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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 392

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

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

1 Section 1. Amend § 10115, Title 29 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

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

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5 of such proposals, together with copies of the existing regulation being adopted, amended or repealed, the regulatory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

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

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

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

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

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

27 Section 2. Amend § 10404A, