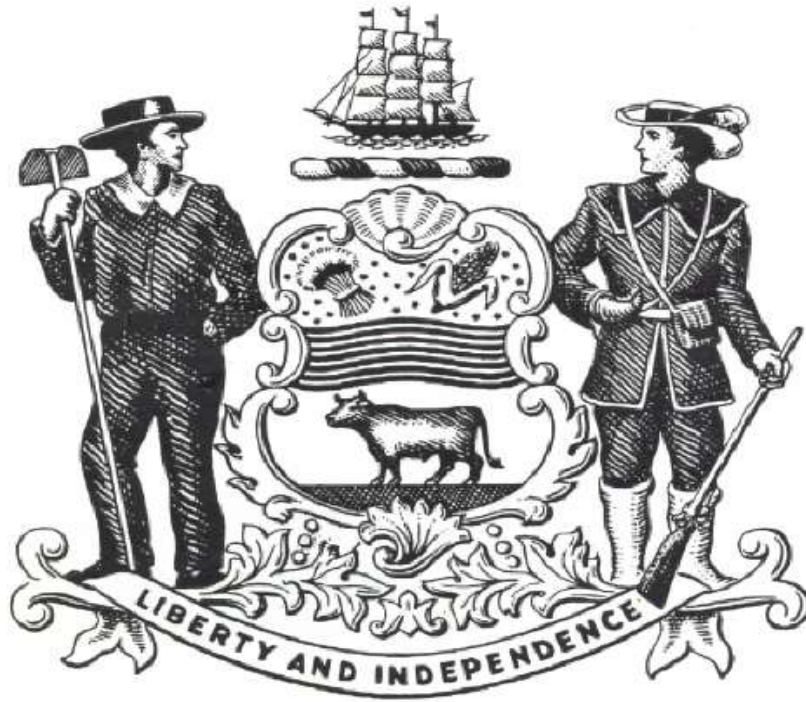

Joint Legislative Oversight & Sunset Committee 2017 Final Report



Human Relations Commission

*A Report to the Governor and the
149th General Assembly of the State of Delaware*

June 2017

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2017 Joint Legislative Oversight and Sunset Committee Members

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions. The purpose of sunset review is to determine whether there is a public need for an agency, board, or commission and, if so, to determine whether it is effectively performing to meet that need. Agencies may be reviewed once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) is responsible for guiding the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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2017 Final Recommendations: Human Relations Commission

The Joint Legislative Oversight and Sunset Committee recommends that the Human Relations Commission (“Commission”) be continued.

1. As proposed by the Commission and the JLOSC, the Commission membership should be reduced.

Title 31 Del. Code § 3001 currently reads:

§ 3001 Creation; composition; vacancies; compensation.

(a) There is created a State Human Relations Commission which shall consist of 28 members. Each county of the State shall be represented by 7 members, and 7 members shall be selected without regard to the county in which they reside. The members shall be appointed by the Governor and shall be broadly representative of various racial and cultural groups of the State. Seven of the original members shall be appointed for a term of 1 year, 7 for a term of 2 years, 7 for a term of 3 years and 7 for a term of 4 years. Thereafter, all appointments shall be made for terms of 4 years.

Discussions at the public hearing included recommendations from the Commission that due to the hearing process, that the membership be 18. The Committee may wish to discuss this further to consider an even smaller number than 18.

RECOMMENDATION: The Commission shall provide to JLOSC proposed amendments to its governing statute to reduce the size of the Commission from 28 members to 18 commissioners.

OUTCOME: Senate Bill 122, provided in Appendix A is the result of JLOSC’s recommendation.

2. As discussed in the JLOSC Public Hearing, the Commission’s meeting quorum is not included in their governing statute.

RECOMMENDATION: The Commission shall provide to JLOSC proposed amendments to its governing statute to include quorum language.

OUTCOME: Senate Bill 122, provided in Appendix A is the result of JLOSC’s recommendation.

3. Expand statute language to include a process for removal of a board member.

RECOMMENDATION: The Commission shall provide to JLOSC proposed amendments to its governing statute to include language standard to boards and commissions.

OUTCOME: Senate Bill 122, provided in Appendix A is the result of JLOSC’s recommendation.

4. The JLOSC was concerned that there is not available video space in Sussex County for ease of meetings and public attendance.

RECOMMENDATION: The Commission shall make every effort to add a video location, which will allow for Sussex County members and public to participate in meetings.

5. The Committee discussed with the Commission the limitations of their powers and duties. The Commission was asked to comment on items such as disparity in education, however, the Commission’s authority is in the areas of Fair Housing and Equal Accommodations. This is not reflected in Title 31 §3004, but in Title 6.

RECOMMENDATION: The Commission shall provide to JLOSC proposed amendments to its governing statute to include references to its powers and duties in Chapter 45, Title 6 (Equal Accommodations), and Chapter 46, Title 6 (Fair Housing Act).

OUTCOME: Senate Bill 122, provided in Appendix A is the result of JLOSC's recommendation.

6. The Commission shall be released from review [upon the enactment of recommended any/all legislation].

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A NOTE ABOUT THIS REPORT

The information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported.

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AGENCY HISTORY

The State Human Relations Commission (“Commission”) was established by legislation passed by the 121st Delaware General Assembly on December 28, 1961.¹ In 1961 the primary mission of the Commission was to promote ways in which people in communities learn to get along and to safeguard equal opportunity for all.

Under Chapter 30, Title 31 of the Delaware Code, the Commission is responsible to do the following: cooperate with others in promoting amicable relationships among various racial and cultural groups; act as conciliator in matters involving race, age, marital status, color, sex, creed, national origin, or handicap; make investigations, surveys and studies, as are pertinent in the performance of their duties; and make recommendations to the Governor and General Assembly concerning needed legislation.

The Commission was given additional administrative and enforcement authority both in 1963 when the Equal Accommodations law was passed, and in 1969 when the Equal Rights to Housing law was passed. The Delaware Fair Housing Act was amended in 1992 to bring it into conformity with the Federal Fair Housing Act of 1988.

In 1970, the Office of Human Relations was established as part of state government to provide staff support, file investigation, and fiscal and clerical support to the Commission.

In 1983, the Office of Human Relations became the Division of Human Relations in the Department of Community Affairs and maintained the same responsibilities to the Commission. In 1991, the Office of Human Relations was transferred to the Department of State.

In January 2001, Governor Minner’s Executive Order #10, directed the Commission to assist the State Personnel Office to prohibit discrimination in state agency employment, services, and facilities through membership on the Governor’s Council on Equal Employment Opportunity. Half of the Council’s 8 members are to be members of the Commission. Reaffirming Governor Minner’s Executive Order is Governor Markell’s Executive Order #8, which added ensuring equal employment opportunities to all members of the Armed Forces, Reserves, National Guard and veterans.

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

The Joint Legislative Oversight and Sunset Committee (“Committee”) previously reviewed the Commission in 1985-1986 and 2002-2003. In its 2002-2003 review of the Commission, the Committee made the following recommendations concerning the Commission’s operations and statute.

Recommendation #1: The Human Relations Commission must enforce existing statutory provisions concerning the annual replacement of any commissioner failing to attend three consecutive meetings without excuse or failing to attend at least half of the Commission’s meetings.

Spreadsheets have been completed for attendance for Commission meetings for 2016, 2015, 2014 and 2013.

¹ <http://delcode.delaware.gov/sessionlaws/ga121/chp261.shtml>

***Recommendation #2:* The Human Relations Commission should develop a job description identifying the duties required of a Commissioner.**

**Delaware State Human Relations Commission
Commissioner Job Description**

The Commission shall cooperate with the Governor, the General Assembly, public agencies, officials, firms, corporations, civic groups, and individuals in promoting amicable relationships among various racial and cultural groups within the State.

1. Be a Commissioner in **good standing**. A member of the Commission who fails to attend 3 consecutive meetings, without reasonable excuse to the Chairperson, or fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed.
2. To be available to serve on panel hearings to consider claims of discrimination under the Fair Housing and Equal Accommodation Laws:
 - Hear evidence and argument, and render judgment, in cases brought before the Commission.
 - Where appropriate, award monetary damages to a complainant.
 - Where appropriate, award attorney's fees and other expenses to a complainant.
 - Where appropriate, award attorney's fees and other expenses to a respondent.
 - Attend training sessions, including Commission retreats, in order to enhance knowledge and skills.
3. Serve on committees and generate appropriate proposals or projects for committee action and Commission approval. Conduct studies, investigations, and surveys, as appropriately needed with Commission approval.
4. Outreach and Education efforts should be attended by the Commissioner, including the Fair Housing Conference, Fair Housing Proclamation Signing, community events, and related activities.
5. Be available to conciliate matters involving race, color, creed, national origin, or ancestry, sex, age, marital status, familial status, gender identity, sexual orientation, and/or persons with disabilities.
6. To be involved with the Commission in making recommendations to the Governor and General Assembly concerning needed legislation.

