins and outs" of the process) verbally explained it to them and later verbally reiterated it when they processed their first Constitutional Amendment. An OCC senior staff member for DOS confirmed that DOS' OCC has no internal training for its attorneys and support staff on Bills or Joint Resolutions, and (to their knowledge) neither does any DOS program area.

Current DOS Legislative Staff (including its Director) Were Unclear of OLA's Responsibilities Concerning its Role in Monitoring Constitutional Amendments with No Direct Impact on DOS Operations

As previously stated, DOS is unique because it takes custody of, and physically retains, all Bills, [concurrent and joint] Resolutions, and [statutory and constitutional] Amendments passed by the General Assembly. Notwithstanding this distinction, the OSIG found that several DOS employees failed to effectively communicate which executive staff member and/or DOS bureau or office specifically assumed responsibility for legislation (regardless of its impact on DOS program areas) affecting Constitutional Amendments. While most employees suggested that DOS' OLA plays a vital role in the process, the OSIG also found it did not appear this was formally communicated or memorialized in any way, and therefore DOS' legislative staff were unclear of OLA's responsibilities.

DOS' OLA has a Director [a member of DOS' executive staff] and a Deputy Director, who are collectively responsible for directing DOS' legislative agenda and monitoring legislation (whether it affects DOS or not) as it moves through the General Assembly. The Director is considered a dual reporting employee, accountable to both their counterpart within the Governor's Office, and to DOS' Secretary. The current Director had prior legislative experience before joining DOS in January 2019. Specifically, the current Director worked as a Legislative Affairs Director (for three years) within another Commonwealth executive agency, and a Chief of Staff to a member of, and was the Executive Director of the Law and Justice Committee within, the General Assembly. DOS' current Deputy Director joined DOS in November 2019 (with no prior Commonwealth legislative experience) having only immediately previously worked in external affairs for a healthcare-related association.

According to an OLA staff member, the Director solely handled all legislative matters including Bill analysis and legislative tracking while the Deputy handled most licensing matters (without much

involvement in the legislative process).²⁰ Although a current OLA staff member held the position for a year and a half, he or she had no idea what crossed the Director's desk, did not know the Director's roles or responsibilities, or even what the Director was required to do. [OSIG Note: Having an employee with no involvement in DOS' legislative activities within DOS' OLA may not be an effective use of legislative staff personnel.] However, the Director explained that a "massive" part of OLA's day-to-day duties consisted of constituent services and responding to licensure requests covering 29 Boards and Commissions within DOS. The Legislative Affairs Director referred to DOS as a "junk drawer" consisting of, for example, the State Athletic Commission, the Bureau of Elections, the Board of Nursing, and the Delaware Bridge Navigation Commission.

According to both DOS' current Legislative Affairs Director and a former OLA employee, there was no formal training (written or otherwise) provided for the position. Additionally, a staff member within the Office of the Governor stated that the job responsibilities for legislative affairs staff were not uniform across executive agencies and they were unaware of written policies from the Governor's Office regarding Legislative Affairs positions. DOS' current Legislative Affairs Director said that (although they chatted with former DOS OLA staff about the day-to-day work responsibilities of the job (including licensure issues, PALS, and constituent service matters)), he or she learned many aspects of the job on their own. A former DOS OLA employee (who worked exclusively within DOS' OLA for 11 years) also told the OSIG that although they tracked Joint Resolutions [as an individual practice], he or she did not discuss [the Constitutional Amendment process nor its impact on DOS] with the current Director because the current Director was aware of the basic mechanics of the job given his or her prior legislative experience.

Notwithstanding their prior legislative experience, DOS' current Legislative Affairs Director told the OSIG that their current position at DOS is radically different from what they were familiar with at their prior Commonwealth executive agency. Specifically, the Legislative Affairs Director said there was a filing cabinet with two rows full of procedure documents and staff held monthly meetings to review internal procedures. By contrast, the Director said there are no written procedures at DOS, and the proposed policies (to rectify some of the problems discovered after DOS' failure to advertise HB 963 became known) would be the first actual procedure they saw since joining DOS. (See Appendix E.) According to the current Legislative Affairs Director, they only learned *last summer* that BFO handled advertisement of a proposed Constitutional Amendment. Additionally, the Director said there were no prior conversations concerning how DOS' OLA email notification specifically served as or initiated the advertising process. Once OLA's email was sent, there were no conversations regarding it [since after passage of legislation OLA is not involved in the publication process].

While Current DOS Legislative Affairs Staff Have No Human Resources Position Descriptions, a Position Description Was Located for the Former OLA Staff

The OSIG attempted to obtain a current Position Description and accompanying job responsibilities for both DOS' current Legislative Affairs Director and Deputy Director positions. The OSIG found that no current Position Description existed for either job title. Consequently, the OSIG

²⁰ According to the Director, a former OLA staff member was tasked with handling more legislative tasks because he or she was employed with DOS longer.

obtained a Job Description (dated 2015) for a former OLA employee and found that it does state the employee “monitors the movement of legislation affecting [DOS].”

When shown the 2015 Position Description, the current Director informed the OSIG that they never received a copy and did not have a Position Description for their current or previous job. Additionally, the current Director stated they have not received an Employee Performance Review (EPR) while employed with DOS. Finally, the Director also acknowledged not completing an EPR for DOS’ OLA’s current Deputy Director (although they were never asked to complete one) but noted that they met with the Deputy Director to provide feedback about job performance.

Analysis of DOS’ OLA as It Related to HB 963

Many DOS staff explained to the OSIG a variety of informal unwritten past practices used to process proposed amendments from intake to publication (i.e., generally communicated through email notifications to DOS staff involved in those processes like DOS’ OLA, OCC, and BFO). Historically, these processes were based on unwritten past practices, were again developed by individuals for their own personal use, were never memorialized, and were only known through word of mouth.

Particularly, the OSIG asked 15 current and former Commonwealth employees (including the current Legislative Affairs Director and other OLA staff) who or what office was responsible for notifying DOS executive staff to initiate the advertisement process of proposed Joint Resolutions. Of the 15 individuals interviewed, eight placed the responsibility on DOS’ OLA. DOS’ former Secretary explained that once a Bill, Resolution, or Amendment is passed – in addition to the email that is sent to the distribution list of 100-plus individuals by BEN clerical staff – DOS’ OLA historically informed relevant DOS staff of its passage and filing with DOS. Though other DOS staff agreed with the former Secretary, a former DOS OLA employee noted that OLA’s role in this process developed over time. However, a member of DOS’ Executive Staff stated this was nothing new and was handled by the former OLA Director. By way of further example, the following statements were made by DOS’ executive staff:²¹

<i>“It became evident [after HB 963] that this clearly is the role of the Director of [DOS’ OLA] ... There were over 100 people on that [BEN] notification email from [the clerk] and no one decided to speak up or communicate the receipt of that email, including the Deputy Secretary and the Director of BEN.”</i>	<i>“Once a Joint Resolution is passed, BEN assigns a Joint Resolution number that is communicated to [DOS’ OLA] who then oversees this process and kicks off the inclusion of General Counsel, Finance, Procurement and Executive Office.”</i>	<i>“Our Legislative Affairs [Office] would make us aware and the first step would be reaching out to BFO. The advertisement process is dependent upon notification from [DOS’ OLA].”</i>	<i>“...for Constitutional Amendments, what happens for [BFO] is we usually get a notification via email. The process, as it is right now, is we get an email notification from [DOS’ OLA].”</i>
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Discovery of DOS’ Failure to Publish HB 963

HB 963 was filed with DOS on November 25, 2019 (with a time stamp of 10:34 a.m.), and clerical

²¹ See Appendix F for full statements of individuals asked by the OSIG – “Who was responsible to notify DOS Executive Staff, OCC, and BFO to initiate the advertisement process for proposed Constitutional Amendments?”

staff sent an email notification (on November 26, 2019 at 3:56 p.m.) advising of the assignment of a Joint Resolution number the following day. However, DOS took no further action until January 28, 2021, when OCC staff contacted the former DOS Secretary (who, in turn, contacted the remainder of DOS’ executive staff including the current Legislative Affairs Director) to inquire about HB 963’s status. During these subsequent meetings and DOS’ internal review, it was discovered that DOS did not advertise HB 963 as constitutionally required.

Other Joint Resolutions During DOS’ Current Legislative Affairs Director’s Tenure Were Successfully Published as Required

DOS’ current Legislative Affairs Director told the OSIG that (although their role included the tracking of legislation), they did not track HB 963 because he or she believed it did not affect DOS’ day-to-day operations. Specifically, the Legislative Affairs Director stated, HB 963 “[did not] affect what we do, whether it is licensure or elections, and so I [did not] follow it.” The Director acknowledged that they were aware of HB 963 because of the news; however, the Director assumed the OAG followed the legislation because it was referred to the Judiciary Committee.

In contrast to HB 963, the Legislative Affairs Director told the OSIG that he or she tracked one Joint Resolution in 2019 and four Joint Resolutions in 2020 [which were all proposed Constitutional Amendments] because those Joint Resolutions (according to the Director) directly impacted DOS (i.e., concerned licensure or elections). (See Table 3.) [OSIG Note: In these instances, the Legislative Affairs Director sent notification emails alerting executive staff and others of their passages but seemed to be unaware that these notifications apparently served as the catalysts for publication.] For example, DOS’ current Legislative

TABLE 3. DOS’ OLA’S NOTIFICATIONS OF JOINT RESOLUTIONS SINCE 2019

JR #	Bill Number	Email Sent
J.R. 2019-1	HB 276	Y
J.R. 2019-2	HB 963	N
J.R. 2020-1	SB 133	Y
J.R. 2020-2	SB 413	Y
J.R. 2020-3	HB 196	Y
J.R. 2020-4	SB 1166	Y

Affairs Director told the OSIG that they only monitored Marsy’s Law in 2019²² because it affected their prior agency, and they maintained a personal interest in the legislation.] [OSIG Note: However, in email communications (initiated on June 19, 2019 at 1:51 p.m. by DOS’ current Legislative Affairs Director), the Director first notified only OCC staff of its second passage. At 1:52 p.m., DOS’ OCC staff replied to *all* and requested the Director to “...send an email around to the entire DOS team with this information[.] Everyone needs to be aware this passed, **and the Secretary has some very real and immediate responsibilities**” (emphasis added). At 1:58 p.m. (or six minutes later), DOS’ current Legislative Affairs Director sent an email to the Secretary, and other DOS executive and legal staff which stated, in pertinent part: “[t]oday the Senate passed HB 276, Marsy’s Law. This is a **constitutional amendment proposal** that has now been passed by both chambers in consecutive sessions. I have attached the bill here. **It will therefore need to be advertised properly and a ballot question will need to be written as well.**” (emphasis added).] [OSIG Note: These communications were sent five months prior to first passage of HB 963.]

²² However, Marsy’s Law [or House Bill No. 276 (HB 276) and Joint Resolution No. 1 of 2019 (JR-1-2019)] concerned rights afforded to crime victims and impacted DOS programmatically according to a DOS Executive Staff Member.

According to DOS' current Legislative Affairs Director, since this was the second passage of Marsy's Law, he or she told the OSIG that they were aware of DOS' publication requirement. The Director, however, believed that it was their job to notify DOS staff of the passage of legislation, but OCC's job to know [and communicate] the legal requirements [associated with Joint Resolutions]. The OCC staff confirmed that DOS' Legislative Affairs Director was responsible to monitor, track, and notify DOS staff of legislative actions and it was OCC's job to counsel DOS staff of its legal publication requirements. However, the same OCC Staff Member did not recall why DOS' current Legislative Affairs Director included language concerning publication of Marsy's Law in their 1:58 p.m. June 19, 2019 email and did not recall instructing him or her to do so.

