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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 134

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

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

1 Section 1. Amend § 10201, Title 29 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 10201. Definitions.

4 As used in this chapter:

5 (1) ~~“Agency”~~ “Entity” means ~~any~~ a regulatory, administrative, advisory, executive, or legislative body of this
6 State, including a board, bureau, commission, department, division, committee, council, association, authority, or ~~any~~
7 ~~other entity~~ organized body established by an act of the General Assembly of this State that meets any of the following:

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

9 b. Is supported in whole or in part by public funds.

10 c. Expends or disburses public funds.

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

12 (2) ~~“Committee” or “Joint Legislative Oversight and Sunset Committee”~~ “Committee” means the ~~joint~~
13 ~~legislative committee~~ Joint Legislative Oversight and Sunset Committee established by this chapter.

14 (3) “Committee staff” means the employees of the Division of Research of Legislative Council who are
15 assigned to support the Committee.

16 (4) “Focused review” means a specialized assessment of an entity, conducted under § 10212 of this title.

17 (5) “Full review” means a formal assessment of the entirety of an entity, conducted under § 10211 of this title.

18 “Full review” does not include a focused review.

19 (3) (6) “Highest administrative officer” means an official who is appointed by the Governor as a member of
20 the Governor’s cabinet.

21 (4) (7) "Performance evaluation" means ~~an assessment of how well an agency has performed and is~~
22 ~~performing its functions, and how well the agency has served and is serving the public need.~~ the review mechanism
23 under this chapter that is an assessment of an entity's performance and function.

24 (8) "Self-report" means the report under § 10207 of this title.

25 (9) "Under review" means undergoing a process implemented under this chapter.

26 Section 2. Amend § 10202, Title 29 of the Delaware Code by making deletions as shown by strike through and
27 insertions as shown by underline as follows:

28 § 10202. Declaration of policy.

29 (a) It is essential to the maintenance of a healthy state economy and ~~of~~ a government that has the confidence of its
30 citizens that the State establish a system of periodic legislative review of its ~~agencies.~~ This entities. ~~The review of agency~~
31 entity performance and activities is consistent with other activities and goals of the General Assembly. The primary purpose
32 of ~~this~~ a full review or focused review under this chapter is to determine whether there is a genuine public need for the
33 ~~agency~~ entity under review and, if so, to determine whether the ~~agency~~ entity is correctly performing to meet that need.

34 (b) The purpose of this chapter is to provide an action-forcing mechanism designed to increase the accountability
35 of ~~various agencies~~ an entity through increased legislative scrutiny of ~~agencies and their~~ the entity and its activities. The
36 intent of the General Assembly is to establish a timetable ~~for the initial review of certain agencies, and process for a full~~
37 review or focused review of an entity and the services it provides and ultimately to review ~~all agencies~~ each entity
38 established by or receiving financial assistance from the State. ~~The action-forcing mechanism is to terminate agencies under~~
39 ~~review on certain dates, unless affirmatively re-established by law.~~

40 (c) The purpose of this chapter is not to terminate ~~agencies which are~~ an entity which the Committee determines is
41 sufficiently meeting a recognized State need and ~~which are accountable to~~ is accountable and responsive to the public
42 interests. Rather, the primary purpose of this chapter is to use the review mechanism to strengthen and support ~~these~~
43 ~~agencies.~~ an entity that the Committee determines is meeting a recognized State need.

44 Section 3. Amend § 10203, Title 29 of the Delaware Code by making deletions as shown by strike through and
45 insertions as shown by underline as follows:

46 § 10203. ~~Joint Legislative Oversight and Sunset~~ Committee composition; ~~Chairperson;~~ chair and vice chair;
47 appointment; quorum; reimbursement; meetings hearings.

48 (a) The Joint Legislative Oversight and Sunset Committee is composed of 5 members of the Senate appointed by
49 the President Pro Tempore and 5 members of the House of Representatives appointed by the Speaker of the House of
50 Representatives.

51 (1) Not more than 3 Senate appointees, nor 3 House appointees, may belong to the same political party.

52 (2) ~~The Chairperson and Vice Chairperson of the Committee~~ The Committee chair and vice chair alternate
53 each year between a Representative appointed by the Speaker of the House of Representatives and a Senator appointed
54 by the President Pro ~~Tem~~ Tempore of the Senate. During odd-numbered years, a Senator serves as ~~chairperson~~ chair
55 and a Representative serves as ~~Vice Chairperson;~~ vice chair; during even-numbered years, a Representative serves as
56 Chairperson chair and a Senator serves as ~~Vice Chairperson;~~ vice chair.

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

60 (c) Quorum.

61 (1) A quorum consists of at least 6 Committee members. A quorum must be present in order to transact
62 business. ~~If a quorum is present, a~~ business, except that a quorum is not required if the only business the Committee is
63 transacting is to hear an entity under review give a presentation.

64 (2) A proposition is carried by a majority of the entire Committee, unless a statute or rule requires a larger
65 number of affirmative votes. A vacancy on the Committee is not counted to determine the number of members needed
66 to achieve a majority.

67 (3) A member who participates in a meeting virtually rather than being physically present at the meeting is not
68 counted toward quorum in determining whether the Committee may transact business. However, a member
69 participating in a meeting virtually may vote as if the member were physically present at the meeting. This paragraph
70 does not apply if the President Pro Tempore of the Senate and the Speaker of the House of Representatives issue a
71 public notice that members of the Senate or House of Representatives or a legislative committee are authorized to
72 convene and conduct a virtual meeting due to an emergency.

73 (d) A member of the Committee is entitled to reimbursement from the appropriate funds of the member's house
74 for the expenses that the member actually and necessarily incurs in performing the duties of the Committee. A request for
75 reimbursement must be approved by the ~~Chairperson of the Committee~~ chair.