As part of the candidate interview process, Commissioners are provided with a copy of Title 31, Chapter 30 of the Delaware Code and the State Human Relations Commission By-laws.

Each Commissioner candidate is asked the following questions:

- Would you please explain why you wish to serve on the Human Relations Commission?
- What skills would you be able to bring to enhance the productivity of the Human Relations Commission?
- Would you please provide us with your educational background? Include only high school, college, or other educational institutions.
- Would you please give us a short history of your professional work? Start from the most recent and work backwards.
- Do you have any professional licenses and/or certificates?
- With what other organizations and societies have you been, or are you now, affiliated?
- How much time are you capable of committing to the Human Relations Commission?

Recommendation #3: Legislation reorganizing the statutes governing the Human Relations Commission and the Division of Human Relations (formerly Office of Human Relations). Legislation must:

- a) Clearly delineate the functions that have been delegated by the Human Relations Commission to the Division of Human Relations.**

Accomplished in 2006 by the following legislative amendments or additions:

29 *Del.C.* § 8733(a).

The Division of Human Relations is established, and shall be responsible for the performance of all the administrative, ministerial, fiscal and clerical functions of the State Human Relations Commission. The Director of the Division may appoint and remove employees of the Division as provided by law.

31 *Del.C.* § 3003.

The Commission shall be responsible for carrying out public information and education programs, for preparing reports and recommendations, and for making surveys and studies necessary for the performance of its duties under this chapter. The Commission may delegate one or more of its responsibilities under this section to the Division; provided, however, that such delegation shall specifically state the responsibility the Division must undertake.

6 *Del.C.* § 4505.

(c) The Commission may delegate, to the Division of Human Relations, any power, duty, or function vested in it by this chapter unless the delegation is expressly prohibited. If the Commission delegates to the Division a power, duty, or function vested in it by this chapter, the delegation shall specifically state the power, duty, or function being delegated.

(d) The Commission shall not delegate its power or duty to conduct public hearings or order relief to the Division.

6 *Del.C.* § 4507.

(b) The Division may commence such conciliatory activities in order to further the purposes of this chapter. It may call conferences of persons in the business industry and other interested parties to acquaint them with the provisions of this chapter governing conciliation and the means it employs to implement those provisions. It shall endeavor, with their advice, to develop programs of voluntary compliance and enforcement. The Division may issue reports on such conferences as it deems appropriate.

(c) When undertaking their respective duties under this section, the Commission and the Division may consult with state and local officials and other interested parties to learn the extent, if any, to which discriminatory public accommodations practices exist in the State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination. The Commission may issue reports on such consultations as it deems appropriate.

6 *Del.C.* § 4608(b).

(2) The Commission may delegate, to the Division of Human Relations, any power, duty, or function vested in it by this chapter unless the delegation is expressly prohibited. If the Commission delegates to the Division a power, duty, or function vested in it by this chapter, the delegation shall specifically state the power, duty, or function being delegated. The Commission shall not delegate its power or duty to conduct public hearings or order relief to the Division.”

6 *Del.C.* § 4609.

(b) The Division may commence such conciliatory activities in order to further the purposes of this chapter. It may call conferences of persons in the business industry and other interested parties to acquaint them with the provisions of this chapter governing conciliation and the means it employs to implement those provisions. It shall endeavor, with their advice, to develop programs of voluntary compliance and enforcement. The Division may issue reports on such conferences as it deems appropriate.

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- b) Amend 31 *Del. C.* § 3004 to empower the Human Relations Commission with the authority to enact by-laws.**

Accomplished in 2006 by legislative amendment:

31 *Del.C.* § 3001(e).

The Commission shall adopt bylaws that provide for operating procedures such as: election of officers, appointment of committees, designation of a quorum, conducting of meetings, and other matters that will promote the efficient operation of the Commission in the performance of its duties under this chapter. 75 *Del. Laws*, c. 356, §§ 3, 4.

- c) Grant the Human Relations Commission with subpoena power in investigations performed under Title 31 of the Delaware Code.**

Accomplished in 2006 by legislative amendment:

31 *Del.C.* § 3006. Subpoenas; compelling testimony.

(a) The Commission may issue subpoenas and order discovery in aid of the investigations, surveys and studies authorized under §3004 of this title when the Attorney General has reason to believe that such subpoenas and discovery will enable the Commission to perform the duties imposed by this chapter.

(b) Any subpoena, process, order of the Commission, or other paper requiring service may be served by any sheriff, deputy sheriff, or constable, or by any employee of the Division of Human Relations.

(c) If a witness refuses to obey a subpoena lawfully issued by the Commission, or to give evidence properly requested by the Commission, the Commission may petition the Superior Court to compel the witness to obey the subpoena or give the evidence. The Court shall immediately issue process to the witness and shall hold a hearing on the petition as soon as possible. If the witness refuses, without reasonable cause or legal grounds, to obey the subpoena or to give the evidence, the Court shall punish the witness for contempt. 75 Del. Laws, c. 356, § 7.

- d) **In Title 31, include language exempting from FOIA meetings involving mediation and conciliation.**

Accomplished in 2006 by legislative amendment:

§ 3004. Powers and duties.

The Commission shall cooperate with the Governor, the General Assembly, public agencies, officials, firms, corporations, civic groups and individuals in promoting amicable relationships among the various racial and cultural groups within the State. To this end the Commission may:

(1) Act as conciliator in matters involving race, age, marital status, color, sex, disability, creed, national origin or ancestry; provided, however, that the provisions of the Freedom of Information Act in Chapter 100 of Title 29 shall not apply to meetings that involve conciliation or mediation.

[75 Del. Laws, c. 356, § 6.](#)

- e) **Permit one Commissioner to issue a pre-trial dismissal order for cases outside the scope of jurisdiction of the Commission, or for cases that do not state a claim for relief. The purpose of the dismissal order is to preserve the claimant's right of appeal.**

As to Delaware's Equal Accommodation Act: The recommendation was accomplished in 2006 by legislative amendment and in 2008 by amendment to Equal Accommodation Regulation 5.0

6 *Del.C.* § 4508. Procedure on complaint.

(c) If the Division determines that the allegations in the complaint do not state a claim for which relief is available under this chapter or that the claim is not within the scope of the Commission's jurisdiction, it may petition the Commission, with notice to the complainant, to dismiss the complaint.

(k) The Commission, by regulation, shall adopt procedures for dismissal of complaints based on lack of jurisdiction or failure to state a claim upon which relief is available under this chapter. Notwithstanding the limitation of delegation in § 4505 of this title, the Commission may authorize such dismissal by a single commissioner prior to appointment of a panel.

Equal Accommodation Regulation 5.0 Case Closing Prior to Hearing

5.1.5 A case may be dismissed upon written application to the Commission by the Respondent or the Division Director when

5.1.5.1 the Commission does not have jurisdiction to determine the case; or

5.1.5.2 the facts alleged do not state a violation of the law.

5.1.6 If the Division determines that the Commission does not have jurisdiction over the case or that the complaint does not allege facts that state a violation of the law, the Division Director shall apply in writing to the Panel Chair or designee (or, if a Panel has not been appointed, to the Chairperson or other designee), for dismissal of the complaint under Rule 5.1.5.

5.1.8 The Panel Chair or designee (or, if no panel has been appointed, the Commission Chairperson or other designee) shall consider the application for dismissal. In the absence of compelling or unusual circumstances, such consideration shall be without an evidentiary hearing or oral argument. The Panel Chair or designee (or, the Commission Chairperson or designee) will consider only the facts alleged in the pleadings or any related submissions and any reasonable inferences from those facts. The facts alleged by the claimant, unless conclusory, will be considered as true for the purpose of the dismissal proceeding. 12 DE Reg. 505 (10/01/08).

As to Delaware's Fair Housing Act

The Commission had authority to dismiss a complaint if the Commission determined that no reasonable cause existed to believe that a discriminatory housing practice had occurred or was about to occur. 6 *Del.C.* § 4610(f)(3). In 2006, the General Assembly amended the statute and granted authority to the Division to dismiss complaints by “by striking the words ‘Commission’ and ‘Commission’s’ wherever they appear[ed] therein and by substituting in lieu thereof the words ‘Division’ and ‘Division’s’, respectively.” [75 Del. Laws, c. 356, § 32](#). Accordingly, the Division now has the authority to dismiss a complaint.