Further, in email communications (dated February 4, 2020) concerning Senate Bill No. 133 of 2020 [(SB 133) (Joint Resolution No. 1 of 2020) regarding the election of Pennsylvania's Lieutenant Governor], DOS' current Legislative Affairs Director notified DOS' executive staff (including, the Secretary, Executive Deputy Secretary, and those from OCC, BFO, BEN and Policy Office) of the first passage of this Constitutional Amendment. Following the Director's notification email, the content of the email thread continued (and the Director is copied) with input from DOS' OCC staff regarding the need for DOS' internal steps for publication. [**OSIG Note:** Specifically, the thread continues "*As a reminder, and a follow-up*" to [The OLA Director's] email below, in terms of next steps, this proposed amendment (JR 2020-1) must be advertised before the 2020 general election on November 3[rd]. That means advertisements must run in newspapers no later than August 3, September 3, and October 3. DOS will need to ensure timely placement of those advertisements and any others that may come before the [General Assembly's] summer break." (emphasis added).] According to DOS' current Legislative Affairs Director, at the time of SB 133's passage, he or she was unaware, until this point in time, that publication was also required after first passage of a proposed Constitutional Amendment. [**OSIG Note:** In February 2020, there was ample time for DOS to fulfill its constitutional mandate and properly advertise HB 963 since advertisement would have followed the same publication schedule as SB 133.]

Consistent with unwritten past practices [of at least former DOS OLA staff], the current Legislative Affairs Director sent notification emails on all Joint Resolutions passed during their tenure prior to, and after, passage of HB 963 but not for HB 963. Contrary to what the Legislative Affairs Director told the OSIG was their understanding, several members of DOS' executive staff told the OSIG that regardless of the substance of a Joint Resolution, each understood that the Secretary is responsible for advertising *all* proposed Constitutional Amendments [upon first and second passages]. Consequently, executive staff members believed DOS' OLA should monitor and track every Joint Resolution regardless of their impact on DOS program areas.

Despite Annual Pennsylvania Legislative Services (PLS) Subscription Costs and Tracking of HB 963, Current DOS Legislative Staff Used PLS Infrequently

Notwithstanding an annual subscription to PLS and the tracking of HB 963, current DOS Legislative staff used PLS infrequently and failed to appreciate that Joint Resolutions with no operational impact on DOS program areas still required constitutionally mandated DOS action. Several DOS employees informed the OSIG that DOS staff hold subscriptions to PLS, an online research, tracking, media, and analysis service database, allowing users to customize the identification of legislation for

tracking to receive personal real-time alerts on any legislative actions. A representative from PLS told the OSIG that the service provides users with all the information needed to make educated decisions on legislation as it relates to their respective agencies, or to simply stay informed about an issue or topic.

The OSIG reviewed DOS’ 2020 and 2021 contract with PLS and found that in 2020 DOS’ BFO paid \$5,375.00 permitting five DOS users’ access to the service²³ and in February 2021 an additional user was added. Subsequently, effective April 2021 after adding an additional five users (bringing the total to 11) DOS paid PLS \$7,700.00. (See Chart 1.)²⁴ Despite the annual subscription costs and benefits, PLS told the OSIG that (as of March 12, 2021) DOS’ current Legislative Affairs Director’s last login date was 30 days ago, and another OLA employee’s last login date was 210 days (or seven months) ago.

CHART 1.
DOS’ PLS COSTS AND USERS
SINCE 2020

2020 – Four users to PLS annual subscription costing (\$5,375.00);
February 2021 – Additional user added to PLS annual subscription at a cost of (\$425.00); and
April 2021 – Additional five users added to PLS annual subscription for a total cost of (\$7,700.00) bringing the total number of users to 11.

A current DOS OLA staff member told the OSIG that they are not involved in the legislative side of the office’s operations, including legislative tracking and Bill analysis and therefore they rarely used PLS. The OLA employee said the Director “keeps [legislation tracking] in [their] wheelhouse and usually [does not] let [it] out of [their] wheelhouse.” According to this OLA employee, the Director initially utilized PLS but expressed interest in changing the way DOS tracks Bills because [in the Director’s opinion] PLS is not the most effective or helpful way to track legislation; and users tend to get a lot of spam emails that are “little nuisance email[s]” that “clogs your inbox.” The OLA employee also told the OSIG that their understanding of how the Director formally tracked Bills was by getting “a heads up” from General Assembly members or the Governor’s Office. Because the Director believed they were already in close contact with individuals who provided them information, the Director allegedly told an OLA staff member that there was no reason to use PLS’ tracking feature because it was not helpful to meet goals and complete routine work of DOS’ OLA.

Unlike former OLA staff members, DOS’ Legislative Affairs Director does not like PLS and believed it might be the “least intuitive and least user-friendly system imaginable.” The current Director told the OSIG that tracking every Bill meant they would never stop checking emails; thus, rendering tracking a useless function because they would receive daily alerts for every single legislative action regardless of its relevance to DOS. According to the Director, if this were the case, PLS would not serve its intended purpose.

A Governor’s Office staff member told the OSIG that all Commonwealth Legislative Affairs Directors have access to PLS, adding “[i]t’s the system that we have, and I think [we have] been able to use it effectively for [the role of a Legislative Affairs Director].” Barring a technical issue, the Governor’s Office employee could not think of a reason why an executive agency’s Legislative Affairs Office would

²³ According to DOS communications to the OSIG, the five initial PLS users included two from OLA, two from its Policy Office and one who serves as the Director of Intergovernmental Affairs at DOS.

²⁴ In April 2021, DOS was charged \$380.00 per user to add five additional users. DOS informed the OSIG that the cost per user decreases if additional users are added.

**STATEMENTS OF DOS’
FORMER OLA
AND BUREAU STAFF MEMBERS
ON THE USE OF PLS**

PLS is a “critical” tool for Legislative Affairs Offices.

Without PLS, [I] would not have had enough time to do [my] job.

PLS is a timesaver that the individual utilized daily.

*[I] love PLS and use it every day... PLS is the tool Legislative Affairs Offices use and he or she **relies on it heavily**; it is how he or she finds out about bills.*

not use PLS and said it was their expectation that all Legislative Affairs Directors reporting to it utilized PLS. While the Governor’s Office employee added that a Legislative Affairs Director’s role is driven, in part, by conversations, relationships, and regular contacts with the Legislature, the Governor’s Office, and other agency legislative staff, the role of a Legislative Affairs Director is facilitated through, and supported by, PLS.

Other DOS Staff Statements Concerning OLA’s Use of PLS

Outside of DOS’ OLA, the OSIG was informed that use of, and reliance upon, PLS is essential to DOS’ legislative functions. For example, DOS BFO staff member said DOS’ PLS contract provides DOS’ OLA the ability to query keywords or phrases in PLS’ database and receive “pings” and email notifications to service users. The BFO employee

also said DOS’ Legislative staff have paid PLS subscriptions through DOS and it was their assumption that any legislation concerning DOS that came through would be tracked and circulated.

Similarly, a DOS Executive Staff Member told the OSIG that they believed DOS’ OLA was responsible for tracking and flagging legislation concerning DOS and its operations in PLS. DOS’ OCC staff told the OSIG that in the past, both Policy and OLA had PLS access and OLA took the lead in “investigating” and “dig[ging] in” to PLS notifications that were received. DOS’ OCC staff also said former Legislative Affairs Directors utilized PLS and communicated with DOS’ OCC concerning legislation, specifically whether a particular piece of legislation should be tracked. Finally, DOS’ OCC staff also told the OSIG that PLS should be part of DOS’ process to capture legislation to have on one’s radar and that knowing what to track [in PLS] and monitoring legislation from the outset was “absolutely key.”

Another DOS’ Executive Staff Member also confirmed to the OSIG that DOS had multiple PLS accounts but relied on OLA (given its role), to inform other staff about legislation, such as Joint Resolutions. This Executive Staff Member stated further that they would not blame [non-OLA] PLS subscribers [for DOS’ failure to advertise HB 963] because it was not those other PLS users’ responsibility [to monitor and track legislation]. According to this DOS Executive Staff Member, PLS users can enter keywords such as “Joint Resolution,” “Constitutional Amendment,” or anything that otherwise falls under DOS’ oversight. The Executive Staff Member added that DOS had a huge legislative [portfolio] and said PLS was a tool to help “keep track of things that may slip through the cracks.”

Notwithstanding the Current Director’s Criticism of PLS, Records Indicate They, In Fact, Received Real-Time Alerts and Reports Regarding HB 963 from PLS

Notwithstanding their criticism of PLS, records indicate that DOS’ current Legislative Affairs

Director did, in fact, receive automated real-time alerts, daily “NIGHTWriter” reports,²⁵ and “Commonwealth Clips”²⁶ concerning HB 963.

A Governor’s Office staff member told the OSIG that it was the individual user who sets up their PLS account for tracking, notices, and alerts on what legislation they follow. To proactively track a Bill in PLS, DOS’ current Legislative Affairs Director confirmed they personally logged into PLS to track legislation. The current Director said they used PLS to track “important” Bills; or former OLA staff accessed PLS to track them or assigned certain Bills to the Director to track.²⁷ The current Director also told the OSIG that DOS’ legislative and policy staff have access to each other’s PLS accounts to see what the others are tracking. [OSIG Note: If true, then evidence suggests that DOS’ Policy Office staff possibly had access to the same automated real-time alerts, daily reports, and clips concerning HB 963.]

However, this Executive Staff Member told the OSIG that they utilized PLS to conduct historical research for Bill analysis and did not use the service to track legislation. This Executive Staff Member said the NIGHTWriter reports list all staff within the agency and provides a listing of all legislative tracks. The OSIG found that from March 2019 through November 2019, DOS staff within its Legislative Affairs and Policy Offices received approximately 60 emails specifically referencing HB 963, the last of which were received on November 21, 2019 and November 26, 2019, respectively, and alerted that:

- 11/21/19 at 10:46AM – Signed in the House;
- 11/21/19 at 3:59PM – Signed in the Senate;
- 11/26/19 at 4:04PM – Filed in the Office of the Secretary of the Commonwealth;
- 11/26/19 at 4:05PM – Assigned Joint Resolution #JR-2 of 2019; and
- 11/26/19 at 4:06PM – Pamphlet Laws Resolution No. 2.

In 2019, the OSIG also found there were 21 news articles about HB 963 that PLS provided to its subscribers: two in March, 16 in April, one in May, and two in November.

(3) DOS’ PROPOSED CHANGES TO CORRECT INTERNAL PROCESSES CONCERNING THE HANDLING OF PROPOSED CONSTITUTIONAL AMENDMENTS DO NOT APPEAR TO BE SUFFICIENT TO CORRECT SYSTEMIC DEFICIENCIES.

After DOS identified its failure to advertise HB 963, the agency began drafting a policy and procedure document titled *Procedures for Receiving, Processing and Advertising Proposed Constitutional Amendments* (Proposed Procedures). The five-page Proposed Procedures document attempts to assign responsibility to respective bureaus and offices to further guide DOS on the advertisement process. A DOS Executive Staff Member told the OSIG that while hopefully the failure

“I [will] be the first to admit that I think we need a better internal process that documents what has to happen.”

“This is such an important process and so [it is] really important that something like this never happens again.”

²⁵ A former DOS OLA employee told the OSIG that a NIGHTWriter Report is a summary of legislative actions that day, such as: all Bills that were filed; what transpired in the General Assembly; what meetings appear on the General Assembly’s calendar; when a tracked Bill has any kind of movement; and provides a review of all pieces of legislation that were filed for that day (by a user’s key words).

²⁶ “Commonwealth Clips,” a service to PLS users, is the state’s leading legislative and information service on politics and government and includes a daily listing of news clips from over 100 local, state, and national newspapers.

²⁷ Another former OLA employee told the OSIG that they could not recall whether he or she added to DOS’ current Director’s PLS tracking [to include HB 963], but said it was their understanding that DOS’ current Director knew how to use PLS.

that occurred with HB 963 is never repeated, *if it does occur*, the changes in the Proposed Procedures document would identify the bureau(s) and/or office(s) and individuals at fault.

