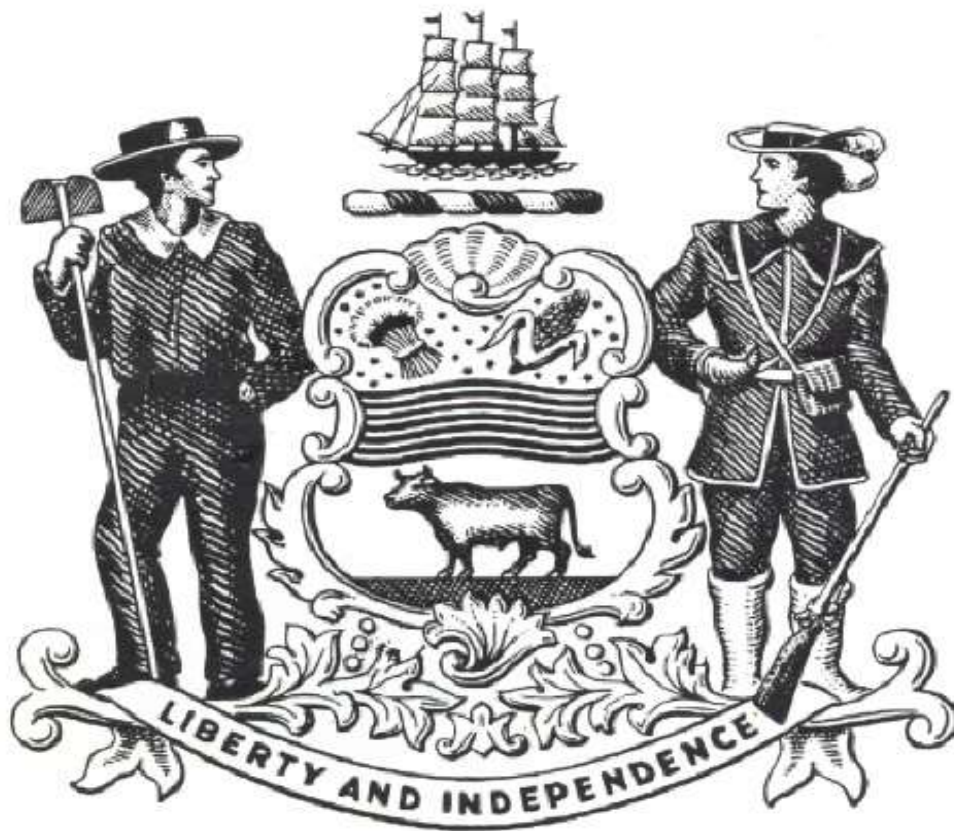

Joint Legislative Oversight and Sunset Committee 2017 Final Report



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

June 2017

2017 Joint Legislative Oversight and Sunset Committee Members

Senator John J. Walsh,
Chair

Representative Stephanie T. Bolden,
Vice-Chair

Representative Andria L. Bennett

Representative Gerald L. Brady

Representative Timothy D. Dukes

Representative Jeffrey N. Spiegelman

Senator Stephanie L. Hansen

Senator Brian G. Pettyjohn

Senator Bryant L. Richardson

Senator David P. Sokola

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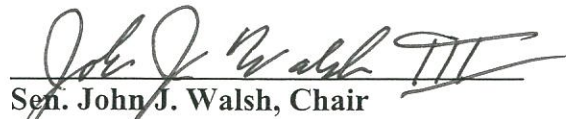
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The Joint Sunset Committee approves and submits the 2017 Final Report to the Governor and members of the 149th General Assembly.

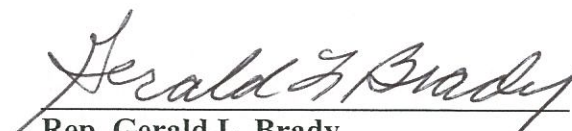

Sen. John J. Walsh, Chair

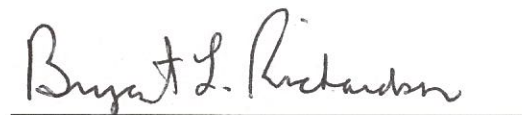

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Executive Summary

Executive Summary

Background

Delaware's Legislative Oversight and Sunset Law, enacted in 1979 in Chapter 102 of Title 29, provides for the periodic legislative review of state agencies, boards, and commissions (collectively, "entity" or "entities"). The purpose of review is to determine if there is a public need for an entity and, if so, to determine if it is effectively performing to meet that need. Generally, an entity cannot be reviewed more than once every six years.

The Joint Legislative Oversight and Sunset Committee ("JLOSC" or "Committee") is responsible for guiding the review process. JLOSC is a bipartisan committee comprised of ten legislators. Five senators are appointed to serve on the Committee by the Senate President Pro Tempore and five representatives are appointed by the Speaker of the House.

Reviews are generally conducted over a ten to twelve month time period commencing in July. The Committee's Analyst compiles a comprehensive review of each entity, based on the responses each entity provides on a questionnaire designed to meet statutory criteria, and then prepares a preliminary report for the Committee members' use during public hearings held in February and March of each year. Public hearings serve as a critical component of the review process because they provide the best opportunity for JLOSC to determine if there is a genuine public need for the entity, and if the entity is beneficial to the public's health, safety, and welfare.

At the conclusion of a review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an entity. Although the Committee has "sunset" a small number of entities since its first reviews in 1980, the more common approach has been for the Committee to work with an entity under review to formalize specific statutory and non-statutory recommendations with an end goal of improving the entity's overall performance and government accountability.

2017 Sunset Reviews

This report details the work of the Committee from July 2016 through June 2017. Specifically, it focuses on the following entities:

- State Board of Education
- Delaware Information and Analysis Center
- Agricultural Farmland Preservation Foundation
- Human Relations Commission
- Board of Medical Licensure and Discipline
- Board of Clinical Social Work Examiners
- Diamond State Port Corporation

Guide to this Report

The following pages detail the work of the Committee during the first session of the 149th General Assembly, including the Committee's Final Recommendations and the individual entity reports developed by the Committee's Analyst. The reports served as references for the

Committee during public hearings and facilitated the development of the Final Recommendations.

Summary of 2017 Joint Legislative Oversight and Sunset Committee Actions

The Committee held public hearings regarding the State Board of Education, Delaware Information and Analysis Center, Agricultural Farmland Preservation Foundation, and Human Relations Commission. As a result of the public hearings and subsequent Committee meetings and deliberations, the Committee recommended the continuation and release of three entities, and hold over of one entity.

State Board of Education – Held Over to 2018

The Committee made several Recommendations for the **State Board of Education** (“SBE”), an advisory Board to the Department of Education (“Department”). The Committee’s Recommendations include amending the Board’s governing statute, clarifying SBE’s duties, revising the Executive Director’s job description, modifying meeting time and locations, providing additional opportunity for public comment at meetings, and adding two non-voting Board members. At the time of the Final Report’s publication, the recommended legislation has not yet been released. The Committee recommended to hold over SBE, which must report back to the Committee in January 2018. At that time, the Committee will consider whether to continue and release the Board from review upon enacted legislation or terminate the Board. In May 2017, the Joint Finance Committee voted during budget markup to eliminate SBE. The Committee’s Analyst will continue to monitor SBE’s status as the budget bill is finalized.

Delaware Information and Analysis Center – Released from Review.

The Committee recommended continuing the **Delaware Information and Analysis Center** (“DIAC”) and releasing it from review, with a letter of support to the Joint Finance Committee for funding for an Intelligence Analyst. Such funding which will support DIAC’s goal of being a 24/7 operation. The Committee considered adding DIAC to the Delaware Code, but made no recommendation to do so.

Agricultural Farmland Preservation Foundation – Released Upon Enactment of Recommended Legislation.

The Committee recommended continuing the **Agricultural Farmland Preservation Foundation** (“Foundation”) and releasing it from review upon the enactment of recommended legislation, which includes adding standard language to the Foundation’s governing statute regarding removal of Trustees and limiting review of a preservation easement after 25 years. At the time of the Final Report’s publication, Senate Bill 74 has not yet been enacted.

Human Relations Commission – Released Upon Enactment of Recommended Legislation.

The Committee recommended continuing the **Human Relations Commission** (“Commission”) and releasing it from review upon enactment of recommended legislation, which includes amendments to its governing statute to reduce the Commission’s size, adding standard language quorum and removal of Commission members, increasing availability of Commission meetings to public through video meetings, and references its powers and duties under the Equal Accommodations and Fair Housing Acts. At the time of the Final Report’s publication, Senate Bill 122 has not yet been enacted.

Board of Medical Licensure and Discipline – Released Upon Enactment of Recommended Legislation.

The review for the **Board of Medical Licensure and Discipline** was conducted in 2016 and the Board was continued and released from review, with reporting requirements. The Committee also recommended legislation to amend the Board's governing statute; HB 426 of the 148th General Assembly did not pass. With the assistance of the Director of the Division of Professional Regulation, the legislation was reintroduced as Senate Bill 39 in the 149th General Assembly. The Committee recommended in 2017 to release the Board upon enactment of Senate Bill 39.

Board of Clinical Social Work Examiners – Released Upon Enactment of Recommended Legislation.

The Committee and staff will continue to work with the **Board of Clinical Social Work Examiners (“Board”)** and the Division of Professional Regulation to meet the 2015 recommendation that the Board revise its governing statute. This revision will modernize the practice of social work throughout the State. The Committee and Board expect this legislation to be addressed in January 2018. At the time of the Final Report's publication, the recommended legislation has not yet been released.

Diamond State Port Corporation – Released with Reporting Requirements.

The Committee released the Diamond State Port Corporation (“DSPC”) with reporting requirements regarding the status of the hiring hall and cranes. In January 2017, the Committee received updates from DSPC and recommended additional monitoring of the hiring hall and cranes.

JLOSC Improvement – Legislation to Clarify the Committee's Governing Statute.

The Committee voted to amend § 10214, Title 29, to clarify the Committee's authority to hold over entities or recall entities that could have but failed to meet a JLOSC recommendation, or when legislation recommended by the Committee fails to be enacted. At the time of the Final Report's publication, Senate Bill 74 has not yet been enacted.

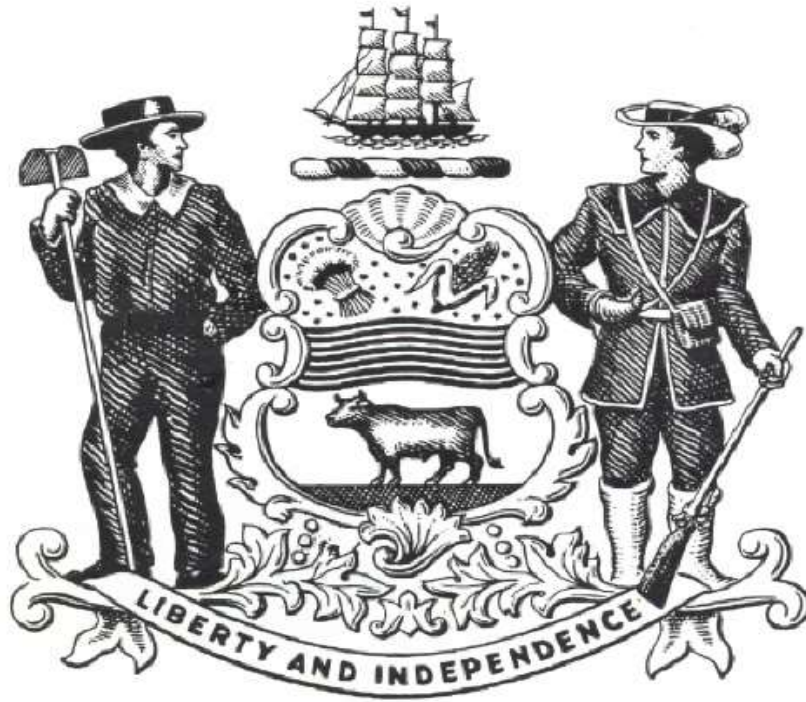
Entities Under Review in 2018

The Committee selected the following entities for review in 2018:

- **Division of Waste and Hazardous Substances**
 - **Restricted to that Division's Management of the HSCA fund.**
- **Council on Correction**
- **Child Protection Accountability Commission**
- **Board of Occupational Therapy**

Delaware State Board of Education

Joint Legislative Oversight & Sunset Committee 2017 Final Report



Delaware State Board of Education

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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:

Delaware State Board of Education

The Joint Legislative Oversight and Sunset Committee recommends that the State Board of Education (“Board”) be held over, and report before the JLOSC in January 2018.

1. At the JLOSC public hearing, the Committee noted that the statute is not clear in stating the duties of the Board.

RECOMMENDATION: The Board shall clarify Title 14, § 104-107, and report to the JLOSC the Board’s duties, including accountability.

OUTCOME: The Board provided an updated appendix to the Committee, clarifying the Board’s duties, including accountability.

2. The Board requested amending the statute to include a process to remove a board member.

RECOMMENDATION: The Board shall draft, and submit to JLOSC amendments to Title 14, § 104-107 to include a process to remove a board member.

OUTCOME: The Committee will update legislation in January 2018 if the Board is recommended to continue.

3. As discussed in the JLOSC Public Hearing, the Committee expressed concern regarding the mandated duties of the Board and Executive Director. The Executive Director may have acquired additional duties that the Committee deems beyond the scope of the Executive Director’s job duties.

RECOMMENDATION: The Board will present to the Committee a revised Executive Director job description to better align with the Board’s duties.

OUTCOME: The Board provided the Committee with a revised Executive Director job description.

4. As discussed in the JLOSC Public Hearing, the regular Board meetings are not accessible to all public school families in Delaware since the meetings are always held in Dover, during the day and several hours long.

RECOMMENDATION: The Board shall provide amendments to the JLOSC which require the Board to hold monthly meetings at locations among the three counties on a rotating basis, locations to host agenda items that are relevant to that specific county, and staggering the locations to make the meetings suitable for parents, teachers, and other community members from all counties to attend.

5. As discussed in the JLOSC Public Hearing, the regular Board meetings are held during working hours and tend to be very lengthy, which can a hardship for public attendees.

RECOMMENDATION: The Board shall hold regular meetings at or after 5pm.

6. As discussed in the JLOSC Public Hearing, the regular Board meetings only allow public hearing at the beginning of their meeting. This would allow the public to interact with the Board per agenda item.

RECOMMENDATION: The Board shall draft and submit to JLOSC a draft bill to include allowing public comment before voting on action items; the Board shall also submit to JLOSC a list of issues that will be exceptions to the public comment provision.

7. As noted by members of the Committee and public during the Public Hearing, information should be accessible to those that cannot attend meetings or access the SBE website.

RECOMMENDATION: The Board shall make available information for Delawareans that are not able to travel to meeting locations or have internet access. These documents should be distributed to the public through public libraries, as well as information added to school calendars and newsletters.

8. As discussed in the JLOSC Public Hearing, the Board does not have a clearly defined process for their support or non-support of legislation. Consideration should be made to include each Board member opinion when commenting on any legislation. As a citizen's voice, the Board should consider support or non-support, of the public that attend or provide comment to the Board should be considered as well.

RECOMMENDATION: The Board shall create and submit to JLOSC a clear and defined process for supporting or not-supporting proposed legislation. The Board, as the citizen's voice, should include consideration of the public that attend Board meetings and provide comment to the Board. So that FOIA applies, this process shall be developed and approved in a public Board Meeting.

9. As proposed by the Board in the JLOSC questionnaire, consider additional voices to the Board process by adding the teacher of the year as a non-voting member to the Board.

RECOMMENDATION: The Board shall draft and submit JLOSC amendments to Title 14, § 104 to add two non-voting members to the Board. These members can include the Teacher of the Year, current students, representatives from the military, or disability community.

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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. Additional points of consideration which arose in analyzing the questionnaire and compiling this report is addressed in the section titled “Additional Comment from the Committee’s Analyst.”

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AGENCY HISTORY

The first reference to an officially titled Delaware State Board of Education (“Board”) was made in 1875, with the order for the governor to appoint a state superintendent of free schools.¹

Several reorganizations of the Board over the years led to significant changes in 1997 through the Department of Education Act of 1997. This Act made the Governor responsible for selecting the State Superintendent. The State Superintendent became a member of the Governor’s cabinet. The Department of Public Instruction was renamed the Department of Education (“Department”) and became a cabinet agency.

Through legislation passed in 2001, the Board became responsible for authorizing charter schools², and charged with the responsibility of approving all regulations of the Higher Education Commission.³ Legislation passed in 2010, which dissolved the Higher Education Commission and created the Office of Higher Education (“Higher Education”) within the Department. The legislation also designated the Secretary of Education (“Secretary”) to approve all Higher Education regulations, unless subsequent legislation specified that such regulations required the assent of the Board.

