

CHAPTER 260
FORMERLY
HOUSE BILL NO. 343

AN ACT TO AMEND TITLE 4 AND TITLE 29 OF THE DELAWARE CODE RELATING TO THE JOINT SUNSET COMMITTEE.

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

Section 1. Amend Chapter 102, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

CHAPTER 102. DELAWARE LEGISLATIVE OVERSIGHT AND SUNSET ACT.

§ 10201. Definitions.

For purposes of this chapter, unless the context otherwise requires:

(1) "Agency" means any regulatory, administrative, advisory, executive, or legislative body of this State, including, ~~but not limited to,~~ a board, bureau, commission, department, division, committee, council, association, authority, or any other entity established by an act of the General Assembly of this State ~~which that~~ meets any of the following:

a. Is given authority in the Delaware Code to regulate a business, occupation, or ~~profession;~~ profession.

b. Is supported in whole or in part by public ~~funds;~~ funds.

c. Expends or disburses public ~~funds;~~ or funds.

d. Is specifically charged by a public body to advise or make ~~recommendations;~~ recommendations.

(2) "Committee" or "Joint Legislative Oversight and Sunset Committee" means the joint legislative committee established by this ~~chapter;~~ chapter.

§ 10202. Declaration of policy.

(a) It is essential to the maintenance of a healthy state economy and of a government that has the confidence of its citizens that the State establish a system of periodic legislative review of its agencies. This review of agency performance and activities is consistent with other activities and goals of the General Assembly. The primary purpose of this review is to determine whether ~~or not~~ there is a genuine public need for the agency under ~~review;~~ review and, if so, to determine whether ~~or not~~ the agency is correctly performing to meet that need.

§ 10203. Joint Legislative Oversight and Sunset Committee composition; chairperson; appointment; quorum; reimbursement; meetings.

(a) The Joint Legislative Oversight and Sunset Committee is composed of 5 members of the Senate appointed by the President Pro Tempore and 5 members of the House of Representatives appointed by the Speaker of the House. Not more than 3 Senate appointees, nor 3 House appointees, may belong to the same political party. The chairperson and vice chairperson of the ~~Sunset~~ Committee alternate each year between a Representative appointed by the Speaker of the House and a Senator appointed by the President Pro Tem of the Senate. During odd-numbered years, a Senator serves as chairperson and a Representative serves as vice-chairperson; during even-numbered years, a Representative serves as chairperson and a Senator serves as vice chairperson.

(b) In each General Assembly, new members of the ~~Sunset~~ Committee must be appointed within the month of January, or within 1 week of the organization of each respective house, whichever is later.

(c) A quorum consists of at least 6 Committee members. A quorum must be present in order to transact business. If a quorum is present, a proposition is carried by a majority of the entire Committee, unless a statute or rule requires a larger number of affirmative votes ~~is required for passage by statute or rule.~~

(e) A member of the Joint Finance Committee or Legislative Council may not serve on the ~~Sunset~~ Committee. However, this subsection does not apply when the minority party in either house has less than 7 members.

(f) Although all meetings of the ~~Sunset~~ Committee are open to the public, only members of the Committee and persons designated by the chairperson are permitted to speak or otherwise participate.

§ 10204. ~~Sunset~~ Committee staff; appropriations.

Employees of the Division of Research of Legislative Council and of the Office of the Controller General serve as the permanent staff of the ~~Sunset~~ Committee. The Committee may, by the affirmative vote of at least 6 members, provide for other assistance, equipment, or expenditures that are within the limits of the Committee's budget. The General Assembly shall appropriate funds that it considers necessary to carry out the activities and goals of the Committee.

§ 10205. ~~Sunset~~ Committee rules and regulations.

The ~~Sunset~~ Committee ~~should~~ may adopt Committee rules and regulations necessary to carry out the activities and goals of this chapter.

§ 10206. ~~Sunset~~ Committee subpoena powers.