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

78 (f) ~~Although all meetings of the Committee are~~ Except as provided by Committee rules or § 10209(d) of this title,
79 each Committee hearing is open to the public, but only Committee members of the Committee and persons designated by
80 the Chairperson the chair designates are permitted to speak or otherwise participate. ~~participate.~~

81 Section 4. Amend § 10204, Title 29 of the Delaware Code by making deletions as shown by strike through and
82 insertions as shown by underline as follows:

83 § 10204. Committee staff; appropriations.

84 (a) Employees of the Division of Research of Legislative Council and of the Office of the Controller General serve
85 as the permanent staff of the Committee.

86 (b) The Committee may, by the affirmative vote of at least 6 members, provide for other assistance, equipment, or
87 expenditures that are within the limits of the Committee's budget. The General Assembly shall appropriate funds that it
88 considers necessary to carry out the Committee's activities and goals of the Committee. ~~goals.~~

89 Section 5. Amend § 10205, Title 29 of the Delaware Code by making deletions as shown by strike through and
90 insertions as shown by underline as follows:

91 § 10205. Committee rules and regulations.

92 The Committee may adopt ~~Committee rules and~~ rules or regulations necessary to carry out the activities and goals
93 of this chapter.

94 Section 6. Amend § 10206, Title 29 of the Delaware Code by making deletions as shown by strike through and
95 insertions as shown by underline as follows:

96 § 10206. Committee subpoena powers.

97 (a)(1) The Committee may issue process to ~~witnesses~~ a witness at any place in this State and compel ~~their~~
98 ~~attendance, and compel the production of books, records, papers, and other objects that may be necessary or proper for the~~
99 ~~purposes of the Committee's proceedings.~~ the witness's attendance or compel the production of a document, book, record,
100 paper, or other object that may be necessary or proper for the purpose of a full review or focused review.

101 (2) The Committee may issue ~~attachments~~ an attachment when necessary to obtain compliance with
102 ~~subpoenas~~ a subpoena or other process. An attachment ~~so~~ issued under this section may be addressed to and served by
103 any peace officer in this State.

104 (3) ~~The Chairperson of the Committee shall issue in the name of the Committee any subpoenas requested by~~
105 ~~the Committee, if the request received the affirmative vote of at least 6 members of the Committee. If the Chairperson~~
106 ~~of the Committee is unavailable, the designee of the Chairperson may issue subpoenas or any other lawful process in~~
107 ~~accord with the provisions of this subsection.~~ The Committee chair shall issue in the name of the Committee a
108 subpoena that the Committee requests by affirmative vote of a majority of Committee members. If the chair is
109 unavailable, the chair's designee may issue a subpoena or another lawful process under this section.

110 (b) ~~All testimony~~ Testimony taken under subpoena must be given under oath subject to the penalties of perjury,
111 and must be reduced to writing.

112 Section 7. Amend § 10207, Title 29 of the Delaware Code by making deletions as shown by strike through and
113 insertions as shown by underline as follows:

114 § 10207. ~~Agency reports to the Committee.~~ Entity self-report.

115 (a) ~~Each agency under review by the Committee shall forward to the Committee an annual report containing~~ Self-
116 report for full review. An entity under full review shall forward to Committee staff a self-report that includes all of the
117 following information:

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

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

122 (3) ~~All programs in being at any time for the period of~~ Each entity program that has existed for at least 1 year
123 immediately prior to before the date of the ~~annual report.~~ self-report.

124 (4) The total value of state funds or materials, or both, ~~used by the agency that the entity used~~ for each of the
125 last 5 fiscal years immediately before the date that the Committee selects the entity for review.

126 (5) A listing of ~~all Delaware Code provisions from which the agency~~ each provision in the Delaware Code
127 from which the entity derives its rights, duties, and or functions.

128 (b) ~~In October of the year immediately before an agency is reviewed, unless the agency has requested and been~~
129 ~~granted an extension that may not extend past December 31, each agency under review by the Committee shall forward all~~
130 ~~of the following to the Committee:~~

131 (+) (6) The last 5 budget reports or similar documents for the period immediately before the date of the self-
132 report, relating to ~~all program priorities, activities, and accomplishments, if the agency is subject to zero-based~~
133 ~~budgeting requirements.~~ each program priority, activity, or accomplishment.

134 (2) (7) A concise and specific statement setting forth describing the performance or achievement of the agency
135 entity relating to the criteria for review ~~set forth in~~ under § 10211 of this title, ~~and addressing no other subject except~~
136 ~~the criteria for review.~~ title.

137 (3) (8) ~~Any additional information requested by the Committee,~~ Additional information that the Committee or
138 its staff may request, including ~~any~~ a record, document, or file over which the agency entity has custody or jurisdiction,
139 if the additional information is available.

140 (9) Summary and results related to each past, upcoming, or ongoing audit of the entity, including each
141 completed audit report from the 5 fiscal years immediately before the date of the self-report.

142 (10) Each annual report the entity has published during the 5 fiscal years immediately before the self-report.

143 (b) Self-report for focused review. Subject to paragraph (f)(2) of this section, an entity under focused review shall
144 forward to Committee staff a self-report that includes the information under subsection (a) of this section that the staff
145 requests of the entity.

146 (c) Notwithstanding any other law or statute to the contrary, upon notification to an agency that it is under review
147 by the Committee, the agency shall forward all information set forth in this section to the Committee, and shall update the
148 information and provide additional information that the Committee or its staff may from time to time request. Date self-
149 report is due. An entity under full review or focused review shall submit a self-report to Committee staff not later than the
150 date the staff establishes based on the Committee's needs.

151 (d) Updates to self-report. An entity under full review or focused review shall provide Committee staff with
152 updates, if any, to the information required under this section throughout the review.

153 (e) The full review or focused review process continues regardless of an entity's cooperation with the review.