In 2009, legislation modified the Board’s membership to include an at-large member, two residents from New Castle County outside the City of Wilmington, one resident from Kent County, and one resident from Sussex County. Previously, Board membership included three New Castle County members outside of the City of Wilmington, one resident from Kent County, and one resident from Sussex County. Membership of New Castle County members was set at three with one specified from the city of Wilmington.⁴

The US Department of Education audited the State’s Perkins grant and state plan, and determined that neither the Department nor the Delaware Advisory Council for Career Technical Education (“DACCTE”) had the required governance structure or policy-making authority to be the State’s eligible Perkins agency. Legislation passed in 2013 made the Board the eligible and sole agency responsible for the supervision and administration of career technical education for purposes of the federal Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) and any subsequent reauthorization of the Perkins law, and subjected the Board to Perkins’ requirements and implementing regulations.⁵

JUSTIFICATION/NEED FOR EXISTENCE

The State initially established the Board as a governance structure over its diverse public education system. Today, the Board is the non-politicized, citizens’ voice in education policy serving as policy makers, advocates for education and students, liaisons to other stakeholders, and a consensus builder.

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

This is the first time the Committee has reviewed the Board.

¹ Found at <http://archives.delaware.gov/collections/aghist/8005.shtml>.

² See <http://delcode.delaware.gov/sessionlaws/ga141/chp164.shtml>.

³ See <http://delcode.delaware.gov/sessionlaws/ga141/chp188.shtml>.

⁴ See <http://delcode.delaware.gov/sessionlaws/ga145/chp051.shtml>.

⁵ See <http://delcode.delaware.gov/sessionlaws/ga147/chp083.shtml>.

VISION, MISSION, GUIDING PRINCIPLES

These statements directly align with the enabling legislation and accurately reflect the Board’s mission:

Vision Statement

All Delaware students are prepared to lead full and productive lives and be successful in the 21st century global society.

Mission Statement

In collaboration with community and stakeholders, the Delaware State Board of Education serves as the primary voice for Delaware citizens on education policy to create a world class education system for every student.

Guiding Principles

1. Further our thriving democratic society with opportunities for an excellent and equitable education for all students.
2. Enrich education policymaking with the inclusion of diverse perspectives that represent the breadth and depth of Delaware's citizens.
3. Utilize research-based viewpoints to inform decisions in the best interest of all students.
4. Advocate for the development of the whole child through learning, teaching, and community engagement

GOALS & KEY PRIORITIES

The Board’s overarching goal is to use high standards and rigorous expectations for students, teachers, and leaders, and ensure that all Delaware students graduate ready for college, career, and High Expectations Citizenship.

The Board published a Strategic Plan and Key Priorities and Focus Areas for 2016-17. The Key Priorities and Focus Areas document was developed instead of a new strategic plan, due to the transition the State is currently undergoing regarding education and new systems in development. These transitions are a result of Every Student Succeeds Act (“ESSA”) and the potential changes of leadership on the Board and within the Department. The Board’s Strategic Plan was first published in the fall of 2011, before the Board implemented its online meeting software. The Board’s current strategic plan has been updated each fall to incorporate updated accomplishments and enable the Board to review the key focus areas within the plan. The 2011-2015 Strategic Plan, which was updated in September 2016, can be found in Appendix A.

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Below are the Board's Key Priorities and Focus Areas for 2016-17.

Delaware State Board of Education – Key Priorities and Focus Areas for 2016-2017



Standards and Assessments

- Drive implementation of **rigorous and consistent content standards** aligned to College and Career Readiness with clearly communicated expectations for learning
- **Assessments** aligned to standards, which **measure student learning, growth, depth of knowledge, and readiness**



Accountability and School Supports

- Clear and visible **stakeholder engagement** in the development of our state's ESSA plan
- State and School Accountability systems **measuring performance and growth across multiple metrics**
- **Supports for systemic and sustainable models to build high performing schools** throughout our state
- **High quality educational programs** and opportunities **available to all students**
- **School Profiles and performance dashboards** which transparently highlight successes and best practices



Educators as Catalysts

- **Prepare educators for success** as they enter our classrooms by implementing **performance expectations** across multiple measures **for all educator preparation programs**
- Provide our most high need students **equitable access to excellent education** and ensure that they are not disproportionately served by ineffective or inexperienced educators
- **Align Licensure, Certification, and Professional Learning** with standards in the profession
- **Invest in the growth and development of instructional leaders, great teachers, and specialists** within our schools



Readiness for Success

- Increase access to **high quality Early Learning** for all students, focus on elevating the **professional learning and licensure structures** for **early learning educators**, and **enhance funding structures** to align with the necessities of increased early learning programs
- **Promote literacy competencies** achieved by all students which leads to increased college, career, and civic readiness
- Career Readiness aligned **industry and business competencies** including technology literacy, financial literacy, analytical reasoning, multicultural competence, and effective communications



Delaware's Education System is built upon standards

A core foundation of principles integrating Content, Performance, and Educator standards across all priority and focus areas

The Board reviews its progress against its strategic plan annually. It also tracks its actions against the key areas in the strategic plan by using an issue item report generated by the Board's online meeting management software. The software creates an annual report card that shows how many times the Board had items on its agenda aligned to the four key areas in its strategic plan. The Board also routinely brings in the National Association of State Boards of Education ("NASBE") to work with the Board on effective board governance and policy effectiveness. The NASBE generally works with the Board during Board retreats or special professional development sessions for Board training held by the NASBE.

COMPOSITION & STAFFING OF THE STATE BOARD OF EDUCATION

The Board's governing statute requires 7 voting members. The Governor appoints and the Senate confirms each member, who must be a Delaware citizen. The Governor names the President, who serves at the Governor's pleasure. Each remaining member is appointed to serve for 6 years, until that member's successor qualifies. Currently, there is 1 vacancy on the Board, due to a member moving out of state after the General Assembly session ended in 2016. The Board expects Governor Carney to appoint new members.

Board members are appointed based on their character and fitness and subject to the following qualifications:

- At least 2 members of the Board must have had prior experience on a local board of education.
- No more than 4 members of the Board may belong to the same political party.
- No person is eligible for appointment who has not been for at least 5 years immediately preceding appointment.
- No person may be appointed to the Board who is in any way subject to its authority.

The Board's President is appointed from the State at large. The remaining 6 members consists of at least 1 resident of the City of Wilmington, 2 residents from New Castle County outside the City of Wilmington, 1 from Kent County, 1 from Sussex County, and 1 member at large.

The Board's governing statute does not address removal of a Board member. When a vacancy occurs for any cause, including resignation, the Governor fills the unexpired term until a successor qualifies for appointment.

Current Board Members

	NAME	POSITION HELD	COUNTY	OCCUPATION	APPOINTED/RE- APPOINTED /EXPIRATION
1.	Dr. Teri Quinn Gray	President	New Castle	Commercialization Manager	2009/at the pleasure of the Governor
2.	Nina Lou Bunting	Vice President	Sussex	Retired Teacher	2015/ June 2021
3.	Gregory B. Coverdale, Jr.		Wilmington, New Castle	Financial Planner	2010/ June 2016
4.	G. Patrick Heffernan		New Castle	IT Manager	2008/2015/ Jan 2021
5.	Barbara B. Rutt, J.D.		Kent	Retired Lawyer	2005/2012/ May 2018
6.	Dr. Terry M. Whittaker		New Castle	Provost	2007/2014/ April 2020
7.	Jorge Melendez (RESIGNED 9/2016)		Sussex	Career Agent	2007/2011/ March 2017

Staff:

The Board and the Department have agreements between them regarding staffing, office space, and meeting space. The Board's annual budget includes allocation for 1 staff member, the Executive Director. The Department provides the Board's administrative assistant.

Compensation:

Members are compensated \$100.00 for each day's attendance at Board meetings, not to exceed 24 days' attendance in any 1 calendar year. Members are reimbursed for their actual travel and other necessary expenses incurred in attending meetings and transacting the business of the Board.

Member Training:

All Board members are provided training on the Board's procedures, policy manual, and responsibilities. The Deputy Attorney General ("DAG") assigned to the Board provides members with information regarding the Freedom of Information Act ("FOIA") and conflicts of interest. As a member of NASBE, the Board is able to send, free of charge, 2 new Board members each year to training with board members across the country. The Board also utilizes memberships with National Association of Charter School Authorizers ("NACSA") and Education Commission of the States ("ECS") for additional professional development. Representatives from the NASBE regularly attend retreats or work sessions to review recommendations related to effective state board governance practices and policy research.

Conflict of Interest:

To avoid conflicts of interest, Board members take an oath of office and are subject to review by the Public Integrity Commission. Members also regularly receive guidance and counsel from the DAG assigned to the Board.

Staffing:

The Board's annual budget provides for 1 staff person, the Executive Director. Additionally, the Department assigns 1 staff person for administrative support to the Board.

The Board has hired summer interns each of the past 3 years, from the Department's Educators as Catalysts program, the University of Delaware, and Education Pioneers. Additionally, the Board contributed to or fully funded contracts with organizations or companies to staff several studies and projects involving research and program analysis. Lastly, the Board contracted with an independent contractor to assist with press releases and publications, due to time and staff limitations.

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DUTIES, RESPONSIBILITIES & AUTHORITY

Title 14 of the Delaware Code provides for the Board's duties, responsibilities, and authority, and includes the following:

- (1) Provide the Secretary with advice and guidance on the development of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the Board. Provide guidance on new initiatives which the Secretary may propose. The Secretary is to consult with the Board regularly to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer, and that rules and regulations presented to the Board for its approval are developed with the Board's input. The Board may also recommend certain initiatives for the Secretary to undertake to improve public education in Delaware.
- (2) Provide the Secretary with advice and guidance on the Department's annual operating budget and capital budget requests.
- (3) Provide the Secretary with guidance in the preparation of the annual report specified in § 124 of Title 14, including recommendations for additional legislation and for changes to existing legislation.
- (4) Provide the Secretary with guidance concerning the implementation of the student achievement and statewide assessment program specified in § 122(b)(4) of Title 14.
- (5) Decide, without expense to the parties concerned, certain types of controversies and disputes involving the administration of the public school system.
- (6) Fix and establish the boundaries of school districts which may be doubtful or in dispute, or change district boundaries.
- (7) Decide on all controversies involving rules and regulations of local boards of education.
- (8) Subpoena witnesses and documents, administer and examine persons under oath, and appoint hearing officers to conduct investigations and hearings related to paragraphs (5), (6), and (7) above.
- (9) Review the Secretary's decisions, upon application for review, where specific provisions of this title provide for such review. The Board may reverse the decision of the Secretary only if it decides, after consulting with legal counsel to the Department, that the Secretary's decision was contrary to a specific state or federal law or regulation, was not supported by substantial evidence, or was arbitrary and capricious.
- (10) Approve Department rules and regulations that the Title 14 has specified the Board to approve, before such regulations are implemented.
- (11) Approve rules and regulations governing institutions of postsecondary education that offer courses, programs of courses, or degrees within the State or by correspondence to residents of the State.
- (12) Decide appeals of decisions by the board of directors of a charter school to suspend or expel a student for disciplinary reasons.

(13) Digitally record all regular monthly public board meetings and make the recordings available to the public on the Department’s website within 7 business days of each meeting.

(14) Serve as the State Board for Vocational-Technical Education (Career and Technical Education). Serve as the "eligible agency" and sole agency responsible for the supervision of administration of career and technical education for purposes of the federal Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV).

Since 2005, the Board President has co-chaired the P-20 Council. Board staff also attends meetings and provides support to the Council. The P-20 Council is responsible for coordinating educational efforts of publicly-funded programs, from early care through higher education, and fostering partnership among groups concerned with public education.

ENACTED LEGISLATION IMPACTING THE BOARD

Federal Laws Impacting the Board

Reauthorization of the Perkins Act is the pending federal legislation that would most directly impact the Board’s responsibilities. As Delaware’s eligible agency for Perkins funding, the Board is working with the federal delegation to ensure that reauthorization of the Perkins Act will continue to fund vocational education at a fair and equitable level for Delaware students.

Until the Perkins Act is reauthorized, the Board operates under the existing Perkins Act. The Board may be required to take on additional responsibilities, depending on the changes made when the Perkins Act is reauthorized.

The Board continues to monitor finalized regulations from the United States Department of Education (“USDE”) regarding the Elementary and Secondary Education Act, as reauthorized in Every Student Succeeds Act (“ESSA”), Individuals with Disabilities Education Act (“IDEA”), Higher Education Act, and recent regulations pertaining to higher education institutions and educator preparation programming.

PENDING LEGISLATION

When the Board submitted its JLOSC questionnaire, no legislation in Delaware was pending. The Board regularly discusses bills that impact the responsibilities of the Board, including an overview of the entire legislative session during its July meeting.

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EXECUTIVE ORDERS IMPACTING THE BOARD

There have been several executive orders which impact the Board due to the requirement of a representative to serve on a task force or commission. There are also several executive orders which impact the responsibilities and actions of the Board.

EO 62: Creating the Delaware Every Student Succeeds Act Advisory Committee to Guide Executive Branch Leaders in the Development of the Delaware State Essa Plan, 08/30/16.

EO 61: Establishing a Delaware Pathways Steering Committee. 08/11/16.

EO 57: Establishment of the Delaware Open Data Council to Promote a More Open, Accountable and Effective Government. 01/27/16.

EO 46: Establishes the City of Wilmington Education Advisory Group, comprised of at least 15 members appointed by the Governor in consultation with elected representatives from the city, 09/25/14.

EO 45: Creating the youth re-entry education task force to examine educational opportunities offered to juveniles involved in the juvenile justice system and returning to the community, 05/09/14.

EO 42: Creating the Delaware Background Check Task Force to Conduct a Comprehensive Examination of Delaware's Criminal Background Check and Child Protection Registry Check Requirements Relating to Individuals Working with Children and Youth, 01/13/14.

EO 36: Review and Reform of State Agency Regulations, 06/14/12.

EO 31: Improving Access to Public Records Through Uniform Procedures for Freedom of Information Act Requests, 10/20/11.

EO 15: Fostering Science, Technology, Engineering and Mathematics ("STEM") Education in Our Schools and Creating a STEM Council to Lead Those Efforts, 02/18/10.

EO 47: Requiring the Board President to serve as co-chair of the P-20 Council, 2005.

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ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

The Board does not promulgate rules or regulations, but does provide final approval or assent to regulations promulgated by the Department, the Delaware Interscholastic Athletic Association (“DIAA”), and the Professional Standards Board (“PSB”). The Board reviews and considers on a monthly basis regulation changes. The list of all regulatory action taken within the last 3 years is included in Appendix E. In total there are 104 regulations under the Board’s authority for final approval or assent.⁶

The Board’s process for approving regulations is as follows:

Department Regulations:

- Proposed regulations are submitted to the Registrar of Regulations for public comment and to the Board as discussion items for the Board while public comment is accepted.
- The Department reviews the public comment and determines whether to make changes to the proposed regulations based on the comments.
- The Department presents the regulations to the Board for approval. The Board must either approve or not approve the regulations. When substantive changes are made, the changed regulations go back for public comment and, afterward, the Department decides whether to bring them forward for final action.
- During the discussion month on the Board agenda, the Board discusses proposed amendments to the regulation and asks questions or provides feedback to the Department.
- Once public comment is closed, the Board is provided with all public comment and discusses with the Department about its decision to either incorporate or not incorporate the comments.
- Four affirmative votes are required for the Board to take action on a regulation, or the proposed changes to the regulation do not pass.
- The Department can bring back regulation that did not pass for amendments, but follows the same process of publication, discussion, and approval from the Board.

PSB Regulations

- The PSB brings recommendations for revisions to regulations to their subcommittee, then to the full PSB, which votes whether to request the Board’s approval to publish the regulation.
- If the Board approves the regulations for publication, the PSB submits the proposed regulations to the Registrar of Regulation for publication. The PSB and the Board both receive public comment for 30 days.
- While the proposed regulations are out for public comment, the Board and the PSB place the regulations on their agendas as discussion items. When comment is closed, the PSB reviews comments, makes any changes they deem appropriate, and vote to send the regulation forward for the Board’s final approval. The regulations go back out for 30 days of public comment if substantive changes are made.
- Four affirmative votes are required for the Board to take action on a regulation, or the proposed changes to the regulations do not pass.
- The PSB can bring back regulations that did not pass for amendments, but follows the same process of publication, discussion, and approval from the Board.

⁶ See <http://regulations.delaware.gov/AdminCode/title14/>.

Updates to the Board's APA manual are needed to address outdated language, clarifications to the appeals section, technology changes, and staff responsibilities. The Board's DAG and Executive Director typically work together to update the manual.

The Board approves regulations related to educator licensure and certification, and assessments used in the licensure process. The Board does not, however, convey licenses or certifications, nor does it administer the assessments.

FREEDOM OF INFORMATION ACT COMPLIANCE

The Department handles all of the Board's FOIA complaints. The Department's FOIA coordinator, and the Board work together to comply with any FOIA requests. The Department has received 2 FOIA complaints regarding the Board. In the first complaint, there was a finding of no violation of FOIA. In the second complaint, the Board was found to have inadequately supplied a venue large enough for overflow attendees to participate in open meetings. As a result of this ruling, the Board has an overflow room with full viewing access to the meetings.

The Board's executive sessions are posted on the agenda. Topics discussed in executive session include student disciplinary appeals, personnel issues, or pending litigation. Minutes are taken for executive session and maintained. No action is taken in executive session and minutes are taken in regular session when the Board takes action based on discussion from an executive session.

