

**ASSEMBLY CONCURRENT
RESOLUTION No. 95**

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:
Assemblyman BENJIE E. WIMBERLY
District 35 (Bergen and Passaic)

SYNOPSIS

Proposes amendment to State Constitution to provide for elected State Comptroller and eliminate Office of State Auditor.

CURRENT VERSION OF TEXT

As introduced.



1 **A CONCURRENT RESOLUTION** amending Articles II, IV, V and VII
2 of the Constitution of the State of New Jersey.

3
4 **BE IT RESOLVED** *by the General Assembly of the State of New*
5 *Jersey (the Senate concurring):*

6
7 1. The following proposed amendment to the Constitution of
8 the State of New Jersey is hereby agreed to:

9
10 PROPOSED AMENDMENT

11
12 a. Amend Article II, Section I, paragraph 1 to read as follows:

13 1. General elections shall be held annually on the first Tuesday
14 after the first Monday in November; but the time of holding such
15 elections may be altered by law. The Governor, Lieutenant
16 Governor, State Comptroller and members of the Legislature shall
17 be chosen at general elections. Local elective officers shall be
18 chosen at general elections or at such other times as shall be
19 provided by law.
20 (cf: Art. II, Sec. I, para. 1, effective January 17, 2006)

21
22 b. Amend Article IV, Section V, paragraphs 1 and 5 to read as
23 follows:

24 1. No member of the Senate or General Assembly, during the
25 term for which the member shall have been elected, shall be
26 nominated, elected or appointed to any State civil office or position,
27 of profit, which shall have been created by law, or the emoluments
28 whereof shall have been increased by law, during such term. The
29 provisions of this paragraph shall not prohibit the election of any
30 person as Governor, as Lieutenant Governor, as State Comptroller
31 or as a member of the Senate or General Assembly.
32 (cf: Art. IV, Sec. V, para. 1, effective January 17, 2006)

33
34 5. Neither the Legislature nor either house thereof shall elect or
35 appoint any executive, administrative or judicial officer **【except the**
36 **State Auditor】**.
37 (cf: Art. IV, Sec. V, para. 5, effective January 1, 1948)

38
39 c. Amend Article V, Section 1, paragraphs 2 and 3 to read as
40 follows:

41 2. The Governor and the State Comptroller shall be not less
42 than thirty years of age, and shall have been for at least twenty
43 years **【a citizen】** citizens of the United States, and **【a resident】**
44 residents of this State seven years next before election, unless **【the**
45 Governor shall have been**】** absent during that time on the public

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 business of the United States or of this State. A person shall be
2 eligible for the office of Lieutenant Governor only if eligible under
3 this Constitution for the office of Governor.

4 (cf: Art. V, Sec. I, para. 2 effective January 17, 2006)

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6 3. No member of Congress or person holding any office or
7 position, of profit, under this State or the United States shall be
8 Governor or Lieutenant Governor or State Comptroller. If the
9 Governor or Lieutenant Governor, or person administering the
10 office of Governor, or the State Comptroller shall accept any other
11 office or position, of profit, under this State or the United States,
12 the office of Governor or Lieutenant Governor or State Comptroller,
13 as the case may be, shall thereby be vacated. No Governor or
14 Lieutenant Governor or State Comptroller shall be elected by the
15 Legislature to any office during the term for which the person shall
16 have been elected Governor or Lieutenant Governor or State
17 Comptroller.

18 (cf: Art. V, Sec. I, para. 3 effective January 17, 2006)

19
20 d. Amend Article VII, Section I, paragraph 6 to read as
21 follows:

22 6. **【The State Auditor shall be appointed by the Senate and**
23 **General Assembly in joint meeting for a term of five years and until**
24 **his successor shall be appointed and qualify. It shall be his duty to**
25 **conduct post-audits of all transactions and accounts kept by or for**
26 **all departments, offices and agencies of the State government, to**
27 **report to the Legislature or to any committee thereof as shall be**
28 **required by law, and to perform such other similar or related duties**
29 **as shall, from time to time, be required of him by law.】**

30 (cf: Art. VII, Sec. I, para. 6 effective January 1, 1948)

31
32 e. Amend Article VII, Section 1, by the addition of the
33 following new paragraph 7:

34 7. a. The State Comptroller shall be the head of a principal
35 department in the Executive Branch of State Government. The
36 State Comptroller shall exercise such powers and duties as may be
37 conferred upon the State Comptroller by law.