154 (f) Committee staff duties relating to self-report. Committee staff shall do all of the following:

155 (1) Provide an entity under full review or focused review a template for the self-report, instructions for
156 completing the self-report, and a date by which the self-report is due.

157 (2) Based on the scope of a focused review, as determined under § 10212(b)(3) of this title, Committee staff
158 shall determine which of the categories of information listed under subsection (a) of this section are appropriate for the
159 focused review and include only those categories in the template staff provides an entity under paragraph (f)(1) of this
160 section.

161 (3) Make the self-report available to the public after Committee staff reviews the self-report for completeness
162 and, if appropriate, provides the entity an opportunity to submit additional information, but not later than the date of the
163 Committee's initial public hearing relating to the entity.

164 Section 8. Amend § 10208, Title 29 of the Delaware Code by making deletions as shown by strike through and
165 insertions as shown by underline as follows:

166 § 10208. ~~[Reserved.]~~ Confidentiality; Freedom of Information Act.

167 (a) Committee staff shall treat as confidential each record or communication that an entity submits relating to the
168 entity's focused review or full review, unless any of the following apply:

169 (1) Disclosure is necessary to enable Committee staff to perform staff's duties under this chapter. Committee
170 staff may disclose a record or communication under this paragraph only to the extent it is necessary to perform staff's
171 duties.

172 (2) The entity did not maintain the record or communication as confidential before the review.

173 (3) The entity agrees in writing that the record or communication may be disclosed.

174 (b) On receipt of a record or communication that by law is confidential under subsection (a) of this section or
175 privileged, Committee staff shall maintain the confidentiality or privilege and may not further disclose or disseminate the
176 information, except as provided under applicable state or federal law.

177 (c) Each record or communication exchanged between Committee staff and an entity under full review or focused
178 review that is exempt from public disclosure under the Freedom of Information Act, Chapter 100 of Title 29 before the
179 exchange remains exempt after the exchange.

180 Section 9. Amend § 10209, Title 29 of the Delaware Code by making deletions as shown by strike through and
181 insertions as shown by underline as follows:

182 § 10209. ~~Committee responsibilities and duties.~~ Full review; hearing notice; Committee staff duties; Committee
183 duties.

184 (a) The purpose of a full review is to evaluate an entity and its statues, policies, rules, regulations, and programs.

185 ~~(b) The Committee should try to give 2 weeks' notice to an agency under review of dates scheduled for Committee~~
186 ~~meetings, public hearings, and other related assemblages; Notice of hearing. Whenever possible, the Committee shall give 2~~
187 ~~weeks' notice to an entity under full review of a Committee hearing related to that entity; however, lack of notice does not~~
188 ~~affect the lawfulness of the Committee's activities or decisions~~ a Committee action or decision.

189 ~~(b) (c) To review an agency, the~~ Committee staff duties. To prepare the Committee for a full review of an entity,
190 Committee staff shall do all of the following:

191 ~~(1) Direct staff to prepare a draft report to be used in public hearings.~~

192 ~~a. Following review and comment by the Committee, the draft report must be made available to the~~
193 ~~public.~~

194 ~~b. The draft report must contain information that assists the Committee in conducting a review of the~~
195 ~~agency and meeting its requirements under this section, including background information on and an introductory~~
196 ~~analysis of the information submitted by the agency under review, together with any preliminary evaluations or~~
197 ~~recommendations arising from the information in the draft report.~~

198 (1) Fulfill staff's duties under § 10207(f) of this title, relating to the entity's self-report.

199 (2) Conduct a thorough review of ~~all information furnished to the Committee by the agency~~ the information
200 that the entity under review provides in its self-report under § 10207(a) of this title.

201 (3) Obtain, verify, and review ~~any reports, audits, or actions taken by other state agencies concerning the~~
202 ~~agency under review.~~ each report, audit, or action taken by another entity or organization concerning the entity under
203 review.

204 (4) Performance evaluation. Conduct a performance evaluation of the ~~agency under review based, at least in~~
205 ~~part, on the following criteria:~~ entity under review.

206 a. The purpose of a performance evaluation is to do all of the following:

207 1. Improve the entity's accountability, effectiveness, and efficiency.

208 2. Determine how well the entity has served and is serving the public need.

209 b. A performance evaluation must be based on, at a minimum, all of the following:

210 1. Program effectiveness, including analysis of both of the following:

211 a. A. If the ~~agency~~ entity is a licensing ~~agency~~ entity, the extent to which the ~~agency~~ entity has
212 permitted qualified applicants to be licensed.

213 b. B. The extent to which the ~~agency~~ entity has served the public ~~interests.~~ need, using the
214 criteria for review under § 10211 of this title.

215 2. Whether the entity has sufficient internal controls to achieve effective and efficient operations and
216 provide a reliable reporting mechanism for internal and external use.

217 e. ~~The~~ 3. Whether the entity has complied with a law or another requirement that affects the entity's
218 performance, including the extent to which the ~~agency~~ entity has recommended statutory changes, and
219 whether those changes directly benefit the public or ~~whether those changes primarily benefit the agency or~~
220 ~~other entities,~~ entity, or another entity or organization, and are of only indirect benefit to the public. benefit the
221 public only indirectly.

222 (5) Prepare a staff report.

223 a. Staff shall compile and produce a staff report. The staff report must include information that assists the
224 Committee in conducting a thorough review of the entity and meet the Committee's requirements under this
225 section. The staff report must include at least all of the following:

226 1. Background information on the entity.

227 2. Staff's analysis, conclusions, and recommendations arising from the staff's independent research
228 and information that the entity submits, including from the entity's self-report.