Agendas are posted publicly. Minutes and audio recordings are posted on the Board's website within 5 days of being approved.⁷

Complaints Process

The Board does not hear or receive official complaints. It does hear appeals to actions of the local or charter board or the DIAA Board. The Board has heard 19 appeals over the past three years. The Board pays for the hearing officer and any associated fees dealing with such appeals from State budget allocation. Those hearings are held in accordance with the appeal process. This process is fully outlined in the Board's Procedures Manual and posted on the home page of the Board's website.

The Board office and Board members do receive complaints from individuals regarding school operations, department procedures, or district actions. The process for handling these complaints is to gather information from the caller or email and provide the person with the appropriate entity to address their complaint as well as information that will assist them in their request. The Board also notifies the school, district, or department area, of the complaint received, with a request that they reach out to the individual directly.

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⁷ The Board's website is at <http://www.destateboarded.k12.de.us>.

FISCAL INFORMATION

External factors that have impacted the Board over the past 3 years include opportunities to apply for and receive grants from NASBE to increase the number of professional development workshops, stakeholder outreach, and research enacted by the Board. In the past 3 years, the Board has received \$48,000 in grant funds. The NASBE also provided professional development grants to grant team members. Overall, the NASBE provides multiple resources and access to professional development for Board members, staff, and grant team members.

Actual Revenue:

Fiscal Year	Source(s) of Funds	Amount
FY17 (budgeted)	General Fund	\$223,100.00
	Outside Funds: NASBE Grant	\$15,000.00
FY16 (actual)	General Fund	\$223,100.00
	Outside Funds: NASBE Grant	\$15,000.00
FY15 (actual)	General Fund	\$223,100.00
	Outside Funds: NASBE Grant(2)	\$18,000.00

Actual Expenditures:

Fiscal Year	Source(s)	Amount
FY17 (budgeted)	General Fund	\$223,100.00
FY16 (actual) \$223,100.00	General Fund	\$199,181.91
FY15 (actual) \$223,100.00	General Fund	\$200,122.82

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FY16 Budgeted Expenses:

Line Item Appropriation 05191	Amount of Expenditures
Assoc. Dues and Conference Fees	38,564.00
Books and Publications	431.38
Computer Services	2750.00
Computer Supplies	27.73
Fleet Rental	140.70
Food	2919.13
Food Service	239.61
Lodging out of State	1379.10
Meals out of State	77.30
Meals w/in State	18.90
Mileage/car out of State	146.80
Office Supplies	2105.03
Other Professional Service	13550.00
Other Rental	302.52
Other Travel out of State	269.00
Other Travel w/in State	40.50
Temporary Emp. Services	5675.00
Training	208.50
From PHRST (set asides)	
Salary (1 Education Associate)	90472.72
OEC	27523.72
HI	6428.88
Board Member Stipends	16800.00
Member Stipend OEC	1565.76
	TOTAL \$214,343.38

AUDITS

The State Auditor's Office conducted an inspection of the Department's travel expenses, which included the Board's travel expenses, since the Board's funding is within the Education section of the state budget. The inspection found no evidence to support any allegations of mishandled funds or inappropriate travel.

In 2010/2011, the National Association of Charter School Authorizers ("NACSA") conducted an audit of the State's authorizing practices and made several recommendations for improvements. The audit was one of the catalysts that drove the change in the authorizing policy, including the development of the Charter Performance Framework, revisions to the application and renewal process, and the annual performance review reports. The NACSA representative noted that the Board had already identified 90% of the issues regarding charter authorizing practices at its recent retreat session, and commended the Board for their proactive approach. The NACSA's review and findings were presented to the Board and the Department at the Board's March 2011 work session.

COORDINATION WITH OTHER AGENCIES

The Board works most directly with the Department and the PSB on a daily basis. The Board's staff contacts the Department and PSB address a variety of issues before the Board, policy matters regarding Board action, and the areas outlined in the Board's strategic plan and key priorities.

In addition to the P-20 Council, the Board also coordinates with several other agencies and groups. The Board serves on the Delaware School Boards Association Board of Directors, with 2 Board members regularly attending meetings. The Board communicates regularly with DSEA, the Governor's Office, Congressional delegation, superintendents, school administrators, and charter school leaders and boards to discuss policy issues.

The Board hosts informational workshops for stakeholders throughout the year. The Board publicly promotes these sessions to Delaware parents, legislators, and school board members. Grant funds have increased the number and frequency of professional development sessions, to bridge communication gaps. Since 2013, the Board has hosted 15 workshops and professional development sessions with over 1000 participants.

The Board works directly with members of the General Assembly regarding legislation. The Board routinely provides information, testimony, or comment on bills related to Board policy issues or responsibilities, or aligned with the Board's strategic plan and key priorities.

ACCOMPLISHMENTS

- Transition of Delaware's school governance structure to a local school board model, with oversight for statewide policy shared between the Secretary and the Board.
- One of the Board's biggest accomplishments has been the increase in professional development workshops it offers and the resulting unification of a variety of stakeholders. Until recent years, there were sporadic, separate information meetings. With the Board's efforts, the local boards, charters, and other stakeholders have come together to share ideas freely with one another. These workshops have increased discussion related to education issues, helped find common ground to build many of the successes we have realized, and understand challenges that the Board may face in the future.
- Some large accomplishments over the past several years include improvements to Delaware's graduation requirements, and transition to new content standards.
- Development of a multiple measures performance framework for charter schools that enabled a more holistic review of their performance once they are authorized and operating.
- The Board approved the development of the shift away from Adequate Yearly Progress ("AYP") and toward a multiple measures system for all school accountability, after successfully implementing the charter framework.
- In the Board's strategic plan and monthly meeting standing agenda, the Board includes a section titled, "Educators as Catalysts." The Board uses this platform to advocate and take

action on policies improving educator quality, to ensure that every student has access to a quality educator regardless of their zip code. The Board has adopted assessments for prospective educators to demonstrate content readiness and performance readiness to enter the classroom and begin teaching our students. The Board regularly features educators or programs supporting and further developing educators to highlight the catalyzing force they have in the State's schools. This brought attention and further highlighted many of these initiatives and individuals that do not regularly get the headlines and front page stories.

- One of the statutory responsibilities of the Board is to hear requests for school district boundary changes. The Board has heard several of these in its history. Requests include moving from county to district schools, or moving single neighborhoods and partial land parcels from one district to another due to construction. The Board also heard a redistricting request regarding Wilmington Schools and the Red Clay and Christina School District boundaries. The Board will continue to thoroughly review the issue, keeping in mind the overarching question of what impact these changes would have on students and improvements to student learning.

The Board is proud of the accomplishments they have had while considering some of these challenging requests. The Board argues that one of its consistent and strongest attributes is that its members have always been dedicated to the Board's mission, vision, and guiding principles. They utilize this opportunity to be the voice for citizens in education policy. The Board asserts that they have a firm belief and grounding principle to always consider the impact all programs will have on students and student learning. They are most proud of being a student-centered decision-maker.

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CHALLENGES

- The Board could face significant transition in the coming year, with the transition from the Markell to Carney administrations. The President of the Board serves at the pleasure of the Governor, one seat is vacant, and another seat is up for re-appointment. This is more transition at one time than the Board has faced in 10 years.
- The Department may be undergoing significant turnover and transition with the new administration. Because the Board works so closely with the Department, such changes could impact the Board.
- ESSA may result in many changes in state education policy. This work is underway, but will continue into the next school year. The Board needs an informed and dedicated group of policy leaders to oversee and manage these changes.
- Government budgets are getting tighter and impact the demands of preparing our students to be successful and ready for college and career. Policy challenges will continue to mount as the Board looks to determine what programs may need to be revised or how to continue to support the programs that are most impactful.
- Teacher preparation and teacher pipeline is an area of concern throughout the United States. The Board has an obligation to make sure the most prepared and ready teachers are in classrooms for our students. The Board needs to look at how the State attracts and retains teachers and how to improve educator preparation programs. This involves new and innovative approaches to educator preparation and teacher compensation, including the career ladder of growth opportunities.
- The Board has applied for outside grants in recent years, but has no guarantee that they will continue to be available. The Board will continue to look for ways to continue the outreach and programs that we been able to fund through grants.
- Wilmington Education Improvement Commission (“WEIC”) is an issue that the Board has addressed regarding a request to change boundary lines. The Board will continue to monitor and work with WEIC leadership to help finalize a solution that will be in the best interest of students and ultimately improve student learning.⁸
- The State Board Literacy Campaign is an area for opportunity in the State. The Board has the ability through multiple and coordinated approaches to address the challenge of grade level reading by 3rd grade.

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⁸ WEIC was created to move forward on the work that the Wilmington Education Advisory Committee (“WEAC”) began, to strengthen educational opportunities for Wilmington students. The Board approved the WEIC Redistricting plan on February 18, 2016.

OPPORTUNITIES FOR IMPROVEMENT

- The Board would benefit from revisions to their procedures manual.
- The Board would like to have the previous Teacher of the Year as a non-voting member. Other state boards include such a member. The Board believes that the voice of a current educator would add necessary insight.
- The Board would like to further explore the use of technology to stream meeting audio to the public throughout the state. The Board is cognizant of potential costs associated with technology changes and would like to explore ways to increase transparency of government without increasing costs.
- The Board would like to further explore opportunities for increasing capacity and opportunities for outreach and partnership and collaboration with stakeholders.
- The Board would like to consider adding a staff member due to increased work.

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ADDITIONAL COMMENT FROM THE COMMITTEE’S ANALYST

As the Board noted, the National Association of Charter School Authorizers (NACSA) completed an audit of the State’s authorizing practices and made recommendations for improvements. NACSA ranked Delaware 21/33 with recommendations to:

- Consider a default closure policy to make closure the expected outcome for failing charter schools. This creates a differentiated renewal mechanism that can streamline the renewal process while enforcing a high level of charter school accountability.
- As the state conducts its first round of reviews under the new application process, review the process and outcome of the new impact analysis and consider if any modifications are needed. A quality impact analysis process should reflect input from parents and contribute to a high-quality charter sector.
- Review charter school enrollment policies to ensure that state law prevents charter schools from establishing undue barriers to enrollment.

Several members of the public provided comments through letters and during the Committee’s public hearing of the Board. Public comments included support and criticism of the Board.

Support for the Board included:

- Advocacy efforts.
- The Board’s support of fair teacher salaries.
- Implementation of rigorous state standards.
- Efforts to gather stakeholder and public involvement in ESSA.
- Open and effective meetings.

Criticism of the Board included:

- Lack of collaboration and stakeholder representation.
- Lack of elected members to support a citizen’s voice.
- Insufficient opportunity for public comment during regular monthly meetings.
- Time of meeting is not at a time that most members of the public and interested teachers.
- Public comment opportunity should be expanded to provide ample opportunity for the public to comment on each item on the Board’s agenda.

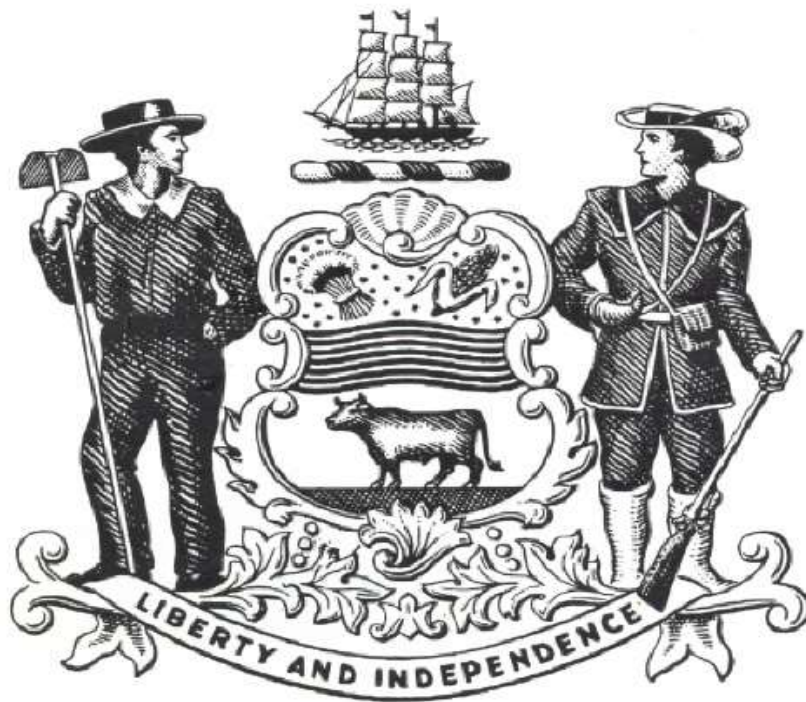
During the Committee’s meetings, it was noted that the Department of Education had not provided feedback regarding the Board. A letter was forwarded to the Department requesting feedback. The Department responded that “collaboration between the State Board and the Department are frequent and fruitful.”

The Committee requested additional details regarding budgeted expenses and travel costs. The Board provided a detailed list of expenses as well as a detail of committee meetings and conferences with costs to SBE.

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Delaware Information & Analysis Center

Joint Legislative Oversight & Sunset Committee 2017 Final Report



Delaware Information & Analysis Center

*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

Senator John J. Walsh,
Chair

Representative Stephanie T. Bolden,
Vice-Chair

Representative Andria L. Bennett

Representative Gerald L. Brady

Representative Timothy D. Dukes

Representative Jeffrey N. Spiegelman

Senator Stephanie L. Hansen

Senator Brian G. Pettyjohn

Senator Bryant L. Richardson

Senator David P. Sokola

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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:

Delaware Information and Analysis Center

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) recommends that the Delaware Information and Analysis Center (“DIAC”) be continued.

1. The DIAC requested the addition of another analyst in order to support the facility’s goal of being a 24/7 operation.

RECOMMENDATION: The Committee shall provide support, by way of letter to the Joint Finance Committee, for the addition of one analyst to DIAC.

OUTCOME: The Committee forwarded a letter to the Joint Finance Committee.¹

¹¹ See Appendix A

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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 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 Delaware Information and Analysis Center (“DIAC”) is a unit that the Delaware State Police (DSP) created in 2005. It was formed out of the DSP Intelligence Section as Delaware’s designated “fusion center.” Currently, DIAC falls under the Delaware State Police (“DSP”), Intelligence and Homeland Security Section. There was no new legislation to create DIAC.

Fusion centers were created as a response to the 9/11 Commission Report, which proposed that “information be shared horizontally, across new networks that transcend individual agencies.”

A fusion center is a state or locally operated entity, designated and recognized by each state’s governor, addressing crime prevention, response, and investigation (including terrorism).² The fusion center concept is defined as “a collaborative effort of two or more agencies that provide resources, expertise, and/or information to the center with the goal of maximizing the ability to detect, prevent, investigate, apprehend, and respond to criminal and terrorist activity.”

DIAC is part of a national network of fusion centers. There are 78 state and major urban area fusion centers in the United States. The role of fusion centers in the network is to serve as focal points with the state and local environment for the receipt, analysis, gathering, and sharing of threat-related information, including terrorism information and information on traditional crime activities, between the federal government and state, local, tribal territories (“SLTT”), and private sector partners.³

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) has not previously reviewed DIAC.

MISSION & GOALS

DIAC’s mission is to combat terrorism through information and intelligence sharing an “all crimes, all hazards” model was developed in order for DIAC to utilize the information sharing and analytical tools beyond the counterterrorism mission.

DIAC’s goals and objectives are:

1. Prevent acts of terrorism.
2. Prevent, reduce, and solve crime through information sharing and analysis.
3. Utilize information sharing tools to add value to homeland security partners through an “all crimes, all hazards” approach. This involves partnerships, collaboration, and innovation.

In the last five years, DIAC participated in the U.S. Department of Homeland Security (“DHS”) Annual Fusion Center Assessment and Gap Mitigation Activities.⁴ The results of this assessment were the topic of legal discussion to keep the results from being publically released and identifying particular strengths

² In 2007, the Secretary for the U.S. Department of Homeland Security and the U.S. Attorney General issued a letter to each governor, requesting the designation of “a single fusion center to serve as the statewide or regional hub to interface with the federal government and through which to coordinate the gathering, processing, analysis, and dissemination of terrorism, law enforcement, and homeland security information.” Further, the letter requested the development of a strategy that “is consistent with federal efforts to constitute the ISE,” which also includes any major urban area fusion center.

³ For the 2014-2017 National Strategy for the National Network of Fusions Centers, click the following link: <https://www.ise.gov/sites/default/files/National%20Strategy%20for%20the%20National%20Network%20of%20Fusion%20Centers%202014.pdf>.

⁴ For additional information regarding fusion center assessment and gap mitigation activities click the following link: <https://www.dhs.gov/annual-fusion-center-assessment-and-gap-mitigation-activities>.

and weaknesses of each individual center. The aggregate data was released. The assessments revealed an average score of 98% in 2015.⁵

Fusion centers are expected to have the following Critical Operating Capabilities (“COCs”):

- Receive: Ability to receive classified and unclassified information from federal partners.
- Analyze: Ability to assess local implications of that threat information through the use of a formal risk assessment process.
- Disseminate: Ability to further disseminate that threat information to other state, local, tribal, territorial, and private sector entities within their jurisdiction.
- Gather: Ability to gather locally generated information, aggregate it, analyze it, and share with federal partners as appropriate.