Fair Housing Regulation 7.0, Charge and Answer, adopted by the Commission in 2004. Subsection 7.1 provides that except in the case of complaints initiated by the Commission, the Director or his or her designee shall make a determination as to whether or not reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur and issue a charge on behalf of the aggrieved person or dismiss the complaint pursuant to Section 4610(f). 8 DE Reg. 591 (10/01/04).

MISSION, GOALS, & OBJECTIVES

The mission of the Commission is to promote amicable relations among racial and cultural groups and enforce laws against discrimination. The Commission utilizes the following procedures to meet the mission.

Education – To educate the public on the rights and protections against discrimination under the equal accommodations and fair housing laws. To educate the Governor and General Assembly on the impact of current or proposed laws, policies and/or the need for new laws to continue the work of eradicating unlawful discrimination by:

- Creating a knowledge and understanding of the laws against discrimination in housing and equal accommodations among residents statewide;

- Monitoring, reviewing, and proposing laws and policies that support the eradication of unlawful discrimination and segregation;
- Holding forums and producing materials and resources that help the Division in meeting its obligation to affirmatively further fair housing.

Each workshop, presentation, training seminar, conference, community forum, or film and discussion forum conducted by the Division is evaluated using a feedback/evaluation form. The feedback received is reviewed, assessed, tallied, and used to plan future sessions.

Enforcement – To hold Delawareans accountable to the rights and protections against discrimination and segregation under law by:

- Ensuring quality, timely, and efficient processing of complaints;
- Ensuring the knowledge, skills, and competencies of staff and Commissioners (volunteers) to perform their roles and responsibilities;
- Working cooperatively and collaboratively with organizations and governmental entities to affirmatively further fair housing.

With the support of Department of Technology and Information, in 2015 the Division of Human Relations built and implemented a new case management system – Civil Rights Enforcement Management System (CREMS). The system, allows the Division to enter details of each complaint from the filing date, to each step of the investigation, to witnesses interviewed, to conciliation agreements, to final disposition. The system produces reports that enable the agency to review and evaluate quality, timeliness, and other measures.

It is mandatory that housing cases accepted for joint filing (federal and state) are entered into the U.S. Department of Housing and Urban Development (HUD) case management system Housing Enforcement Management System (HEMS). The cases are reviewed, monitored and assessed by the regional Office of Fair Housing and Equal Opportunity (Philadelphia) and the FHEO headquarters (Washington, DC).

Engagement - To engage Delawareans in building and promoting understanding and respectful relationships as well as valuing and fostering diverse and inclusive communities by:

- Building healthy, respectful, and effective relationships with individuals and diverse communities statewide;
- Holding or participating in community meetings to foster and facilitate amicable relationships.

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COMPOSITION & STAFFING OF THE COMMISSION

The Commission's governing statute requires 28 members. The statute requires each county of the State to be represented by 7 members, and for the remaining 7 members to be selected without regard to the county in which they reside. The members are appointed by the Governor and must be broadly representative of various racial and cultural groups of the State. Seven of the original members were appointed for a term of 1 year, 7 for a term of 2 years, 7 for a term of 3 years and 7 for a term of 4 years. Thereafter, all appointments are made for terms of 4 years. As of October 2016, there were 27 members serving on the Commission.

Members serve without compensation but are reimbursed for actual and necessary expenses, and will be compensated up to \$50 per day up to a maximum of \$500 in a calendar year for each day spent in attendance of a hearing.

The Division of Human Relations provides clerical, administrative and fiscal support to the Commission and assists in monitoring the State Affirmative Action Plan. The staff of the Division of Human Relations employs 7 staff (1 is appointed and 6 are merit). The Division employs contractual workers as follows: Previous two fiscal years: Two (1-Training Coordinator/Grant Monitor; 1-Admin. Specialist I Sussex Office) and Current Fiscal Year: One (Training Coordinator/Grant Monitor).

The Division has taken steps to request funding for additional investigators through identification of HUD Partnership Grant Opportunities, utilizing federal funds to the extent that it is feasible, and submittal of a State budget request for FY18.

DUTIES, RESPONSIBILITIES, & AUTHORITY

Complaint and Disciplinary Process

The Commission, with the Division of Human Relations, receives complaints with relation to the following:

- **EQUAL ACCOMMODATIONS** – The law prohibits discrimination in places open to the public because of race, age, marital status, creed, color, sex, national origin, persons with disabilities, sexual orientation, or gender identity. (Title 6, Chapter 45).
- **FAIR HOUSING** – The law prohibits discrimination in the sale, lease, or rental of housing or application for credit because of race, age, religion, national origin, sex, disability, familial status (children under 18) marital status, creed, color, sexual orientation, gender identity, or source of income. (Title 6, Chapter 46)

Who Can File a Complaint

Anyone who feels they have experienced discrimination in violation of the fair housing or equal accommodations

Complaint Process

Step One: Complaint Filed

One of three ways:

- **In person**, visit one of the three Division locations (Wilmington, Dover, Georgetown).
- **Online**, visit Division's website (www.statehumanrelations.delaware.gov).
- **By phone**, call to have a complaint form mailed.

A person who files a complaint is called the **COMPLAINANT**.

The person being complained about, is called the **RESPONDENT**.

Step Two: Notice of Complaint

Respondent

- Receives notification that a complaint has been filed.
- Receives a copy of the appropriate law and governing regulations.
- Provided a questionnaire to complete based on the allegations.

Step Three: Fact Finding Conference

The Fact Finding Conference

- Parties are invited to meet together, hear both sides and determine if the complaint can be resolved.
- If the complaint can be conciliated, a conciliation agreement (voluntary agreement which satisfies all involved parties) is prepared and signed by the parties.
- If the complaint conciliates, the case is closed.
- If the complaint cannot be conciliated, the investigation proceeds.

Step Four: Investigation

- The investigation (interviews, review of files, records, tapes,) helps determine the facts.

Equal Accommodations Cases

Step Five: Hearing

- An Administrative Hearing is held in front of a panel of the Human Relations Commission.
 - If the Commission determines there was no violation of law, the case is **dismissed**.
 - If the Commission determines there was a violation of law, an **order is issued**.

Fair Housing Cases

Step Five: Determination

- Based on the investigation, a written determination is issued for **Charge** or **No Charge**.
- A **No Charge** determination means the **case is dismissed**.
- A **Charge** determination means the **case moves forward**.