The Proposed Procedures document contains 25 steps that summarizes the actions of five different DOS bureaus and offices (and other departments or agencies consulted throughout the process). (See Appendix E for full details.) The OSIG reviewed the Proposed Procedures document and identified the following possible deficiencies:

- There is no executive level oversight of procedures to ensure appropriate internal actions are taken; and
- DOS’ OLA is tasked with too many responsibilities potentially creating another single point of failure like that seen with HB 963.

In creating new written procedures (which appear to only memorialize DOS’ past informal practices), DOS still failed to reorganize its system to allow for executive oversight of the Joint Resolution intake and publication processes. Thus, the proposed procedures do not assign the receipt and subsequent assignment of internal actions regarding a proposed Constitutional Amendment to a member of DOS’

executive staff ensuring DOS’ subsequent actions are properly directed and administered. Given the gravity of this constitutional mandate, the OSIG notes that delegation of this function to BEN clerical staff again leaves open the possibility for future email notification failures akin to HB 963.

“...you [cannot] necessarily 100 percent rely on something like that to conduct a process like this and so I believe that, in general, for this process going forward, [it is] – there needs to be a way to make the connection between passage andthe individuals who are... responsible for the processes that the passage requires...and I believe the easiest route to that goes through the Executive staff at [DOS], probably multiple Executive staff at [DOS].”

Further, the OSIG notes that the Proposed Procedures document indicates DOS’ OLA bears full responsibility for identifying and tracking Joint Resolutions, along with tracking legislation which may directly impact DOS program areas. By placing responsibility in a single office or business unit (without any other executive oversight), the OSIG notes that

DOS again creates another single point of failure. For example, DOS’ current Legislative Affairs Director explained that approximately 1,450 Bills (not including Joint Resolutions proposing Constitutional Amendments) were considered during the current legislative session, 80 of which pertained to either DOS or professional licensure along with approximately 29 other statutory amendments related to DOS. According to the Director, DOS’ Proposed Procedures document requires OLA to track and monitor **all** legislation impacting DOS (including proposed amendments). A Governor’s Office staff member told the OSIG that because DOS takes “custody” of all Bills, having DOS’ Legislative Affairs Director involved in that amount of tracking is an enormous task to put on one person, far too broad, and inappropriate given other responsibilities.

“All of those bits and pieces that [are not] necessarily legislative, but that are important to the carrying out of a legislative requirement.”

Even a member of the Governor’s Office acknowledged that Joint Resolutions should be “elevated,” and should absolutely be tracked more closely by DOS (whether solely by the Legislative Director or with the assistance of DOS’ Chief Counsel). However, the same employee believed DOS’ internal processes should also require the involvement of either DOS’ Secretary or Executive Deputy

Secretary to ensure ongoing executive oversight and stated more involvement is better along with specific assignments of duties.

CONCLUSIONS

Based on its review, the OSIG concludes the following:

- (1) There is no evidence suggesting that DOS' failure to advertise HB 963 was deliberate or the result of intentional malfeasance.
- (2) DOS lacks a formal, well-structured, memorialized process for tracking, receiving, processing, publishing, and otherwise handling proposed Constitutional Amendments, that places oversight responsibility on senior DOS official(s) and clearly identifies the duties and processes of each DOS bureau or office that takes part in the process. (*See* "Recommendations" section of this *Program Review* report for more detail.)
- (3) Based on DOS' reliance on informal and unwritten past practices, the direct, proximate cause of DOS' failure to properly advertise HB 963 occurred because of OLA's failure to notify necessary DOS' executive staff of HB 963's first passage and OLA's failure to notify stakeholders further prevented relevant DOS bureaus and offices from taking appropriate action to ensure time-sensitive publication.

RECOMMENDATIONS

Following its review, and to avoid future failures to meet its constitutional mandate, the OSIG recommends that DOS consider:

- (1) Creating and memorializing written policies that detail the various types of legislation received and assigning roles and responsibilities to DOS bureaus and offices, and executive accountability and oversight for each type, to ensure proper understanding by, and successive transition to, current employees and new hires.
 - (a) When creating these policies, DOS should also identify and task a single DOS executive (with authority over and across applicable bureaus and offices) with overseeing and tracking the handling of Joint Resolutions and/or Constitutional Amendments from intake to publication.
- (2) Creating and memorializing written sequential procedures (and demarcations for various types of legislation including Joint Resolutions and Bills that affect DOS program areas) after intake to ensure appropriate internal actions are taken upon the filing of each type of legislation at DOS, and facilitate proper understanding by, and successive transition to, current employees and new hires.
 - (a) To ensure proper executive oversight of sequential procedures, DOS should revise its current Clerical Level ("bottom up") notification process and replace it with an Executive Level ("top down") management system.

- (b) To ensure “top down” management and redundant tracking and/or awareness to protect itself against single points of failure, DOS’ OLA should track Constitutional Amendments and notify executive staff accordingly. However, based on their constitutional importance, executive staff should *physically* accept receipt upon intake and assume custody of Joint Resolutions, and take responsibility to assign appropriate actions. This would create redundant processes between tracking (and subsequent notification of legislative activity) and intake (and subsequent assignment of required actions) to ensure that there is no one single point of failure through overlapping and separate responsibilities.
- (c) When handling Joint Resolutions and/or Constitutional Amendments specifically, DOS should assign written responsibilities and accountability to each bureau and office involved in the publication process, including:
 - (i) Creating an internal document or tracking system for each sequential step in the process.
 - (ii) Update and maintain both an internal database (with names, telephone numbers and e-mail addresses) and an internal electronic distribution list (through Microsoft Outlook) of DOS executive staff and those individuals responsible for ensuring the publication of Joint Resolutions and/or Constitutional Amendments upon filing in DOS that includes, but is not limited to, the Secretary, an Executive Deputy Secretary, Chief Counsel, Policy Director, BFO Director, OLA Director, and BEN Director. Additionally, require one member on the list to manage this database and update it regularly to ensure accuracy.
 - (iii) Demarcate the routing of and use unique language and/or a descriptive header when notifying internal executive DOS staff of the receipt and filing of a Joint Resolution and/or Constitutional Amendment to prioritize its importance.
- (d) Require all employees who handle Joint Resolutions and/or Constitutional Amendments to undergo annual training on these new written policies and procedures to ensure proper understanding by, and successive transition to, current employees and new hires.
- (e) Require all employees within DOS’ OLA to receive additional training concerning DOS’ legislative responsibilities (including those regarding Joint Resolutions and/or Constitutional Amendments) and effectively use legislative staff as intended.
- (f) Properly identify and understand PLS functionalities (or alternate legislative tracking resources or methods), implement annual PLS training for all users, and require its proper use to more effectively track and monitor legislation that affects DOS (including Joint Resolutions and/or proposed Constitutional Amendments) by DOS’ OLA staff.

**Department of State's Failure to Meet
Its Constitutional Mandate
OSIG-21-0016-I-DOS**

April 28, 2021

Program Review

If you have any questions concerning this matter, please do not hesitate to call me, Deputy State Inspector General Steven E. Bear or Chief Counsel Althia O. Bennett at (717) 787-6835.

cc: Anne Gingrich Cornick
Deputy General Counsel
Governor's Office of General Counsel

Timothy E. Gates
Chief Counsel
Department of State

APPENDIX A

COPY OF FEBRUARY 1, 2021 PRESS RELEASE

Department of State Apologizes for Its Failure to Properly Advertise Proposed Constitutional Amendment, HB 963

02/01/2021

Harrisburg, PA -The Department of State today apologized for failing to advertise a proposed constitutional amendment first passed by the legislature in November 2019, HB 963, which could have been considered this month for second consideration.

Under the state constitution, after first passage, the wording of a proposed constitutional amendment must be advertised in two newspapers in every county, in each of the three months before the next general election at which members of the General Assembly are elected. This advertising did not occur, as required, in the leadup to the 2020 general election.

The proposed constitutional amendment would extend retroactively the timeline victims have to file civil action against their abusers.

The department offers a sincere apology to the victims impacted by this oversight and the delay that will be caused, as well as to all those working to pass this measure. Department staff advertised other proposed constitutional amendments passed during the last legislative session, but through simple human error mistakenly failed to include this proposed constitutional amendment in the advertisements. In preparing for the potential second passage this month, DOS staff noticed late last week that the amendment was not previously advertised.

The proposed amendment passed around the same time as a related three-bill package that included House Bill 962, which provided for prospective statute of limitations reforms, House Bill 1051, increasing penalties for failure to report child abuse by a mandated reporter, and House Bill 1171, which makes conversations with law enforcement agents exempt from non-disclosure agreements. All of these reforms are in effect and are not impacted by this delay.

The department has instituted new controls to ensure that such failings will not occur in the future, including tracking of all constitutional amendments from the time they are filed, and direct

notifications to additional department staff when they are signed, along with cross checks to ensure all required steps are carried out.

While the department will take every step possible to expedite efforts to move this initiative forward, the failure to advertise the proposed constitutional amendment means the process to amend the constitution must now start from the beginning.

Proposed constitutional amendments must pass in two consecutive sessions of the state Legislature, and must be advertised after each passage, after which the proposal is put to the voters in a statewide referendum.

MEDIA CONTACT: Wanda Murren, 717-783-1621

APPENDIX B

COPY OF HOUSE BILL No. 963

PRIOR PASSAGE - NONE

PRINTER'S NO. 1130

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. **963** Session of
2019

INTRODUCED BY GREGORY AND ROZZI, MARCH 27, 2019

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 27, 2019

A JOINT RESOLUTION

Proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for courts to be open and suits against the Commonwealth.

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

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with Article XI:

That Section 11 of Article I be amended to read:

§ 11. Courts to be open; suits against the Commonwealth.

(a) All courts shall be open; and every man for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law, and right and justice administered without sale, denial,

or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

(b) An individual for whom a statutory limitations period has already expired shall have a period of two years from the time that this subsection becomes effective to commence an action arising from childhood sexual abuse, in such cases as provided by law at the time that this subsection becomes effective.

Section 2. (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment. The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of

Pennsylvania and which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.

Proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for courts to be open and suits against the Commonwealth.

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

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with Article XI:

That Section 11 of Article I be amended to read:

§ 11. Courts to be open; suits against the Commonwealth.

(a) All courts shall be open; and every man for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

(b) An individual for whom a statutory limitations period has already expired shall have a period of two years from the time that this subsection becomes effective to commence an action arising from childhood sexual abuse, in such cases as provided by law at the time that this subsection becomes effective.

Section 2. (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in

sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment. The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.

APPENDIX C

COPY OF EMAIL NOTIFICATION (DATED 11/26/19) ASSIGNMENT OF JOINT RESOLUTION NUMBER

Assignment of joint resolution number



Reply Reply All Forward ...

To: [Abbott, J.J.](#); [agobrecht@palrb.us](#); [Alison Yerges](#); [Barnes, Andrew](#); [Barry, Abdout](#); [Beamer, Vince](#); [Beth Rash](#); [Beth Witmer](#); [Bonner, Krystal](#); [Bordonaro, Nicole](#); [Gilbert, Brandon \(GC\)](#); [Bruder, Stephen](#); [Brunelle, Michael](#); [C Hoover](#); [Cashman, Cindy](#); [Chmielewski, Michael](#); [Clark, Sarah L](#); [Conrad, Laura](#); [Crawford, Kristin](#); **+95 others**

Tue 11/26/2019 3:56 PM

 November 25, 2019 message.docx
31 KB

Good afternoon,

Please see attached for the assignment of the joint resolution message

Bureau of Elections & Notaries
Pennsylvania Department of State

APPENDIX D

COPY OF 10-STEP PROCESS FOR JOINT RESOLUTIONS

[Redacted]

From: [Redacted]
Sent: Tuesday, December 3, 2019 3:27 PM
To: [Redacted]
Cc: [Redacted]
Subject: Veto and Joint Resolution message

-updated originally in 2015

Joint Resolutions:

Joint Resolutions are not signed by the Governor and are not taken down to OGC.