Fusion centers were expected to have the following Enabling Capabilities (“ECs”):

- Privacy, Civil Rights, and Civil Liberties Protections.
- Sustainment Strategy.
- Communication and Outreach.
- Security.

COMPOSITION & STAFFING OF DIAC

There are currently 23 DSP employees assigned to DIAC. Twelve are sworn troopers and 11 are civilians. DIAC would like to keep the detailed list of employees and their assignments confidential due to safety concerns.⁶

The path for discipline or removal will usually follow the DSP Complaint and Disciplinary Process via DSP Internal Affairs Section. This path is not absolute, since some sworn members may be deemed unfit for duty for not qualifying to carry a firearm, not passing weight or fitness standards, or having their driving privileges revoked for an extended period of time. Some civilian employees, such as analysts, are required to qualify for and maintain a national security clearance. Colonel McQueen and Secretary Coupe have the ultimate authority to approve terminations. No members of DIAC have been removed.

Delaware’s Homeland Security Advisory Council (“HSAC”) is the DIAC Governance Board and is comprised of the following members, all whom may appoint a designee, other than the first 2 listed:

- The Secretary of the Department of Safety and Homeland Security, who serves as chair.
- The Homeland Security Advisor for the Department of Safety and Homeland Security.
- The Adjutant General of the Delaware National Guard.
- The Chief Information Officer of the State of Delaware.
- The Secretary of the Department of Natural Resources and Environmental Control.
- The Secretary of the Delaware Department of Transportation.
- The Secretary of the Delaware Department of Education.
- The Secretary of the Delaware Department of Agriculture.

⁵ The 2015 National Network of Fusion Centers Final Report can be found at <https://www.dhs.gov/sites/default/files/publications/2015%20Final%20Report%20Section%20508%20Compliant.pdf>.

⁶ See Appendix A for the DIAC organization chart. Analyst’s note: Employee safety is important to DIAC staff and their families. Such lists have been distributed to those responsible for terrorizing Delaware’s protectors. News articles to support privacy for DIAC employees have been provided and are available upon request.

- The Commissioner of the Department of Correction.
- The Superintendent of the Delaware State Police.
- The Director of the Division of Public Health.
- The Director of the Delaware Emergency Management Agency.
- The Director of the Division of Motor Vehicles.
- The Executive Secretary of the Delaware Volunteer Firefighters' Association.
- The Chair of the Delaware Police Chiefs' Council.
- The President of the League of Local Governments; and
- Other representatives from federal, state, and local governments, private sector partners, academia, and emergency service organizations, as recommended by the Secretary of Safety and Homeland Security and appointed by the Governor.⁷

Currently, there are 23 HSAC members. Twelve members constitute a quorum.

There is no designated term for DIAC members. Sworn troopers may be transferred out of DIAC to other DSP assignments at the discretion of the DSP Superintendent.

There is no designated term of office for HSAC members. Each new member must receive an official appointment; however, with the position is an expectation that they will serve on the Council or name a designee. For example, if the Director of DEMA retires and is replaced, the DSHS Secretary appoints the new Director HSAC member.

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⁷ Other representatives currently represent Dover Motorsports, Wilmington University, Dover Air Force Base, Delaware Healthcare Association, Amtrak, US Department of Homeland Security, Federal Bureau of Investigation, and the U.S. Attorney's Office.

Staff Member	Responsibilities	Percentage of Time Devoted to Each Responsibility
Captain- Commander (1) DIAC Director	Administrator	50% DIAC 50% Intelligence Unit
Lieutenant (1) DIAC Deputy Director	Administrator	100% DIAC
Lieutenant (1) DIAC Special Projects	Administrator/Project Manager	100% DIAC
Sergeant (1) DIAC	First-Line Supervisor for Analysts and Criminal Intelligence Officers	100% DIAC
Sergeant (1) DSP Maritime Unit	First-Line Supervisor of DSP Maritime Unit	80% DIAC, 20% DSP SCUBA Team (Part-Time Unit, not under DIAC)
Intelligence Analysts (7)	Intelligence Analysis	100%
Crime Analyst (1)	Crime Analysis	100%
Crime Statistician also known as Management/Data Analyst (1)	Statistics	100%
Criminal Intelligence Officers (3)	Support to DSP criminal investigative units in each county(N,K,S) and other police agencies	100%
Planner- Vulnerability Assessment Specialist in Critical Infrastructure Unit (1)	Infrastructure outreach and vulnerability assessments. Maintains specific information on Critical Infrastructure	100%
Terrorism Liaison Officer (1)	Conducts outreach and education concerning suspicious activity reporting related to terrorism and response considerations to acts of violence (i.e. active shooter, violent intruder)	100%
Planner- Weapons of Mass Destruction Unit (1)	Planning, exercise, and training in chemical, biological, radiological, nuclear, and explosive (CBRNE) incidents	100%

Contractors

DIAC has employed 1 contractor for the last 2 years, providing computer programming and technical assistance.

Compensation

DIAC employees are DSP employees, either sworn or civilian, and are compensated as such.

Training

Training is offered throughout the year and throughout the country. The Homeland Security Grant Program (“HSGP”) provides funding for these training opportunities. The Delaware Emergency Management Agency (“DEMA”) HSGP Working Group must approve HSGP expenditures.

DIAC Analysts must complete 8 hours of training per year and DSP Troopers must complete 16 hours of training per year (COPT-Council on Police Training)

Conflict of Interest

DSP internal rules and regulations prohibit conflicts of interest.

Partnerships

DIAC offers many other state entities the opportunity to utilize DIAC tools and information-sharing capabilities to further their mission and add value. For example, in August of 2016, DIAC partnered with the Delaware Department of Health and Social Services, Delaware Division of Forensic Science, Delaware Office of Emergency Services, Delaware Division of Substance Abuse and Mental Health, and the High Intensity Drug Trafficking Area (HIDTA) Program to develop a comprehensive statewide drug monitoring initiative (DMI), initially focusing on the heroin epidemic. This research will greatly assist in painting a better picture of the current operating environment for law enforcement, service providers, and treatment communities in Delaware. Delaware’s DMI will continue to share its findings with the state, region, and nation to combat heroin overdoses and deaths.

In October 2016, DIAC submitted a request to the Delaware National Guard for a full-time Counterdrug Task Force analyst to assist with the DMI project. National Guard leadership agreed that this was a priority for the citizens of Delaware and committed the resource. The position has been posted and a selection panel was held on November 10, 2016. The National Guard analysts assigned to the DMI project are currently working in DIAC.

Next, the DMI partnership will be extended to other agencies and entities. The Delaware Department of Correction (“DOC”) is one excellent example. Many Delaware inmates have had substance abuse issues and DOC inclusion in the DMI project could help shape treatment strategies and efforts in our prisons.

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Agencies that DIAC regularly interacts with are as follows:

Delaware Agencies:

- All Delaware law enforcement.
- Delaware National Guard.
- United States Air Force (DAFB).
- Delaware Emergency Management Agency (“DEMA”).
- Department of Natural Resources and Environmental Control (“DNREC”) .
- Department of Education.
- Department of Transportation.
- Department of Agriculture.
- Dept. of Correction.
- Div. of Public Health.
- Division of Motor Vehicles.
- Delaware Volunteer Firefighters.
- Delaware League of Local Governments.

Federal Agencies:

- Federal Bureau of Investigation.
- U.S. Dept. of Homeland Security.
- Federal Protective Service.
- US Dept. of Agriculture.
- Amtrak Police Department.

Licensing:

DIAC is the conduit for law enforcement officers and personnel to gain access to criminal intelligence information. Individuals must first be trained and certified in 28 CFR, Part 23- Criminal Intelligence Information.⁸ In the past 3 years, 954 individuals received the license and were permitted access to the Delaware Statewide Intelligence System (‘DSIS’). This licensing is valid until their employment is terminated.

A standardized national certification examination is used to test knowledge of 28 CFR Part 23. The United States Department of Justice (“USDOJ”) Bureau of Justice Assistance (“BJA”) develop and score the examination, and issues the certification. Delaware, via DIAC, does not issue licenses outside of Delaware, except to federal law enforcement agency personnel that work within Delaware.

Many other states have reciprocity with DIAC and DIAC users if they are trained and certified in 28 CFR, Part 23. Often times, intelligence is shared through a pointer/index system via the Regional Information Sharing System (“RISS”) network. With a pointer/index system intelligence information is not immediately shared over the network, but the requester is directed to the specific holder (agency) of that information. There may be additional inquiries or requirements as to the right and need to know that information.

The criteria for determining qualifications for licensure include a law enforcement nexus, a need and right to know, and a Delaware Justice Information System (“DELJIS”) access.

⁸ See Appendix B for 28 CFR, Part 23.

	# of License Applications Received	# of License Applications Approved	# of Licenses Issued	# of Licenses Rejected	# of Licenses Revoked
Calendar Year 2014	595	595	595	0	0
Calendar Year 2015	209	209	209	0	0
Calendar Year 2016	150	150	150	0	0

ENACTED LEGISLATION IMPACTING DIAC

State Executive Order:

Delaware Executive Order 21, dated October 12, 2010; reauthorizing the Delaware HSAC with an “all hazards, all persons” approach.⁹

Federal Legislation:

The Code of Federal Regulations, specifically 28 CFR Part 23, covers the collection, retention, and dissemination of criminal intelligence information.¹⁰

Although not laws or regulations, the Fusion Center Guidelines and the National Suspicious Activity Reporting (“SAR”) Initiative standards are guidelines for fusion centers.¹¹

PENDING LEGISLATION

There is no pending legislation at this time.

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

DIAC does not promulgate rules and regulations.

The DIAC website is a resource available to the general public and other potential partners. DIAC is also highlighted in the Delaware State Police Annual Report.

In 2015, DIAC greatly increased public outreach efforts through the creation of the DIAC Terrorism Liaison Officer (“TLO”). The TLO educates the public and particular target groups on reporting suspicious activity related to terrorism. The current terrorism threat stream can guide the TLO outreach effort. For example, when international terrorists were calling for attacks on shopping malls, the TLO reached out to Delaware’s larger commercial establishments and conducted training and awareness events. In response to attacks in American religious institutions, the TLO conducted House of Worship training events in partnership with the United States Attorney’s Office in Wilmington, DE.

⁹ See Appendix C for Executive Order 21.

¹⁰ https://it.ojp.gov/documents/28CFR_Part_23.PDF.

¹¹ https://it.ojp.gov/documents/fusion_center_guidelines_law_enforcement.pdf

This education also provides these target groups with considerations for responding, or planning to respond, to violence.

FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE

All FOIA requests are to be forwarded to the Deputy Attorney General assigned to the Delaware State Police for legal review and recommended response.

DIAC has never received a complaint that it violated FOIA.

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FISCAL INFORMATION

DIAC does not collect fines or fees.

- Total amount of federal funds - \$488,585.
- Type of federal fund – Department of Homeland Security Grants.
- State/Federal Match Ratio - No state match if Port Security grants are used for training.
- State Share of Dollars - \$0.
- Federal Share of Dollars - 100%

FY15 and FY16 Actual Expenditures and FY17 Budgeted Expenditures

Also indicated are the source of expenditures, such as general fund, special fund, or federal fund.

Fiscal Year	Source(s)	Amount \$\$
FY17 (budgeted)	GF	\$2,549,337
	ASF	\$18,000
	NSF (federal/other)	\$733,059
		TOTAL \$3,300,396
FY16 (actual)	GF ASF	\$2,194,347
	NSF (federal/other)	\$18,000
		\$576,629
		TOTAL \$2,788,976
FY15 (actual)	GF	\$2,289,037
	ASF	\$18,000
	NSF (federal/other)	\$679,138
		TOTAL \$2,986,175

FY16 Budgeted Expenses.

Line Item	Source(s)	Amount of Expenditures
Personnel Costs	GF	\$2,373,238
	NSF (Federal)	\$176,274
Vehicle Operating/Capital Costs	GF	\$86,925
Facilities	GF	\$89,173
Computer Services	ASF	\$6,500
	NSF	\$556,785
Misc. Contractual Services	ASF	\$5,000
Plotter Supplies	ASF	\$6,500
		TOTAL \$3,330,396

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ACCOMPLISHMENTS

The largest accomplishment is that DIAC has matured into an effective fusion center and has consistently met the expectations set by the US Department of Homeland Security. DHS, under the Secretary for Intelligence and Analysis, Francis X. Taylor, testified before the US House Homeland Security Committee on September 14, 2016 concerning shutting down terrorist pathways into America. He stated, “Today, the National Network of Fusion Centers serves as the cornerstone of domestic information sharing, and architecture, providing grassroots intelligence and analytic capabilities to their customers at the state and local levels.” There is a full-time DHS Intelligence Officer assigned to work in DIAC to capitalize on these resources.

On October 26, 2016, the Director of the Federal Bureau of Investigation (“FBI”), James Comey, addressed hundreds of representatives from fusion centers at the National Fusion Center Association (“NFCA”) conference in Alexandria, VA. Director Comey discussed terror threats and the FBI desire to work more closely with all fusion centers. FBI has been working through their Office of Partner Engagement (“OPE”) to find the best possible ways to increase these working relationships. Director Comey stated that co-location of fusion center and FBI personnel was an extremely effective way of working together, but not possible in every scenario. He also discussed security clearances for fusion center personnel, so that the FBI could be readily transparent with as much information as possible. This is already occurring in DIAC and is a significant accomplishment.

The Director of National Intelligence, James Clapper, also spoke at the October 2016 NFCA Conference. He discussed how fusion centers fit into the national framework for increased homeland security efforts. Deputy Secretary of DHS, Alejandro Mayorkas, chose to spend his last day in office at the NFCA Conference and also addressed the event participants. These actions demonstrate the strong partnerships between the federal government and their state, local, and tribal territory partners via the fusion center network and can be viewed as a significant accomplishment.

DIAC is well-positioned to share threat information with the federal government, both as the provider and the recipient. The following examples provide clear evidence:

- In February 2015, Delawareans learned that a terror suspect was operating a kiosk at the Dover Mall. He was arrested and accused of being part of a plot to raise money to fly 2 subjects to Syria to join ISIL fighters. This was Plan A. Plan B was to remain in the US and kill a police officer and take his weapon and kill more police officers. This case was a surprise to most who read it in the news. DIAC personnel had been briefed months earlier by the FBI and had participated in activities to ensure that Plan B did not occur. In addition, leadership from the Delaware State Police and Dover Police Department were made fully aware of the investigation and supported the FBI-led efforts. This degree of information sharing and partnership is at the highest level ever in Delaware.¹²

¹² More details of this investigation are available to JLOSC on a confidential basis.

- In July 2015, the Middletown Police Department was alerted by a Delaware citizen who saw a disturbing Facebook post of a photograph of an acquaintance holding a Koran and an assault rifle while wearing Arab-style clothing. This photograph was similar to martyr photos often produced by terrorists and was posted in the immediate wake of the terror-inspired killings of 5 US military service members in Chattanooga, Tennessee. The Middletown PD officer notified DIAC and emailed the photograph. The on-call DIAC analyst observed the notification, determined that the incident needed immediate attention and made contact with DIAC leadership. Within minutes, FBI leadership in Delaware was made aware of the incident and a Joint Terrorism Task Force investigation was launched. DSP and FBI investigators determined that the individual in the photo was holding a real assault rifle, had recently taken the photo, and was prohibited from possessing firearms due to a domestic violence conviction. Investigators also learned that the subject held extreme radical Islamic beliefs and spent hours a day watching beheading videos. The subject was arrested for illegally possessing a firearm and eventually convicted. He was not linked to any plots to do harm.¹³

DIAC personnel have been very effective at finding information to add value to criminal investigations. DIAC information-sharing efforts have also added value to solving cases.¹⁴

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¹³ More details of this investigation are available to JLOSC on a confidential basis.

¹⁴ More details of this investigation are available to JLOSC on a confidential basis.

CHALLENGES

The counterterrorism mission is extremely challenging. It is tantamount to investigators being expected to identify and apprehend a bank robber prior to the subject committing the actual robbery. Efforts in this area are often very difficult to measure for effectiveness and crime prevention.

DIAC has the immediate need to have 24/7 coverage, particularly for the “watch” function. Currently, this is accomplished through the on-call analyst periodically checking the DIAC email box and/or administrators responding to calls or reacting to reported events. DSP Headquarters Communications is 24/7 and notifies DIAC personnel during non-working hours for matters that appear to necessitate immediate attention. Other “on-call” DIAC personnel remain available to respond for an emergency which is not an uncommon business practice for DSP.

Staffing is an issue. DIAC has several “units” consisting of only 1 person. This presents an obvious problem for continuity of operations, including extended hours, long-term events, and even planned vacations; unplanned vacancies; and general turnover, including transfers, and retirements.

OPPORTUNITIES FOR IMPROVEMENT

DIAC works under the philosophy of “continuous improvement.” There can always be improvement in methods of sharing and analyzing information. DIAC not only looks for the best methods, but also seeks out smart methods that could have applicability. In the fusion center environment it is important to look at information from several different angles. This can effectively be accomplished through the sharing of information and the inclusion of personnel with different backgrounds and from different disciplines. Looking at things through different lenses can greatly enhance analytic capabilities and enhance the quality of product production. DIAC should continue to seek buy-in from potential partners and increase efforts to have these partners contribute to the fusion center mission through inclusion and if possible, immersion.