38 b. The State Comptroller shall be elected by the legally
39 qualified voters of this State for a term of four years, beginning at
40 noon of the third Tuesday in January of an odd numbered year. A
41 person who is a candidate for State Comptroller shall not
42 simultaneously seek election to another office. The candidate for
43 State Comptroller receiving the greatest number of votes shall be
44 elected to that office. If two or more candidacies shall be equal and
45 greatest in votes, one candidate shall be elected by the vote of a
46 majority of all the members of both houses in joint meeting at the
47 regular legislative session next following the election for State
48 Comptroller by the people. Contested elections for the office of

1 State Comptroller shall be determined in such manner as may be
2 provided by law.

3 c. No person who has been elected State Comptroller for two
4 successive terms, including an unexpired term, shall again be
5 eligible for that office until the third Tuesday in January of the
6 fourth year following the expiration of the second successive term
7 served by that person.

8 d. In the event of a vacancy in the office of State Comptroller
9 resulting from the death, resignation, or removal of a State
10 Comptroller in office, or the death of a State Comptroller-elect, a
11 State Comptroller shall be elected to fill the unexpired term of
12 office at the next general election, unless the vacancy occurs within
13 60 days immediately preceding a general election in which case the
14 State Comptroller shall be elected at the second succeeding general
15 election. A State Comptroller elected for an unexpired term shall
16 assume office immediately upon election. No election to fill an
17 unexpired term shall be held in any year in which a State
18 Comptroller is to be elected for a full term.

19 e. In the event a State Comptroller-elect fails to qualify, is
20 absent from the State, is unable to discharge the duties of the office,
21 or is impeached, or in the event of a vacancy pursuant to d. or f. of
22 this paragraph, the functions, powers, duties, and emoluments of
23 office shall devolve in such manner as shall be provided by law
24 until a vacancy for the unexpired term is filled pursuant to the
25 provisions of this paragraph.

26 f. In the event a State Comptroller-elect fails to qualify, is
27 continuously absent from the State, or is continuously unable to
28 discharge the duties of the office for a period of six months, the
29 office shall be deemed vacant by a determination of the Supreme
30 Court upon presentment to it of a concurrent resolution declaring
31 the ground of the vacancy, adopted by a vote of two-thirds of all the
32 members of each house of the Legislature, and upon hearing with
33 prior notice before the Court and proof of the existence of the
34 vacancy.

35 g. The State Comptroller shall receive for services a salary
36 which shall be neither increased nor diminished during the period
37 for which the State Comptroller shall have been elected or
38 appointed.

39

40 f. Amend Article V, Section IV, paragraphs 1 and 2 to read as
41 follows:

42 1. All executive and administrative offices, departments, and
43 instrumentalities of the State government, including the offices of
44 State Comptroller, Secretary of State and Attorney General, and
45 their respective functions, powers and duties, shall be allocated by
46 law among and within not more than twenty principal departments,
47 in such manner as to group the same according to major purposes so
48 far as practicable. Temporary commissions for special purposes

1 may, however, be established by law and such commissions need
 2 not be allocated within a principal department. No diminution in
 3 the functions, powers, and duties of the State Comptroller, whether
 4 by law or by executive order or proclamation, enacted, adopted or
 5 issued after the election of any person to that office shall take effect
 6 until another person has been elected to succeed that person and has
 7 qualified into office.

8 (cf: Art. V, Sec. IV, para. 1 effective January 1, 1948)

9
 10 2. Each principal department shall be under the supervision of
 11 the Governor. The head of each principal department shall be a
 12 single executive unless otherwise provided by law. Such single
 13 executives shall be nominated and appointed by the Governor, with
 14 the advice and consent of the Senate, to serve at the pleasure of the
 15 Governor during the Governor's term of office and until the
 16 appointment and qualification of their successors, except as herein
 17 otherwise provided with respect to the State Comptroller, Secretary
 18 of State and the Attorney General. The Governor may appoint the
 19 Lieutenant Governor to serve as the head of a principal department,
 20 without the advice and consent of the Senate, and to serve at the
 21 pleasure of the Governor during the Governor's term of office.

22 (cf: Art. V, Sec.IV, para. 2 effective January 17, 2006)

23
 24 2. When this proposed amendment to the Constitution is finally
 25 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
 26 shall be submitted to the people at the next general election
 27 occurring more than three months after the final agreement and
 28 shall be published at least once in at least one newspaper of each
 29 county designated by the President of the Senate, the Speaker of the
 30 General Assembly and the Secretary of State, not less than three
 31 months prior to the general election.

