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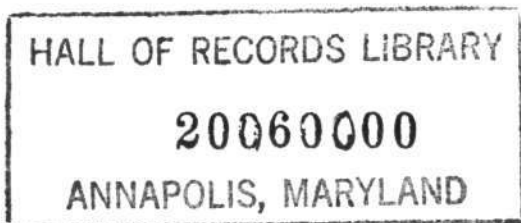
# THE MARYLAND STATE CONSTITUTION

## A Reference Guide

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Dan Friedman

Foreword by  
Judge Robert L. Karwacki



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MARYLAND STATE ARCHIVES

## Article VI

### Treasury Department

Article VI of the Maryland Constitution creates the Treasury Department with two constitutional officers: the Comptroller, elected directly by the people; and the Treasurer, elected by the General Assembly. This article is unchanged, in most respects, since it was first incorporated into the Maryland Constitution in 1851.<sup>1</sup>

Prior to the constitutional convention in 1967–1968, the constitutional convention commission recommended deleting both the Comptroller and the Treasurer from the constitution, thus strengthening the powers of the Governor.<sup>2</sup> The constitutional convention, due to extraordinary political pressures, settled on an unusual compromise—the Comptroller was to be retained as a statewide elected official but was deprived of most powers.<sup>3</sup> Ultimately, of course, the proposed constitution was rejected and the offices of both the Comptroller and the Treasurer remained unchanged.

#### SECTION 1

**Composition of Department; election of Comptroller; appointment of Treasurer; terms and compensation of Comptroller and Treasurer; vacancies; offices; oath and bonds.** There shall be a Treasury Department, consisting of a Comptroller chosen by the qualified electors of the State, who shall receive such salary as may be fixed by law; and a Treasurer, to be appointed on joint ballot by the two Houses of the Legislature at each regular session in which begins the term of the Governor, who shall receive such salary as may be fixed by law. The terms of office of the Comptroller and Treasurer shall be for four years, and until their successors shall qualify; and neither of the officers shall be allowed, or receive any fees, commissions

or perquisites of any kind in addition to his salary for the performance of any duty or services whatsoever. In case of a vacancy in the office of the Comptroller by death or otherwise, the Governor, by and with the advice and consent of the Senate, shall fill such vacancy by appointment, to continue until another election and until the qualification of the successor. In case of a vacancy in the office of the Treasurer by death or otherwise, the Deputy Treasurer shall act as Treasurer until the next regular or extraordinary session of the Legislature following the creation of the vacancy, whereupon the Legislature shall choose a successor to serve for the duration of the unexpired term of office. The Comptroller and the Treasurer shall keep their offices at the seat of government, and shall take such oaths and enter into such bonds for the faithful discharge of their duties as are now or may hereafter be prescribed by law.

Article VI, §1 describes the election, term of office, and salary for the Comptroller and the Treasurer. The Comptroller is elected on the general ballot pursuant to Article XVII (Quadrennial Elections) of the Maryland Constitution. The Treasurer is elected by a joint ballot of the two houses of the General Assembly.<sup>4</sup> Both officials serve four-year terms *and* until a successor qualifies, thus guaranteeing that the offices will always be filled.<sup>5</sup> The salary for each office is set legislatively.<sup>6</sup> Section 1 also provides the means for filling vacancies in the respective offices. If the office of Comptroller is vacant the Governor, with the advice and consent of the Senate, appoints a temporary successor;<sup>7</sup> if the office of the Treasurer is vacant, the Chief Deputy Treasurer serves until the next session of the General Assembly, when a new Treasurer is selected.<sup>8</sup> Both the Comptroller and Treasurer are required to maintain their main offices in Annapolis but, by judicial interpretation, are permitted to have additional offices elsewhere in the State.<sup>9</sup>

#### SECTION 2

**Powers and duties of Comptroller.** The Comptroller shall have the general superintendence of the fiscal affairs of the State; he shall digest and prepare plans for the improvement and management of the revenue, and for the support of the public credit; prepare and report estimates of the revenue and expenditures of the State; superintend and enforce the prompt collection of all taxes and revenue; adjust and settle, on terms prescribed by law, with delinquent collectors and receivers of taxes and State revenue; preserve all public accounts; and decide on the forms of keeping and stating accounts. He, or such of his deputies as may be authorized to do so by the Legislature, shall grant, under regulations prescribed by Law, all warrants for money to be paid out of the Treasury, in pursuance of appropriations by law, and countersign all checks drawn by the Treasurer upon any bank or banks in which the moneys of the State, may, from time to time, be deposited. He shall prescribe the formalities of the transfer of stock, or other evidence of the State debt, and countersign the same, without which such evidence shall not be valid; he shall make to the General Assembly full reports of all his proceedings, and of the state of the Treasury Department within ten days after the commencement of each session; and perform such other duties as shall be prescribed by law.

The Comptroller of Maryland serves three primary roles in state government: (1) chief financial officer of the state; (2) state tax collector; and (3) executive decision-maker as a member of the Board of Public Works.<sup>10</sup> Only the first of these duties is clearly defined by §2, which makes the Comptroller the superintendent of fiscal affairs of the State of Maryland. As such, the Comptroller serves as the "check on the Treasury,"<sup>11</sup> and as a financial watchdog for the state.

Although §2 requires the Comptroller to "superintend and enforce the prompt collection of all taxes and revenue," this was not a major feature of the Comptroller's historical duties. Beginning in 1937, however, the role of the Comptroller was significantly increased because, with the adoption of the state income tax, the responsibility for the administration of the income tax, and other taxes was placed on the Comptroller.<sup>12</sup> Thus, the Comptroller also functions as the state tax collector.

