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Sens. Henry, Poore, Bonini, Cloutier, Lavelle; Reps.  
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DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE CONCURRENT RESOLUTION NO. 33

CREATING AN ADMINISTRATIVE LAW IMPROVEMENT TASK FORCE FOR THE PURPOSE OF REVIEWING AND IMPROVING THE ADMINISTRATIVE PROCEDURES ACT, PROCESSES FOR JUDICIAL REVIEW OF DECISIONS BY ADMINISTRATIVE TRIBUNALS, AND PROCESSES FOR DISPUTES INVOLVING LAND USE AND REAL PROPERTY, INCLUDING THE LANDLORD TENANT CODE.

1 WHEREAS, in 1976, the State of Delaware first adopted the Administrative Procedures Act (the "APA") as part  
2 of an overall effort to modernize and make more efficient and effective its system of government; and

3 WHEREAS, the APA was based in large part on the Model State Administrative Procedures Act as adopted by the  
4 Uniform Law Commission; and

5 WHEREAS, there have been several efforts to modernize the Model State Administrative Procedures Act over the  
6 last forty years, but Delaware has not comprehensively reviewed the APA since its original enactment; and

7 WHEREAS, since its enactment in 1976, many regulatory statutes and bodies have been created and subjected to  
8 alternative forms of administrative review outside of or inconsistent with the APA, thereby undermining the efficiency and  
9 effectiveness the APA sought to achieve; and

10 WHEREAS, jurisdiction over appeals from state or county level administrative agencies has been allocated within  
11 the Judiciary in inefficient ways, resulting in instances of courts having overlapping jurisdiction and jurisdiction otherwise  
12 assigned in a manner inconsistent with the traditional areas of practice for the court; and

13 WHEREAS, the proliferation of bespoke regulatory statutes that do not follow the APA and the erratic allocation  
14 of administrative law jurisdiction among various courts have resulted in a lack of consistency and reliability in the key area  
15 of administrative law; and

16 WHEREAS, the inconsistent approaches have a negative effect on administrative agency performance, leaving  
17 agency staff responsible for applying statutes and holding administrative hearings without a consistent body of APA  
18 centered administrative law; and

19 WHEREAS, the complexity, inconsistency, and long timelines for our administrative law system can be frustrating  
20 and costly to Delaware businesses, discouraging commercial investment and the expansion of commercial operations, to the  
21 detriment of job creation in our state; and

22 WHEREAS, there is currently a lack of consistent expedited processes for critical issues before administrative  
23 tribunals or appeals thereof, which creates significant uncertainty to the detriment of Delaware's economy; and

24 WHEREAS, the persistence of these practices is costly in terms of efficiency, as the courts sometimes struggle  
25 with a wide variety of regulatory schemes and jurisdictional idiosyncrasies, rather than focusing on the merits of the claims  
26 before them; and

27 WHEREAS, the complexity of our administrative law system can lead to citizens, businesses, and community  
28 organizations not understanding how to assert their rights, thus diminishing confidence in the rule of law; and

29 WHEREAS, by taking a fresh look at this system, we can better serve the people of Delaware by rationalizing  
30 administrative law review: (1) to apply one consistent, backbone approach to administrative review when practicable; (2) to  
31 allocate administrative law review in the Judiciary in a clear and efficient manner to avoid overlap, confusion, and waste;  
32 and (3) to increase fairness by reducing the extent to which cases are resolved on technicalities or statutory quirks, rather  
33 than on substantive merit; and

34 WHEREAS, consistent with this effort, it is also critical to look at the most important stage in the administrative  
35 law process, which is the initial agency hearing; and

36 WHEREAS, many of these hearings are presided over by hearing officers with ongoing ties to an agency that is  
37 also a litigant in the case, leading to a perception that the hearing officer may not be neutral; and

38 WHEREAS, the current system also strains agency resources, as not all agencies have the resources necessary to  
39 handle hearings effectively, and thus administrative law decision quality varies widely; and

40 WHEREAS, at the federal level and in other states, approaches have been taken to ensure that neutral, experienced  
41 hearing officers, without dependence on any litigant agency, are employed to improve the quality, neutrality, and  
42 consistency of administrative agency determinations; and

43 WHEREAS, Delaware could benefit by examining these approaches and moving toward a system of neutral,  
44 expert hearing officers, whose principal function is delivering high-quality administrative law decisions; and

45 WHEREAS, Delaware practitioners and Judiciary members have begun to review the APA, subsequent model  
46 acts, and similar provisions in other states in an effort to start the process of modernizing the APA; and

47 WHEREAS, to properly modernize Delaware's administrative law system, including allocating jurisdiction more  
48 rationally within the judicial branch, it is important to conduct a comprehensive study of which various administrative  
49 agencies hold hearings and, relatedly, the extent to which those hearings result in appeals to the courts; and