32
 33 3. This proposed amendment to the Constitution shall be
 34 submitted to the people at that election in the following manner and
 35 form:

36 There shall be printed on each official ballot to be used at the
 37 general election, the following:

38 a. In every municipality in which voting machines are not used, a
 39 legend which shall immediately precede the question as follows:

40 If you favor the proposition printed below make a cross (X), plus
 41 (+), or check (✓) in the square opposite the word "Yes." If you are
 42 opposed thereto make a cross (X), plus (+) or check (✓) in the
 43 square opposite the word "No."

44 b. In every municipality the following question:

1

	YES	CONSTITUTIONAL AMENDMENT PROVIDING FOR ELECTION OF STATE COMPTROLLER AND ABOLISHING THE OFFICE OF THE STATE AUDITOR Shall the amendments to Articles II, IV, V and VII, agreed to by the Legislature, providing for the election by the people of the State Comptroller, who shall be the head of a principal department in the Executive Branch of State Government, and abolishing the office of the State Auditor, be approved?
	NO	INTERPRETIVE STATEMENT This constitutional amendment provides for the popular election of the State Comptroller for a four-year term. The State Comptroller will head a principal department in the Executive Branch of State Government. Currently, the State Comptroller, a recently established statutory officer responsible for financial audit and performance reviews of the State and local government units, is appointed by the Governor for a six-year term with the advice and consent of the Senate, and is subject to removal by the Governor for cause. This amendment will make the State Comptroller an independent Statewide elected officer. The amendment also abolishes the office of State Auditor.

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SCHEDULE

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STATEMENT

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This concurrent resolution proposes a constitutional amendment
to provide for the Statewide popular election of the State

1 Comptroller for a four year term. Currently, the State Comptroller
2 is a recently established statutory officer within the Department of
3 the Treasury, who is appointed for a six year term by the Governor
4 with the advice and consent of the Senate and is responsible directly
5 to the Governor. The elected State Comptroller will be the head of
6 a separate Executive branch department. This department is to be
7 established in implementing legislation.

8 It is intended that the State Comptroller's powers and duties will
9 be those recently established for the Office of the State Comptroller
10 by law, pursuant to P.L.2007, c.52 (C.52:15C-1 et al.), as may be
11 amended and supplemented from time to time. These duties include
12 conducting routine, periodic and random audits; reviewing public
13 sector contracts; coordinating the conduct of forensic accounting
14 investigations of agencies of State government; conducting
15 performance reviews; developing and enforcing remediation plans
16 if violations are found; providing technical assistance and training
17 to strengthen internal procedures; and preventing the misuse of
18 public funds. Together, these powers, may be enhanced through
19 companion legislation that will implement this constitutional
20 amendment, and will allow the State Comptroller to systematically
21 review and scrutinize the financial and programmatic functions and
22 interactions of various State agencies, independent authorities, local
23 units of government, and public colleges, universities and boards of
24 education.

25 The amendment also abolishes the office of State Auditor as the
26 duties of that office within the legislative branch concerning post-
27 financial audits and discretionary performance reviews of State
28 government entities and certain school districts are duplicative of
29 the State Comptroller's duties.

30 This amendment will make the State Comptroller a truly
31 independent officer who will be elected at Statewide general
32 elections for up to two consecutive four-year terms. The election of
33 a State Comptroller will be held in each year before the year in
34 which the Governor and Lieutenant Governor are elected. The
35 election of a State Comptroller will be held in even-numbered years
36 in which elections for members of Congress or the President of the
37 United States are held.

38 The often-noted remarkable level of executive and political
39 power held by New Jersey's Governor under our Constitution makes
40 it unlikely that a truly independent and much needed, vigorous State
41 fiscal watchdog is possible from the current statutory plan under
42 which the State Comptroller is appointed by and controlled by the
43 Governor. The financial oversight system applied to all levels of
44 government in this State is virtually on "auto-pilot" and is beyond
45 full repair by a "go-slow", superficial, first aid approach. Making
46 the State Comptroller the second and separately elected State-level

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1 official is the only means of providing independent and responsive
2 checks and balances needed to be applied to this system. An
3 elected State Comptroller will have personal motivations to seek the
4 office, serve the entire State, and be accountable to no other
5 appointing power other than the people of the State.