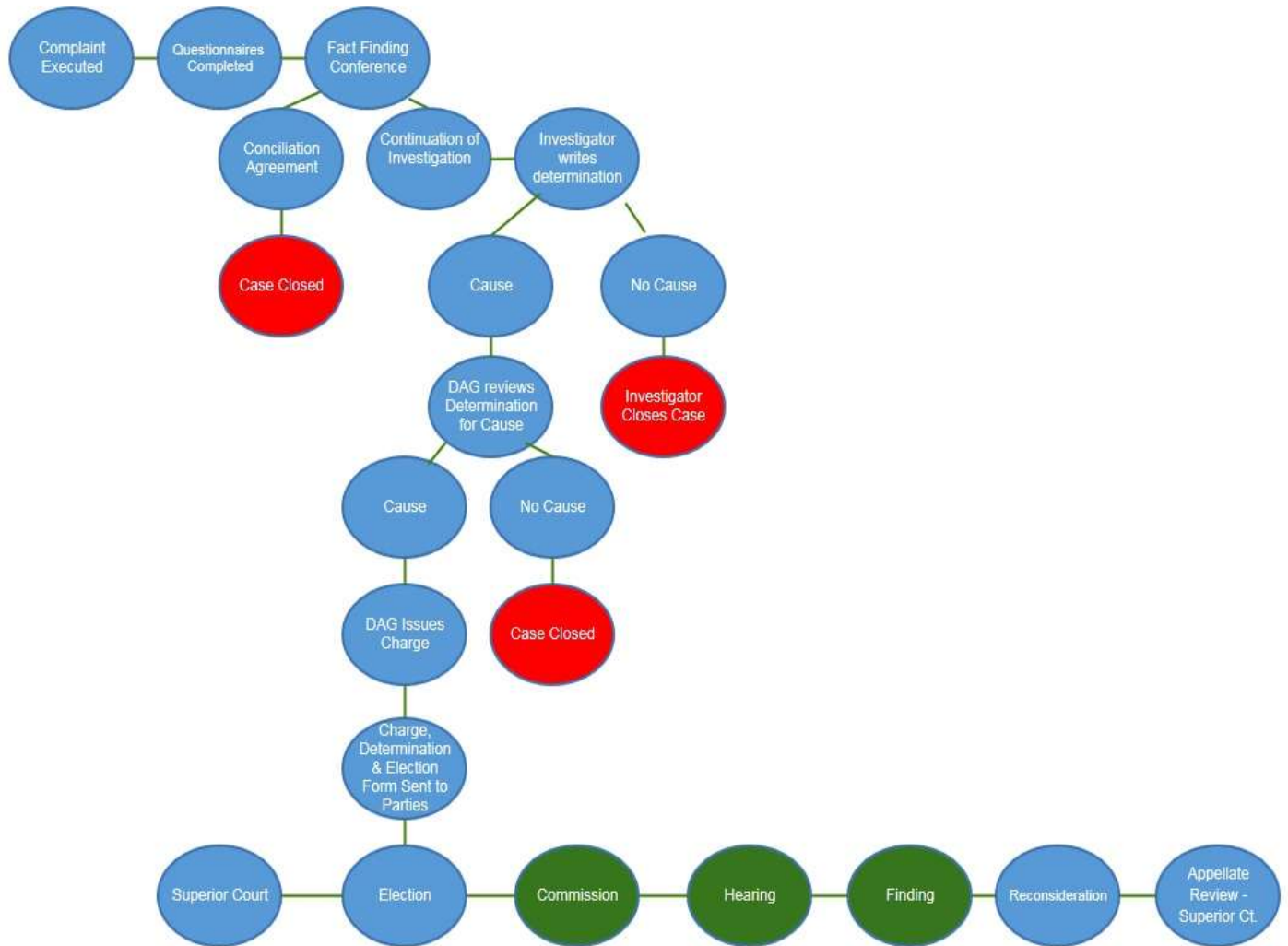
Step Six: Hearing Election

- When a charge is issued party or aggrieved person may elect for an **Administrative Hearing** or **Court Hearing**.

Step Seven: Administrative Hearing

- At the Administrative Hearing, the panel of Commissioners make findings of fact, and conclusions of law.
 - If the panel finds that the facts **do not support** a violation of law, the case is **dismissed**.
 - If the panel finds the facts **support** a violation of law, an **order is issued**.

PROCEDURE FOR PROCESSING FAIR HOUSING COMPLAINTS



The opportunity to attempt voluntary conciliation of a complaint is available at any stage of the complaint process. When a conciliation agreement is reached, the complaint process is discontinued.

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Complaint Data for Calendar Years 2014, 2015, 2016

	Calendar Year 2014		Calendar Year 2015		Calendar Year 2016 (to-date)	
Total # of complaints Received	82		158		98	
	EA	Housing	EA	Housing	EA	Housing
Total # of complaints Investigated	7	26	16	26	16	12
Total # of complaints found valid	10	26	14	26	5	12
Total# of complaints forwarded to Attorney General	1	0	2	0	2	0
Total # of complaint resulting in civil penalty	0	0	0	1	1	0

EA=Equal Accommodation cases; Housing=Fair Housing cases

The Commission has one case pending: *Lopez v. Wilson's Lane Mobile Home Park*.

Disciplinary Actions Process

Typical “disciplinary” actions include: signed conciliation agreement with terms that require training (equal accommodations or fair housing), a reasonable accommodation (housing), change in policy (housing), changes to website (equal accommodations and housing), letters of apology, and in some cases a monetary settlement.

The Commission does not discipline licenses. The Commission is responsible for hearing and deciding cases of alleged discrimination in the fair housing and equal accommodations contexts.

At the conclusion of a hearing, the Commission Panel adjourns for deliberations. Pursuant to Commission regulations, deliberations are closed to the public and are not recorded.

The Commission Panel evaluates whether the Complainant met his or her burden of proof. The Commission utilizes the *McDonnell Douglas* analysis to determine whether the Complainant established a *prima facie* case of discrimination by a preponderance of the evidence. To establish a *prima facie* case, the Complainant must establish: (1) that he or she is a member of a protected class; (2) that the Complainant was denied housing or access to a public accommodation or treated in a discriminatory manner during the process; and (3) that nonmembers of the protected class were treated more favorably than the Complainant. If a *prima facie* case is established, the burden shifts to the Respondent to present evidence of a legitimate, non-discriminatory reason for the conduct. If the Respondent presents evidence of a legitimate, non-discriminatory reason for the conduct, the Complainant must then prove that the reason offered by the Respondent was just a pretext or sham for discrimination.

The Panel weighs the evidence presented by the parties through testimony and evidence and makes findings of facts and conclusions of law based on that evidence. Through the aid of the Commission's Deputy Attorney General (DAG), the Commission utilizes case law in making its decision. Once a decision is rendered, it is written into a final order by the Commission DAG and is reviewed and signed by the Commission Panel members.

Within 10 days, after the mailing of the final order, any party may apply to the Commission Panel for reconsideration. The Panel reconvenes to consider the motion for reconsideration.

A party aggrieved by a final order of the Commission may file a petition for review in the Superior Court within 30 days after the order is entered.

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ENACTED LEGISLATION IMPACTING THE COMMISSION

Federal Legislation

Fair Housing Protections For People With Limited English Proficiency

Limited English Proficiency (LEP) guidance that addresses how the Fair Housing Act would apply to claims of housing discrimination brought by people because they do not speak, read, or write English proficiently. <http://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf>

Affirmatively Further Fair Housing (AFFH)

AFFH Rule: 80 FR 42271 (07/15/2015)

<https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing>

Affirmatively Furthering Fair Housing Fact Sheet

<https://www.hudexchange.info/resources/documents/AFFH-Fact-Sheet.pdf>

Reasonable Accommodations

Joint HUD/DOJ Statement on Reasonable Accommodations under the Fair Housing Act

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7771.pdf

Reasonable Modifications

Provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable modifications. (March 5, 2008).

Joint HUD/DOJ Statement on Reasonable Modifications under the Fair Housing Act

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7502.pdf

Discriminatory Advertising on the Internet

To ensure websites do not provide an open market for unlawful discriminatory conduct. (September 20, 2006). <http://portal.hud.gov/hudportal/documents/huddoc?id=InternetAdvertMemo.pdf>

Assistance Animals for Persons With Disabilities

Obligations of housing providers with respect to animals that provide assistance to individuals with disabilities (April 25, 2013). Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs.

http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf

Certification and Funding of State and Local Fair Housing Enforcement Agencies

This regulation establishes the criteria for certification of state and local fair housing laws that are substantially equivalent to the federal Fair Housing Act, as well as for decertification of state and local fair housing laws that are deemed no longer substantially equivalent. (April 16, 2007). [Fair Housing Assistance Program \(FHAP\)](#). The Delaware Division of Human Relations is a FHAP.

<http://portal.hud.gov/hudportal/documents/huddoc?id=FINALFHAPRULE.PDF>.

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The Commission Supports the Following Proposed Legislation

State Legislation

Homeless Individual's Bill of Rights
SS 1 for SB 134 (May 18, 2016)

Federal Legislation

New Protections for Victims of Harassment and Survivors of Domestic Violence
Final Rule (September 14, 2016)
<https://www.federalregister.gov/documents/2016/09/14/2016-21868/quid-pro-quo-and-hostile-environment-harassment-and-liability-for-discriminatory-housing-practices>

Fair Housing Act Guidance
<http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

The Human Relations Commission promulgates rules and regulations in accordance with the Administrative Procedures Act.²

Equal Accommodations Regulations³ (10/01/08)

The Equal Accommodations Regulations must be updated concerning new protected classes (sexual orientation added in 2009 and gender identity added in 2013).

Fair Housing Regulations⁴ (12/01/08)

The Fair Housing Regulations must be updated concerning new protected classes (sexual orientation added in 2009, gender identity added in 2013, and source of income added in 2016).

FREEDOM OF INFORMATION ACT COMPLIANCE

The Human Relations Commission has never received a complaint that they were in violation of FOIA. FOIA compliance is handled per the Department of State FOIA Policy.

Public Integrity Act

Information on the Public Integrity Act is contained in the manuals provided to new Commissioners. The manuals were updated in 2015. A voluntary training was held for Commissioners in December 2015 and a second training was held in February 2016. The manuals, including the Public Integrity Act, were reviewed with Commissioners at that time.

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² Analyst Note: Regulations need to be updated with the new information. Regulations have not been updated since 2008.