ADDITIONAL COMMENT FROM THE JOINT SUNSET ANALYST

The JLOSC requested review of the DIAC due to concerns regarding its potential use of the Stingray technology, first observed in a News Journal article in February 2016. The DIAC provided the JLOSC with an overview of technology regarding cell phone data and that DIAC follows guidelines regarding the retention of data set forth by the National Strategy for the National Network of Fusion Centers. DIAC utilizes information to detect, prevent, investigate, apprehend, and respond to criminal and terrorist activity.

DIAC would like to become a 24 hour, 7 day a week operation in the future, which would require additional funding.

Appendix A: Letter to the Joint Finance Committee

Sen. John J. Walsh, Chair
Sen. David P. Sokola
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

April 27, 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 Delaware Information and Analysis Center Funding

In 2017, the Joint Legislative Oversight and Sunset Committee ("JLOSC") conducted a comprehensive review of the Delaware Information and Analysis center ("DIAC"). After a public hearing and a recommendation meeting held earlier this session, the JLOSC adopted three recommendations relating to DIAC.

One of the adopted recommendations relates to funds appropriated to DIAC through the Delaware State Police 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 the addition of one analyst to DIAC.

JLOSC heard testimony from DIAC staff regarding ongoing challenges in keeping Delaware safe from crime and potential terrorist activity. DIAC is part of a national network of fusion centers. There are 78 state and major urban area fusion centers in the United States. The role of fusion centers is to serve as focal points with the state and local environment for the receipt, analysis, gathering, and sharing of threat-related information, including terrorism and traditional crime activities, among the federal government; state and local governments; tribal territories; and private sector partners.

JLOSC respectfully requests your review and consideration for appropriations to ensure that support can be provided for an additional analyst. The pay grade 13 Intelligence Analyst would cost a total of \$70,308 per year, which includes salary, fringes, and health costs. Unlike some fusion centers across the nation, DIAC is not a 24-hour, 7 day per week operation. The addition of another analyst could support DIAC's goal of becoming a 24/7 facility. JLOSC understands the current state of the budget, but believes that DIAC and their work is a high priority, and consideration should be made to provide funding.

Sincerely,



Senator John J. Walsh
Chair, JLOSC

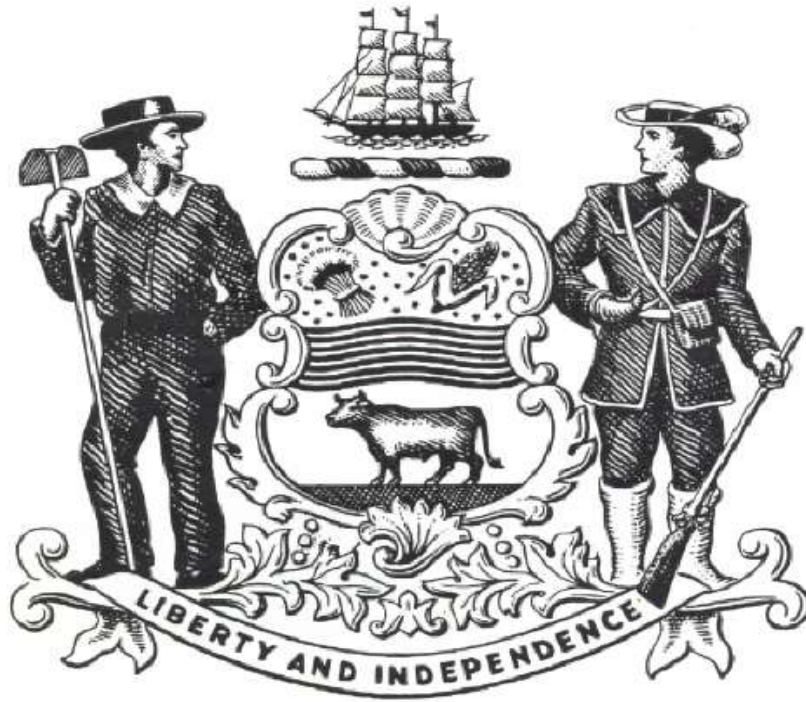


Stephanie T. Bolden
Vice-Chair, JLOSC

cc: JLOSC Members
Major Daniel Meadows, DIAC

Agricultural Farmland Preservation
Foundation

Joint Legislative Oversight & Sunset Committee 2017 Final Report



Agricultural Lands Preservation Foundation

*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

Senator John J. Walsh,
Chair

Representative Stephanie T. Bolden,
Vice-Chair

Representative Andria L. Bennett

Representative Gerald L. Brady

Representative Timothy D. Dukes

Representative Jeffrey N. Spiegelman

Senator Stephanie L. Hansen

Senator Brian G. Pettyjohn

Senator Bryant L. Richardson

Senator David P. Sokola

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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: Agricultural Lands Preservation Foundation

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) recommends that the Agricultural Lands Preservation Foundation (“Foundation”) be continued.

1. The Foundation requested the removal of the 25 year provision, found in 3 *Del. C.* § 917, from the Foundation’s governing statute. This would not apply to easements acquired previously, only newly acquired easements. Elimination of this clause would require legislative approval for any preservation easement termination.

RECOMMENDATION: The JLOSC approved draft legislation which removes the 25 year provision. This legislation was amended to strike that language from the bill.

OUTCOME: Senate Bill 74, with Senate Amendment No. 1, provided in Appendix A. The Amendment is a result of opposition to removing the 25 year provision.

2. The JLOSC recommended that statute language include a process for removal of a Foundation member.

RECOMMENDATION: The Foundation shall provide to JLOSC proposed amendments to its governing statute to include standard language regarding removal of a foundation member.

3. The JLOSC recommended a technical correction to 3 Del.C. §945.

RECOMMENDATION: The Foundation shall provide to JLOSC an amendment to 3 Del.C. § 945 to correct a mistake in the code reference. The reference should be for 909(a)(4) a. and b. rather than 904(a)(4) a and b.

OUTCOME: Senate Bill 74, provided in Appendix A is the result of the above recommendations.

RECOMMENDATION: The Foundation shall be released from review [upon the enactment of recommended any/all legislation] with no reporting requirements.

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A NOTE ABOUT THIS FINAL 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. Any point of consideration which arose in analyzing the questionnaire and compiling this report is addressed in the section titled “Additional Comment from the Committee’s Analyst.”

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AGENCY HISTORY

The Delaware Aglands Preservation Foundation (“Foundation”) was established in 1991 by House Bill No. 200.¹ The impetus for the legislation, through efforts by the Delaware State Grange, was to establish a farmland preservation program to address Delaware’s dwindling farmland base. Maryland, New Jersey, and Pennsylvania all had farmland preservation programs at the time.

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

The Committee previously reviewed the Foundation in 1986 and 1994. In its 1994 review of the Foundation, the Committee made specific recommendations concerning the Foundation’s operations and statute.

Recommendation #1: The Committee recommended that the Agricultural Lands Preservation Foundation not be terminated, but rather that the Foundation be continued.

The Foundation has continued to function since the last Committee review.

Recommendation #2: The Committee sent correspondence to the Joint Finance Committee urging that they appropriate support in the amount of \$100,000 to the Agricultural Lands Preservation Foundation.

The Aglands Preservation Foundation has received funding since FY96 of at least \$2 million per year.

Recommendation #3: The Committee recommended that the term “agricultural preservation easement” be defined in the Foundation’s statute.

The Foundation’s statute contains a definition of “preservation easement” and a definition of “forestland preservation easement” – these definitions are located in § 902 of Title 3.

Recommendation #4: The Committee recommended that the Foundation provide a decision regarding the Secretary of Agriculture’s separate veto powers over the establishment of preservation districts and easements.

The Foundation retained the Secretary of Agriculture’s separate veto powers over the establishment of districts and easements.

MISSION & GOALS

The Foundation’s mission is to protect viable farmlands and forestlands to serve the long-term needs of the agricultural community and the citizens of Delaware.

The Foundation’s goals are to:

- *Permanently protect enough farmland to maintain a viable agricultural industry in Delaware (250,000 acres by 2035). This is accomplished through the voluntary purchase of development rights from landowners utilizing primarily state funds, but, when possible, with matching funds from federal, county, and nongovernment organizations.*

¹ See summary of legislation on pages 10 and 11

- *Ensure there are a sufficient number of farmers to maintain an agricultural industry.* This goal is addressed through the Young Farmer's Loan Program which provides long-term, no-interest loans to qualified applicants to help them purchase a farm. These farms are also placed into permanent agricultural preservation easements.
- *Enhance the profitability and viability of agriculture.* The purchase of development rights and the Young Farmer Loan Program both provide funding to farmers to both help them grow their business and remain profitable.

The Foundation supports these goals by tracking the following information statewide and by county:

- Agricultural district/expansion applications.
- Agricultural preservation easement applications.
- Agricultural preservation easements purchased.
- Young Farmer Loan Program prequalification applications.
- Young Farmer Loan Program loan applications.
- Young Farmer Loan Program loans settled.
- Forestland Preservation area applications.
- Forestland Preservation easement applications.
- Forestland Preservation easements purchased.

COMPOSITION & STAFFING OF THE FOUNDATION

There are 13 Trustees, as defined in the foundation's governing statute.² The legally designated term of office for Foundation trustees is three years. Trustees may serve multiple terms.

The governing statute defines the qualifications and requirements for the Trustees. The membership includes:

- Secretary of Agriculture.
- Secretary of DNREC.
- State Treasurer.
- DE Farm Bureau Representative.
- DE State Grange Representative.
- Farmer/agribusiness person from each county.
- Chairperson of Governor's Council on Forestry.

There is currently no representative from the House of Representatives or the Senate. Concerns have been raised about dual office provisions contained in the Delaware Constitution regarding legislators.

² See Appendix A for governing statute, 3 Del. C. § 901- § 949.

Compensation:

The Foundation's Trustees are not compensated for the services they provide to the Foundation; however, each Trustee is entitled to reimbursement for actual and necessary expenses incurred to enable the performance of official duties.

Member Trainings:

Trustees are not offered any formal training; however, staff will meet with new Trustees, if requested, to review the program and its laws and regulations.

Conflict of Interest:

The governing statute includes language regarding conflicts of interest.³ Foundation Trustees are not permitted to vote on any matter where the Trustee knowingly has a financial interest.

Staffing:

There are seven Department of Agriculture ("Department") staff members (one appointed and six merit) that assist the Foundation:

- Deputy Secretary (appointed).
- Three (3) Planner positions.
- Administrative Specialist II.
- Management Analyst II.
- Accounting Specialist.

The Accounting Specialist and Management Analyst II work full-time for the Foundation. The remaining merit positions perform other duties within the Department, although most of their time is devoted to the Aglands Preservation Program.⁴

Recruitment and Training:

All of the staff, excluding the Deputy Secretary, are merit positions recruited and hired through the state recruiting process. There is not an orientation session for new hires; however, staff work with new hires to develop a performance plans, conduct performance reviews, and train them as needed.

As merit employees, staff have access to training opportunities as other merit employees funding permitting.

Temporary or Contractual Employees:

The Foundation did not have temporary or contractual employees during the past two fiscal years. However, the Foundation does utilize outside legal counsel, Parkowski, Guerke, and Swayze for all legal matters.⁵ The Foundation utilizes a private appraiser, Karen H. Belinko Appraisals, LLC, to complete all of the appraisals for the program. The Foundation also contracts with an independent accounting firm, Faw Casson, to compile the annual financial statements as recommended in an earlier audit.

³ See Appendix A for governing statute, 3 *Del C.* § 901-§ 949.

⁴ See Appendix B for staff list.

⁵ See Appendix C for 2006 letter from Dept. of Justice to Parkowski, Guerke & Swayze, P.A. regarding legal service fees.

Staff Limitations:

The Foundation is not hindered by a lack of staff assistance. Some of the merit positions have been reclassified over the past three years to better address the work-load and control of duties. For instance, the Foundation reclassified a vacant position to a Planner III position. The Planner III now handles all of the geographic information system (“GIS”) mapping duties. These duties were previously handled by a private contractor.

Licensing:

The Foundation does not issue any licenses or certificates.

ENACTED LEGISLATION IMPACTING THE FOUNDATION

State Legislation:

House Bill No. 200 – 136th General Assembly – Signed July 8, 1991. Enabling legislation (Title 3, Chapter 9).

Senate Bill No. 177 (21st Century Fund) – 138th General Assembly – Signed July 1995. This legislation provided the initial funding of \$12 million for the purchase of development rights, also called preservation easements, from the Twenty-First Century Fund. The legislation required a minimum of a 20% match of non-state funds, which could include discounts or donations of the easement value by the landowner.

House Bill No. 750 (FY99 Bond Bill) – 139th General Assembly – Signed July 8, 1998. The Epilogue of the Bond Bill amended the original Aglands Preservation law and added a requirement to prioritize the creation of agricultural preservation districts and preservation easements near and adjacent to designated growth zones.

Senate Bill No. 193 – 139th General Assembly – Signed January 27, 1998. This legislation allowed district expansions to occur within three miles (instead of one mile) of an agricultural district.

Senate Bill No. 333 – 142nd General Assembly – Signed August 23, 2004. This legislation: (1) eliminated the requirement that any residences on farms enrolled in the Aglands Preservation Program must be for family or farm help and instead limited the number of residences to three, with no requirement on who could live in them; and (2) clarified or specified certain types of activities that are allowed on farms enrolled in the Program.

Senate Bill No. 121 w/SA 1 – 143rd General Assembly – Signed July 20, 2005. This legislation established the Forestland Preservation Program (Title 3, Chapter 9, Subchapter V). It also added the Chair of the Governor’s Council on Forestry to the Foundation Board.

Senate Bill No. 190 (FY06 Bond Bill) – 143rd General Assembly – Signed July 1, 2005. Added a member of the House, appointed by the Speaker, and a member of the Senate, appointed by the President Pro Tem, to the Foundation Board.

Senate Bill No. 229 – 143rd General Assembly – Signed July 20, 2005. Transfers \$10 million of the realty transfer tax receipts to the Delaware Farmland Preservation Fund on or before October 15 each year.

Senate Bill No. 117 – 146th General Assembly – Signed July 28, 2011. This legislation established the Young Farmers Loan Program (Title 3, Chapter 9, Subchapter VI).

Senate Bill No. 124 – 148th General Assembly – Signed February 3, 2016. This legislation added a 13th member to the Foundation Board; this individual must be actively involved in farming or an agribusiness.

Senate Bill No. 201 – 148th General Assembly – Signed May 11, 2016. This legislation clarified that private airstrips for non-commercial use are allowed on farms enrolled in the Aglands Preservation Program.

Senate Bill No. 260 – 148th General Assembly – Signed July 28, 2016. This legislation allowed certain agri-tourism activities, such as barn weddings, educational tours, and annual and semi-annual events, such as festivals, to occur on enrolled farms, with prior written permission from the Foundation Board.

Federal Legislation:

The Agricultural Lands Easement Program (“ALE”) authorized by the 2014 Farm Bill and administered by the United States Department of Agriculture Natural Resources Conservation Service (“NRCS”) provides federal matching funds to qualifying farmland preservation programs to purchase farmland preservation easements. Also see information in Fiscal Information Section.

PENDING LEGISLATION

There is no pending legislation at this time.

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

The Foundation promulgates rules and regulations. Current rules and regulations have been reviewed for compliance by Parkowski, Guerke, and Swayze.⁶

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⁶ See Appendix D for Regulations adopted November 18, 2015.

FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE

FOIA requests are handled by the Department’s FOIA coordinator. The coordinator processes and responds to requests in consultation with Foundation staff, the Department’s Deputy Attorney General, and Foundation legal counsel, if needed.

Since 2014, the Department received seven FOIA requests pertaining to the Foundation. Of those requests, four were fulfilled, one was fulfilled in part and withdrawn in part, one required additional information from the requestor that was not provided, and one request had no such records available.

The Foundation has never received a complaint that it violated FOIA.

The following information is available to the public without requiring a formal FOIA request.

Meeting agendas are posted at least seven full days prior to the meeting, both in the publicly-accessible lobby area of the Department of Agriculture at 2320 South DuPont Hwy., Dover, DE, and on the State’s public meeting calendar.

Meeting minutes are prepared after every meeting and are posted on the State’s public meeting calendar once they are approved by the Foundation Board. They are also available upon request from Delaware Department of Agriculture (“Department”).

The Foundation has gone into executive session during the past three calendar years; however, no action is taken during executive session.⁷ These instances included the review the landowner bids for easement purchases and to review Young Farmer loan applications, as these documents contain confidential financial information. There was also one executive session to review the confidential health records of an individual whose family was petitioning to have their agricultural preservation district terminated. Requests for minutes of executive sessions are handled through the Department of Agriculture’s standard FOIA request process and disclosure decisions are made on a case-by-case basis.

The Foundation publishes its current Situation Report in conjunction with each Foundation Board meeting that summarizes the number of statewide and county agricultural preservation districts and easements, including funding.⁸ The report also includes a summary of the Young Farmers Loan Program and the Forestland Preservation Program. These reports are provided upon request and published on the Delaware Department of Agriculture webpage: http://www.dda.delaware.gov/aglands/Aglands_news.shtml.