50 WHEREAS, because these subjects are critical to Delawareans, they should be examined by a group comprised of  
51 administrative law experts and citizens, representing a diverse range of Delawareans whose lives are affected by our

administrative law system, including representatives of environmental, consumer, and community groups, the business community, and legal services organizations;

NOW, THEREFORE:

BE IT RESOLVED by the Senate of the 149th General Assembly of the State of Delaware, the House of Representatives concurring therein, that the Administrative Law Improvement Task Force is hereby created and that:

1. The Administrative Law Improvement Task Force shall be comprised of the following members:

- a. A Chairperson and Co-Chairperson shall be appointed by the Governor from among the members;
- b. One member appointed by the Pro Tempore of the Senate and one member appointed by the Minority Leader of the Senate;
- c. One member appointed by the Speaker of the House and one member appointed by the Minority Leader of the House;
- d. One representative of the Office of the Governor, appointed by the Governor;
- e. One member representing the Judiciary, appointed by the Chief Justice;
- f. One of the State's Commissioners to the Uniform Law Commission, appointed by the Governor;
- g. One member representing the Department of Justice, appointed by the Attorney General;
- h. One member representing the Department of State, appointed by the Secretary of State; and
- i. Five members of the public appointed by the Governor representing the business community, county and municipal government, the environmental advocacy community, legal services for the indigent, and other civic organizations concerned about the administrative law system.

2. The Administrative Law Improvement Task Force shall be comprised of the following subcommittees:

a. The State Regulatory Subcommittee

- i. This subcommittee shall review and provide any comments or suggestions on modernizing the APA, with a goal of bringing as many agencies as possible under the governance of the APA as modernized and to ensure that a consistent, high quality form of administrative law review applies to all statutes.
- ii. The subcommittee shall review the allocation of administrative law appeals to the courts, with the goal of reducing overlap, inconsistency, and allocating jurisdiction in the manner that best facilitates the expertise and expeditious resolution of administrative law disputes.

81                   iii. The subcommittee shall coordinate with the Chief Justice, the Presiding Judges, the  
82                   Administrative Office of the Courts, the Executive Branch Agencies, and the  
83                   Attorney General in conducting targeted case load studies to aid the overall work of  
84                   the Task Force.

85                   iv. The subcommittee shall consider, and if deemed advisable, propose a plan for the  
86                   creation of a unit comprised of neutral hearing officers to improve the consistency  
87                   and fairness of administrative agency rulings. In studying this issue, the  
88                   subcommittee, using the case load study and other inquiries, shall endeavor to  
89                   identify what resources are currently devoted to the work of conducting and  
90                   deciding administrative hearings, and develop an efficient plan based on reallocating  
91                   resources to the extent practicable, so that scarce tax dollars are used cost-  
92                   effectively.

93                   b. Subcommittee on Land Use and Real Property

94                   i. This subcommittee shall examine whether it is possible to improve the consistency,  
95                   efficiency, and fairness of decision-making in the important area of land use and real  
96                   property.

97                   ii. The subcommittee shall endeavor to rationalize the jurisdiction of the various courts  
98                   in this area, and to ensure that appeals in land use cases are handled in a single  
99                   court, with the capacity and expertise to handle them effectively.

100                  iii. The subcommittee shall also examine jurisdictional and appellate issues relating to  
101                  civil actions, summary possession hearings, and appeals arising under the landlord  
102                  tenant code, with a view to making its jurisdiction fit coherently with other bodies of  
103                  law, and to provide a reliable guide to both tenants and landlords regarding where  
104                  certain disputes are heard. In particular, the goal should be to have all appeals from  
105                  the Justice of the Peace Court, and related cases, go to a single court. The  
106                  subcommittee shall consider eliminating the use of outdated writs to better ensure  
107                  that landlord tenant and land use cases are decided on the merits and not based upon  
108                  technicalities such as non-compliance with outdated technical procedures.

109                   3. The Administrative Law Improvement Task Force may include additional representatives of important  
110                   constituencies in the work of the Task Force, at the discretion of the Chairs. The Chairs may also identify  
111                   additional members of the Bar to serve as reporters to the Task Force.

112                   4. The Administrative Law Improvement Task Force shall report to the General Assembly and the  
113                   Governor on or before January 9, 2018 on the following:

114                   a. Any suggested revisions to modernize the APA.

115                   b. Any fiscal or budget implications resulting from the enactment and implementation of  
116                   legislation to modernize the APA.

117                   c. Any additional statutory changes the Administrative Law Task Force recommends to  
118                   effectuate the recommendations stemming from the efforts outlined in this resolution.

#### SYNOPSIS

This resolution creates the Administrative Law Improvement Task Force, which is charged with reviewing Delaware's Administrative Procedures Act and other related statutes for the purpose of making recommendations to modernize Delaware's administrative tribunal process, including judicial review of administrative tribunal decisions and processes for disputes involving land use and real property, including the Landlord Tenant Code.

Author: Senator McBride