(a) The ~~Sunset~~ Committee may issue process to witnesses at any place in this State and compel their attendance, ~~as well as~~ and compel the production of books, records, papers, and other objects that may be necessary or proper for the purposes of the Committee's proceedings. The Committee may issue attachments when necessary to obtain compliance with subpoenas or other process. An attachment so issued may be addressed to and served by any peace officer in this State. The chairperson of the Committee shall issue in the name of the Committee any subpoenas requested by the Committee, if the request received the affirmative vote of at least 6 members of the Committee. If the chairperson of the Committee is unavailable, the designee of the chairperson may issue subpoenas or any other lawful process in accord with the provisions of this subsection.

§ 10207. Agency reports to the ~~Sunset~~ Committee.

(a) Each agency under review by the ~~Sunset~~ Committee shall forward to the Committee an annual report containing all of the following information:

(1) A chart or diagram showing the greater agency of which it is a part, if any, ~~as well as~~ and all agencies over which it has ~~jurisdiction;~~ jurisdiction.

(2) Agency goals and objectives, and the statutory authority for the goals and objectives, if ~~any;~~ any.

(3) All programs in being at any time for the period of 1 year immediately prior to the date of the annual ~~report;~~ report.

(4) The total value of state funds or materials, or both, used by the agency for each of the last 5 fiscal ~~years;~~ years.

(b) Each year on or before January 15, each agency under review by the ~~Sunset~~ Committee shall forward all of the following to the Committee:

(1) The last 5 budget reports relating to all program priorities, activities, and accomplishments, if the agency is subject to zero-based budgeting ~~requirements;~~ requirements.

(2) A concise and specific statement setting forth the performance or achievement of the agency relating to the criteria for review set forth in § 10211 of this title, and addressing no other subject except the criteria for ~~review; and~~ review.

(c) Notwithstanding any other law or statute to the contrary, upon notification to an agency that it is under review by the ~~Sunset~~ Committee, the agency shall forward all information set forth in this section to the Committee, and shall update the information and provide additional information that the Committee or its staff may from time to time request.

§ 10209. ~~Sunset~~ Committee responsibilities and duties.

(b) Each year on or before February 7, the Committee shall do all of the following:

(1) Conduct a thorough review of all information furnished to the Committee by the agency under ~~review;~~ review.

(2) Obtain, verify, and review any reports, audits, or actions taken by other state agencies concerning the agency under ~~review;~~ review.

(3) Conduct a performance evaluation of the agency under review based, at least in part, on the following criteria:

a. If the agency is a licensing agency, the extent to which the agency has permitted qualified applicants to be ~~licensed;~~ licensed.

b. The extent to which the agency has served the public ~~interests;~~ interests.

c. The extent to which the agency has recommended statutory changes, and whether those changes directly benefit the public or whether those changes primarily benefit the agency or other entities, and are of only indirect benefit to the ~~public;~~ public.

(4) Direct staff to prepare a draft report to be used in public hearings. Following review and comment by the Committee, the draft report must be made available to the public. The draft report must contain information that assists the Committee in conducting a review of the agency, including background information on, and an introductory analysis of, the information submitted by the agency under review, together with any preliminary evaluations or recommendations arising from the information in the draft ~~report;~~ and report.

§ 10210. Public hearings.

(a)(1) Between February 7 and the second Tuesday of March of each year, the ~~Sunset~~ Committee shall regularly and uniformly convene initial public hearings scheduled by the chairperson, in order to provide an opportunity for the Committee to meet with the agencies under review and to help formalize a timetable for the reviews.

§ 10211. Criteria for review.

(a) The genuine public need for an agency under review by the ~~Sunset~~ Committee and whether ~~or not~~ the agency is satisfactorily meeting that need may not be assumed. The agency has the burden of showing, through the criteria for review under subsection (b) of this section, that there is a genuine public need and that the agency is meeting that need.

(b) The criteria for review required by the provisions of subsection (a) of this section are as follows:

(1) The purpose of the act establishing the agency and the manner of operation of the agency designed to achieve the ~~purpose;~~ purpose.