³ <http://regulations.delaware.gov/AdminCode/title1/600/601.pdf>

⁴ <http://regulations.delaware.gov/AdminCode/title1/600/602.pdf>

FISCAL INFORMATION**Revenues:**

Fiscal Year	Source(s) of Funds	Amount (\$)
FY17	General	\$591,500
	Federal (HUD/FHEO Cooperative Agreement)	
FY 16 (actual)	General	\$579,400
	Federal(HUD/FHEO Cooperative Agreement)	
FY 15 (actual)	General	\$580,400
	Federal (HUD/FHEO Cooperative Agreement)	

Federal Funds

Cooperative Agreement Breakdown of Fiscal Year 2014 Funds

Complaint Processing

Number of completed cases = 18:

Total case processing = \$42,970.00

Administration Cost = \$6,000.00

Training Funds = \$22,500.00

Total Cooperative Agreement Amount = \$71,470.00

Cooperative Agreement Breakdown of Fiscal Year 2015 Funds

Complaint Processing

Number of completed cases = 25:

Total case processing = \$63,800.00

Administration Cost = \$11,000.00

Training Funds = \$24,750.00

Total Cooperative Agreement Amount = \$99,550.00

State/Federal Match Ratios: 20%

Expenditures:

Fiscal Year	Source(s) of Funds	Amount (\$)
FY 17 (budgeted)	General Fund	\$591,500
FY 16 (actual)	General Fund	\$579,400
FY 15 (actual)	General Fund	\$580,400

External Factors Impacting Revenue or Expenditures:

In the last three years, HUD Partnership Grants have positively impacted the Division's expenditures (contractor costs, travel, supplies, etc.) by providing funding for statewide fair housing education and outreach. Partnership Grant funding has enabled the Division to expand initiatives to promote amicable relations and inclusive communities using public libraries for film and discussion forums.

Audits

The U.S. Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity, (FHEO) conducted a Performance Assessment of the Delaware Division of Human Relations (DDHR) Fair Housing Assistance Program (FHAP). The Performance Assessment determines whether an agency, in operation, provides substantive rights, remedies, procedures, and availability of judicial review that are substantially equivalent under the federal Fair Housing Act.

Fines or fees collected by Human Relations Commission

The Special Administration Fund (SAF) is a special fund that consists of:

- (1) All civil penalties assessed and collected pursuant to Chapter 45 or 46 of Title 6.
- (2) Costs, attorneys' fees and expenses awarded to the Commission pursuant to Chapter 45 or 46 of Title 6.
- (3) All Community Development Block Grant moneys designated for the administration and enforcement of Chapter 46 of Title 6.
- (4) All other moneys specifically designated for this Fund.
- (5) All interest on or profits earned by the Special Administration Fund.

The current (2/2017) balance of the SAF is **\$91,076.38**.

The Commission may use these funds for:

- (1) The payment of litigation expenses, costs and attorneys' fees in connection with the enforcement provisions of Chapters 45 and 46 of Title 6.
- (2) The payment of the expenses of investigations conducted pursuant to Chapters 45 and 46 of Title 6, and chapter 30.
- (3) The payment of studies and surveys conducted pursuant to chapter 30.

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ACCOMPLISHMENTS

- Delaware’s primary resource for information and enforcement of the fair housing laws (state and federal) educating 100’s of residents annually.
- The Delaware Fair Housing Act has six more protected classes than the seven of federal fair housing law (creed, marital status, age, sexual orientation (2009), gender identity (2013) and source of income (2016)).
- Served as a liaison on matters of race relations in the state.
- Applied for and received over \$200K in HUD partnership grants (3) for fair housing outreach and education targeting identified communities in Sussex County.
- Receive and process more than 35 allegations of housing discrimination annually.
- Receive and process 50 allegations of discrimination in places of public accommodations annually.
- Processed discrimination case settlements totaling more than \$300K.
- Provided basic fair housing training to more than 250 housing advocates and professionals
- Held 3 county-based fair housing conferences instead of one central conference during National Fair Housing Month.
- Held more than 20 fair housing training sessions for respondents in fair housing cases.
- Provided training on Delaware’s law against discrimination in places of public accommodation.

Statewide agencies that provide housing services (housing counseling, first-time home buyers program) are encouraged to refer any client that feel they experienced discrimination in the sale, lease, rental, or credit application process because they are in a protected class to the Division of Human Relations. Agencies include First State Community Action Agency, Housing Opportunities of Northern Delaware (HOND), NCALL Research, Inc., Sussex County Community Development and Housing, Neighborhood House, Inc., YWCA, Delaware Community Reinvestment Action Council, and Community Legal Aid Society, Inc. Agencies receive fair housing informational materials to share with their client.

Staff Training – The Division of Human Relations provides fair housing training to the staff of numerous entities to facilitate appropriate and informed referrals and to assist them in avoiding discriminatory acts prohibited under law. Entities include Delaware State Housing Authority, New Castle County Department of Community Development and Housing, Ministry of Caring, City of Wilmington Department of Real Estate and Housing, Peoples Place II, First State Community Action Agency, several property management organizations, law firms, real estate firms and the Delaware Division of Motor Vehicle.

Client Training – The Division offers fair housing training to participants in programs offered by a number of organizations including YWCA and New Castle County.

Annual Fair Housing Conference – Annually the Division invites the public, partners, elected and appointed officials, to attend a conference that provides training, information and updates on laws, policies and case law.

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Partnerships

Community Legal Aid Society, Inc. (CLASI)

The Division works cooperatively with CLASI on such matters as fair housing complaint referrals, testing, and education and outreach, all toward affirmatively furthering fair housing in Delaware. CLASI continues to file housing discrimination complaints with the Division for any meritorious claims.

Pathways to Success

With Partnership Grants from HUD, the Division collaborated with Pathways to Success, a local non-profit organization, to provide fair housing education, outreach and training focused in Sussex County Delaware. This grant was intended to support the fair housing education and outreach in the communities identified as “Impacted Communities” in the Voluntary Compliance Agreement between HUD, Diamond State Land Trust, and Sussex County Council, and Sussex County Planning and Zoning Commission. It is estimated that 728 additional residents in Sussex County received fair housing information and resources of as a result of Partnership funding.

Fair Housing Task Force

There are a number of organizations taking actions to further fair housing practices that include providing education, outreach and enforcement in Delaware. The Delaware Division of Human Relations (DHR) leads the task force and the members include DSHA, Housing Opportunities of Northern Delaware (HOND), Delaware Community Reinvestment Action Council (DCRAC), Community Legal Aid Society, Inc. (CLASI), Delaware Housing Coalition (DHC), and HUD. The Fair Housing Task Force Committee is comprised of these entities, other housing authorities, and nonprofit organizations, and acts as a formal statewide advocacy network for fair housing, as well as for implementing the State of Delaware Regional Fair Housing Plan.

Coalition for Fairness and Equity in Schools

The Division and Commission participate in a statewide effort to keep students in the classroom and out of the juvenile justice system. The Coalition for Fairness and Equity in Schools is engaged in statewide advocacy to change school discipline practices to eliminate suspensions for low-level offenses and reduce disparities while adopting a restorative approach.

Delaware Racial Justice Collaborative

In 2015, convened by the United Way of Delaware, a group of organizations began meeting around the need to eliminate institutional racism in Delaware. The State Human Relations Commission chair and Division of Human Relations director participated in those meeting. The group, now named the Delaware Racial Justice Collaborative, has as its mission to “work collectively to reduce the impact of racism affecting communities of color.”

South Asian Bar Association (SABA)

In April 2016, the Division of Human Relations partnered with SABA for a Book Reading, Discussion and signing featuring Deepa Iyer, South Asian American activist, writer, and lawyer and current Senior Fellow at The Center for Social Inclusion.

Islamic Society of Delaware (ISD)

In 2013, the Division and Commission participated in an Interfaith (Jewish, Christian and Sikhs) forum as a show of solidarity against intolerance following an incident of vandalism at the Islamic Center of Delaware.