UPDATED VERSION

1. Sign the receipt
2. Date stamp the bill
3. Time stamp the Log Sheet
4. OGC advises us when it is a joint resolution
5. Wait for joint resolution message from [Redacted]
6. Assign JR#s , i.e., Jr-1 of 2019, JR-2 of 2019 (assign in a separate message from act numbers)
7. Send the assignment of act numbers/Joint Resolution message
8. Type JR #1 on Bill and Log sheet
9. Certify the Joint Resolution (if it is requested)
10. File in S:/drive/Notaries 2019/Legislation/Joint Resolution folder

[Redacted]



APPENDIX E

CHART DEPICTING DEPARTMENT OF STATE’S PROPOSED “PROCEDURES FOR RECEIVING, PROCESSING AND ADVERTISING PROPOSED CONSTITUTIONAL AMENDMENTS”

DOS Intended Action	DOS Staff Involved
1. Tracking of proposed constitutional amendments <ul style="list-style-type: none"> • Office of Legislative Affairs tracks legislation proposing a constitutional amendment during consideration by the General Assembly. • Office of Legislative Affairs works with the Bureau of Elections and Notaries (BEN) and the Office of Chief Counsel (OCC) to provide a bill analysis, if required. • Office of Legislative Affairs works with BEN and the Business Finance Office (BFO) to assess the fiscal impact of advertising the proposed constitutional amendment. • Office of Legislative Affairs continues tracking the legislation until the proposed constitutional amendment (Joint Resolution) is signed by the Senate and the House of Representatives. In consultation with OP, SOC and EDS, as necessary.	Office of Legislative Affairs (OLA), Bureau of Elections and Notaries (BEN), Office of Chief Counsel (OCC) and the Business Finance Office (BFO)
	Consulted: Office of Policy (OP) Executive Deputy Secretary Secretary
Assign Joint Resolution Number	BEN
2. Transmit (via email) Assignment of Joint Resolution Message to all internal and external legislative contacts.	BEN
3. Transmit separate email notification of Joint Resolution Number Assignment to internal DOS contacts in OLA, BEN, BFO, OCC and DOS Executive Office.	BEN
4. Upon receipt of email notification, organize DOS Team (OLA, BEN, OCC, BFO, DSEC, OP, SOC, and EDS) meeting to discuss timing and requirements of advertising the proposed constitutional amendment.	OLA and/or BEN
5. Notify the Department’s contracted advertising vendor and Commonwealth Media Services to schedule meeting between all parties and the DOS Team to discuss requirements and deadlines for advertising the proposed constitutional amendment. Vendor will provide a quote for advertising services based on information provided during the meeting. CMS will provide, in writing, an approval for BFO	BFO

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to proceed with executing a purchase order to advertising vendor.	
6. Quote provided to BFO Fiscal to ensure funding is available for advertisement. If funding is not available, BFO Fiscal sends letter for Executive Authorization to the Governor’s Budget Office (GBO) to request additional funds to advertise.	BFO
7. Draft advertisement preamble.	OLA, OCC, and BEN
8. Obtain signoff from EDS and SOC	Deputy Secretary of Elections and OCC
9. If the constitutional amendment has already passed and advertised in the previous session of the General Assembly, this “second passage” requires DOS to work with the OAG to obtain a Plain Language Statement to accompany the proposed constitutional amendment.	OCC
10. Draft the question to be presented to voters on the balloting materials at the next election.	OCC in consultation with BEN, Deputy Secretary of Elections, Executive Deputy Secretary, Secretary, Governor’s Office, and Office of General Counsel
11. Obtain necessary internal approvals of the question from DOS Executive Office, Governor’s Office, and OGC.	OCC and Secretary/Executive Deputy Secretary
12. Submit ballot question to OAG for approval.	OCC
13. Notify county election contacts that a proposed constitutional amendment must be presented to the voters at the next election.	BEN
14. BFO receives copy of draft documents from OCC and BFO provides a copy to outside vendor for Spanish translation. No contract required for translations as these expenses are paid via Purchase Card.	OCC and BFO
15. Once translated documents are received from outside vendor, BFO transmits the following materials to the contracted advertising vendor and request draft ad copy and proposed list of newspapers for publication: <ul style="list-style-type: none"> • Preamble • Text of the Constitutional Amendment • Text of the approved Ballot Question (2nd passage only) • Text of the approved Plain Language Statement (2nd passage only) • Text of Paid for with Taxpayer \$ disclaimer • Translations of the advertisement materials 	BFO
16. Review and approve the list of proposed newspapers	BEN in consultation with OCC, Deputy Secretary of Elections, Executive Deputy Secretary and Secretary
17. Review and approve ad copy provided by the advertising vendor	BEN, OCC, and Bureau of Campaign Finance & Civic Engagement
18. Post electronic copies of English and Spanish ad copy on DOS website	BEN and Office of Communications and Press (OCP)
19. If second passage, include in the ballot certification to county election contacts the form of the ballot question the Plain Language Statement, and the text of the proposed constitutional amendment	BEN
20. Track progress of advertisements and collect and store proofs of publication as they are received by the advertising vendor	BFO and BEN

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21. Alert OCC, BEN, OLA, DSEC, EDSOC, and SOC if any newspaper failed to properly publish the advertisement. In the event of such a failure, obtain form affidavits from both the newspaper and the advertising vendor documenting that DOS provided the advertisement in ample time.	BFO
22. Vendor submits invoice to BFO for payment of advertising services after each round of publication	BFO
23. Compile and prepare for certification by SOC the election returns for the proposed constitutional amendment	BEN
24. Prepare proclamation for the Governor's signature indicating whether the proposed amendment has been adopted by the voters or not	BEN in consultation with OCC and OGC
25. Deliver proclamation to the Legislative Reference Bureau for publication in the PA Bulletin	OCC

APPENDIX F

CHART OF FULL STATEMENTS

QUESTION 1:

Bureau/Office and Agency	Issue 1: Was there any evidence suggesting Intentional, Deliberate or Purposeful Acts from anyone to make HB 963 fail?
Executive Staff Member, DOS	Saw no evidence of intentional or deliberate acts from the Director of Legislative Affairs or anyone else. Also did not see any evidence of outside or undue pressure put on the Director of Legislative Affairs or any other Department staff member about this.
Executive Staff Member, DOS	...I [do not] think so. I really [do not] think so. I think this was just a pathetic failure on the -- on the part of an office that led to this terrible outcome and all of the dominoes that fell all at one time...[M]y personal perspective is this was not outside pressure [and] this was just a failure.
Executive Staff Member, DOS	Did not believe anything was done intentionally or deliberately. The Department’s internal review did not indicate anything like that at all and if it had, they would have disclosed it right away. Does not feel this was malfeasance, but clearly someone dropped the ball in handling this. Reiterated there was no evidence supporting intentional or deliberate acts to squash this amendment from anyone.
OCC Staff Member, DOS	There was no intentional, deliberate, or purposeful acts from anyone on this. It was clear oversight which identified some organizational challenges regarding this process. Who from the Department would gain from this?
OCC Staff Member, DOS	...this is such an important process and so [it is] really important that something like this never happens again...No, [I am] not aware of anything...In my opinion, what broke down here in this process was not – the advertising process [did not] break down. The notification process broke down...like I said, if the notification [would have] happened here, I have every reason to believe that the advertising [would have] happened as it has with all of these other ones in the past... [It is] just that -- there was a huge breakdown in that aspect of it.
Bureau Staff Member, DOS	I think it was an honest mistake... I think it was pure oversight. I think -- and [I am] only speaking from the conversations that I have been a part of and that [I have] been an observer, not a real participant, was that this particular Bill, it [did not] really -- it [did not] scream constitutional amendment like a lot of the other ones do. I think it was embedded in a lot of other things and it was really missed. It was just missed, but it was a big miss and [that is] my understanding of it, which is unfortunate.

Bureau/Office and Agency	Issue 1: Was there any evidence suggesting Intentional, Deliberate or Purposeful Acts from anyone to make HB 963 fail?
Bureau Staff Member, DOS	... [That is] a good question. I [do not] know. I would hope that it was not an intentional thing to do. Obviously, I would have no proof that it was. I would hope not. I mean I give kudos I guess to the Secretary who kind of took this all for us. But I do think that maybe -- you know what I mean? [There is] got to be some other -- obviously, someone else was responsible for this and that [it is] -- it [should not] just be all on her as well. So [I am] hoping that it [was not] towards her; that this was the reason they -- that it happened. But it [could have] been an honest mistake too. I [do not] – I really [do not] know, so.
Executive Staff Member, DOS	I have no reason to believe that it was anything other than a -- you know, an administrative mistake, an administrative failure. I would certainly hope that it was not intention[al] in any way.
Bureau Staff Member, DOS	Oh, no. No, I [do not] believe that, not for one minute. I just think it was missed...Short of tracking and notifying the group, whoever does that. You know, [that is] where I think things went awry...
Staff Member, DOS	Oh, I can honestly say it was probably an honest mistake. I [do not] think it was intentional.
Staff Member, DOS	This was an honest mistake and not intentional.
Executive Staff Member, DOS	I definitely [do not] think it was intentional because...no one else at the Department is that type of person. I mean we...I [do not] think it was intentional...I have no idea and [cannot] speculate what [might have] happened, but I can -- I [do not] believe it was intentional.
Staff Member, Governor’s Office of General Counsel	Highly doubt this was an intentional mistake by DOS, but without knowing the ins and outs of their processes she could not say 100% for sure. “My guess would be no” ...and believes this was a clerical error.
Staff Member, Governor’s Office	... [t]hat is the farthest thing from the truth. I [do not] know a single person that found out about this who [was not] absolutely sick over it. It in no way was intentional and I [cannot] think of a reason why it would have been intentional. [It is] a horrible mistake.
Executive Staff Member, DOS	... There was no intent here. I [do not] think -- I mean I am certainly not a supporter of the Catholic Church and obviously not of child sex abuse...but [there was] no intent. Like [it is] – [that is] just absurd.
Bureau Staff Member, DOS	I think it was an honest mistake...I know in some of the last hearings that [we have] had, some legislators have brought up that they thought that it was intentional malfeasance and I definitely do not believe that at all...
Bureau Staff Member, DOS	I think it was an honest mistake. I [do not] think anyone would purposely do this, but [that is] me. I [do not] have a lot of negative thoughts, so I [do not] think anyone would purposely do this.
Executive Staff Member, DOS	I really [do not] have any thoughts on it. [It is] not -- one, [it is] not my place to have any thoughts on it ...

QUESTION 2:

Bureau/Office and Agency	Issue 2: Who was responsible to notify DOS Executive Staff, OCC, and BFO to initiate the advertisement process for proposed constitutional amendments?
Executive Staff Member, DOS	Relied on the Office of Legislative Affairs to track and communicate relevant Legislative actions to the Department and its staff... once an amendment, resolution or bill is passed, the Office of Legislative Affairs normally informs relevant Department staff of the passage and that a document is to be filed with the Department.
Executive Staff Member, DOS	Once a joint resolution is passed, BEN assigns a joint resolution number that is communicated to the Legislative Office who then oversees this process and kicks off the inclusion of General Counsel, Finance, Procurement, the Executive Office.
Executive Staff Member, DOS	It became evident [after HB 963] that this clearly is the role of the Director of the Legislative Affairs Office ... There were over 100 people on that [BEN] notification email from [the clerk] and no one decided to speak up or communicate the receipt of that email, including Deputy Secretary of Elections and Commissions and the Director of BEN.
OCC Staff Member, DOS	... So, like when I talk about tracking, [that is] what I mean, like tracking where the legislation is in the process and then [it is] not just tracking, then [it is] the notification, right? [It is] informing the right people and Joint Resolution or if [it is] a Bill that impacts a Department, you probably need to tell that to the right folks like even before it passes, right, because, like the Executive Staff I would think would want to know, okay, you know what, we might have a Bill [that is] going to have like some impact on BPOA now and [we have] got to mobilize; we got to figure out how to implement it. [There has] been other legislative enactments that have come through that require a lot of implementation besides just Joint Resolutions. So, the tracking is one thing, and the notification is another ... But I think, historically, the tracking and the notification has been the Legislative folks.
OCC Staff Member, DOS	My understanding is that typically [that is] kind of the – [it is] the Legislative Affairs Office that typically is the one that would kind of make it known that [there is] a potential amendment that we need to work on.
Executive Staff Member, DOS	Our Office of Legislative Affairs would make us aware, and the first step would be reaching out to the Bureau of Finance and Operations. The advertisement process is dependent upon notification from the Office of Legislative Affairs.
Staff Member, DOS	After BEN sends the announcement email, the Legislative Affairs Office takes over.
Bureau Staff Member, DOS	I do not now who spearheads advertising. I assume that [it is] our Press Office and our Fiscal Office, but I [do not] actually know.