The list, by year and round of agricultural land preservation easements purchased is also available on the website and by request at: http://www.dda.delaware.gov/aglands/Indpres_prog.shtml.

This same page of the website includes an overview of the Aglands Program; as well as links to the various applications, the enabling statute, the rules and regulations, and an interactive, online statewide map (using Delaware FirstMap) that shows the locations of agricultural preservation districts, easements, Young Farmer Loan properties, and Forestland Preservation easements.

There is a page on the website for the Young Farmers Loan Program which contains the program information packet, including application forms, and the list of Young Farmer loans awarded: http://www.dda.delaware.gov/aglands/young_farmers.shtml.

⁷ Executive sessions occurred during the following meeting dates: 10/16/13, 11/20/13, 12/19/13, 1/15/14, 4/16/14, 12/10/14, 4/14/15, and 5/18/16.

⁸ The Foundation Board typically meets each month.

Interest Groups (Groups affected by agency actions or represent others served by or affected by agency actions)		
Group or Association Name/Contact Person	Address	Phone Number Fax Number Internet Address
Delaware Farm Bureau Contact: Pam Bakerian, Executive Director	3457 S. DuPont Highway Camden, DE 19934	302-697-3183 pam.bakerian@defb.org
Delaware State Grange Contact: William (Chip) Narvel, Jr., Secretary	911 S. Governors Avenue Dover, DE 19904	302-734-4653
The Nature Conservancy – Delaware Chapter Richard I.G. Jones, Jr. - Director	100 West 10 th Street Suite 1107 Wilmington, DE 19801	302-654-4707 Ext. 426 Richard.jones@tnc.org
Delaware Nature Society Contact: Brenna Goggin – Director of Advocacy	P.O. Box 700 Hockessin, DE 19707	302-239-2334 Ext. 132 brenna@delnature.org
League of Women Voters of Delaware Contact: Peggy Schultz, Land Use and Transportation Chair	2400 W. 17 th Street, Clash Wing Room 1, Lower Level Wilmington, DE 19806	302-255-7182 schultz_peggy@yahoo.com

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National Organizations or other Government Entities (that serve as an information clearinghouse or regularly interact with the agency)		
Group or Association Name/Contact Person	Address	Phone Number Fax Number Internet Address
USDA Natural Resources Conservation Service – Delaware Office Contact: Paul Petrichenko, Asst. State Conservationist - Programs	USDA NRCS 1221 College Park Drive Suite 100 Dover, DE 19904	302-678-4180 paul.petrichenko@de.usda.gov
American Farmland Trust (AFT) Contact: Jim Baird, Mid-Atlantic Director	1150 Connecticut Ave, NW Suite 600 Washington, DC 20036	202-378-1235 jbaird@farmland.org
Kent County Levy Court Contact: Sarah Keifer, Director, Dept. of Planning Services	555 Bay Road Dover, DE 19901	302-744-2471 302-736-2128 (fax) Sarah.Keifer@co.kent.de.us
Sussex County Contact: Todd Lawson, Administrator	Sussex County Administrative Office Building, 1 st Floor 2 The Circle P.O. Box 589 Georgetown, DE 19947	302-855-7742 302-855-7749 (fax) tlawson@sussexcountype.gov
New Castle County Contact: Matthew Meyer, County Executive	New Castle County Government Center 87 Read's Way New Castle, DE 19720	302-395-5102 302-395-5268 (fax)
Ducks Unlimited Contact: Jacob McPherson, Regional Biologist – MD, DE, WV	114 South Washington Street Suite 104 Easton, MD 21601	410-690-7346 jmcperson@ducks.org
DelDOT Contact: Rosemary Richardson Statewide Acquisition & Relocation Manager	DelDOT 800 Bay Road P.O. Box 778 Dover, DE 19903	302-760-2231 rosemary.richardson@state.de.us

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FISCAL INFORMATION

Fiscal Year	Source(s) of Funds	Amount \$\$
FY17 (budgeted)*	Special Funds Aglands Preservation Fund (Bond Bill) Department's Pesticides Section ⁹ Property Rollback Taxes ¹⁰ County funds (farmland preservation) ¹¹ Young Farmer Loan Repayment Property Lease (Wilson Farm) ¹² License Plate Income ¹³ Interest Income	 \$2,500,000 \$275,000 \$168,808 \$116,127 \$23,727 \$12,155 \$5,500 \$3,445
		TOTAL: \$3,104,762
FY16 (actual)	Special Funds Aglands Preservation Fund (Bond Bill) Department's Pesticides Section Property Rollback Taxes County funds (farmland preservation) Sussex County payment – Wilson Farm ¹⁴ Young Farmer Loan Repayment Property Lease (Wilson Farm) License Plate Income Interest Income Donations	 \$3,000,000 \$294,000 \$120,915 \$146,432 \$66,010 \$23,727 \$12,155 \$6,580 \$3,445 \$2,000
		TOTAL: \$3,675,264
FY15 (actual)	Special Funds Aglands Preservation Fund (Bond Bill) Property Rollback Taxes Ducks Unlimited Funds ¹⁵ County funds (farmland preservation) Young Farmer Loan Repayment Property Lease (Wilson Farm) License Plate Income Interest Income Federal Funds	 \$2,000,000 \$63,941 \$135,255 \$95,526 \$23,727 \$11,576 \$5,145 \$1,501 \$4,847,270
		TOTAL \$7,183,941

Federal Funds:

⁹ While the FSF Budgetary reports for FY16 show a combined spending authority of \$508,800 in ASF, the FY16 Bond Bill Epilogue directed the Foundation to utilize ASF from the Department's Pesticides Section for the Foundation's operating expenses. The FY17 Bond Bill Epilogue contained the same provision; staff hope to use only \$275,000 of Pesticides funds for the Foundation's operating expenses. Revenue is shown as it is received, so receivables are counted in the fiscal year in which they are actually paid.

¹⁰ Expected receipts of rollback tax income as of June 30, 2016, is included in the budgeted revenue for FY17.

¹¹ County funds are those received from the counties to assist with the purchase of preservation easements within those counties.

¹² The Foundation was willed a 47-acre farm, the Wilson Farm, located between Lewes and Rehoboth in 2004. The cropland is leased to a farmer and the rental income is placed into the Wilson Farm account specifically for the maintenance and improvement of the farm.

¹³ The Foundation receives the fees for the purchase of the Agricultural Farmland Preservation license plates.

¹⁴ Sussex County purchased a permanent easement on the Wilson Farm in FY16 to expand their adjoining sewer pump station. These funds were deposited into the Wilson Farm account.

¹⁵ Ducks Unlimited provided funding, through a North American Wetlands Conservation Act ("NAWCA") grant they received from the U.S. Fish and Wildlife Service, to assist with the purchase of preservation easements on farms that had forested wetlands.

In FY14, the Foundation received \$4,847,270 of matching federal funds from the USDA National Resources Conservation Service (NRCS) Farm and Ranch Lands Protection Program (“FRPP”). These funds assisted with the purchase of five qualifying easements in Round 17 and 23 easements in Round 18 (FY13 and FY14 purchases) and provided up to 50% of the federal easement value for each farm. Landowner donation can count as part of the State’s 50% match; however, the federal program will not pay more than 75% of the actual purchase price. The State must pay at least 25% of the easement purchase price even if the landowner discounted more than 50% from the appraised value. Note that these funds were not available for all easement purchases, only those that met the federal criteria.

FRPP was eliminated by the 2014 Farm Bill and the Delaware Aglands Program has not received any funding from the new USDA easement program – the Agricultural Land Easement (ALE) program. The Foundation continues to negotiate with USDA NRCS to try to reach mutually agreeable conservation easement deed terms. Two major issues must be satisfied for the Foundation to receive federal funding:

- Subdivision into smaller farms - Currently ACEP/ALE provides three options for dividing a preserved farm into smaller farms: (1) none; (2) identify future subdivisions at the time of easement settlement, which is virtually impossible; or (3) subdivide in the future as long as the resulting parcels are not smaller than the median-sized farm for that county based on USDA’s latest Ag Census.¹⁶ The Foundation has multiple instances where an owner wants to subdivide 15-20 acres, such as to a child or other relative, for a poultry operation; this is not possible with current terms. The Foundation argued that as long as the resulting subdivisions meet the entity’s (State’s) definition of a farm, subdivision should be allowed. Delaware uses the definition of Delaware’s Farmland Assessment Act, which is 10 acres, although the Farmland Assessment Act allows smaller farms if they generate at least \$10,000 annually in agricultural sales, such as a poultry farm, vineyard, etc. As of February 7, 2017 NRCS agreed to allow Delaware’s terms in the conversation easement deed regarding subdivision.
- Eminent Domain/State Sovereignty – ACEP/ALE states that NRCS has to approve or disapprove a state’s eminent domain (condemnation) requests. It is unclear whether NRCS would deny such a request; however, they do have the ability. The Foundation does not support the USDA NRCS, or any other entity, to have the ability to prohibit the State from using its right of eminent domain.
- Currently, some of the provisions in the federal conservation easement deed conflict with Delaware’s easement terms. Prior to the 2014 Farm Bill, Delaware received over \$49 million of federal funds between 1997 and 2014 through FRPP to assist with the purchase of 302 easements. As previously noted, the 2014 Farm Bill eliminated FRPP and replaced it with ALE.

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¹⁶ The median-sized farm in Delaware is currently 25 acres in New Castle County, 37 acres in Sussex, and 40 acres in Kent

Actual (FY15, FY16) and Budgeted (FY17) Expenditures:

Fiscal Year	Source(s)	Amount \$\$
FY17 (budgeted)	Special Funds	\$3,376,976
		TOTAL \$3,376,900
FY16 (actual)	Special Funds	\$1,682,016
		TOTAL \$1,682,016
FY15 (actual)	Special Funds Federal Funds	\$6,636,843 \$4,847,270
		TOTAL \$11,484,113

FY17 Budgeted Expenses:

Line Item	Source(s)	Amount of Expenditures
Easement purchases and associated closing costs and survey fee	Special Fund – Bond Bill	\$2,866,000
Easement Appraisals	Special Fund – Bond Bill	\$165,000
Easement Options and Negotiations	Special Fund – Bond Bill	\$65,000
Legal Fees (not related to easement purchases – i.e., district agreements, district modifications, ownership changes, etc.)	Special Fund – Pesticides Appropriated Special Funds (“ASF”)	\$130,000
Salaries & OECs (Accounting Specialist & Management Analyst)	Special Fund – Pesticides ASF	\$107,700
Financial Statement Preparation and Annual Financial Audit	Special Fund – Pesticides ASF	\$37,500
Insurance	Special Fund – Pesticides ASF	\$5,500
Supplies	Special Fund – Pesticides ASF	\$200
		TOTAL \$3,376,900

The significant impacts to the Foundation’s budget over the past three years are:

- Not receiving the full \$10 million of state funding to purchase easements.¹⁷
- Not receiving any USDA NRCS federal funds to purchase easements since 2014.
- Using Department’s Pesticides Section ASF for operating expenses.

¹⁷ FY13 was the last year that the Foundation received \$10 million in state funding.

The reduction in state funding for easement purchases over the past three years coupled with the loss of federal funds since 2014, significantly reduced the number of easements that the Aglands Program was able to purchase over the past three years. Additionally, having to utilize Department's Pesticides Section funds for operating expenses is a burden for the Pesticides program.

AUDITS

The State Auditor of Accounts conducts an audit of the Foundation's financial records annually through an outside accounting and audit firm. The most recently completed audit (FY15) had the following finding:

The Foundation's FY15 financial statements neglected to address the Foundation's adoption of Government Accounting Standards Board ("GASB") Statement No. 68 "Accounting and Financial Reporting for Pensions" and GASB Statement No. 71 "Pension Transition for Contributions Made Subsequent to the Measurement Date."

The Foundation staff was not aware of the requirement to implement GASB Nos. 68 and 71 into the financial statements, since all staff are state employees; however, staff will meet quarterly with the Department's Controller to discuss accounting procedures.¹⁸

The Foundation's FY16 Audit revealed no findings.

ACCOMPLISHMENTS

- Of the 250,000 acre goal, the Foundation has acquired permanent preservation easements on 825 farms totaling over 118,000 acres. Total cost of easements is \$211 million with a total donation (discount) by landowners of over \$273 million.
- Twenty eight Young Farmer loans settled since 2011 totaling \$6.3 million, which helped young farmers purchase over 2,200 acres. These farms are also permanently preserved.
- Nearly 300 farms totaling 54,000 acres enrolled in 10-year agricultural preservation districts.
- Nine Forestland Preservation easements totaling 872 acres. This program was funded for only one year but still exists.

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¹⁸ Analyst Note: FY15 Audit and Financial Statement is available upon request.

CHALLENGES

- Lack of consistent state funding. Legislation passed in 2005 directs \$10 million of realty transfer funds to the Aglands Preservation Program annually; however, due to recent state budget constraints, this amount has been reduced.
- Reduced or eliminated federal funding. As mentioned previously, Delaware’s Aglands Preservation Program received over \$49 million of USDA matching funds for farmland preservation between 1997 and 2014. Since passage of the 2014 federal Farm Bill, the Program has not received any funds due to federal easement deed requirements that conflict with the state’s easement terms. Staff continue negotiations with USDA NRCS to resolve this issue. Staff and legal counsel are also negotiating with the U.S. Department of Defense to use Readiness and Environmental Protection Integration (“REPI”) funds to assist with the purchase of easements that are near military facilities.
- Reduced landowner participation. Landowner participation in the program, such as, landowners enrolling their lands into the ten-year district agreements, has decreased over the past year; we believe this is primarily due to the reduced funding.

OPPORTUNITIES FOR IMPROVEMENT

- Full state funding of \$10 million would enable the Foundation to reduce the backlog of over 250 landowners who wish to voluntarily sell their preservation easements. It would also provide additional opportunities to receive matching funds from other organizations.
- Opportunity to receive matching federal funds for easement purchases. As mentioned previously, staff continue to negotiate with USDA NRCS to attempt to reach mutually agreeable conservation easement deed language so that the Aglands Program can receive ALE federal funds.
- Consider reducing the initial period for agricultural preservation districts from 10 years to 5 years; this may increase landowner participation. Landowners must enroll their farm into an agricultural preservation district before they are eligible to sell their development rights. Some owners have stated that the initial 10-year commitment, with no monetary compensation, is too long.
- Consider eliminating the clause that allows landowners to apply to buy back their farm development rights at least 25 years after the Foundation purchases the easement. The landowner has to prove that they can no longer profitably farm the property and pay to the Foundation the farm’s current development rights value, which would be the current fair market value at the highest-valued development zoning category, less any farm value. The ultimate decision to terminate is the Foundation’s. There has been some discussion if this provision is needed, if it were changed, it would not apply to easements acquired previously, only newly acquired easements. Elimination of this clause would require legislative approval for any preservation easement termination.
- Provide state funding to the Forestland Preservation Program. The Program was funded for one year, FY08. State funding may also provide opportunities for matching funds from other organizations.

ADDITIONAL COMMENT FROM THE COMMITTEE’S ANALYST

As part of the Technical Corrections Bill research, an error was pointed out in 3 *Del C.* § 945. The Code reference is a mistake and should be 909(a)(4) a and b. This technical correction will be added to recommendations for the Committee to vote on.

APPENDIX A



SPONSOR: Sen. Walsh & Rep. Bolden
Sens. Hansen, Sokola, Pettyjohn, Richardson; Reps.
Bennett, Brady, Dukes, Spiegelman

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 74

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO THE DELAWARE AGRICULTURAL
LANDS PRESERVATION ACT.

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

1 Section 1. Amend § 903, Title 3 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 903. Delaware Agricultural Lands Preservation Foundation.

4 (h) A Trustee may be removed by the Trustee's appointing authority at any time for gross inefficiency, neglect of
5 duty, malfeasance, misfeasance, or nonfeasance in office.

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

8 (2) A Trustee who is deemed in neglect of duty is considered to have resigned and, upon appointment of a
9 successor, is no longer a Trustee.

10 Section 2. Amend § 917, Title 3 of the Delaware Code by making deletions as shown by strike through and
11 insertions as shown by underline as follows:

12 § 917. Termination of easement.

13 (b) Request for review. — At any time after 25 years from the date of acquisition of a preservation easement ~~For a~~
14 preservation easement acquired before [the date of enactment of this Act], the owner may may, any time after 25 years from
15 the date of acquisition of the easement, request that the easement be reviewed for possible termination of the easement.
16 Section 917 of this title does not apply to preservation easements acquired after [the date of enactment of this Act].
17 Preservation easements acquired after [the date of enactment of this Act] may not be terminated under § 917 of this title.

18 Section 3. Amend § 945, Title 3 of the Delaware Code by making deletions as shown by strike through and
19 insertions as shown by underline as follows:

20 § 945. Loan requirements and approval.