Fair Housing/Equal Accommodations Training

The Division conducts frequent fair housing training for a variety of audiences throughout the State:

- The Division requires fair housing training for respondents in all conciliated and adjudicated fair housing complaints.
- The Division collaborated with the City of Wilmington to conduct fair housing training for City of Wilmington Real Estate Department staff in March 2015; this collaboration resulted in an annual planned fair housing training for the City's sub-grantees, which occurred in July 2015 and again in March 2016.
- The Division conducted fair housing training for Greater Wilmington Housing Partnership in March 2015.
- The Division conducted fair housing training for real estate students in April 2015.
- The Division collaborated with Housing Opportunities of Northern Delaware (HOND) to conduct fair housing training as part of *its Annual Fair Housing Law Forum* in April 2015.
- The Division conducted fair housing training for mediators at People's Place in May 2015.
- The Division conducted fair housing training for residents of Carvel Gardens affordable housing community in Laurel in August 2015; this request for training was an outcome of the April 2015 Sussex County Community Conversation.
- The Division presented to the State Disability Council Housing Committee in September 2015.
- The Division conducted fair housing training for Patterson Schwartz realtors in October 2015.
- The Division conducted fair housing/equal accommodations training for members of the Kent County LGBT Support Group in November 2015.
- The Division conducted fair housing/equal accommodations training for clients of the Division of the Visually Impaired in December 2015.
- The Division planned and led training for members of the State Human Relations Commission on the fair housing complaint process in December 2015, and the fair housing hearing process in February 2016.
- The Division conducted fair housing training for approximately 60 staff at the Delaware Early Childhood Center in May 2016.
- The Division conducted fair housing training for residents of the Salvation Army transitional shelter July 2016.
- The Division conducted fair housing training for staff of the YWCA transitional shelter in August 2016.
- Starting in February 2016 until the present, the Division has conducted equal accommodations training for nearly 250 employees of the Division of Motor Vehicles at every DMV location.
- Evaluations surveys are completed for all fair housing/equal accommodations trainings Division conducts. The Division collected over 250 surveys. An estimated 97% answer Strongly Agree or Agree that the training was helpful.

Community Outreach

- Annual Outreach and Education events (primarily tents and exhibit tables) to connect the community to the resources and services of SHRC/DHR include the following: The AFRAM (Seaford); Festival Hispano (Georgetown); the Peach Festival (Wyoming/Georgetown); The Pride Festival (Dover); and the Veterans Administration Stand Down (Dover).
- The Division planned and implemented a series of conversations with community residents and leaders on the topic of fair housing.

- The Division planned and executed a policy conference targeting residents, policy leaders, elected officials and housing professionals. The 2015 Fair Housing Policy Conference: “The Realities and Consequences of Housing Segregation: Education, Health Disparities and Economic Inequality” was held in Wilmington on April 28, 2015. In April 26, 2016, the Division planned and executed a policy conference, again targeting fair housing stakeholders, policy leaders, elected officials and housing professionals, entitled “Residential Segregation: Making the Fair Housing Act’s Commitment to Removing Barriers to Equal Housing Opportunity a Reality.”

Civil Rights

- The Division planned, coordinated, negotiated a reduced rate, and helped to subsidize a community screening and discussion of the movie “SELMA” on February 2, 2015 at the Midway theater in Rehoboth which was attended by more than 127 residents (adults and youth groups) who otherwise would not have been able to afford the movie fee.
- Division planned and coordinated a Statewide film-and-discussion series featuring films with civil rights themes, including “Freedom Summer,” “Mr. Civil Rights,” “Home of the Brave,” “My Country,” “A Class Apart,” “Bridge to the Ballot,” and “Freedom Summer.”
- The Division planned and executed, in conjunction with community partners (Restoring Central Dover, Delaware State student group “The Movement,” and Wesley College) a community engagement film-and-discussion workshop using the film “Cracking the Codes: The System of Racial Inequity” (with food donated by a Commissioner who owns a pizza franchise) that was attended by nearly 80 participants consisting a diverse group of adults, seniors, college students, residents, and youth groups in March 2016.

Sussex County Hispanic Community

- The Division increased the number of Spanish language fair housing publications distributed in its outreach and educations efforts.
- The Division hired a multi-lingual investigator whose skills have increased Division’s interactions with persons with LEP.
- The Division disseminated fair housing and equal accommodations information (English/Spanish) at the Hispanic Heritage Celebration & Community Fair (Georgetown - October 2015 and 2016).
- The Division staff participated in the First Delaware Latino Summit (Dover - November 2015.)
- The Division led a Fair Housing Awareness Training Telamon (Bridgeville - Nov. 2014).
- The Division led a Fair Housing Awareness Training at Telamon (Milford, Laurel and Seaford locations - Dec. 2014) (*Telamon Corp. sponsors the National Farmworker Jobs Program statewide and also offers Early Head Start/Head Start at Sussex locations*).

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Regional Collaboration Among Various Communities

- The Division invited state, county, and municipal elected officials to participate in fair housing month events including Fair Housing Community Conversations held in each county in 2015 and 2016. Some officials attended.
- The Division conducted a Fair Housing Policy Conference in 2015 and 2016 to which public and elected officials were invited. Some officials attended.
- Division staff attended a New Castle County Planning Board, Public Hearing on November 5, 2014 to amend Chapter 40 of the New Castle County Code regarding the creation of a new traditional neighborhood housing program (County Council Sponsor: Penrose Hollins).
- Division staff gave public testimony at the public hearing at which the vote was taken on whether to support New Castle County Moderately-Priced Housing Ordinance.
- Division staff provided written support for the amendment to create new traditional neighborhood housing and encouraged other stakeholders to submit written support of the amendment.
- The Division sponsored a NFHA webinar on “Schools, Steering and Segregation: Real Estate Sales Discrimination in the U.S.” for attendance and participation by fair housing stakeholders in September 2015.
- Division staff attended a presentation on Affirmatively Furthering Fair Housing hosted by the jurisdictions (April 2016).

Technology

With the support of Department of Technology and Information, in 2015 the Division of Human Relations built and implemented a new case management system – Civil Rights Enforcement Management System (CREMS). The case management system allows the Division to enter details of each complaint from the filing date, through the final disposition including each step of the investigation to witnesses interviewed, and conciliation agreements. The system produces reports that enable the agency to review and evaluate quality, timeliness, etc.

CHALLENGES

- **Capacity** - There is significant work needed to improve the status of race relations statewide. Currently, the Commission lacks the funding and personnel including a Community Relations Coordinator to effectively tackle the issue on a statewide basis (or even county by county).
- **A dedicated DAG** is needed to advise the Division on cases, investigations, and legal issues.
- **A Training Coordinator** is needed to develop and deliver core training courses for the public and Commission members.
- **The Commission is too large.** The Commission has 28 members, the same number as that required under its enabling legislation in 1961. The large number of members hampers the Commission from rapidly responding to community needs, from forming a cohesive focus, and from remaining motivated to attend meetings, hearings and training opportunities.

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OPPORTUNITIES FOR IMPROVEMENT

- **Improved funding** would permit the hiring of a Community Relations Coordinator and Training Coordinator.
- **A dedicated DAG** would increase the effectiveness and productivity of the Division staff by giving them priority and timely access to legal advice and support on all phases of the complaint and resolution processes. Having a dedicated DAG would resolve concern expressed by the HUD Performance Assessment.
- **Reducing Commission membership** would result in more rapid response to issues, and would help the Commission maintain focus and motivation.

The enabling legislation is arguably vague causing public questions regarding the role of the Commission in the advancement, protection, and enforcement of civil rights and human rights in Delaware, and specifically, whether an independent Office of Civil Rights should be established. The questions include whether the Commission is the entity within state government with jurisdiction and authorization to advance remedies over such matters as racial disparities in school discipline policies and practices, under-representation (race, sex, national origin) among Delaware's teachers, cultural competency among specific service providers (teachers, law enforcement officers) and police community conflict.

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APPENDIX A

Sen. John J. Walsh, Chair
Sen. David P. Sokols
Sen. Stephanie L. Hansen
Sen. Bryant L. Richardson
Sen. Brian G. Pettyjohn



STATE OF DELAWARE
JOINT LEGISLATIVE OVERSIGHT AND
SUNSET COMMITTEE

Rep. Stephanie T. Bolden, Vice Chair
Rep. Gerald L. Brady
Rep. Andria L. Bennett
Rep. Timothy D. Dukes
Rep. Jeffrey N. Spiegelman

June 7, 2017

The Honorable Melanie George Smith
The Honorable Harris B. McDowell
The Honorable Members of the Joint Finance Committee
Legislative Hall
411 Legislative Avenue
Dover, Delaware 19901

Re: Support for the Human Relations Commission

In 2017, the Joint Legislative Oversight and Sunset Committee ("JLOSC") conducted a comprehensive review of the Human Relations Commission ("HRC"). After a public hearing and a recommendation meeting held earlier this session, the JLOSC adopted three recommendations relating to HRC.

One of the adopted recommendations relates to funds appropriated to HRC through the Division of Human Relations operating budget. JLOSC unanimously adopted the following recommendation:

Recommendation 3: The Committee shall provide support, by way of letter to the Joint Finance Committee, for additional funding to support HRC's duty of providing sufficient training and education to the public.

