



SPONSOR: Rep. Brady & Rep. Collins & Sen. Hocker &
Sen. Pettyjohn

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 471

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO ADMINISTRATIVE PROCEDURES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 101, Title 29 of the Delaware Code by making deletions as shown by strike through,
2 insertions as shown by underline and redesignate as follows:

3 § 10115. Notice [~~For application of this section, see 80 Del. Laws, c. 113, § 8~~]

4 (a) Whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text
5 of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar
6 for publication, in full or as a summary, in the Register of Regulations pursuant to § 1134 of this title. Any submission to
7 the Registrar hereunder shall include, to the extent applicable, any agency regulatory statement required to be submitted by
8 the agency pursuant to Chapter 104 of this title.

9 (1) The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance,
10 issues, possible terms of the agency action, a reference to the ~~legal-specific statute(s) or law of Delaware delegating~~
11 such authority of the agency to act and reference to any other regulations that may be impacted or affected by the
12 proposal;

13 (2) The notice shall state the manner in which persons may present their views: (i) if in writing, of the place to
14 which and the final date by which such views may be submitted; or (ii) if at a public hearing, the date, time and place
15 of the hearing. Each notice shall include an e-mail address through which comments may be submitted. If a public
16 hearing is to be held, such public hearing shall not be scheduled less than ~~20~~ 30 days following publication of notice of
17 the proposal in the Register of Regulations.

18 (b) If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of
19 the proposal shall also be published in at least 2 Delaware newspapers of general circulation a minimum of ~~20~~ 30 days prior
20 to such public hearing and shall also be advertised at least ~~20~~ 30 days prior to such public hearing by electronic posting on a
21 designated State of Delaware website, approved by the Registrar of Regulations by May 1, 2013, which shall be accessible
22 to the public.

(c) The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

(d) No regulation being proposed to be formulated, adopted, amended or repealed shall be published if the requisite notice prescribed in subsection (a) of this section is not submitted with the proposed regulation to the Registrar of Regulations.

§ 10116. Written submittals.

Before adopting, amending or repealing any regulation, an agency shall give notice as prescribed in § 10115 of this title and shall receive all written and electronic suggestions, compilations of data, briefs or other written materials submitted to it by any person. The agency, in its discretion, may designate a subordinate to organize, classify, summarize and make recommendations with respect to the materials, which recommendations may be considered with the materials by the agency in reaching its conclusions.

§ 10117. Public hearings.

When an agency is required by law to hold public hearings before adopting, amending or repealing a regulation and, otherwise, if an agency in its discretion determines to hold public hearings, in addition to giving opportunity for the submission of written materials, the following shall apply to the conduct of such hearings:

(1) The hearing shall be conducted either by the agency or by a subordinate designated by the agency for that purpose who shall be empowered in connection with such hearing to:

a. Issue subpoenas, in the agency's sole discretion, for witnesses or other evidence, on the agency's initiative or at the request of any person;

b. Administer oaths to witnesses; and

c. Exclude irrelevant, immaterial, insubstantial, cumulative, privileged matter and unduly repetitive proofs, rebuttals and cross-examination.

(2) A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of preparing any transcript shall be borne by the person requesting it. No part of the public hearing is exempt from this record requirement.

(3) If the hearing notice includes a specific length of time for the holding of the hearing, the hearing shall not adjourn prior to the end of that length of time.

(4) Each person attending a hearing who desires to speak shall be entitled to at least five (5) minutes to speak and make their presentation. If all persons desiring to speak cannot do so within the scheduled hours of the hearing as

52 noticed, then the hearing shall either be extended on that date until all speakers are heard or the hearing shall be
53 recessed to a later date when such speakers may be heard.

54 § 10118. Agency findings; form of regulations.

55 (a) The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is
56 published in the Register of Regulations. The opportunity for public written comment shall be extended for a minimum of
57 15 days after the final public hearing when 1 or more public hearings are held on the proposal.

58 (b) At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the
59 testimonial and written evidence and information submitted, together with summaries of the evidence and information by
60 subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its
61 conclusion in an order which shall include:

62 (1) A brief summary of the evidence and information submitted;

63 (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule
64 of procedure is being adopted or amended;

65 (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported
66 by its findings on the evidence and information received;

67 (4) The exact text and citation of such regulation adopted, amended or repealed;

68 (5) The effective date of the order;

69 (6) Any other findings or conclusions required by the law under which the agency has authority to act; and

70 (7) The signatures of at least a quorum of the agency members.