21 (a) The following requirements and conditions ~~shall~~ apply to loans provided by the Foundation:

Page 1 of 2

22 (5) Loans ~~shall be~~ are limited to the purchase of farmland and farmland improvements only. Portions of the
 23 property subject to purchase which are used or proposed for use for residential purposes ~~shall not be~~ are not eligible for
 24 loans, provided further nonetheless, that those lands used or intended for use for residential purposes ~~shall be~~ are
 25 subject to the limitations set forth in ~~§ 904(a)(4)a. and b. [sic]~~ § 909(a)(4)a. and b. of this title.

SYNOPSIS

This Act fulfills recommendations made by the Joint Legislative Oversight and Sunset Committee. First, this Act adds language to establish the circumstances under which Trustees of the Delaware Agricultural Lands Preservation Foundation may be removed, using language standard to boards and commissions in this State. Second, this Act limits review of a preservation easement after 25 years of the easement's acquisition to only easements that were acquired before the enactment of this Act. Preservation easements acquired after the enactment of this Act are not subject to termination under § 917 of Title 3. Third, this Act corrects an internal reference, and makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator John Walsh



SPONSOR: Sen. Walsh

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1
TO
SENATE BILL NO. 74

1. AMEND Senate Bill No. 74 by deleting lines 10 through 17 in their entirety.

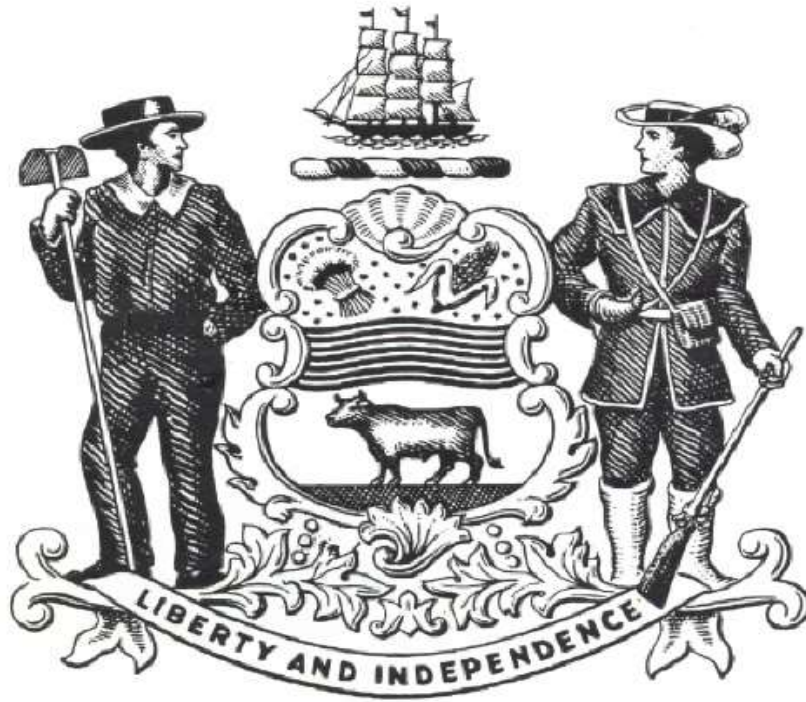
SYNOPSIS

This Amendment removes the changes made to § 917 of Title 3 regarding the termination of preservation easements.

Author: Sen. John Walsh

Human Relations Commission

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

Senator John J. Walsh,
Chair

Representative Stephanie T. Bolden,
Vice-Chair

Representative Andria L. Bennett

Representative Gerald L. Brady

Representative Timothy D. Dukes

Representative Jeffrey N. Spiegelman

Senator Stephanie L. Hansen

Senator Brian G. Pettyjohn

Senator Bryant L. Richardson

Senator David P. Sokola

Final Report Prepared By:

Julie Fedele
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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.

(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.

- 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**.

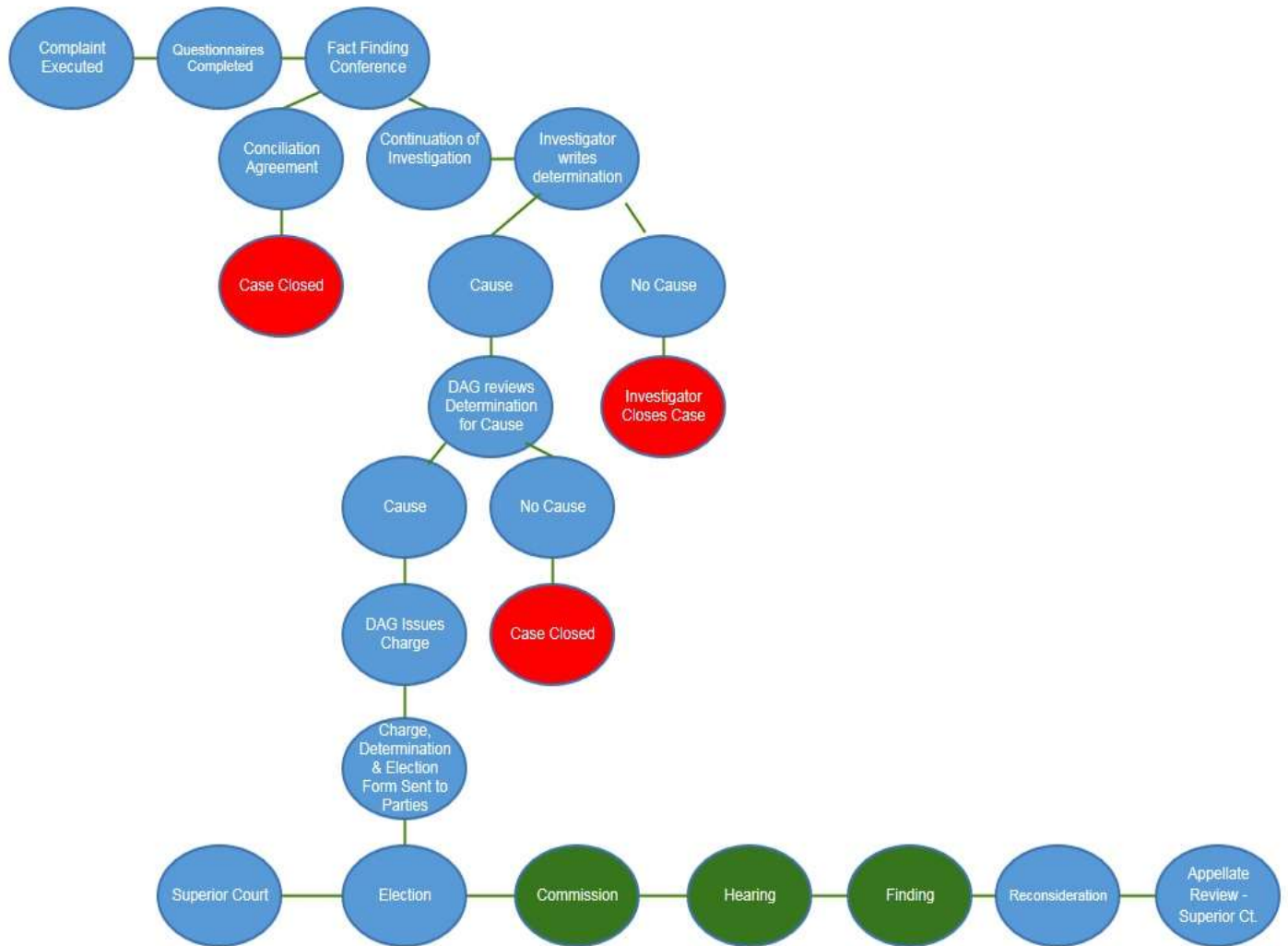
Step Six: Hearing Election

- 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~~ as 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 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.

Board of Medical Licensure and Discipline



SPONSOR: Sen. Walsh & Rep. Bolden
Sens. Hansen, Sokola, Pettyjohn, Richardson; Reps.
Brady, Bennett, Dukes, Spiegelman

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 39

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF MEDICAL
LICENSURE AND DISCIPLINE.

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

1 Section 1. Amend § 1710, Title 24 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1710. Composition.

4 (j) ~~A member of the Board is eligible to be reimbursed for travel to and from each meeting. However, a member~~
5 ~~may receive not more than \$50 for each meeting attended, and not more than a total of \$500 for meetings attended in any~~
6 ~~calendar year. Each member of the Board shall be compensated at an appropriate and reasonable level as determined by the~~
7 Division of Professional Regulation not more than \$100 for each meeting attended, and not more than a total of \$1,500 for
8 meetings attended in a calendar year, and may be reimbursed for all expenses involved in each meeting, including travel,
9 according to Division policy.

10 Section 2. Amend § 1713, Title 24 of the Delaware Code by making deletions as shown by strike through and
11 insertions as shown by underline as follows:

12 § 1713. Powers and duties of the Board.

13 (a) The Board has the following powers and duties, in addition to other powers and duties set forth elsewhere in
14 this chapter:

15 (18) To utilize licensed medical professionals who are not Board members as co-investigators when a
16 complaint's allegations implicate unique subject matters. The co-investigator who is not a Board member must possess
17 particular expertise in the unique subject matter that is at issue when a co-investigator is needed under this paragraph.

18 (e) The Board shall promulgate regulations specifically identifying those crimes which are substantially related to
19 the practice of medicine, the work of a physician assistant, ~~or~~ the practice of respiratory care, the practice of acupuncture,
20 the work of a genetic counselor, the practice of polysomnography, or midwifery.

Section 3. Amend § 1720, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1720. Certification requirements to practice medicine.

(j) The Board may issue an administrative medicine license to a physician who meets all qualifications for licensure, including payment of a fee set by the Division of Professional Regulation, except that an applicant for an administrative medicine license shall not be required to show that the applicant has been engaged in the active practice of medicine, as defined in the Board's regulations. Administrative medicine licensees may not provide medical or clinical services to or for patients and shall attest to understanding this on the application.

Section 4. Amend § 1733, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 1733. Complaints; notice of hearing.~~

~~(a)(1) Any member of the public or of the Board, or the Executive Director may file with the Board a complaint concerning any aspect of the practice of medicine against a person to whom a certificate to practice medicine in this State has been issued or any other person with a duty imposed by this chapter.~~

~~(2) The Executive Director shall advise the complainant of the progress of the case at least every 90 days until the case is resolved.~~

~~(3) The Executive Director shall communicate with the Delaware Department of Justice, at least monthly, regarding the status of complaints filed by law enforcement, and shall report the case status to the Board only if the case is no longer subject to suspension pursuant to § 1732(e) of this title.~~

~~(b) The Executive Director shall investigate in accord with the procedures set forth in § 1732 of this title each complaint which appears to be valid and well-founded.~~

~~(c) The Executive Director may maintain the confidentiality of the complaining party or the respondent from the Board. In the absence of an Executive Director or acting Executive Director, the Secretary of State may exercise that discretion.~~

~~(d) After investigation, if the Executive Director elects to file a formal written complaint against a respondent, the person must be served personally or by certified mail, return receipt requested, with a copy of the complaint not less than 20 days nor more than 60 days prior to a hearing on the complaint. A formal written complaint under this subsection must describe in detail the allegations upon which the complaint is based.~~

~~(e) A notice of hearing must inform the person of the date, time, and place of the hearing; state the statute or regulation allegedly violated and the statutory or regulatory authority which gives the Board authority to act; state that the~~

51 person has a right to be represented by counsel at the hearing and to present evidence on the person's own behalf; and
52 inform the person that the Board must base its decision solely upon evidence received at the hearing. The person is entitled
53 to file with the Board a written response to the complaint within 20 days of service or of receipt by certified mail of the
54 complaint.

55 (f) A complaint of the unauthorized practice of medicine must be reported immediately to the Attorney General. A
56 person who files a complaint with or provides information to the Board concerning a violation of this chapter is not liable in
57 any cause of action arising out of the filing of the complaint or the providing of information, provided that the person does
58 so in good faith and without gross or wanton negligence.

59 (g) The Office of the Attorney General shall provide legal services to the Board, its committees, and the Executive
60 Director.

61 Section 5. Amend § 1734, Title 24 of the Delaware Code by making deletions as shown by strike through and
62 insertions as shown by underline as follows and by redesignating accordingly:

63 § 1734. Hearings.

64 (a) *Procedure.* —

65 (1) Upon the mailing of a formal complaint by the Executive Director pursuant to this chapter, the Executive
66 Director shall appoint an examiner pursuant to § 1713 of this title or a hearing panel composed of 3 unbiased members
67 of the Board, the 3 members being 2 physician members and 1 public member if practical, who shall hear the evidence
68 concerning the alleged charges. The hearing panel shall convene to hear the evidence no more than 90 days after the
69 Board accepts a formal complaint unless the hearing panel, in its discretion, grants a continuance of the hearing date.
70 All evidence at the hearing must be taken under oath or affirmation, but technical rules of evidence do not apply. After
71 the evidence has been heard by the hearing panel, the panel may convene in executive session for consideration of the
72 evidence presented at the hearing and for purposes permitted by § 10004 of Title 29, and shall make written findings of
73 fact, conclusions of law, and a recommendation for a proper disciplinary action, if 1 is warranted. Only evidence
74 presented at the hearing may be considered by the hearing panel in reaching its findings of fact and conclusions of law.
75 The findings of fact made by the hearing panel are binding on the parties appearing before it and on the Board. If the
76 hearing panel finds that the allegations made in the complaint are not supported by the evidence, it shall so indicate to
77 the Board, together with its recommendation that no further action be taken and that the person complained about be
78 exonerated of all charges. If a majority of the members of the Board who consider the matter, excluding members who
79 participated in the investigation of the complaint and members on the hearing panel and members who are otherwise
80 biased, vote to accept the hearing panel's conclusions of law and recommendation, no further proceedings may be held

before the Board. However, if a majority of the members of the Board who consider the matter, excluding any members who participated in the investigation of the complaint and members on the hearing panel and members who are otherwise biased, vote to reject the hearing panel's conclusions of law and recommendation, a formal hearing must be held before the Board to enable the Board to make its own conclusions of law and determine what discipline, if any, should be imposed. In such a case, the hearing panel's findings of fact are binding upon the Board.

(2) If the hearing panel finds that any of the factual allegations made in the complaint are supported by the evidence it has considered, the Board, excluding members who participated in the investigation of the complaint and members on the hearing panel and members who are otherwise biased, will consider the findings of fact and conclusions of law made by the hearing panel at a formal hearing.

(3) A formal hearing must be held within 90 days after the issuance of the written findings of facts and conclusions of law of the hearing panel pursuant to this subsection; provided, however, that if the hearing panel finds that the person complained about presents a clear and imminent danger to the public health by that person's continued practice of medicine, then the full Board may meet for the formal hearing as soon as possible, but only upon 3 days' written notice of the formal hearing being provided to the person or to that person's attorney. No less than 7 affirmative votes are necessary in order for disciplinary action to be taken by the Board. Upon reaching its conclusions of law and determining the appropriate disciplinary action, if any, the Board shall issue a written decision and order in accordance with § 10128 of Title 29. The decision and order must be signed by the Board's President, or, if the President is not available, by another officer of the Board.

(c) *Transcript of proceedings.* — A stenographic transcript must be made of the formal hearings of the Board and of the hearings of the Board's hearing panels or examiner. The person complained about is entitled, upon that person's own request, to obtain a copy of the transcript at the person's own expense.

(d) *Rights of respondent.* — The person complained about is entitled to be represented by counsel before a hearing panel or examiner and before the Board. The person complained about also has the right to cross-examine witnesses against the person, the right to present that person's own witnesses, and the right to introduce evidence at the hearing. In addition, the person complained about has the right to compel the issuance of a subpoena for the attendance of witnesses to appear and testify or for the production of books, records, or other documents at the hearing.

(e) *Conduct of hearing before the hearing panel.* — An attorney from the Office of the Attorney General shall present evidence in support of the allegations contained in the formal complaint. The attorney may call witnesses and cross-examine any witnesses called on behalf of the person complained about. A member of the Board who participated in the investigation of the complaint under consideration or a member who is biased may not sit on the hearing panel or take part

111 in the deliberations or decisions of the hearing panel. To find that a fact or allegation is supported by evidence, the panel
112 members must unanimously agree. The hearing panel shall make its findings of fact and conclusions of law based solely
113 upon the evidence presented to it at the hearing.