As noted in the statute, the Commission may assign duties to the Division of Human Relations ("Division"). The Commission assigned training and education to the Division within the Department of State. JLOSC heard testimony from HRC staff regarding upcoming challenges with training and education due to the loss of a contractual position. This position was responsible for education and training.

APPENDIX B



SPONSOR:

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL

AN ACT TO AMEND TITLE 6 AND TITLE 31 OF THE DELAWARE CODE RELATING TO THE STATE HUMAN RELATIONS COMMISSION.

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

Section 1. Amend § 3001, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3001. ~~Creation; composition;~~ State Human Relations Commission composition; vacancies; ~~compensation~~
~~compensation; removal; quorum.~~

(a) ~~There is created a State Human Relations Commission which shall consist of 28 members. The State Human Relations Commission consists of 18 members, all of whom are appointed by the Governor and, collectively, meet the all of following criteria:~~

(1) Broadly represent the various racial and cultural groups of this State.

(2) All reasonable efforts must be made to ensure that each county is represented by at least 5 members. Each county of the State shall be represented by 7 members, and 7 members shall be selected without regard to the county in which they reside. The members shall be appointed by the Governor and shall be broadly representative of various racial and cultural groups of the State. Seven of the original members shall be appointed for a term of 1 year, 7 for a term of 2 years, 7 for a term of 3 years and 7 for a term of 4 years. Thereafter, all appointments shall be made for terms of 4 years.

(b) Commission appointments are for 4-year terms. The Governor may appoint a member for a term of less than 4 years to ensure that no more than 5 members' terms expire in one year. In the event of death, removal or resignation of a member, a successor shall be appointed to serve for the unexpired term.

(c) ~~Members shall serve~~ A Commission member serves without compensation but ~~shall be~~ is reimbursed for actual and necessary ~~expenses; provided, however, expenses, except that those Commissioners~~ a member designated by the ~~Chairperson~~ Chair to serve on hearing panels ~~shall be~~ is compensated the sum of \$50 per ~~day~~ day, up to a maximum of \$500 ~~\$1,500~~ in a calendar ~~year~~ year, for each day spent ~~in attendance of~~ attending a hearing.

(d) ~~Any member of the Commission who fails to attend 3 consecutive meetings, without reasonable excuse to the Chairperson, or fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and the Chairperson shall immediately notify the Governor that a vacancy on the Commission exists and that a replacement must be appointed. The notice shall identify the member deemed to have resigned and the reason therefore. A Commission member may be removed at any time for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.~~

(1) A member is deemed in neglect of duty if the member, without good cause, is absent from 3 consecutive meetings or attends less than 50% of meetings in a calendar year.

(2) A member deemed in neglect of duty is considered to have resigned. The Commission Chair shall immediately notify the Governor of the resignation.

(e) The Commission shall adopt bylaws that provide for operating ~~procedures~~ procedures, such as: ~~as~~ an election of officers, appointment of committees, ~~designation of a quorum~~, conducting of meetings, and other matters that ~~will~~ promote the Commission's efficient operation of the Commission in the performance of its duties under this chapter.

(f) A majority of appointed members must be present at a meeting in order to have a quorum and conduct official business.

Section 2. Amend § 3002, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3002. ~~Chairperson~~ Chair and executive committee; meetings.

(a) ~~The Governor shall designate 1 of the members of the Commission to serve as its Chairperson. The Commission shall elect a Chair from among the members who are on the Commission.~~

(b) ~~The Chairperson of the Commission may appoint an executive committee of not less than 7 members. The Chairperson shall serve as Chairperson of the executive committee. An executive committee of the Commission consists of 7 members. The Commission Chair shall serve as Chair of the executive committee. The Chair may appoint the remaining 6 executive committee members after consulting with the Commission as a whole regarding which members to appoint.~~

(c) ~~There shall be a meeting of the~~ The executive committee or ~~of the Commission shall meet~~ at least once a month.

Section 3. Amend § 3003, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3003. Responsibilities.

The Commission ~~shall be~~ is responsible for carrying out public information and education programs, ~~for~~ preparing reports and recommendations, and ~~for~~ making surveys and studies necessary for the performance of its duties under this chapter. The Commission may delegate 1 or more of its responsibilities under this section to the ~~Division; provided, however, that such~~ Division of Human Relations, but the delegation shall must specifically state the responsibility the Division must undertake.

Section 4. Amend § 3004, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows: **[Note: This Section will take effect if SB 49 IS enacted.]**

§ 3004. Powers and duties.

The Commission shall cooperate with the Governor, the General Assembly, public agencies, officials, firms, corporations, civic ~~groups~~ groups, and individuals in promoting amicable relationships among the various racial and cultural groups within the State. To this end the Commission may do any of the following:

(1) Act as conciliator in matters involving race, age, marital status, color, sex, disability, creed, national ~~origin or ancestry; provided, however, that the~~ members of groups protected under the laws enforced by the Commission. The provisions of the Freedom of Information Act in Chapter 100 of Title 29 ~~shall do~~ not apply to meetings that involve conciliation or ~~mediation; mediation~~.

(2) ~~Make such~~ Complete investigations, ~~surveys~~ surveys, and studies as are pertinent to the performance of its ~~duties; duties~~.

(3) Make recommendations to the Governor and General Assembly concerning needed legislation.

(4) Perform duties assigned to the Commission under Chapters 45, 46, and 78 of Title 6.

Section 5. Amend § 3004, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows: **[Note: This Section will take effect if SB 49 IS NOT enacted.]**

§ 3004. Powers and duties.

The Commission shall cooperate with the Governor, the General Assembly, public agencies, officials, firms, corporations, civic ~~groups~~ groups, and individuals in promoting amicable relationships among the various racial and cultural groups within the State. To this end the Commission may do any of the following:

(1) Act as conciliator in matters involving race, age, marital status, color, sex, disability, creed, national ~~origin origin, or ancestry; provided, however, that the~~ ancestry. The provisions of the Freedom of Information Act in Chapter 100 of Title 29 ~~shall do~~ not apply to meetings that involve conciliation or ~~mediation; mediation~~.

(2) ~~Make such~~ Complete investigations, ~~surveys~~ surveys, and studies as are pertinent to the performance of its ~~duties; duties~~.

(3) Make recommendations to the Governor and General Assembly concerning needed legislation.

~~(4) Perform duties assigned to the Commission under Chapter 45 and 46 of Title 6.~~

Section 6. Amend § 3005, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows: **[Note: This Section will take effect if SB 49 IS enacted.]**

§ 3005. Special Administration Fund.

(a) Creation. — ~~There is created in the State Treasury a~~ A special fund in the State Treasury, to be known as the Special Administration Fund of the Human Relations ~~Commission.~~ Commission and referred to as "the Fund" throughout this section. This Fund shall consist consists of:

(1) All civil penalties assessed and collected ~~pursuant to Chapter 45 or 46~~ under Chapters 45, 46, or 78 of Title 6.

(2) Costs, attorneys' ~~fees~~ fees, and expenses awarded to the Commission ~~pursuant to Chapter 45 or 46~~ under Chapters 45, 46, or 78 of Title 6.

(3) All Community Development Block Grant moneys designated for the administration and enforcement of Chapter 46 of Title 6.

(4) All other moneys specifically designated for ~~this~~ the Fund.

(5) All interest on or profits earned by the ~~Special Administration~~ Fund.

(b) Administration. —

(1) All moneys collected ~~pursuant to~~ under this section ~~shall~~ must be deposited or paid into ~~this Fund and shall be the Fund,~~ continuously available to the Commission for expenditure in accordance with this ~~section and shall~~ section, and not lapse at any time or be transferred to any other fund. All moneys in ~~this~~ the Fund ~~shall~~ must be prudently invested to the credit of ~~this~~ the Fund, administered and disbursed in the same manner as is provided by law for other special funds in the State ~~Treasury and such moneys shall be~~ Treasury, and maintained in a separate ledger account on the books of the Secretary of Finance.

(2) All moneys in the Fund which are received from the federal ~~government or any agency thereof~~ government, or any of its agencies, or which are appropriated by this State for purposes described in this chapter or Chapters ~~45 or 46~~ 45, 46, or 78 of Title 6, ~~shall~~ may be expended solely for the proper and efficient administration of this chapter.

(3) The State Treasurer ~~shall be~~ is the custodian of and ~~shall be~~ is liable on the State Treasurer's official bond for the faithful performance of duties in connection with the Fund. Such liability on the official bond ~~shall exist~~ exists

in addition to the liability on any separate bond which the State Treasurer may ~~give~~ be given by the State Treasurer. All sums recovered on any such official bond for losses sustained by the Fund ~~shall~~ must be deposited in the Fund.