Bureau/Office and Agency	Issue 2: Who was responsible to notify DOS Executive Staff, OCC, and BFO to initiate the advertisement process for proposed constitutional amendments?
Bureau Staff Member, DOS	So, for constitutional amendments, what happens is we usually get a notification via email. The process, as it is right now, is we get an email notification from our Legislative Affairs Office. In the past, it used to come through [OCC]. They would reach out to us. It was usually one or the other would let us know. Once that happened, once we knew that there was a potential constitutional amendment to be advertised in the paper ... And to be honest with you, the OCC was a courtesy email. It -- I [do not] think it was even their responsibility to let us know because [it is] a Program Area thing; [it is] not Legal’s thing.
Bureau Staff Member, DOS	Usually the Director of Legislative Affairs, the Executive Deputy Chief Counsel, or the Deputy Secretary for Elections and Commissions would start the email chain regarding the advertisement process... “one of those three usually”
Staff Member, Governor’s Office	[DOS] ... has a unique role when it comes to the passage and filing of Bills because they take custody of everything and in my experience, it is -- once a Bill becomes law and is in sort of the implementation phase, the Legislative Affairs Office does not have much to do with it at that point.
Executive Staff Member, DOS	My assumption was that once that email notification [from BEN] goes out, I assumed that notifies the people who need to be notified and whether that was Communications, like I said, I thought it was Communications until I found out it [was not], or now Finance and Operations. I -- it was my assumption that that notification was the notification to pertinent parties.
Bureau Staff Member, DOS	... [I am] not officially sure at all about what the process is for that... [I have] never seen like a list of like all the steps of where like once this happens, you know, number one, go to such-and-such office and talk to this person about, you know what I mean? ... Like [I have] never seen [an] actual flow chart or been told what the steps are, what the directions are. I just know who was involved from the last round, this past round of advertising ... I really [do not] know anything about what happened before February 1 [2021] as far as, you know, who informs who or how that goes about happening.

Bureau/Office and Agency	Issue 2: Who was responsible to notify DOS Executive Staff, OCC, and BFO to initiate the advertisement process for proposed constitutional amendments?
Executive Staff Member, DOS	<p>.... a Constitutional Amendment was approved by or got assigned a Joint Resolution number, ...input that information into [a] report so that everybody would see that on the report... After -- after it has been -- had been assigned a Joint Resolution number, at what point -- how involved after that, I [cannot] recall for certain ... After -- the only -- the only thing ... am certain of is that it was on [the] report, and that everybody [would have] had notification that a Joint Resolution number was assigned. That [I am] absolutely certain --... [cannot] recall if I was involved in the reminder process to [legal] counsel, or to the Election Bureau after that point. I do know I did -- I did that as a reminder. That yes, a Joint Resolution number was assigned, and it was on [the] report, and it stayed on [the] report.... So that would be there as a reminder. That [I am] positive of...it took me a little bit to understand the process because it [is not] something [that is] very easily understandable, in my opinion but I did understand the process fairly well to the time when I left, meaning like of course Constitutional Amendment ... [T]he last of my job involving a Constitutional Amendment would have been once that general -- the Joint Resolution number was assigned, that pretty much ended my involvement.</p>
Bureau Staff Member, DOS	<p>I was not involved. But one, [I am] not an attorney, so I [would not] even know where to start with that. And that was -- yeah, no, I did not get involved in that ... I would assume that the leg directors were involved. I [do not] know. I think [a constitutional amendment] was done under [the former Director], but I would assume that [they are] involved.</p>

**RESPONSE OF
FORMER DOS SECRETARY TO
THE OSIG'S PROGRAM
REVIEW**

Response by Kathy Boockvar to the Office of State Inspector General's Program Review Concerning House Bill No. 963 of 2019

The Office of State Inspector General (OSIG) has concluded its review of the failure to advertise the constitutional amendment House Bill 963 of 2019. The OSIG report confirms the earlier findings of the Department of State's executive team, including:

- The "single point of failure" regarding HB 963 was caused when dual-report staff responsible for tracking legislative actions failed to track and notify Department of State executive staff members about the bill (pp. 5, 22);
- The failure was unintentional (pp 6, 22);
- The incident was an anomaly: both before and after HB 963, constitutional amendments had been tracked and published with no issues other than an incident thirty years ago (pp. 15-17); and
- Process improvement, including redundancies in responsibility for tracking and notification, should be instituted to prevent this from recurring.¹

I started as Acting Secretary of State in early 2019, a few months before HB 963 was introduced. Our team prioritized process review, improvement, and expanded staff training, beginning with areas identified as needing the most attention. No issues or concerns were raised by internal or external parties about the constitutional amendment process, which had successfully tracked and advertised amendments for decades. I am extremely disappointed that legislative tracking processes that were used previously and subsequently were not followed in this instance, delaying the time for victims of abuse to hold their abusers accountable.

I have dedicated my life's work to advancing issues of equity and advocating on behalf of the voiceless, and this delay is heartbreaking to me. It is my fervent wish that victims of abuse succeed in their continuing fight for justice, and that House Bill 951, which would extend the statute of limitations and give victims more time to hold their predators accountable, be passed without delay.

¹ Because I agree with these findings, I will not address the inaccuracies and unsubstantiated misstatements of fact and law throughout the report. The most important tasks at hand are implementing the process improvements noted above and for the General Assembly to pass House Bill 951 without delay, to provide access to justice for victims of abuse.

**RESPONSE OF
THE PENNSYLVANIA
DEPARTMENT OF STATE TO
THE OSIG'S PROGRAM
REVIEW**



TO: Lucas M. Miller
State Inspector General

FROM: Veronica Degraffenreid *Veronica W. Degraffenreid*
Acting Secretary of the Commonwealth of Pennsylvania

SUBJECT: Response to the State Inspector General's Program Review

DATE: May 26, 2021

Thank you for the Program Review that your office conducted at the request of Governor Wolf. I greatly value your input and take very seriously the concerns raised and the recommendations made to improve the process used by the Department to ensure that obligations to publish proposed Constitutional Amendments are fulfilled in the future, without fail.

Before discussing the details of my response to your recommendations I wanted to take a moment to express my deepest sympathies to the victims that have been adversely impacted by the Department's failure to meet its constitutional mandate. This failure certainly was not deliberate or intentional in any way but as noted in your review was caused by an absence of a formal, well-structured, memorialized process for tracking, receiving, processing, publishing, and otherwise handling proposed Constitutional Amendments. The Department again offers a sincere apology to the victims impacted by the oversight and the delay that has been caused. Prior to receipt of your recommendations, the Department had already initiated an internal review and drafted proposed new procedures to prevent something similar from happening in the future. The proposed procedures were submitted to you for review and comment. You have recommended additional changes to those procedures, which have been accepted by the Department and are highlighted in our responses below and are also reflected in the updated procedures attached to this response.

In addition, the Department agrees with the remaining recommendations, which we are working to implement immediately.

Recommendations:

- (1) Creating and memorializing written policies that detail the various types of legislation received and assigning roles and responsibilities to DOS bureaus and offices, and executive accountability and oversight for each type, to ensure proper understanding by, and successive transition to, current employees and new hires.**

The Department agrees with this recommendation and had already drafted proposed written procedures prior to the receipt of this review. The proposed procedures were submitted to the

OSIG for evaluation and comment. Pursuant to the recommendation above the written procedure has been strengthened to provide specific executive-level accountability and oversight of the Constitutional Amendment process. The Department's Executive Deputy Secretary/Chief of Staff has been assigned to ensure proper understanding by, and successive transition to, current employees and new hires. In addition, and as documented in the attached policy, individual roles have been assigned to each sequential step required of Department personnel starting from the time a Joint Resolution is first introduced by the legislature.

- (a) When creating these policies, DOS should also identify and task a single DOS executive (with authority over and across applicable bureaus and offices) with overseeing and tracking the handling of Joint Resolutions and/or Constitutional Amendments from intake to publication.**

The Department agrees with this recommendation and as indicated above the Department's Executive Deputy Secretary/Chief of Staff has been assigned via written policy.

- (2) Creating and memorializing written sequential procedures (and demarcations for various types of legislation including Joint Resolutions and Bills that affect DOS program areas) after intake to ensure appropriate internal actions are taken upon the filing of each type of legislation at DOS, and facilitate proper understanding by, and successive transition to, current employees and new hires.**

The Department agrees with this recommendation and has incorporated the same into its updated written procedures, which are attached to this response.

- (a) To ensure proper executive oversight of sequential procedures, DOS should revise its current Clerical Level ("bottom up") notification process and replace it with an Executive Level ("top down") management system.**

The Department agrees with this recommendation and has implemented an Executive Level ("top down") management system. Specifically, Joint Resolutions (including proposed Constitutional Amendments), when filed with the Department, will be immediately delivered to the Executive Office to ensure that the Executive Deputy Secretary/Chief of Staff timely initiates notification to appropriate Department personnel.

- (b) To ensure "top down" management and redundant tracking and/or awareness to protect itself against single points of failure, DOS' OLA should track Constitutional Amendments and notify executive staff accordingly. However, based on their constitutional importance, executive staff should *physically* accept receipt upon intake and assume custody of Joint Resolutions, and take responsibility to assign appropriate actions. This would create redundant processes between tracking (and subsequent notification of legislative activity) and intake (and subsequent assignment of required actions) to ensure that there is no one single point of failure through overlapping and separate responsibilities.**

The Department agrees with this recommendation and has incorporated the same into its updated

written procedures, which are attached to this response.

(c) When handling Joint Resolutions and/or Constitutional Amendments specifically, DOS should assign written responsibilities and accountability to each bureau and office involved in the publication process, including:

(i) Creating an internal document or tracking system for each sequential step in the process.

The Department agrees with this recommendation and has incorporated the same into its updated written procedures, which are attached to this response.

(ii) Update and maintain both an internal database (with names, telephone numbers and e-mail addresses) and an internal electronic distribution list (through Microsoft Outlook) of DOS executive staff and those individuals responsible for ensuring the publication of Joint Resolutions and/or Constitutional Amendments upon filing in DOS that includes, but is not limited to, the Secretary, an Executive Deputy Secretary, Chief Counsel, Policy Director, BFO Director, OLA Director, and BEN Director. Additionally, require one member on the list to manage this database and update it regularly to ensure accuracy.

The Department agrees with this recommendation and is in the process of updating its internal database/internal electronic distribution list. A member on the list has been tasked with managing the database/list and is responsible for updating it regularly.

(iii) Demarcate the routing of and use unique language and/or a descriptive header when notifying internal executive DOS staff of the receipt and filing of a Joint Resolution and/or Constitutional Amendment to prioritize its importance.

The Department agrees with this recommendation and has incorporated the same into its updated written procedures, which are attached to this response.

(d) Require all employees who handle Joint Resolutions and/or Constitutional Amendments to undergo annual training on these new written policies and procedures to ensure proper understanding by, and successive transition to, current employees and new hires.