- 229 3. The entity's response, if any, to staff's analysis, conclusions, and recommendations.
- 230 4. Additional research that the Committee may request.
- 231 b. After staff produces the staff report, staff shall provide the entity an opportunity to review and
232 comment on the report before the submitting the report to the Committee or making the report available to the
233 public.
- 234 c. After the Committee and the entity under review receive the staff report, staff shall make the report
235 available to the public.
- 236 (d) Committee duties. To review an entity, the Committee shall do all of the following:
- 237 (1) Conduct the review at a public hearing.
- 238 (2) Consider the staff report and additional information that the entity under review or Committee staff may
239 provide.
- 240 (3) Deliberate and consider recommendations in the staff report.
- 241 (4) Create additional recommendations that the Committee determines is necessary or appropriate.
- 242 (5) Review the implementation of recommendations contained in the final reports presented, under § 10213 of
243 this title, to the General Assembly and the Governor during previous legislative sessions. Review the implementation
244 of recommendations, if any, contained in an annual report relating to a previous full review or focused review of the
245 entity.
- 246 (6) Take testimony relating to the full review or focused review from additional persons at the request of a
247 Committee member and approval of the chair.

248 Section 10. Amend § 10210, Title 29 of the Delaware Code by making deletions as shown by strike through and
249 insertions as shown by underline as follows:

250 § 10210. Public hearings.

251 (a)(1) From January through March of each year, unless the needs of the General Assembly require otherwise, the
252 Committee shall regularly and uniformly convene initial public hearings scheduled by the Chairperson, in order to provide
253 an opportunity for the Committee to meet with the agencies under review and to help formalize a timetable for the reviews.
254 convene an initial hearing for each entity under full review or focused review that the chair schedules, to provide an
255 opportunity for the Committee to meet with the entity to discuss the analysis, conclusions, and recommendations in the
256 entity's staff report and otherwise fulfill the Committee's duties under § 10209(d) of this title for a full review or
257 § 10212 of this title for a focused review.

258 (2) ~~Following an initial public hearing for an agency, the Committee may, at the call of the Chairperson, meet~~
259 ~~to discuss and consider actions and recommendations relating to the agency, with or without the staff of the agency~~
260 ~~under review. Following the initial public hearing under paragraph (a)(1) of this section, the Committee may, at the call~~
261 ~~of the chair, hold additional hearings as needed to complete conducting the full review or focused review. The entity's~~
262 ~~staff or highest administrative officer is not required to attend an additional hearing unless the chair requests their~~
263 ~~attendance.~~

264 (3) [Repealed.]

265 (4) ~~To encourage participation by the general public, hearings and meetings convened under this subsection~~
266 ~~must occasionally be held~~ the Committee shall hold a public hearing in the early evening hours if the Committee
267 determines that an evening meeting would better served the full review or focused review, the entity under review, or
268 the constituency that the entity serves.

269 (b)(1) ~~The highest administrative officer of an agency under review must be present at each public hearing or~~
270 ~~meeting relating to the agency and convened under this chapter, unless excused by the Chairperson, and at any Committee~~
271 ~~meeting where the officer's attendance is requested. The officer must be prepared to answer questions from members of the~~
272 ~~Committee and members of the general public. Highest administrative officer attendance at public hearings. The highest~~
273 administrative officer of an entity under full review or focused review must be present at the initial public hearing relating
274 to the review and at each additional public hearing for which the Committee chair requests the officer's presence.

275 (1) The Committee chair may excuse the highest administrative officer from the initial public hearing at the
276 request of the officer, at the recommendation of Committee staff, or as the chair may determine is appropriate.

277 (2) ~~The highest administrative officer of an agency under review may, with the Chairperson's chair's~~
278 ~~approval, appoint a designee to meet the officer's obligations under paragraph (b)(1) of this section. this subsection.~~

279 (3) ~~The Committee may designate a person an individual other than the highest administrative officer of an~~
280 ~~agency under review to meet the officer's obligations under paragraph (b)(1) of this section. this subsection.~~

281 (c)(1) ~~Notwithstanding the provisions of § 10203(f) of this title, at each title, at the initial public hearing held in~~
282 ~~accordance with the provisions of this chapter, relating to an entity under full review or focused review, individuals in~~
283 ~~attendance, including members of the general public, representatives of the agency entity under review, and witnesses on~~
284 ~~behalf of either the agency entity or the general public, are entitled to be heard and to present their evidence for the record.~~

285 (1) ~~Testimony and written materials that are offered by members of the general public may not be~~
286 ~~unreasonably refused, and must be retained and considered by the Committee during its evaluation of an agency.~~
287 Testimony or written materials relating to a full review or focused review that a member of the general public offers

288 may not be unreasonably refused, and the Committee must retain and consider the testimony or written materials
289 during the review.

290 ~~(2) Testimony and written materials that are offered by an agency or by witnesses on behalf of the agency,~~
291 ~~including officers and others having a direct interest in the continued existence of the agency, must be accepted, but the~~
292 ~~testimony and written materials are not considered to have been offered by “members of the general public.”~~
293 Testimony or written materials relating to a full review or focused review that an entity or a witness on behalf of an
294 entity, including an officer or another individual having a direct interest in the continued existence of the entity under
295 review, must be accepted and the Committee must retain and consider the testimony or written materials during the
296 review.

297 Section 11. Amend § 10211, Title 29 of the Delaware Code by making deletions as shown by strike through and
298 insertions as shown by underline as follows:

299 § 10211. Criteria for full review.

300 (a) Standard.

301 (1) In conducting a full review of an entity, the Committee shall assess the entity based on each of the
302 following:

303 a. Whether the entity is meeting a genuine State need.

304 b. Whether the entity should and can be strengthened or supported so that it can perform correctly to meet
305 its purpose.

306 (2) The genuine public need for an agency entity under full review by the Committee and whether the agency
307 entity is satisfactorily meeting that need may not be is not assumed. The agency entity has the burden of showing,
308 through the criteria for review under subsection (b) of this section, that there is a genuine public need and that the
309 agency entity is meeting that need.