(c) Use — The Commission may use moneys in the ~~Special Administration Fund~~ may be used by the Commission for any of the following purposes:

(1) The payment of litigation expenses, ~~costs~~ costs, and attorneys' fees in connection with the enforcement provisions of Chapters ~~45 and 46~~ 45, 46, or 78 of Title 6.

(2) The payment of the expenses of investigations conducted ~~pursuant to~~ under Chapters ~~45 and 46~~ 45, 46, or 78 of Title 6, and this chapter.

(3) The payment of studies and surveys conducted ~~pursuant to~~ under this chapter.

(d) Transfer. — ~~The Commission whenever it~~ If the Commission determines that the money in the ~~Special Administration Fund~~ Special Administration Fund is more than adequate to pay for all foreseeable needs for which this Fund is created, it may authorize the transfer ~~therefrom~~ of money from the Fund to the General Fund of such in an amount as is ~~as is~~ the Commission deems proper.

Section 7. Amend § 3005, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows: [Note: This Section will take effect if SB 49 IS NOT enacted.]

§ 3005. Special Administration Fund.

(a) Creation. — ~~There is created in the State Treasury a~~ A special fund in the State Treasury, to be known as the Special Administration Fund of the Human Relations ~~Commission~~ Commission and referred to as "the Fund" throughout this section. This Fund shall consist ~~consists~~ of:

(1) All civil penalties assessed and collected ~~pursuant to~~ under Chapter 45 or 46 of Title 6.

(2) Costs, attorneys' ~~fees~~ fees, and expenses awarded to the Commission ~~pursuant to~~ under Chapter 45 or 46 of Title 6.

(3) All Community Development Block Grant moneys designated for the administration and enforcement of Chapter 46 of Title 6.

(4) All other moneys specifically designated for ~~this~~ the Fund.

(5) All interest on or profits earned by the ~~Special Administration Fund~~.

(b) Administration. —

(1) All moneys collected ~~pursuant to~~ under this section ~~shall~~ must be deposited or paid into ~~this Fund and shall be the Fund~~ the Fund, continuously available to the Commission for expenditure in accordance with ~~this section and shall section and~~ section and not lapse at any time or be transferred to any other fund. All moneys in ~~this~~ the Fund ~~shall~~ must be

140 prudently invested to the credit of ~~this~~ the Fund, administered and disbursed in the same manner as is provided by law
 141 for other special funds in the State Treasury and such moneys shall be Treasury and maintained in a separate ledger
 142 account on the books of the Secretary of Finance.

143 (2) All moneys in the Fund which are received from the federal ~~government or any agency thereof~~
 144 government, or any of its agencies, or which are appropriated by this State for purposes described in this chapter or
 145 Chapters 45 or 46 of Title 6, ~~shall~~ may be expended solely for the proper and efficient administration of this chapter.

146 (3) The State Treasurer ~~shall be~~ is the custodian of and ~~shall be~~ liable on the State Treasurer's official bond
 147 for the faithful performance of duties in connection with the Fund. Such liability on the official bond ~~shall exist~~ exists
 148 in addition to the liability on any separate bond which the State Treasurer may give ~~be given by the State Treasurer~~. All
 149 sums recovered on any such official bond for losses sustained by the Fund ~~shall~~ must be deposited in the Fund.

150 (c) Use. — The Commission may use moneys in the Special Administration Fund ~~may be used by the~~
 151 Commission for any of the following purposes:

152 (1) The payment of litigation expenses, ~~costs~~ costs, and attorneys' fees in connection with the enforcement
 153 provisions of Chapters 45 and 46 of Title 6.

154 (2) The payment of the expenses of investigations conducted ~~pursuant to~~ under Chapters 45 and 46 of Title 6,
 155 and this chapter.

156 (3) The payment of studies and surveys conducted ~~pursuant to~~ under this chapter.

157 (d) Transfer. — ~~The Commission, whenever it~~ If the Commission determines that the money in the Special
 158 Administration Fund is more than adequate to pay for all foreseeable needs for which this Fund is created, it may authorize
 159 the transfer ~~therefrom~~ from money from the Fund to the General Fund ~~of such in an amount as it~~ the Commission deems proper.

160 Section 8. Amend § 3006, Title 31 of the Delaware Code by making deletions as shown by strike through and
 161 insertions as shown by underline as follows:

162 § 3006. Subpoenas; compelling testimony.

163 (a) The Commission may issue subpoenas and order discovery in aid of the investigations, ~~surveys~~ surveys, and
 164 studies authorized under § 3004 of this title when the Attorney General has reason to believe that such subpoenas and
 165 discovery will enable the Commission to perform the duties imposed by this chapter.

166 (b) Any subpoena, process, order of the Commission, or other paper requiring service may be served by any
 167 sheriff, deputy sheriff, ~~or~~ constable, or ~~by any~~ employee of the Division of Human Relations.

168 (c) If a witness refuses to obey a subpoena that the Commission lawfully issued ~~by the Commission~~, or to give
 169 evidence the Commission properly requested ~~by the Commission~~, the Commission may petition the Superior Court to

compel the witness to obey the subpoena or give the evidence. The Court shall immediately issue process to the witness and shall hold a hearing on the petition as soon as possible. If the witness refuses, without reasonable cause or legal grounds, to obey the subpoena or to give the evidence, the Court shall punish the witness for contempt.

Section 9. Amend § 4508, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4508. Procedure on complaint.

(c) Within 120 days after the complaint is filed, the Division shall investigate the complaint and endeavor to eliminate any unlawful discriminatory practice discovered through conciliation. Insofar as possible, conciliation meetings shall be held in the county where the alleged discriminatory public accommodations practice occurred. If the matter is resolved through conciliation, the parties shall enter a conciliation agreement stating the terms of the resolution of the matter. If the Division determines that the allegations in the complaint do not state a claim for which relief is available under this chapter or that the claim is not within the scope of the Division's jurisdiction, it may petition the ~~Division~~ Commission, with notice to the complainant, to dismiss the complaint.

Section 10. Sections 2, 3, and 8 of this Act take effect upon enactment. Sections 1 and 9 of this Act take effect 1 year after enactment. Sections 4 and 6 of this Act take effect only if Senate Bill No. 49 of the 149th General Assembly is enacted. Sections 5 and 7 of this Act take effect only if Senate Bill No. 49 of the 149th General Assembly is not enacted.

SYNOPSIS

This Act fulfills recommendations made by the Joint Legislative Overview and Sunset Committee ("JLOSC") by making amendments to the State Human Relations Commission's ("the Commission") governing statute.

First, this Act changes the number of members on the Commission to a more manageable number, 18 members, and adjusts appointment language accordingly, including providing for staggered appointments so that members' terms do not expire all at the same time. To provide the Commission with sufficient time to reorganize itself with the new number of members, Section 1 of this Act takes effect 1 year after the date of enactment.

Next, this Act adds several provisions that are administrative in nature: defining the Commission's quorum and requiring quorum to meet and conduct business; language standard to boards and commissions regarding the removal of members for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance; and technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Finally, this Act fulfills the JLOSC recommendation that the Commission's governing statute include reference to its duties under other chapters of the Delaware Code. Current Delaware law provides that the Commission has duties under Chapters 45 and 46 of Title 6, the Equal Accommodation Act and Fair Housing Act, respectively. Senate Bill No. 49 ("SB 49") of the 149th General Assembly, however, if enacted, will create a new Chapter 78 in Title 6, under which the Commission will have duties related to Homeless Individuals' Bill of Rights. In order to accommodate the possibility of a new chapter in Title 6 which should be referenced in the Commission's governing statute, §§ 3004 and 3005 have been drafted as two versions. The first version of each, Sections 4 and 6, include references to the new Chapter 78, while the second version of each, Sections 5 and 7, do not. Therefore, Section 10 of this Act provides that Sections 4 and 6 take effect if SB 49 is enacted during this General Assembly, and Sections 5 and 7 take effect if SB 49 is not enacted during this General Assembly.



SPONSOR: Rep. Bolden

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1
TO
SENATE BILL NO. 122

- 1 AMEND Senate Bill No. 122 on lines 76 and 77 by deleting "race, age, marital status, color, sex, disability, creed,
2 national ~~origin~~ origin, or ~~ancestry; provided, however, that the~~ ancestry," as it appears therein and inserting in lieu thereof
3 the following: "race, age, marital status, color, sex, disability, creed, national origin or ancestry; provided, however that the
4 members of groups protected under the laws enforced by the Commission,".

SYNOPSIS

This Amendment corrects a technical error.