The Department agrees with this recommendation and is currently developing an initial training for all staff members with responsibilities delineated in the attached procedure. After the initial training is complete, annual training will be instituted. In addition, all new hires with assigned tasks in the attached procedure will be required to complete training to ensure compliance with the attached procedures.

- (e) Require all employees within DOS' OLA to receive additional training concerning DOS' legislative responsibilities (including those regarding Joint Resolutions and/or Constitutional Amendments) and effectively use legislative staff as intended.**

The Department agrees with this recommendation and is in the process of fully implementing.

- (f) Properly identify and understand PLS functionalities (or alternate legislative tracking resources or methods), implement annual PLS training for all users, and require its proper use to more effectively track and monitor legislation that affects DOS (including Joint Resolutions and/or proposed Constitutional Amendments) by DOS' OLA staff.**

The Department agrees with this recommendation and is in the process of fully implementing it.

Again, thank you for your comprehensive review and for the recommendations provided. You have my assurance that the Department is committed to fully implementing them to ensure that this tragic situation never happens again.

Attachment



Procedures for Receiving, Processing and Advertising Non-emergency Proposed Constitutional Amendments

Introduction

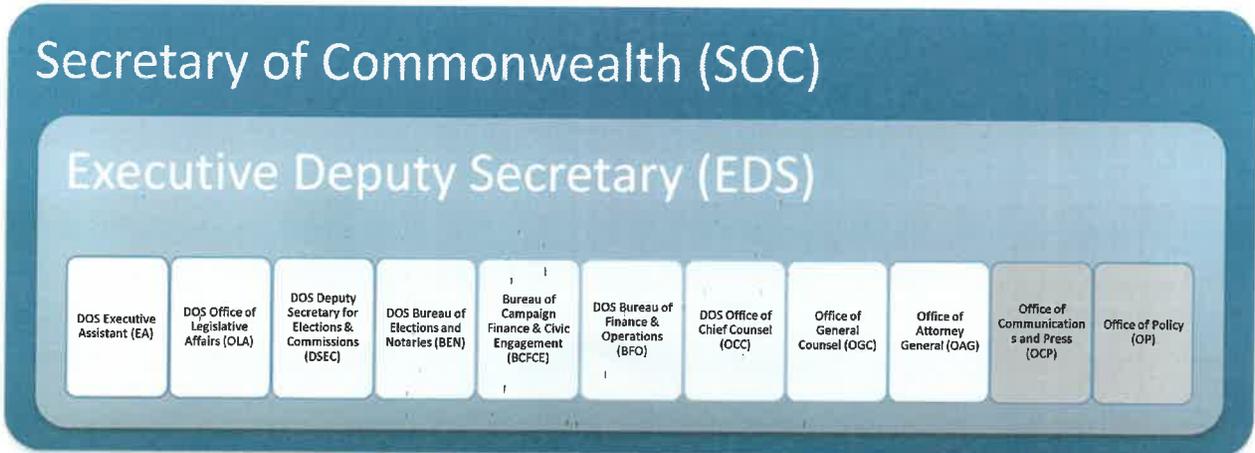
Article XI, § 1 of the Pennsylvania Constitution requires the Secretary of the Commonwealth to publish proposed amendments to the Pennsylvania Constitution. The Pennsylvania Constitution states that if an amendment is agreed to by the majority of the members of both the Senate and House of Representatives, the Secretary of the Commonwealth shall cause the proposed amendment to be published **three months before the next general election (November election in an even-numbered year)**, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the same manner and the proposed amendment will be submitted to the voters as prescribed by the General Assembly.

Purpose and Objectives

Department of State (DOS) staff must initiate, coordinate, monitor, and verify publication of constitutional amendments to ensure timely and proper advertisement of constitutional amendments in accordance with the requirements of Article XI of the Pennsylvania Constitution.

Owners and Stakeholders

The following owners (white boxes) and stakeholders (shaded boxes) share responsibility for the publication of the process. Unless otherwise noted the documents should be shared with the head of the bureau.



Process

The Office of Legislative Affairs tracks and monitors all legislation impacting DOS, including legislation proposing amendments to the Pennsylvania Constitution. A proposed constitutional amendment, when agreed upon by the Senate and the House of Representatives, is filed with DOS in the form of a Joint Resolution.

ACTION		OWNER(S)
1.	<p>Tracking of proposed constitutional amendments</p> <ul style="list-style-type: none"> • OLA tracks legislation proposing a constitutional amendment during consideration by the General Assembly. • OLA works with BEN and OCC to provide a bill analysis, if required. • OLA works with BEN and BFO to assess the fiscal impact of advertising the proposed constitutional amendment. • OLA continues tracking the legislation until the proposed constitutional amendment (Joint Resolution) is signed by the Senate and the House of Representatives. • OLA notifies the Executive Office (SOC, the EDS (CoS), and DSEC) when a Joint Resolution is signed by both chambers of the General Assembly. <p><i>In consultation with OP, SOC, and EDS.</i></p>	<p>OLA, BEN, OCC, and BFO</p> <hr/> <p>Consulted: OP, EDS (CoS), and SOC</p>
2.	The General Assembly delivers the signed joint resolution to BEN, and BEN immediately assigns the Joint Resolution # and date stamps original document? Appendix A.	BEN
3.	Log the joint resolution in the legislative log and routes the joint resolution to Executive Staff (SOC, EDS (CoS), and DSEC) via the Executive Office Assistant (EOA).	BEN
4.	The EOA logs receipt of the joint resolution electronically, scans the joint resolution, uploads it to the tracking system.	EOA
5.	The EOA transmits (via email) the Assignment of Joint Resolution Message to all internal and external legislative contacts. See Appendix B.	EOA
6.	The EOA provides the original joint resolution to the EDS (CoS) who acknowledges receipt of the joint resolution and returns it to the EOA. The EOA routes the original joint resolution back to BEN for retention.	EDS (CoS), EOA, and BEN

7.	Upon receipt of joint resolution, EDS (CoS) organizes DOS Team (OLA, BEN, OCC, BFO, DSEC, OP, and SOC) meeting to discuss timing and requirements of advertising the proposed constitutional amendment.	EDS (CoS)
8.	BFO notifies the department's contracted advertising vendor and Commonwealth Media Services (CMS) to schedule meeting between all parties and the DOS team to discuss requirements and deadlines for advertising the proposed constitutional amendment. The vendor will provide a proposed schedule for advertising. Subsequently, the vendor will provide a list of publications and a quote for advertising services based on information provided during the meeting. CMS will provide, in writing, an approval for BFO to proceed with executing a purchase order to advertising vendor.	BFO, OCC, BEN, and impacted program area
9.	Review and approve list of proposed newspapers.	BEN in consultation with OCC, DSEC, EDS (CoS), and SOC
10.	Quote provided to BFO Fiscal to ensure funding is available for advertisement. If funding is not available, BFO Fiscal sends letter for Executive Authorization to the Governor's Budget Office (GBO) to request additional funds to advertise.	BFO
11.	Draft advertisement preamble.	OCC and BEN
12.	Obtain signoff from EDS (CoS) and SOC	DSEC and OCC
13.	If the constitutional amendment has already been passed and advertised in the previous session of the General Assembly, this "second passage" requires DOS to work with the OAG to obtain a Plain Language Statement to accompany the proposed constitutional amendment.	OCC

14.	Draft the question to be presented to voters on the balloting materials at the next election.	OCC in consultation with BEN, DSEC, EDS (CoS), SOC, GO, and OGC
15.	Obtain necessary internal approvals of the question from DOS Executive Office, Governor's Office, and OGC.	OCC and SOC/EDS (CoS)
16.	Submit ballot question to OAG for approval.	OCC
17.	BFO receives copy of draft documents from OCC and BFO provides a copy to outside vendor for Spanish translation. No contract required for translations as these expenses are paid via Purchase Card. Spanish materials are also viewed internally.	OCC and BFO
18.	Once translated documents are received from outside vendor, BFO transmits the following materials to the contracted advertising vendor and requests draft ad copy and final list of newspapers for publication: <ul style="list-style-type: none"> • Preamble • Text of the Constitutional Amendment • Text of the approved Ballot Question (2nd passage only) • Text of the approved Plain Language Statement (2nd passage only) • Text of <i>Paid for with Taxpayer \$</i> disclaimer • Translations of the advertisement materials 	BFO
19.	Review and approve ad copy provided by the advertising vendor.	BEN, OCC, and BCFCE
20.	Post electronic copies of English and Spanish ad copy on DOS website.	BEN and OCP
21.	If second passage, include in the ballot certification to the county boards of elections the form of the ballot question, the Plain Language Statement, and the text of the proposed constitutional amendment(s).	BEN
22.	Track progress of advertisements and collect and store proofs of publication as they are received by the advertising vendor.	BFO and BEN

23.	Alert OCC, BEN, OLA, DSEC, EDS (CoS), and SOC if any newspaper failed to properly publish the advertisement. In the event of such a failure, obtain form affidavits from both the newspaper and the advertising vendor documenting that DOS provided the advertisement in ample time.	BFO
24.	The SOC certifies the results of the election on the proposed constitutional amendment (2 nd passage only)	SOC, with support from BEN
28.	Vendor submits invoice to BFO for payment of advertising services after each round of publication.	BFO
29.	Compile and prepare for certification by SOC the election returns for the proposed constitutional amendment.	BEN
30.	Prepare proclamation for the Governor's signature indicating whether the proposed amendment has been adopted by the voters or not.	EOA in consultation with BEN, OCC and OGC
31.	Deliver proclamation to the Legislative Reference Bureau for publication in the PA Bulletin.	OCC

Training

The Executive Office must ensure that all owners and their designated staff members are trained at the time of onboarding and at least once annually thereafter on these procedures.

At the completion of training, all staff members will understand:

- How to Identify a joint resolution
- How to track the progress of a proposed joint resolution
- How to assign a joint resolution number
- Who is responsible and accountable for each task
- How to track the joint resolution through completion of every task

Specific staff members with specialized tasks will also receive training relating to:

- tracking of proposed legislation
- publication and financing for a joint resolution
- certification of a proposed constitutional amendment
- certification of the results of the election on a proposed constitutional

Background

Amendments to the Pennsylvania Constitution may be proposed in either the Senate or the House of Representatives but must pass in both by a majority vote of the members elected. Pursuant to Article XI of the Pennsylvania Constitution, a proposed constitutional amendment must be passed in identical form in two consecutive sessions of the General Assembly before the amendment can be submitted to the voters for approval.

First Passage

After the first passage of a proposed constitutional amendment, the Secretary of the Commonwealth is required to have the proposed amendment published in each of the three months (August, September and October) prior to a November general election (even-numbered years) in at least two newspapers in every county.

Second Passage

The next succeeding session of the General Assembly at any time, may pass a joint resolution proposing the identical constitutional amendment. The General Assembly shall direct the Secretary of the Commonwealth when to present the proposed amendment to the voters in the form of a ballot question, so long as the primary or election in which voters will vote on the ballot question is at least three months after second passage. After second passage, the proposed amendment must be advertised in each of the three months prior to the election at which the amendment is to be voted for, which could be either a municipal (odd-numbered years) or general (even-numbered years) primary or election. The amendment is voted on by the entire electorate. If passed by a majority vote, the amendment becomes part of the Pennsylvania Constitution.

Ballot Question and Plain Language Statement

Under Section 201.1 of the Election Code, when a proposed constitutional amendment is submitted to the voters in referendum, the Attorney General is required to prepare a statement "in plain English" that indicates "the purpose, limitations and effects of the ballot question on the people of the Commonwealth." See 25 P.S. § 2621.1. The Secretary of the Commonwealth drafts the ballot question itself with approval by the Attorney General. See 25 P.S. § 2755. The Secretary then includes the ballot question and the plain language statement in the constitutional amendment advertisement. See 25 P.S. § 2621.1. The ballot question and the plain language statement is sent to each of the county boards of elections as part of the notice of elections published not earlier than ten (10) days nor later than three (3) days before the primary or election. See 25 P.S. §§ 2621.1, 3041. The county boards of elections are also required to post copies of the ballot question and plain English statement at the polling places and in specimen ballots. See 25 P.S. § 2621.1.