310 ~~(b) The criteria for review required by the provisions of subsection (a) of this section~~ Criteria for review. The
311 criteria to conduct a full review of an entity are as follows:

312 (1) The purpose of the act establishing the agency entity and the manner of the entity’s operation of the
313 agency designed to achieve the purpose.

314 (2) Whether it can be independently established, apart from information supplied by the agency entity or by
315 persons having a direct interest in the continued existence of the agency, entity, that the termination of the agency
316 entity would be detrimental to the public health, safety, or welfare; welfare, and whether a possibility exists that the
317 termination would be beneficial to the public health, safety, or welfare.

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

320 (4) Whether ~~statute a law~~ establishes a clear mandate to the ~~agency, entity~~ and whether the ~~agency entity~~ has
321 complied with the mandate, if any, in the best interests of the general public.

322 (5) Whether ~~other programs, activities, or agencies of the state government have~~ another program, activity, or
323 entity has the same or similar objectives, and, if so, a comparison of the costs and effectiveness of ~~those programs,~~
324 ~~activities, or agencies, and the identification of any duplicate programs, activities, or agencies with those of the agency~~
325 ~~under review: that program, activity, or entity, and the identification of a duplicate program, activity, or entity with that~~
326 of the entity under review.

327 (6) Whether, ~~in the prior 3 years, the agency~~ in the 3 years before the entity's full review, the entity has
328 recommended to the General Assembly only ~~those~~ statutory changes of primary benefit to the public, or if ~~those~~ the
329 recommended changes were primarily of benefit to the ~~agency entity~~ or ~~to~~ the occupation, business, or institution
330 which ~~it~~ the entity serves or regulates.

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

332 (8) Whether applications and formal public complaints filed with the ~~agency entity~~ have been processed
333 effectively and fairly.

334 (9) Whether the ~~agency entity~~ has issued professional or occupational licenses only to qualified applicants,
335 and whether the ~~agency entity~~ has unfairly restricted access to ~~any~~ a person wishing to engage in a regulated business,
336 occupation, or profession.

337 (10) The extent to which the ~~agency entity~~ has encouraged participation by the public in making ~~agency rules,~~
338 ~~regulations, and decisions,~~ an entity rule, regulation, or decision, as opposed to participation solely by those ~~it~~ the
339 entity regulates, and the extent to which public participation has resulted in ~~rules, regulations, and decisions~~ a rule,
340 regulation, or decision compatible with the objectives of the ~~agency entity~~.

341 (11) Whether the ~~agency entity~~ has operated in an open and accountable manner with public access to records
342 and meetings, and whether there are safeguards against possible conflicts of interests.

343 (12) Whether ~~"ethical conduct" provisions or rules of an agency,~~ an entity's provision or rule relating to
344 ethical conduct, if any, ~~are~~ is in fact limited to ethical or moral conduct, or if the ~~provisions or rules contain~~ provision
345 or rule contains primarily commercial prohibitions and restrictions relating to profits, advertising, ~~and other business~~
346 ~~topics:~~ or another business topic.

347 (13) The extent to which the ~~agency has been complying~~ entity has complied with Chapters 58, 100, and 101
348 of this title; §§ 6506, 6512, and 6519 of this title; and ~~§ 8, article XV~~ Section 8 of Article XV of the Delaware
349 Constitution, or with the requirements of ~~any laws which are direct successors to~~ a law which is a direct successor to
350 any of those listed in this paragraph (b)(13).

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

353 (15) ~~Any additional criteria designated by the Committee as applicable to the particular agency under review.~~
354 Additional criteria that the Committee determines is appropriate or necessary to complete the entity's full review.

355 Section 12. Amend § 10212, Title 29 of the Delaware Code by making deletions as shown by strike through and
356 insertions as shown by underline as follows:

357 § 10212. ~~Agency "rules review".~~ Focused review.

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

360 (b) ~~The Committee may select an agency for a rules review in the same manner that it selects an agency for review~~
361 ~~under this chapter, or it may select an agency upon a written request by the chairperson of a standing committee of either~~
362 ~~house. If the Committee decides to conduct a rules review of an agency, the name of the agency must be included among~~
363 ~~those agencies scheduled for the next immediate review. A rules review may begin immediately if, in the determination of~~
364 ~~the Committee, an emergency exists.~~

365 (c) ~~When the Committee conducts a rules review of an agency, it must first hold an information gathering hearing~~
366 ~~in which any agency, individual, or business has the right to testify about any issue, concern, defect, or problem relating to~~
367 ~~the rules or regulations under review by the Committee. The Committee must also permit members of the public and any~~
368 ~~state agency to send written testimony and other materials to the Committee. The Committee shall, from the information-~~
369 ~~gathering hearing and submitted materials, compile a list of concerns which must include those issues, concerns, defects, or~~
370 ~~problems which the Committee feels merit closer study and consideration.~~

371 (d) ~~Within 1 week following the information gathering hearing, the Committee shall meet to consider the~~
372 ~~accumulated testimony and submitted materials, and may meet as many times thereafter to continue its review for as long~~
373 ~~as the Committee determines that meetings are necessary. Upon the conclusion of its review, the Committee shall list those~~
374 ~~changes in the agency's rules or regulations that the Committee considers necessary or appropriate, and shall meet with the~~
375 ~~highest administrative officer of the agency, or the administrative officer's designee to determine what changes, if any, can~~
376 ~~be agreed upon between the agency and the Committee. If an agreement or possible solutions to the remaining items set~~

377 forth in the list of concerns cannot be obtained, the Committee shall issue its recommendations in the next final report, and
378 shall cause legislation to be drafted that will, in the determination of the Committee, best accomplish its recommendations.