(2) Whether ~~or not~~ it can be independently established, apart from information supplied by the agency or by persons having a direct interest in the continued existence of the agency, that the termination of the agency would be detrimental to the public health, safety, or welfare; and whether ~~or not~~ a possibility exists that the termination would be beneficial to the public health, safety, or ~~welfare;~~ welfare.

(3) An assessment of less restrictive or other methods of achieving the stated objectives of the act establishing the agency, and if those other methods provide as much protection to the ~~public;~~ public.

(4) Whether ~~or not~~ statute establishes a clear mandate to the agency, and whether ~~or not~~ the agency has complied with the mandate, if any, in the best interests of the general ~~public;~~ public.

(5) Whether ~~or not~~ other programs, activities, or agencies of the state government have the same or similar objectives, and, if so, a comparison of the costs and effectiveness of those programs, activities, or agencies, and the identification of any duplicate programs, activities, or agencies with those of the agency under ~~review;~~ review.

(6) ~~Whether or not in the past 3 years~~ Whether, in the prior 3 years, the agency has recommended to the General Assembly only those statutory changes of primary benefit to the public, or if those changes were primarily of benefit to the agency or to the occupation, business, or institution which it serves or ~~regulates;~~ regulates.

(7) The efficiency with which the agency meets its statutory ~~objectives;~~ objectives.

(8) Whether ~~or not~~ applications and formal public complaints filed with the agency have been processed effectively and ~~fairly;~~ fairly.

(9) Whether ~~or not~~ the agency has issued professional or occupational licenses only to qualified applicants, and whether ~~or not~~ the agency has unfairly restricted access to any person wishing to engage in a regulated business, occupation, or ~~profession;~~ profession.

(10) The extent to which the agency has encouraged participation by the public in making agency rules, regulations, and decisions, as opposed to participation solely by those it ~~regulates;~~ regulates, and the extent to which public participation has resulted in rules, regulations, and decisions compatible with the objectives of the ~~agency;~~ agency.

(11) Whether ~~or not~~ the agency has operated in an open and accountable manner with public access to records and meetings, and whether there are safeguards against possible conflicts of ~~interest~~; interests.

(12) Whether "ethical conduct" provisions or rules of an agency, if any, are in fact limited to ethical or moral conduct, or if the provisions or rules contain primarily commercial prohibitions and restrictions relating to profits, advertising, and other business ~~topics~~; topics.

(13) The extent to which the agency has been complying with Chapter 58, Chapter 100, and Chapter 101 of this title; §§ 6506, 6512, and 6519 of this title; and § 8, ~~article~~ Article XV of the Delaware Constitution, or with the requirements of any laws which are direct successors to those listed in this ~~paragraph~~; paragraph.

(14) Any claimed impact as a result of federal intervention or loss of federal funds if the agency is terminated, the impact of which must be fully ~~substantiated~~; and substantiated.

§ 10212. Agency "rules review".

(a) The ~~Sunset~~ Committee may conduct a specialized or focused review of 1 or more rules or regulations of an agency. This review is known as a "rules review," and does not include the same schedules and procedures as an agency review.

§ 10213. Final report.

(a) On or before May 30 of the calendar year in which an agency under review is automatically terminated in accordance with the provisions of this chapter, the Committee shall present its final report to the General Assembly and to the Governor. The final report must contain a complete description of the agency and its objectives, including all sub-agencies or programs within the agency; a review of all material obtained pursuant to §§ 10207-10211 of this title; a determination of whether or not there is genuine public need for the agency, and whether ~~or not~~ the agency is satisfactorily meeting that need; recommendations of the Committee; and other matters or information that the Committee may wish to include.