### SECTION 3

**Powers and duties of Treasurer and deputies; signature of bonds, etc., of State; transfer of evidences of debt of State.** The Treasurer shall receive the moneys of the State, and, until otherwise prescribed by law, deposit them, as soon as received, to the credit of the State, in such bank or banks as he may, from time to time, with the approval of the Governor, select (the said bank or banks giving security, satisfactory to the Governor, for the safekeeping and forthcoming, when required of said deposits), and he or such of his deputies as may be authorized to do so by the Legislature shall disburse the same for the purposes of the State according to law, upon warrants drawn by the Comptroller, or his duly authorized deputy, and on checks countersigned by the Comptroller, or his duly authorized deputy. The Legislature may prescribe, by law, for the Treasurer to disburse the moneys of the State by a system other than by the use of checks. The Treasurer or such of his deputies as may be authorized to do so by the Legislature shall take receipts for all moneys paid from the Treasury Department; and receipt for moneys received by him shall be endorsed upon warrants signed, by the Comptroller, or such deputy as may be authorized to do so by law, without which warrants, so signed, no acknowledgment of money received into the Treasury shall be valid; and upon warrants issued by the Comptroller, or his duly authorized deputy, the Treasurer shall make arrangements for the payment of the interest of the public debt, and for the purchase thereof, on account of the sinking fund. Every bond, certificate, or other evidence of the debt of the State shall be signed by the Treasurer, Chief Deputy Treasurer, or a Deputy Treasurer, and countersigned by the Comptroller, Chief Deputy Comptroller, or a Deputy Comptroller; and no new certificate or other evidence intended to replace another shall be issued until the old one shall be delivered to the Treasurer, and authority executed in due form for the transfer of the same filed in his office, and the transfer accordingly made on the books thereof, and the certificate or other evidence cancelled; but the Legislature may make provisions for the loss of certificates, or other evidences of the debt; and may prescribe, by law, the manner in which the Treasurer shall receive and keep the moneys of the State.

### Article VI

It is the state Treasurer's responsibility to receive the state's money, invest it as appropriate and then to disburse the money. The Treasurer only disburses money upon the direction—through warrants—of the Comptroller. The Court of Appeals has held that the duties of the Treasurer are merely "ministerial" and not discretionary.<sup>13</sup>

### SECTION 4

**Treasurer to render accounts to Comptroller, publish abstract thereof and submit copies to legislature; inspections by Comptroller.** The Treasurer shall render his Accounts, quarterly, to the Comptroller; and shall publish, monthly, in such newspapers as the Governor may direct, an abstract thereof, showing the amount of cash on hand, and the place, or places of deposit thereof; and on the third day of each regular session of the legislature, he shall submit to the Senate and House of Delegates fair and accurate copies of all Accounts by him, from time to time, rendered and settled with the Comptroller. He shall, at all times, submit to the Comptroller the inspection of the money in his hands, and perform all other duties that shall be prescribed by Law.

This section requires the Treasurer to report the status of the state's bank accounts to the Comptroller, the legislature, and to the public. The current language is nearly identical to the version adopted in 1851, with the sole exception of the public reporting requirement added in 1867. The appellate courts have not had the necessity or opportunity to expound on this section.

### SECTION 5

**When Comptroller and Treasurer to qualify.** The Comptroller shall qualify, and enter on the duties of his office, on the third Monday of January next succeeding the time of his Election, or as soon thereafter as practicable. And the Treasurer shall qualify within one month after his appointment by the Legislature.

Article VI, §5 provides mandatory dates by which the newly-elected Comptroller and Treasurer must assume their respective duties.

### SECTION 6

**Removal of Comptroller and Treasurer.** Whenever during the recess of the Legislature charges shall be preferred to the Governor against the Comptroller or Treasurer, for incompetency, malfeasance in office, willful neglect of duty, or misappropriation of the funds of the State, it shall be the duty of the Governor forthwith to notify the party so charged, and fix a day for a hearing of said charges; and if, in the

case of the Comptroller, from the evidence taken, under oath, on said hearing before the Governor, the said allegations shall be sustained, it shall be the duty of the Governor to remove the Comptroller and appoint another in his place, who shall hold the office for the unexpired term of the Comptroller so removed. However, if, in the case of the Treasurer, from the evidence taken under oath in the hearing before the Governor, the allegations are sustained, it is the duty of the Governor to remove the Treasurer, and the deputy treasurer shall act as Treasurer until the next regular or extraordinary session of the Legislature following the appointment, whereupon a successor shall be chosen by the Legislature who shall serve for the unexpired term of the Treasurer so removed.

Article VI, §6 provides an exception to the general constitutional rule that all impeachments are to be tried by the General Assembly. MD. CONST., Art. III, §26. The Comptroller and the Treasurer are afforded less process than other officers in their impeachment, probably to more quickly remove a malfeasant fiscal officer. Upon preferment of charges against either the Comptroller or the Treasurer, the Governor notifies the officer, holds an evidentiary hearing, and determines if the allegations are sustained. If the individual is impeached, appointment of a replacement is made pursuant to this section. It appears that the replacement procedure following an impeachment under §6 is identical to the procedure for filling any other form of vacancy in these offices under §1, except that §6 does not appear to require the advice and consent of the senate when the Governor replaces a Comptroller.