379 (a) The Committee may conduct a focused review of an entity if the Committee determines that a full review of
380 the entity is not appropriate or necessary. The purpose of a focused review is to evaluate a component within an entity, such
381 as a specific statute, policy, rule, regulation, or program related to the entity. A focused review is in contrast to the broader
382 evaluation of a full review under this chapter.

383 (b) A focused review is conducted as follows:

384 (1) The Committee may select an entity or component of an entity, such as a program or sub-entity, for a
385 focused review in the same manner that it selects an entity for a full review under § 10213(c) of this title.

386 (2) The Committee may begin a focused review immediately and is not subject to the timeline under
387 § 10210(a) of this title.

388 (3) Committee staff shall work with the Committee to establish the scope of the focused review.

389 (4) Committee staff shall conduct research based on the scope established under paragraph (b)(3) of this
390 section and another issue, concern, defect, or problem that the Committee may request or as the research may indicate.

391 (5) The Committee shall set a deadline for completion of the Committee staff's research, based on staff's
392 estimation of the time needed to complete the research and the emergency nature, if any, of the focused review.

393 (6) In conducting research under this section, Committee staff shall engage the general public and each
394 appropriate entity or organization, including the entity under focused review, to request written testimony, comment, or
395 other material to aid the Committee in the focused review.

396 (7) Committee staff shall prepare a staff report containing a summary of the staff's research and staff's
397 findings, conclusions, and recommendations. Committee staff shall submit the report to the Committee not later than
398 the deadline that the Committee sets under paragraph (b)(5) of this section, unless staff requests and the chair approves
399 an extension of time.

400 (8) After Committee staff has submitted the staff report under this section to the Committee, the Committee
401 shall conduct the focused review by following § 10209(d) of this title.

402 (9) Committee staff shall make the staff report available to the public not later than the date of the
403 Committee's initial public hearing under paragraph (b)(8) of this section.

404 (10) To conclude a focused review, the Committee shall publish each recommended change that the
405 Committee may determine is necessary or appropriate.

406 Section 13. Amend § 10213, Title 29 of the Delaware Code by making deletions as shown by strike through and
407 insertions as shown by underline as follows:

408 § 10213. ~~Final report.~~ Annual report; review selection.

409 (a) ~~On or before May 30 of the calendar year in which an agency under review is automatically terminated in~~
410 ~~accordance with the provisions of this chapter, the Committee shall present its final report to the General Assembly and to~~
411 ~~the Governor. The final report must contain a complete description of the agency and its objectives, including all~~
412 ~~subagencies or programs within the agency; a review of all material obtained pursuant to §§ 10207-10211 of this title; a~~
413 ~~determination of whether or not there is genuine public need for the agency, and whether the agency is satisfactorily~~
414 ~~meeting that need; recommendations of the Committee; and other matters or information that the Committee may wish to~~
415 ~~include.~~ Annual report. The Committee shall submit an annual report, compiled by Committee staff and approved by the
416 Committee, to the General Assembly, the Governor, and the Director and Librarian of the Division of Research each year
417 not later than July 31. The annual report must contain at least all of the following:

418 (1) A summary of the outcomes and Committee's actions relating to each full review or focused review that
419 the Committee conducts since its previous annual report, including each of the recommendations the Committee makes
420 under § 10214 of this title.

421 (2) A summary of the legislation that the Committee approves for introduction since the Committee's
422 previous annual report.

423 (3) A list of the entities the Committee selects for full review or focused review the next year following the
424 report.

425 (4) Other information that the Committee may wish to include.

426 (b) ~~The final report required by subsection (a) of this section must contain the Committee's review schedule of~~
427 ~~those agencies recommended for review during the year following the final report. The review schedule for that year must~~
428 ~~contain no less than 4 agencies and should~~ Review selection. The Committee must conduct at least 4 full reviews or
429 focused reviews each year. Selection for full review or focused review may take into consideration all of the following:

430 (1) ~~Any agency~~ The number of entities whose full review or focused review is being continued to the
431 following year. A continued full review or focused review may be counted as 1 of the 4 required reviews.

432 (2) ~~Any agency~~ The number of entities automatically scheduled for a full review or focused review.

433 (3) ~~Any agency added by the General Assembly.~~ The number of entities that the General Assembly may add.

434 (4) ~~Any agency added by the Committee by 6 affirmative votes.~~ The number of entities that the Committee
435 adds under subsection (c) of this section.

436 (c) The Committee may, by 6 affirmative votes, ~~add agencies to, remove agencies from, or replace agencies~~ add an
437 entity to, remove an entity from, or replace an entity on the Committee's full review and focused review schedule.

438 Section 14. Amend § 10214, Title 29 of the Delaware Code by making deletions as shown by strike through and
439 insertions as shown by underline as follows:

440 § 10214. Committee ~~recommendations and~~ recommendations; authority to recall ~~an agency~~ entity.

441 (a) ~~In its final report concerning an agency,~~ For each entity under full review or focused review, the Committee
442 may recommend 1 or more of the following:

443 (1) ~~a. The continuance of the agency, as is;~~ Continuance of the entity as is.

444 ~~b. termination of the agency;~~ Termination of the entity.

445 ~~c. termination of any program within the agency;~~ Termination of a program within the entity or a rule or
446 regulation adopted by the entity.

447 ~~d. the consolidation, merger, or transfer of the agency or of functions of the agency to another agency;~~
448 Consolidation, merger, or transfer of the entity or of a function of the entity.

449 ~~e. or continuation, hold-over,~~ Continuation, holdover, or termination of the agency entity unless or until
450 certain conditions are met or modifications are made, by legislation or otherwise, within a specified period of time.

451 (2) Budget appropriation limits for an ~~agency~~ entity.

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

454 (4) Legislation to amend the entity's governing statute or a related statute.