(b) The final report required by subsection (a) of this section must contain the Committee's review schedule of those agencies recommended for review during the year following the final report. The review schedule for that year must contain no less than 4 agencies and should take into consideration the following:

- (1) Any agency whose review is being continued to the following ~~year~~; year.
- (2) Any agency automatically scheduled for ~~review~~; review.
- (3) Any agency added by the General ~~Assembly~~; and Assembly.
- (4) Any agency added by the ~~Sunset~~ Committee by 6 affirmative votes.

(c) The Committee may, by 6 affirmative votes, add agencies to, remove agencies from, or replace agencies on the Committee's review schedule.

§ 10214. Committee recommendations.

In its final report concerning an agency, the ~~Sunset~~ Committee may recommend 1 or more of the following:

(1) The continuance of the agency, as is; termination of the agency; termination of any program within the agency; the consolidation, merger, or transfer of the agency or of functions of the agency to another agency; or the termination of the agency unless certain conditions are met or modifications are made, by legislation or otherwise, within a specified period of ~~time~~; time.

(2) Budget appropriation limits for an ~~agency~~; and agency.

(3) In general or specific terms, legislation which the Committee considers necessary to carry out its decision as to whether ~~or not~~ an agency should be continued or terminated.

§ 10216. Termination of an agency; re-establishment.

(a) If the ~~Sunset~~ Committee recommends the termination of an agency and the agency is not re-established by an act of the General Assembly, the agency is automatically terminated at the end of June 30 immediately following the date of the Committee's final report.

§ 10219. Monitoring of recommendations.

During each legislative session, the staff of the ~~Sunset~~ Committee shall monitor legislation affecting agencies that have undergone review by the Committee and shall periodically report to the members of the Committee any proposed changes which might modify prior recommendations of the Committee.

Section 2. Amend § 710, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 710. Compensation of Lieutenant Governor and members of General Assembly.

(c) Any member of the Senate or the House of Representatives who is elected or appointed to any of the following positions shall, while serving in such position, receive additional yearly compensation as follows:

(11) Chairperson and Vice Chairperson of the Joint Legislative Oversight and Sunset Committee
4,578.00

(12) Members of the Joint Legislative Oversight and Sunset Committee 3,852.00

Section 3. Amend § 910, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 910. Consideration of agency rules during legislative interim.

(c) Each such joint committee shall have the power, by a majority vote of its members, to draft a committee report setting forth its suggestions and recommendations, and to request the President pro tempore of the Senate or the Speaker of the House to call a special session to consider committee recommendations. Each committee report shall be forwarded to the Legislative Oversight and Sunset Committee.

Section 4. Amend § 8735, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8735. Division of Professional Regulation.

(d) The Division of Professional Regulation shall have the following powers, ~~duties~~ duties, and functions relating to the administration of examinations for all boards, ~~commissions~~ commissions, and other agencies listed in this section:

(5) Review and approve, subject to ~~Sunset Committee~~ review by the Joint Legislative Oversight and Sunset Committee, the content and validity of any examination written, ~~developed~~ developed, or used by a board or commission listed in this section;

Section 5. Amend § 10004, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10004. Open meetings.

(h) This section shall not apply to the proceedings of:

(7) Public bodies within the legislative branch of the state government other than the House of Representatives, the Senate, the Joint Finance Committee, the Joint Committee on Capital Improvement, the Joint Legislative Oversight and Sunset Committee, Legislative Council, committees, excluding ethics committees, specifically enumerated and created by Resolution of the House of Representatives ~~and/or~~ or Senate or task forces specifically enumerated and created by Resolution of the House of Representatives ~~and/or~~ or Senate;

Section 6. Amend § 303, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 303. Employees.

Necessary staff as required shall be employed as required to carry out the work under the chapter. After December 1, 2001, the Joint Legislative Oversight and Sunset Committee will review the duties and responsibilities of the Commissioner to determine if additional staff, including hearing officer or officers, is necessary. The Personnel Section of the Department of Safety and Homeland Security shall provide personnel services and other necessary support services for the office of the Commissioner and the Appeals Commission.

Section 7. This act shall take effect on January 1, 2017.

Approved June 09, 2016