Appendices

- A. BEN Joint Resolutions Procedures
- B. Sample Assignment of Joint Resolution message
- C. Statement of Work for Publication of Constitutional Amendments and Reapportionment Plans
- D. Sample Constitutional Amendment Advertisement (First Passage)
- E. Sample Constitutional Amendment Advertisement (Second Passage)
- F. Form Affidavit for Completion by Newspaper for Missed Publication
- G. Form Affidavit for Completion by Advertising Vendor for Missed Publication
- H. Sample Proclamation of the Governor

Joint Resolutions:

Joint Resolutions are not signed by the Governor and are not taken down to OGC.

1. Sign the receipt
2. Date stamp the Joint Resolution
3. Time stamp the Log Sheet
4. Assign JR#, i.e., JR-1 of 2019, JR-2 of 2019 (assign in a separate message from act numbers)
5. Type the JR # on the Joint Resolution and Log sheet
6. Route the Joint Resolution to the Executive Office c/o the Executive Deputy Secretary via the Executive Office Assistant
Executive Office Assistant will send the Joint Resolution message in this circumstance
7. File a copy of the Joint Resolution message in S:/drive/Notaries 2021/Legislation/Joint Resolution folder
8. File the Joint Resolution in the legislation retention files
9. Certify the Joint Resolution (if it is requested)



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
HARRISBURG, PA
17120

OFFICE OF THE SECRETARY
OF THE COMMONWEALTH

BUREAU OF COMMISSIONS,
ELECTIONS AND LEGISLATION
(717) 787-5280

February 5, 2021

NOTICE OF ASSIGNMENT OF ACT/APPROPRIATION/RESOLUTION NUMBERS

The following resolution/s have passed the Senate on February 5, 2021 and House of Representatives on February 5, 2021 and has been assigned numbers as listed below:

<u>BILL #</u>	<u>PRINTER #</u>	<u>ACT #</u>
<u>SB 2</u>	86	JR#1

Work Statement

I. General Requirements:

- A. **Overview:** The Department of State (Department) requires a Contractor to (a) initiate, coordinate and monitor all advertising of proposed amendments to the Pennsylvania Constitution; (b) initiate, coordinate and monitor all publications of the preliminary reapportionment plan and reapportionment plans of the General Assembly required by the Pennsylvania Constitution; (c) initiate, coordinate and monitor any advertising required under the 2021/2022 congressional redistricting act; and (d) provide other advertising services and legal notices as the Department may require from time to time.

II. Bidding Requirements:

- A. **Cost:** Bidders shall indicate their bid price as a percentage fee for each print media service type on the Cost Submittal Sheet. The percentage fees are fixed throughout the five year contract and are an all-inclusive cost for providing the services as described in this statement of work; overhead, travel, subsistence, supplies, etc. may not be billed separately.
- B. **Award:** The award will be made to the lowest, responsive and responsible bidder. The low bid will be determined by adding each of the percentages and arriving at a total combined percentage.

III. Contract Requirements:

A. Required Publications

1. **Constitutional Amendments:** Article XI, § 1 of the Pennsylvania Constitution requires the Secretary of the Commonwealth to publish proposed amendments to the Pennsylvania Constitution. The Pennsylvania Constitution states that if an amendment is agreed to by the majority of the members of both the Senate and House of Representatives, the Secretary of the Commonwealth shall cause the proposed amendment to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the same manner.
2. **General Assembly Reapportionment Plans:** Article II, § 17(i) of the Pennsylvania Constitution requires that any reapportionment plan filed by the Legislative Reapportionment Commission, or ordered or prepared by the Supreme Court upon the failure of the commission to act, shall be published by the elections officer, the Secretary of the Commonwealth, once in at least one newspaper of general circulation in each senatorial and representative district. The publication shall contain a map of the Commonwealth showing the complete reapportionment of the General Assembly by districts, and a map showing the reapportionment districts in the area normally served by the newspaper in which the publication is made. The publication shall also state the population of the senatorial and representative districts having the smallest and largest population and the percentage variation of such districts from the average population for senatorial and representative districts. The Legislative Reapportionment Commission must file a preliminary reapportionment plan and a final reapportionment plan with the Secretary of the Commonwealth.

The Contractor will be required to publish both reapportionment plans at least twice in the manner described above. The exact date that the plans will be filed is unknown; however, the preliminary plan will likely be filed in late September or early October 2021 and the final reapportionment plan will likely be filed in late November or early December 2021. If the reapportionment plan is challenged, additional publications may be required. Publication must be done within two to three weeks of the filing date of any reapportionment plan. The publication date must be approved by the Department.

3. **Congressional Redistricting:** Congressional redistricting is done by the passage of an act by the General Assembly after each federal decennial census. In the past, the General Assembly has required the Secretary to publish notice of the congressional districts as established at least once, in at least one newspaper of general circulation in each county in which such newspapers are published. The Department expects this to be required in the 2021/2022 congressional redistricting act as well. The congressional redistricting act will likely be enacted in late 2021 or early 2022 and will likely require that the notice contain: (a) legal descriptions for all congressional districts in the county in which the publication is made; (b) the population of the districts having the smallest and largest populations; and (c) the percentage variation of such districts from the average population for congressional districts.
 4. **Languages:** All publications must be published in English and also in Spanish, or other languages, in the counties or areas that are required to publish notices in a minority language under the Voting Rights Act of 1965 (52 U.S.C. §§ 10301–10508). Currently, Berks County, Lehigh County and Philadelphia County are required to publish notices in Spanish; however, additional counties or languages may be required depending on the 2020 census figures. The Contractor shall be responsible for all translations required.
 5. **Other Publication Services:** The Contractor shall provide other publication services as required by the Department. Such services and notices shall be provided under the terms and scope of this agreement.
- B. Publication Materials:** The Department will provide source materials, maps and draft copy for all advertisements. The Contractor will develop the typeset proof (camera ready copy) of all advertisements for the Department's approval prior to publication. The Contractor shall be responsible for the final publication of all advertisements, including accuracy in the form of the source materials, maps and copy provided. The Contractor shall provide proof of publication to the Department such as tear sheets and affidavits within three months unless proof is required sooner.
- C. Roster of Newspapers:** The Contractor shall provide a roster of eligible newspapers for the publication of reapportionment plans, congressional districts or proposed Constitutional amendments. Such roster shall include the following and shall be delivered to the Department upon execution of this Agreement.
- Geographical area served;
 - Place of publication;
 - Paid Circulation;
 - Frequency of Publication;
 - Total Distribution;
 - Standard Ad Unit (SAU) Advertising Rate; and
 - Other miscellaneous data as determined by mutual agreement of the parties.

At the request of the Department, the Contractor will provide updates to the information in items one (1) through seven (7) above, within two business days after receipt of a written request from the Department.

The Contractor shall make a recommendation as to the newspapers to be selected for publication, giving consideration to factors such as location, cost, circulation and communities served. The Department shall have final approval in selecting the list of newspapers to be used for advertising each reapportionment plan, congressional redistricting publication, and Constitutional Amendment. The Department reserves the right to amend the list of selected newspapers.

- D. Reports:** The awarded Contractor will be responsible for providing the following detailed reports.
1. **Receipts Report:** Within ten business days of submitting the source materials for publication to the selected newspapers the Contractor shall provide the Department with a Receipts Report. The Receipts Report must verify receipt by each newspaper and list the date each newspaper received the advertisement for publication, the method of transmittal, name of receiving agent and an acknowledgement from the receiving newspaper.
 2. **Final Report of Publication:** Within five business days of publication the Contractor shall submit a Final Report of Publication. This report shall identify the name of the newspaper, the date published and the page number of the publication. A copy of the final publication for each newspaper shall be submitted with this report.
- E. Subcontracting:** The Contractor may subcontract the development of the advertisement copy of this Contract with the approval of the Department. See Section 27 - Assignability and Subcontracting (March 3, 2015) of the Terms and Conditions for additional details.
- F. Inquiries:** Direct all questions concerning this bid and the awarded Contract to the Contracting Officer named herein:

Sara Roadcap, Contracting Officer
Room 308 North Office Building
401 North Street
Harrisburg, PA 17120-0500
(717) 425-5446
sarroadcap@pa.gov

PROPOSED AMENDMENT TO THE CONSTITUTION OF PENNSYLVANIA

The following is a true and correct copy of a joint resolution of the General Assembly regarding an amendment to the Constitution of Pennsylvania that was proposed in the General Assembly during the 2018 session. The proposed amendment was agreed to by a majority of the members elected to the Senate and the House of Representatives. Pursuant to Article XI, Section 1 of the Constitution, the Secretary of the Commonwealth has caused the proposed amendment to be published here. If this proposed amendment is agreed to by a majority of the Senators and Representatives elected to the General Assembly at the upcoming November 6, 2018 General Election, the proposed amendment so approved will be published again and then submitted to the voters of Pennsylvania for approval. If approved by a majority of the voters voting on it, the corresponding amendment becomes part of the Constitution. If the proposed amendment is approved, the words UNDERLINED in the joint resolution will be added to the Constitution.

Anyone who needs help reading this advertisement or needs the text of the proposed amendment in an alternative format may call or write the Pennsylvania Department of State, Bureau of Commissions, Elections and Legislation, Room 210 North Office Building, Harrisburg, PA 17120, 1-877-868-3772, ra-BCEL@pa.gov.

Robert Torres, Acting Secretary of the Commonwealth

Joint Resolution 2018-1

Proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for rights of victims of crime.

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

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with Article XI:

That Article I be amended by adding a section to read:

§ 9.1. Rights of victims of crime.

(a) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, as further provided and as defined by the General Assembly, which shall be protected in a manner no less vigorous than the rights afforded to the accused; to be treated with fairness and respect for the victim's safety, dignity and privacy; to have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the accused; to reasonable and timely notice of and to be present at all public proceedings involving the criminal or delinquent conduct; to be notified of any pretrial disposition of the case; with the exception of grand jury proceedings, to be heard in any proceeding where a right of the victim is implicated, including,

but not limited to, release, plea, sentencing, disposition, parole and pardon; to be notified of all parole procedures, to participate in the parole process, to provide information to be considered before the parole of the offender, and to be notified of the parole of the offender; to reasonable protection from the accused or any person acting on behalf of the accused; to reasonable notice of any release or escape of the accused; to refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused; full and timely restitution from the person or entity convicted for the unlawful conduct; full and timely restitution as determined by the court in a juvenile delinquency proceeding; to the prompt return of property when no longer needed as evidence; to proceedings free from unreasonable delay and a prompt and final conclusion of the case and any related postconviction proceedings; to confer with the attorney for the government; and to be informed of all rights enumerated in this section.

(b) The victim or the attorney for the government upon request of the victim may assert in any trial or appellate court, or before any other authority, with jurisdiction over the case, and have enforced, the rights enumerated in this section and any other right afforded to the victim by law. This section does not grant the victim party status or create any cause of action for compensation or damages against the Commonwealth or any political subdivision, nor any officer, employee or agent of the Commonwealth or any political subdivision, or any officer or employee of the court.

(c) As used in this section and as further defined by the General Assembly, the term "victim" includes any person against whom the criminal offense or delinquent act is committed or who is directly harmed by the commission of the offense or act. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor or incapacitated victim.

Section 2. (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment. The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.

PROPOSED AMENDMENTS TO THE CONSTITUTION OF PENNSYLVANIA

This notice contains information about questions that will be on the ballot in the Municipal Primary to be held on May 18, 2021.

The ballot questions propose three separate amendments to the Constitution of Pennsylvania, based on a joint resolution of the General Assembly of Pennsylvania.

If one or more of the ballot questions is approved by a majority of the people voting on it, each amendment approved will become law.

The General Assembly of Pennsylvania first proposed the amendments during the 2020 session and approved them for a second time during the 2021 session of the legislature, as required by Article XI, Section 1 of the Constitution.