455 (b) When the Committee has released an ~~agency~~ entity from full review or focused review, it may recall the
456 ~~agency~~ entity to a public hearing before the Committee to consider making additional recommendations under subsection

457 (a) of this section if either of the following circumstances apply:

458 (1) The ~~agency~~ entity has the ability to meet a certain condition or make a modification that the Committee
459 ~~recommended,~~ recommends, but fails to do so.

460 (2) The Committee ~~recommended~~ recommends legislation to amend the ~~agency's~~ entity's governing statute or
461 a related statute, but, for any reason, the legislation ~~failed~~ fails to be enacted into law.

462 (3) The entity fails to submit to the Committee a report that the Committee requests with a status update on
463 the implementation of a recommendation, on a date that the Committee determines.

464 Section 15. Amend § 10215, Title 29 of the Delaware Code by making deletions as shown by strike through and
465 insertions as shown by underline as follows:

466 § 10215. ~~Review schedules.~~ Subsequent review; continuation of operations during review.

467 (a) An ~~agency entity~~ that has successfully completed a full review under this chapter or that has been re-
468 established is not subject to another full review until the sixth year following its last full review, unless the Committee
469 ~~believes that a sooner~~ determines by an affirmative vote of 6 members that a sooner full review is reasonable and necessary.
470 ~~The termination date in a review schedule does not apply to an agency recommended for continuance.~~

471 (b) An ~~agency entity~~ which has been recommended for termination or reorganization, but which nevertheless is
472 continued by legislative action or otherwise, must be placed on the Committee's review schedule for a full review at the end
473 of 4 calendar years from the date of the ~~agency's~~ entity's originally scheduled review date. An ~~agency entity~~ which is
474 reorganized ~~in accordance with the recommendation of the Committee at the Committee's recommendation~~ must be placed
475 on the review schedule for a full review or focused review at the end of 4 calendar years from the date of the ~~agency's~~
476 entity's originally scheduled full review or focused review date.

477 (c) An entity shall continue conducting its regular business throughout its full review or focused review unless the
478 Committee requests otherwise in writing.

479 Section 16. Amend § 10216, Title 29 of the Delaware Code by making deletions as shown by strike through and
480 insertions as shown by underline as follows:

481 § 10216. ~~Termination of an agency; Entity termination; reorganization or merger; re-establishment.~~

482 (a) Automatic termination. If the Committee recommends the termination of an ~~agency entity~~ and the ~~agency~~
483 entity is not re-established by an act of the General Assembly, ~~the agency is automatically terminated at the end of June 30~~
484 ~~immediately following the date of the Committee's final report.~~ the entity automatically terminates effective July 1 of the
485 next calendar year after the Committee's annual report in which the Committee first recommends the termination.

486 (b) Termination of a lesser-included entity. When an ~~agency entity~~ is terminated ~~pursuant to~~ under this chapter,
487 each lesser-included ~~agency entity~~ of the terminated ~~agency entity~~ is also terminated at the same time and under the same
488 conditions, unless at least 1 of the following occur:

489 (1) ~~the lesser-included agency is specifically exempted from termination by the Committee~~ The Committee
490 specifically exempts the lesser-included entity from termination.

491 (2) ~~or by law enacted before the end of June 30 immediately following the date of the Committee's final~~
492 ~~report.~~ A law exempting the lesser-included entity from termination is enacted before the end of June 30 of the next
493 calendar year after the Committee submits its annual report regarding the entity's termination.

494 (c) ~~If the Committee recommends the reorganization of an agency under review or a merging of the agency with~~
495 ~~another agency, the agency under review must be terminated on the June 30 following the final report, unless prior to June~~
496 ~~30 a bill is introduced setting forth a proposed reorganization or merger. If the bill is not enacted into law within 7 months~~
497 ~~from the date of its introduction, the agency is automatically terminated.~~ Reorganization or merger. If the Committee
498 recommends that the entity under review is reorganized or merged with another entity, the Committee must introduce
499 legislation establishing the reorganization or merger not later than June 30 of the next calendar year after the Committee
500 submits its annual report recommending the reorganization or merger. If legislation reorganizing or merging the entity is
501 not enacted, the entity automatically terminates effective on the date that the General Assembly in which the legislation is
502 introduced expires.

503 (d) ~~If the Committee recommends continuance of an agency, but only upon its meeting certain conditions or~~
504 ~~making certain modifications, the agency terminates 6 months from the date of the final report or on the termination date~~
505 ~~recommended by the Committee, whichever is later, unless the conditions have been met or the modifications have been~~
506 ~~made to the satisfaction of the Committee. [Repealed.]~~

507 (e) A bill to re-establish an agency entity that has been recommended for termination or reorganization must relate
508 only to that specific agency, entity, and the name of the affected agency entity must be ~~set forth~~ stated in the title of the bill.

509 Section 17. Amend § 10217, Title 29 of the Delaware Code by making deletions as shown by strike through and
510 insertions as shown by underline as follows:

511 § 10217. Concluding year for terminated ~~agencies.~~ entity; fiscal matters.

512 (a) ~~Notwithstanding the termination of an agency, it~~ Concluding year. If the Committee recommends terminating
513 an entity and legislation terminating the entity is not introduced in the same calendar year that the Committee makes the
514 recommendation to terminate, the entity may continue in temporary existence until the end of the next ~~succeeding~~ calendar
515 year in order following the recommendation for termination, only to properly conclude its the entity's business.

516 (1) ~~Unless otherwise provided by law, termination~~ The Committee's recommendation to terminate an entity or
517 legislation introduced but not enacted that terminates the entity does not reduce or otherwise limit the entity's power
518 and authority of a terminated agency during its during the entity's concluding year.