114 ~~(f) Conduct of hearing before the examiner. — An attorney from the Office of the Attorney General shall present~~
115 ~~evidence in support of the allegations contained in the formal complaint. The attorney may call witnesses and cross-~~
116 ~~examine any witnesses called on behalf of the person complained about. The examiner may administer oaths, examine~~
117 ~~witnesses and receive evidence in any locality. The testimony or evidence so taken or received shall have the same force~~
118 ~~and effect as if taken or received by the Board, or by a hearing panel pursuant to §§ 1713(a)(15) and 1734 of this title. Upon~~
119 ~~completion of such hearing or the taking of such testimony and evidence, the examiner shall submit to the Board the~~
120 ~~examiner's findings and recommendations thereon, which findings and recommendations shall be considered by the Board~~
121 ~~and such action taken with respect thereto by the Board as it decides to be proper.~~

122 ~~(g) Conduct of formal hearing before the Board. — The findings of fact made by a hearing panel on a complaint~~
123 ~~are binding upon the Board at a formal hearing on the same complaint. At a formal hearing, the Board may not consider~~
124 ~~additional evidence. The Board shall deliberate and reach its own conclusions of law based upon the findings of fact made~~
125 ~~by the hearing panel. The Board shall consider the hearing panel's conclusions of law, but is not bound by them. To adopt~~
126 ~~conclusions of law, 7 Board members must vote in favor of them. After adopting its conclusions of law, the Board shall~~
127 ~~determine what disciplinary action, if any, against the person complained about is appropriate, based solely upon the record~~
128 ~~before it. To impose disciplinary action, affirmative votes by the majority of the Board members who considered the matter,~~
129 ~~but in every case no less than 7 affirmative votes are necessary. The Executive Director, Board members who participated~~
130 ~~in the investigation of the complaint under consideration, the members of the hearing panel, and any Board members who~~
131 ~~are otherwise biased may not participate in the deliberations of the Board concerning a complaint investigated by the~~
132 ~~Executive Director.~~

133 ~~(h) Written decision and order. — Upon reaching its conclusion of law and determining the appropriate~~
134 ~~disciplinary action, if any, the Board shall issue a written decision and order in accordance with § 10128 of Title 29. The~~
135 ~~order must restate the factual findings of the hearing panel, but need not summarize the evidence presented. However,~~
136 ~~notwithstanding the provisions of § 10128(e) of Title 29, the decision and order may be issued over the signature of only~~
137 ~~the President or other officer of the Board. The decision and order must be sent by certified mail, return receipt requested,~~
138 ~~to the person complained about, with a copy to the Executive Director.~~

(i) Hearings shall be conducted pursuant to the Administrative Procedures Act. Upon receiving a decision and order pursuant to subsection (h) of this section, the Executive Director shall file the required disciplinary action reports to data banks.

Section 6. Amend § 1761A, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1761A. Appointment of a custodian of patient records.

(a) If the Board receives a formal or informal complaint concerning access to patient records as a result of a physician's physical or mental incapacity, or abandonment or involuntary discontinuation of a medical-practice business in this State, the Board may temporarily or permanently appoint a person or entity as custodian of the physician's patient records, in accordance with the procedures set forth in §§ ~~1732-1734~~ § 1732 of this title.

Section 7. Amend § 1770, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1770. The Regulatory Council for Physician Assistants.

(b) Each Council member shall be appointed for a term of 3 years and may succeed himself or herself for 1 additional 3-year term; ~~provided, however, that if a member is initially appointed to fill a vacancy, that member may succeed himself or herself for only 1 additional 3-year term.~~ A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a member whose term of office has expired remains eligible to serve until replaced by the Board. A person who has never served on the Council may be appointed for 2 consecutive terms, but that person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has twice been appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed until an interim period of at least 1 year has expired since the person last served. The members of the Council are to be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's approved rate. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of physician assistants.

(c) The Regulatory Council for Physicians Assistants, by the affirmative vote of 4 of its members and with the approval of the Board within 30 days of the vote, may waive the quarterly meeting requirements of this subchapter.

Section 8. Amend § 1773, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1773. Regulation of physician assistants.

(b)(2)a. If the Board or the Regulatory Council for Physician Assistants receives a formal or informal complaint concerning the activity of a physician assistant and the Regulatory Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Regulatory Council, ~~with the approval of the Board, Council~~ may issue an order temporarily suspending the physician assistant's license to practice pending a hearing upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Council Chair or the Chair's designee. An order temporarily suspending a license to practice may not be issued by the ~~Council, with the approval of the Board, Council~~ unless the physician assistant or the physician assistant's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the physician assistant or the physician assistant's attorney can be heard in opposition to the proposed ~~suspension, and unless at least 4 members of the Council and 7 members of the Board vote in favor of the temporary suspension~~ suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended physician assistant requests a continuance of the hearing date. If the physician assistant requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

d. As soon as possible after the issuance of an order temporarily suspending a physician assistant's license to practice pending a hearing, the Executive Director shall appoint a 3-member hearing panel. After notice to the physician assistant pursuant to subsection (b) of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the physician assistant requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing ~~in accordance with the procedures set forth in § 1734 of this title~~ and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the ~~Board, pursuant to § 1734(g) of this title, Board~~ deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended physician

196 assistant requests an extension of the order pending a final decision of the Board. Upon the final decision of the
197 Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if
198 any, ordered by the Board.

199 Section 9. Amend § 1774, Title 24 of the Delaware Code by making deletions as shown by strike through and
200 insertions as shown by underline as follows:

201 § 1774. Temporary licensing of physician assistants.

202 (a) Notwithstanding any provision of this subchapter to the contrary, the Executive Director, with the approval of
203 a ~~physician~~ Council member ~~of the Board~~, may grant a temporary license to an individual who has graduated from a
204 physician or surgeon assistant program which has been accredited by the Accreditation Review Commission on Education
205 for the Physician Assistant (ARC-PA) or, prior to 2001, by the Committee on Allied Health Education and Accreditation
206 (CAHEA) of the American Medical Association (AMA) or a successor agency and who otherwise meets the qualifications
207 for licensure but who has not yet taken a national certifying examination, provided that the individual is registered to take
208 and takes the next scheduled national certifying examination. A temporary license granted pursuant to this subsection is
209 valid until the results of the examination are available from the certifying agency. If the individual fails to pass the national
210 certifying examination, the temporary license granted pursuant to this subsection must be immediately rescinded until the
211 individual successfully qualifies for licensure pursuant to this subchapter.

212 Section 10. Amend § 1775, Title 24 of the Delaware Code by making deletions as shown by strike through and
213 insertions as shown by underline as follows:

214 § 1775. Respiratory Care Advisory Council.

215 (b) Each Council member is appointed by the Board for a term of 3 years, and may succeed himself or herself for
216 ~~1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may~~
217 ~~succeed himself or herself for only 1 additional 3-year term.~~ A person appointed to fill a vacancy on the Council is entitled
218 to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date
219 specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate
220 in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the
221 Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter
222 provided. A person who has been twice appointed to the Council or who has served on the Board for 6 years within any 9-
223 year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person
224 last served. A member serving on the Council may not be an elected officer or a member of the board of directors of any
225 professional association of respiratory care practitioners.

Section 11. Amend § 1777, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1777. Licensure.

(d) Temporary license. — The Executive Director of the Board, with the approval of a ~~physician~~ member of the ~~Board~~ Council, may issue a temporary permit to an applicant for licensure who has presented a completed application to the Board. A temporary permit issued under this paragraph is valid for a period of not more than 90 days and may not be renewed. Only 1 temporary permit may be issued under this paragraph.

(e) License suspension, revocation, or nonrenewal. —

(2)a. If the Board or the Respiratory Care Advisory Council receives a formal or informal complaint concerning the activity of a respiratory care practitioner and the Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may issue an order temporarily suspending the respiratory care practitioner's license to practice pending a hearing upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of this Council Chair or the Chair's designee. An order temporarily suspending a license to practice may not be issued by the ~~Council, with the approval of the Board, Council~~ unless the respiratory care practitioner or the respiratory care practitioner's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the respiratory care practitioner or the respiratory care practitioner's attorney can be heard in opposition to the proposed suspension, ~~and unless at least 4 members of the Council and 7 members of the Board vote in favor of the temporary~~ suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended respiratory care practitioner requests a continuance of the hearing date. If the respiratory care practitioner requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

d. As soon as possible after the issuance of an order temporarily suspending a respiratory care practitioner's license to practice pending a hearing, the Council President shall appoint a 3-member hearing panel. After notice to the respiratory care practitioner pursuant to paragraph (e)(2)b. of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the respiratory care practitioner requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing ~~in accordance with the procedures set forth in § 1734 of this title~~ and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the ~~Board,~~ pursuant to ~~§ 1734(g) of this title,~~ Board deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended respiratory care practitioner requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

Section 12. Amend Subchapter VII, Chapter 17, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1779A. Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other health-care provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other health-care provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other health-care provider may be unable to practice with reasonable skill and safety to the public by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to clients by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under subsections (a), (b) and (c) of this section must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted

286 in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or
287 wanton negligence required to be shown by the complainant.

288 Section 13. Amend § 1796, Title 24 of the Delaware Code by making deletions as shown by strike through and
289 insertions as shown by underline as follows:

290 § 1796. Acupuncture Advisory Council.

291 (b) Each Council member is appointed by the Board of Medical Licensure and Discipline for a term of 3 years,
292 and may succeed himself or herself for 1 additional 3-year term; ~~provided, however, that if a member is initially appointed~~
293 ~~to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term.~~ A person appointed to fill a
294 vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term
295 of office expires on the date specified in the appointment; however, a Council member whose term of office has expired
296 remains eligible to participate in Council proceedings until replaced by the Board. A person who has never served on the
297 Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to
298 the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the
299 Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1
300 year has expired since the person last served. A member, other than the ex officio member, serving on the Council may not
301 be an elected officer or a member of the board of directors of any professional association of acupuncture practitioners. The
302 members of the Council are compensated at an appropriate and reasonable level as determined by the Division and may be
303 reimbursed for meeting-related travel expenses at the State's current approved rate.

304 Section 14. Amend § 1798, Title 24 of the Delaware Code by making deletions as shown by strike through and
305 insertions as shown by underline as follows:

306 § 1798. Licensure.

307 (d) Temporary license. — The Executive Director of the Board, with the approval of a ~~physician~~ Council member
308 ~~of the Board~~, may issue a temporary permit to an applicant for licensure who has presented a completed application to the
309 Board. A temporary permit issued under this subsection is valid for a period of not more than 90 days and may not be
310 renewed. Only 1 temporary permit may be issued under this subsection.

311 (e) License suspension, revocation, or nonrenewal. —

312 (2)a. If the Board or the Acupuncture Advisory Council receives a formal or informal complaint concerning
313 the activity of an acupuncture practitioner and the Board or Council members reasonably believe that the activity
314 presents a clear and immediate danger to the public health, the Council ~~may recommend that the Board~~ issue an order
315 temporarily suspending the acupuncture practitioner's license to practice pending a hearing upon the written order of

316 the Secretary of State or the Secretary's designee, with the concurrence of the Council Chair or the Chair's designee.

317 An order temporarily suspending a license to practice may not be issued by the Board, unless the acupuncture
318 practitioner or the acupuncture practitioner's attorney received at least 24 hours' written or oral notice prior to the
319 temporary suspension so that the acupuncture practitioner or the acupuncture practitioner's attorney can be heard in
320 opposition to the proposed suspension, ~~and unless at least 3 members of the Council and 7 members of the Board vote~~
321 ~~in favor of the temporary~~ suspension. An order of temporary suspension pending a hearing may remain in effect for no
322 longer than 60 days from the date of the issuance of the order unless the temporarily suspended acupuncture
323 practitioner requests a continuance of the hearing date. If the acupuncture practitioner requests a continuance, the order
324 of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

325 d. As soon as possible after the issuance of an order temporarily suspending an acupuncture practitioner's
326 license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3
327 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the
328 Acupuncture Advisory Council; and if no conflict exists, 1 of the 2 Acupuncture Advisory Council members shall
329 be the Chair of the Acupuncture Advisory Council. The Chair of the hearing panel shall be 1 of the Council panel
330 members. After notice to the acupuncture practitioner pursuant to paragraph (e)(2)b. of this section, the hearing
331 panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the
332 evidence regarding the matters alleged in the complaint. If an acupuncture practitioner requests in a timely manner
333 an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council.
334 The 3-member panel shall proceed to a hearing ~~in accordance with the procedures set forth in § 1734 of this title~~
335 and shall render a decision within 30 days of the hearing.

336 e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found
337 by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found
338 constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect
339 until the ~~Board, pursuant to § 1734(g) of this title,~~ Board deliberates and reaches conclusions of law based upon
340 the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for
341 longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended acupuncture
342 practitioner requests an extension of the order pending a final decision of the Board. Upon the final decision of the
343 Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if
344 any, ordered by the Board.

Section 15. Amend § 1799I, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1799I. Genetic Counselor Advisory Council.

(b) Each Council member is appointed by the Board of Medical Licensure and Discipline for a term of 3 years, and may succeed himself or herself for 1 additional 3-year ~~term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year~~ term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. The members of the Council are to be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's current approved rate. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of genetic counselors.

(e) License suspension, revocation, or nonrenewal. —

(2)a. If the Board or the Council receives a formal or informal complaint concerning the activity of a genetic counselor and the Board or Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may ~~recommend that the Board~~ issue an order temporarily suspending the genetic counselor's license to practice, pending a hearing upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Council Chair or the Chair's designee. An order temporarily suspending a license to practice may not be issued by the Board, unless the genetic counselor or the genetic counselor's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the genetic counselor or the genetic counselor's attorney can be heard in opposition to the proposed ~~suspension, and unless at least 3 members of the Council and 7 members of the Board vote in favor of the temporary~~ suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended genetic counselor requests a continuance of the hearing date. If the genetic counselor requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

d. As soon as possible after the issuance of an order temporarily suspending a genetic counselor's license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Council; and if no conflict exists, 1 of the 2 Council members shall be the Chair of the Council. The Chair of the hearing panel shall be 1 of the Council panel members. After notice to the genetic counselor pursuant to paragraph (e)(2)b. of this section, the hearing panel shall convene within 60 days of the date of issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If a genetic counselor requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing ~~in accordance with the procedures set forth in § 1734 of this title~~ and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the ~~Board, pursuant to § 1734(g) of this title,~~ Board deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended genetic counselor requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(g) The Genetic Counselor Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board within 30 days of the vote, may waive the quarterly meeting requirements of this title.

Section 16. Amend § 1799W, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1799W. Polysomnography Advisory Council.

(b) Each council member is appointed by the Board for a term of 3 years, and may succeed himself or herself for 1 additional 3-year term; ~~provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term.~~ A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a council member whose term of office has expired remains eligible to participate in council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the

Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. The members of the Council are to be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's current approved rate. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of polysomnographers.

(e) License suspension, revocation, or nonrenewal. —

(2)a. In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, the ~~Board~~ Council may temporarily suspend the person's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the ~~Board Chair~~ Council Chair or the ~~Board~~ Chair's designee. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporary suspended person requests a continuance of the hearing date. If the temporary suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received notification of the decision to temporarily suspend the person's license.

SYNOPSIS

This Act is the result of the recommendation made by the Joint Legislative Oversight and Sunset Committee in its review of the Board of Medical Licensure and Discipline ("the Board") that the Division of Professional Regulation amend applicable statutes that are outdated and unnecessary, to provide for consistency with § 8735, Title 29 of the Delaware Code, relating to administrative procedures.

Specifically, this Act permits the Board to utilize non-board member medical licensees as coinvestigators when specialties are required to opine on the disciplinary cases, as long as the co-investigator is licensed in the specialty at issue; creates administrative licensure for medical professionals who do not wish to practice medicine but serve as administrators in the state to applicants who meet all qualifications for licensure except active practice hours; removes antiquated language from Title 17 regarding hearing procedures and instead reiterates hearings are conducted pursuant to the Administrative Procedures Act; and deletes references to the removed language.

Finally, this Act makes minor modifications to each of the sub-councils organized under the Board, to standardize procedures across each of the five councils. Specifically, the Act add a duty to report unprofessional conduct to Respiratory Care Practitioners, permits the Genetic Counselor Advisory Council and the Regulatory Council for Physician Assistants to waive their quarterly meeting requirement with the approval of the Board; clarifies that temporary licenses may be granted by each of the councils under the signature of the Executive Director and the council chair; and permits council members appointed to fill vacancies to serve out those vacancies, along with two three-year terms.

The language submitted for this Act has not been corrected to conform the Act to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Walsh

Joint Legislative Oversight and Sunset
Committee



SPONSOR: Sen. Walsh & Rep. Bolden
Sens. Hansen, Sokola, Pettyjohn, Richardson; Reps.
Bennett, Brady, Dukes, Spiegelman

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 61

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

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

1 Section 1. Amend § 10214, Title 29 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 10214. Committee recommendations and authority to recall an agency.

4 (a) In its final report concerning an agency, the Committee may recommend 1 or more of the following:

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

9 (2) Budget appropriation limits for an agency.

10 (3) In general or specific terms, legislation which the Committee considers necessary to carry out its decision
11 as to whether an agency should be continued or terminated.

12 (b) When the Committee has released an agency from review, it may recall the agency to a public hearing before
13 the Committee to consider making additional recommendations under subsection (a) of this section if either of the
14 following circumstances apply:

15 (1) The agency has the ability to meet a certain condition or make a modification that the Committee
16 recommended, but fails to do so.

17 (2) The Committee recommended legislation to amend the agency's governing statute or a related statute, but,
18 for any reason, the legislation failed to be enacted into law.

SYNOPSIS

This Act clarifies the authority of the Joint Legislative Oversight and Sunset Committee ("Committee") to hold
over entities unless or until certain conditions are met or modifications are made. This Act also provides the authority for
the Committee to recall an entity that has been released from review when the entity has the ability to meet the
recommended condition or make the modification but has failed to do so, or when the Committee recommended legislation
to amend an entity's governing statute or a related statute, but the legislation fails to be enacted for any reason. If the
Committee recalls an entity, it may recommend any of the options available in subsection (a) of this section.

Author: Senator John Walsh