71 (c) In the event an agency makes substantive changes in the proposal as a result of the public comments, evidence
72 and information, the agency shall consider the revised proposal as a new proposal subject to the notice requirements of §
73 10115 of this title and all other requirements of this subchapter. If the changes are not substantive, the agency shall not be
74 required to repropose the regulation change. Whether a change constitutes substantive or nonsubstantive matter shall be
75 determined by the agency head.

76 (d) In the event the proposing agency seeks to withdraw its proposal, the proposing agency shall notify the
77 Registrar, in writing, that the proposal is being withdrawn and the Registrar shall publish the withdrawal information in the
78 next issue of the Register of Regulations.

79 (e) The agency shall file such order with the Registrar of Regulations which shall become the official regulation as
80 defined in § 1132 of this title.

(f) No agency shall adopt a regulation if more than ~~12~~3 months have elapsed since the end of the public comment period or the last public hearing, whichever is later, on the proposed regulation.

(g) The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form, in full or as a summary, in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under § 10119 of this title.

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public ~~health, health or safety or welfare~~ requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; ~~and~~

(5) An agency may not adopt Emergency Regulations which are the same or substantially similar to Regulations which have been invalidated by court order;

(6) All other provisions of this section notwithstanding, an agency may only determine that an imminent peril to the public health or safety exists based upon a written and published notice containing a detailed and specific explanation of how the standard is met under the circumstances, which standard shall be defined as an immediate and substantial risk of irreparable harm; and

~~(5)(7)~~ The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

~~(6) The notice shall inform the parties of the agency's obligation to reach its decision based upon the evidence received.~~

§ 10141. Review of regulations.

(a) It is the intent of the General Assembly that any judicial review of any regulation be expedited and that the court process be efficient and timely in order to benefit all parties in terms of time and cost.

~~(a)(b)~~ Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief. For purposes of this chapter, every Delaware resident or taxpayer shall be considered an aggrieved person.

~~(b)(c)~~ No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

~~(e)(d)~~ When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

~~(d)(e)~~ Except as provided in subsection (c) of this section, no judicial review of a regulation is available unless a complaint ~~therefor~~ is filed in the Court within ~~30~~ 60 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

(f) Judicial review shall be based upon written briefing by the parties and the record established pursuant to the regulation adoption process provided for by this chapter. No preliminary motions shall be permitted and no trial shall be held. The Court shall render a final decision as expeditiously as possible, but not later than one (1) year after the action is brought.

~~(e)(g)~~ Upon review of regulatory action, ~~the agency action shall be presumed to be valid and the complaining party shall have the burden of proving either that the action was taken in a substantially an unlawful manner and that the complainant suffered prejudice thereby, or that the regulation, where required, was adopted without a reasonable basis on the record or is otherwise unlawful. The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency acted.~~

(h) In the event the complainant is successful in meeting its burden under this section, the Court shall order the agency to reimburse such complainant for its costs and reasonable attorneys' fees in pursuing its action.

§ 10142. Review of case decisions.

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

(b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.

(c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

§ 10143. Mandamus for agency action.

Any person aggrieved by the failure of an agency to take action required of it, by law, may bring an action in the Court for an appropriate writ of mandamus.

§ 10144. Stay pending review.

When an action is timely brought in the Court for review of an agency regulation or decision, enforcement of such regulation or decision by the agency ~~may be~~ is automatically stayed until the Court issues a final order finding that the regulation was lawful. ~~by the Court only if it finds, upon a preliminary hearing, that the issues and facts presented for review are substantial and the stay is required to prevent irreparable harm.~~

SYNOPSIS

This Bill amends the Administrative Procedures Act extending and shortening certain time periods for parties to act and limits emergency regulations to situations affecting public health or safety. If an agency is found to have unlawfully adopted regulations, the agency shall be responsible for the complainant's reasonable fees and costs incurred in bringing such action. This Bill also specifies speaker-time allocation and what the agency is to do if more time is needed for parties to speak at public hearings. The purpose of the Bill is to simplify and expedite legal processes to review, stay, and adjudicate regulatory actions.