519 (2) ~~Upon~~ On the expiration of the concluding year, all of the entity's rights, powers, and functions ~~of the~~
520 agency cease. ~~Any unobligated~~ Unobligated or unexpended appropriations of an agency entity terminated under
521 this chapter lapse at the end of the concluding year.

522 (b) Fund transfer. At the end of a terminated ~~agency's~~ entity's concluding year, money in a dedicated fund of a
523 ~~state agency~~ another entity on behalf of the terminated entity must be immediately transferred to the General Fund of the

524 State Treasury, unless otherwise provided for by law. ~~Any~~ A law or portion of a law which dedicates money to a specific
525 fund of a terminated ~~state agency~~ entity is automatically repealed at the end of the ~~agency's~~ entity's concluding year.

526 (c) Limitation on spending. If a terminated ~~agency~~ entity is funded in the Budget Appropriation Act for each year
527 of the General Assembly, the ~~agency has no authority to~~ entity may not spend or obligate ~~any~~ of the funds after December
528 31 of the concluding year or on enactment of a law terminating the entity, whichever occurs first, unless specifically
529 provided for by law.

530 (d) Property and records. If a terminated ~~agency~~ entity is part of a larger ~~agency~~ entity, all property and records in
531 the custody of the ~~terminated agency~~ terminated entity must be transferred at the end of its concluding year to the next
532 largest entity of which the terminated ~~agency~~ entity was a part. If the terminated ~~agency~~ entity was itself the largest entity
533 or was an independent ~~agency~~ entity, the property ~~and records~~ or records must be transferred to the Secretary of State.

534 (e) Bonded indebtedness. If a terminated ~~agency~~ entity has ~~any~~ outstanding bonded indebtedness remaining at the
535 end of its concluding year or on enactment of legislation terminating the entity, the responsibility for the management of the
536 repayment of the bonded indebtedness through the continuation of the ~~agency's~~ entity's functions, limited merely to the
537 repayment function, is vested in the State Treasurer. ~~Any claims by the agency and any claims against the agency continue~~
538 The entity's claim or a claim against the entity continues and may not be terminated with the ~~agency~~ entity.

539 (f) ~~All Delaware Code references~~ Delaware Code. Each reference in the Delaware Code to a terminated ~~agency~~ are
540 entity is invalid upon on the expiration of the ~~agency's~~ entity's concluding year or on enactment of legislation terminating
541 the entity, whichever occurs first, unless specifically retained.

542 Section 18. Amend § 10218, Title 29 of the Delaware Code by making deletions as shown by strike through and
543 insertions as shown by underline as follows:

544 § 10218. Merit system employees.

545 If the termination of an ~~agency or of an agency's programs or activities~~ entity or an entity's program or activity
546 results in unemployment for a ~~person~~ an individual employed under the Merit System of Personnel Administration [Chapter
547 59 of this title], the unemployed ~~person~~ individual is entitled to first preference in all each other state employment
548 ~~opportunities~~ opportunity which arise ~~arises~~ thereafter for which the unemployed ~~person~~ individual is qualified. The
549 unemployed ~~person~~ individual has the right of first refusal for a state employment ~~opportunities~~ opportunity until the ~~person~~
550 individual obtains permanent employment.

551 Section 19. Amend § 10219, Title 29 of the Delaware Code by making deletions as shown by strike through and
552 insertions as shown by underline as follows:

553 § 10219. Monitoring ~~of~~ recommendations.

554 During each legislative session, ~~the staff of the Committee~~ staff shall do all of the following:

555 ~~(1) monitor legislation affecting agencies that have undergone review by the Committee~~ Monitor legislation
556 affecting the entity for at least 2 years after an entity’s full review or focused review concludes.

557 ~~(2) and shall periodically report to the members of the Committee any proposed changes which might modify~~
558 ~~prior recommendations of the Committee.~~ Periodically report to the Committee a proposed or actual legislative, policy,
559 or regulation change, if any, relating to an entity previously under full review or focused review, if the change may
560 result in the Committee modifying a recommendation made during the review.

SYNOPSIS

This Act updates the Legislative Oversight and Sunset Act, the governing statute for the Joint Legislative Oversight and Sunset Committee (“JLOSC”), to reflect updated and modern review practices and standards. The more significant changes include:

- Establishing the term “entity” to denote the organization that is under review. “Agency” has been the term used, but when discussing JLOSC reviews, “agency” could mean either the organization under review or the more common usage of any State agency. Because JLOSC’s reviews routinely include references to or assistance from State agencies that are not under review, using the term “entity” to mean the organization that is under review creates a distinction intended to avoid confusion.

- Clarifying quorum, including the impact of participating virtually in a meeting.

- Creating a new type of review, a focused review, to replace the antiquated and rarely-used rules review and distinguish a focused review from a “full review.” A full review is the standard review that JLOSC has historically performed, in which the entire entity is assessed. A focused review, in contrast, looks at specific components within an entity. A focused review is a more efficient assessment when only certain areas of an entity need to be reviewed.

- Clarifying JLOSC’s powers and duties, including updating JLOSC members’ duties versus staff duties to reflect current, modern practices.

- Clearly establishing 3 types of reports produced in JLOSC’s work: self-reports from the entity under review, staff reports from JLOSC staff, and annual reports from JLOSC summarizing the work performed each year.

- Codifying the confidentiality with which JLOSC and its staff have treated records from an entity under review and exceptions or waivers of confidentiality.

- Establishing that a record protected against public disclosure under the Freedom of Information Act does not lose its protection by virtue of the entity submitting the record as part of its review.

- Clarifying the purpose and standard for conducting a performance evaluation.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. Some of the types of technical corrections include changing the plural to the singular wherever appropriate and consistent with both the Drafting Manual and § 304 of Title 1; replacing passive voice with active voice; and, to increase readability, breaking down large, block paragraphs into lists where possible.

Author: Senator Hoffner