This public notice is part of the process of amending the Constitution of Pennsylvania. The Secretary of the Commonwealth is required to publish:

- A copy of the joint resolution proposing the amendments.
• The text of each question that will be on the ballot.
• A "Plain English Statement" prepared by the Office of Attorney General explaining the purpose, limitations and effects of each ballot question upon the people of this Commonwealth.

Text that appears in bold print are the changes to the words of the Constitution that are proposed by the General Assembly. If the amendment is approved, the words underlined would be added to the Constitution and the words in [brackets] would be deleted.

If you need help reading this advertisement or need the text of the proposed amendment in an alternative format, call or write the Pennsylvania Department of State, Bureau of Election Services and Notaries, Room 210 North Office Building, Harrisburg, PA 17120, 1-877-868-3772 (option 3), ra-elections@pa.gov.

Veronica Degraffenreid
Acting Secretary of the Commonwealth

JOINT RESOLUTION NO. 2021 - 1

Proposing separate and distinct amendments to the Constitution of Pennsylvania, in declaration of rights, providing for prohibition against denial or abridgment of equality of rights because of race and ethnicity; in legislation, further providing for action on concurrent orders and resolutions; and, in the executive, providing for disaster emergency declaration and management.

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) That Article I of the Constitution of Pennsylvania be amended by adding a section to read:

§ 29. Prohibition against denial or abridgment of equality of rights because of race and ethnicity.

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the race or ethnicity of the individual.

(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.

(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.

Section 2. (a) Upon the first passage by the General Assembly of these proposed constitutional amendments, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of these proposed constitutional amendments.

(b) Upon the second passage by the General Assembly of these proposed constitutional amendments, the secretary of the commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of these proposed constitutional amendments. The Secretary of the Commonwealth shall:

(1) Submit the proposed constitutional amendment under section 1(1) of this resolution to the qualified electors of this Commonwealth as a separate ballot question at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.

(1.1) Submit the proposed constitutional amendment under section 1(1.1) of this resolution to the qualified electors of this Commonwealth as a separate ballot question at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.

(2) Submit the proposed constitutional amendment under section 1(2) of this resolution to the qualified electors of this Commonwealth as a separate ballot question at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.

PROPOSED CONSTITUTIONAL AMENDMENT - ARTICLE III, SECTION 9

RELATING TO TERMINATION OR EXTENSION OF DISASTER EMERGENCY DECLARATIONS

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?

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.

PROPOSED CONSTITUTIONAL AMENDMENT – ARTICLE IV
DISASTER EMERGENCY DECLARATION AND MANAGEMENT

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?

Plain English Statement of the Office of Attorney General

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.

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.

PROPOSED CONSTITUTIONAL AMENDMENT – ARTICLE I
PROHIBITION AGAINST DENIAL OR ABRIDGEMENT OF
EQUALITY OF RIGHTS BECAUSE OF RACE OR ETHNICITY

Ballot Question

Shall the Pennsylvania Constitution be amended by adding a new section providing that equality of rights under the law shall not be denied or abridged because of an individual's race or ethnicity?

Plain English Statement of the Office of Attorney General

Joint Resolution No. 2021-1, if approved by the electorate, will add a new section to Article I of the Pennsylvania Constitution. This amendment creates a constitutional prohibition against restricting or denying an individual's equal rights under Pennsylvania law because of race or ethnicity.

Generally, inclusion of this amendment within the Pennsylvania Constitution signifies that freedom from discrimination based on race or ethnicity is an essential principle of liberty and free government. This amendment applies to all Pennsylvania state, county and local governmental entities, and guarantees equality of rights under the law. The amendment, if enacted, will become a part of the Pennsylvania Constitution. As such, its provisions must be applied consistent with the other provisions of the Constitution.

This equal right to be free from racial or ethnic discrimination will exist independent from any such rights under the United States Constitution or corresponding federal law. If the current federal protections proscribing racial or ethnic discrimination are abolished, the prohibition against such discrimination will remain in the Pennsylvania Constitution. The amendment is limited in that it creates a right only under Pennsylvania law.

Once added to the Pennsylvania Constitution, the right to be free from racial or ethnic discrimination under the law cannot be eliminated except by a judicial decision finding the amendment unconstitutional or the approval of a subsequent constitutional amendment. If approved, the General Assembly may pass new laws to implement the amendment, but it may not pass a law inconsistent with it.

AFFIDAVIT

I, _____ (name), hereby swear or affirm that:

1. I am employed by the Muncy Luminary (Luminary) as _____ (title). As part of my duties, I am responsible and oversee the placement of advertisements, including the advertisements of proposed constitutional amendments submitted by Red House Communications (Red House) and its subcontractor, Mid-Atlantic Newspaper Services, Inc. (MANSI), on behalf of the Pennsylvania Department of State (Department).
2. Red House and/or MANSI provided the final advertising materials (ad copy) for Joint Resolution 2018-1 (relating to the rights of victims of crime) to the Luminary on _____ (date).
3. Red House and/or MANSI informed Luminary personnel of the importance of publishing proposed constitutional amendments according to the schedule required in the state constitution, and stated that for the 2018 advertisements, the advertisements had to be published on or before August 6, 2018.
4. The advertisement was scheduled to run in the Luminary's edition of August 1, 2018. The ad copy was provided to the Luminary with ample time to prepare for publication on that date, but because of _____ (insert reasons here), it did not run in that edition.
5. The advertisement is currently set to be published in the next edition of the Luminary. Because the Luminary is a weekly publication, the next possible date for publication is August 8, 2018.

I further swear or affirm that this statement is true and correct to the best of my knowledge, information, and belief.

Date

(NAME)
(JOB TITLE)
Muncy Luminary

Commonwealth of Pennsylvania

County of _____

Signed and sworn to (or affirmed) before me on _____ (date) by
_____ (name of Red House employee).

Signature of notarial officer _____ (stamp)

Title of office _____

My commission expires _____

AFFIDAVIT

I, _____ (name), hereby swear or affirm that:

1. I am employed by Red House Communications (Red House) as _____ (title). As part of my duties, I am responsible for and oversee the work of Red House pursuant to its contract with the Pennsylvania Department of State (Department) for the publication of proposed constitutional amendments.
2. Under the contract, Red House is required to initiate, coordinate, and monitor the publication of proposed constitutional amendments. In this work, Red House collaborates with its subcontractor, Mid-Atlantic Newspaper Services, Inc. (MANSI).
3. Red House has held the contract for the publication of proposed constitutional amendments since _____ (date).
4. Red House was informed by Department personnel of the passage of Joint Resolution 2018-1 (relating to the rights of victims of crime) on _____ (date). Department personnel provided Red House with the final text of the advertisement on _____ (date). Department personnel approved the draft advertisements on _____ (date).
5. Red House and MANSI arranged for the publication of the proposed constitutional amendment in a variety of newspapers, and submitted the required advertising material to them on _____ (date). Red House and MANSI instructed each newspaper that the first publication was required three months preceding the General Election of November 7, 2018, meaning that it could be published, at the latest, August 6, 2018.
6. The Department submitted and approved the advertising materials to Red House with ample time to convey them to the newspapers selected for publication.
7. Despite the timely submission and approval of the advertisements by the Department, the Muncy Luminary, a weekly newspaper published in Lycoming County, did not publish the advertisement in its edition of August 1, 2018.
8. The Muncy Luminary plans to publish the advertisement in its edition of August 8, 2018.

I further swear or affirm that this statement is true and correct to the best of my knowledge, information, and belief.

_____ Date

(NAME)
(JOB TITLE)
Red House Communications

Commonwealth of Pennsylvania

County of _____

Signed and sworn to (or affirmed) before me on _____ (date) by
_____ (name of Red House employee).

Signature of notarial officer _____

(stamp)

Title of office _____

My commission expires _____

Commonwealth of Pennsylvania



Governor's Office

PROCLAMATION

CONSTITUTIONAL AMENDMENT ARTICLE V, SECTIONS 1, 6(c), 10(d), 12(b), and 15(a)

WHEREAS, Joint Resolution No. 1 of 2013 and Joint Resolution No. 2 of 2015 proposed to amend Article V, Sections 1, 6(c), 10(d), 12(b), and 15(a), of the Constitution of Pennsylvania to read:

§ 1. Unified judicial system.

The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.

§ 6. Community courts; Philadelphia Municipal Court.

(c) In the City of Philadelphia there shall be a municipal court. The number of judges and the jurisdiction shall be as provided by law. This court shall exist so long as a community court has not been established or in the event one has been discontinued under this section.

§ 10. Judicial administration.

(d) The Chief Justice and president judges of all courts with seven or less judges shall be the justice or judge longest in continuous service on their respective courts; and in the event of his resignation from this position the justice or judge next longest in continuous service shall be the Chief Justice or president judge. The president judges of all other courts shall be selected for five-year terms by the members of their respective courts. A Chief Justice or president judge may resign such position and remain a member of the court. In the event of a tie vote for office of president judge in a court which elects its president judge, the Supreme Court shall appoint as president judge one of the judges receiving the highest number of votes.

§ 12. Qualifications of justices, judges and justices of the peace.

(b) Justices of the peace shall be members of the bar of the Supreme Court or shall complete a course of training and instruction in the duties of their respective offices and pass an examination prior to assuming office. Such courses and examinations shall be as provided by law.

§ 15. Tenure of justices, judges and justices of the peace.

(a) The regular term of office of justices and judges shall be ten years and the regular term of office for judges of the municipal court in the City of Philadelphia and of justices of the peace shall be six years. The tenure of any justice or judge shall not be affected by changes in judicial districts or by reduction in the number of judges.

WHEREAS, Joint Resolution No. 1 of 2013 was agreed to by a majority of the members elected to each House of the General Assembly and published pursuant to Article XI, Section 1 of the Constitution of Pennsylvania; and

WHEREAS, in the General Assembly next afterwards chosen, the aforesaid amendment to Article V, Sections 1, 6(c), 10(d), 12(b), and 15(a), of the Constitution of Pennsylvania was proposed in Joint Resolution No. 2 of 2015, which was agreed to by a majority of the members elected to each House of the General Assembly and published pursuant to Article XI, Section 1 of the Constitution of Pennsylvania; and

WHEREAS, the aforesaid proposed amendment to Article V, Sections 1, 6(c), 10(d), 12(b), and 15(a), of the Constitution of Pennsylvania was submitted for approval to the qualified electors of the Commonwealth of Pennsylvania pursuant to Article XI, Section 1 of the Constitution of Pennsylvania at an election held on April 26, 2016; and

WHEREAS, the Secretary of the Commonwealth, pursuant to law, has certified to me that the aforesaid proposed amendment to Article V, Sections 1, 6(c), 10(d), 12(b), and 15(a), of the Constitution of Pennsylvania was approved by a majority of those voting thereon on the aforesaid day; and

WHEREAS, Section 903 of Title 1 of the Pennsylvania Consolidated Statutes requires the Governor, upon receiving the aforesaid certification of the Secretary of the Commonwealth, to issue his proclamation indicating whether or not the proposed amendment to Article V, Sections 1, 6(c), 10(d), 12(b), and 15(a), of the Constitution of Pennsylvania has been adopted by a majority of the electors voting thereon.

NOW THEREFORE, I, Tom Wolf, Governor of the Commonwealth of Pennsylvania, do hereby proclaim that the aforesaid amendment to Article V, Sections 1, 6(c), 10(d), 12(b), and 15(a), of the Constitution of Pennsylvania was adopted by a majority of the electors voting thereon on April 26, 2016.

GIVEN under my hand and the Great Seal of the Commonwealth, at the City of Harrisburg, this twenty-seventh day of June in the year of our Lord two thousand sixteen and of the Commonwealth the two hundred and fortieth.



TOM WOLF

TOM WOLF
Governor

ATTEST:

Pedro A. Cortés

PEDRO A. CORTÉS
Secretary of the Commonwealth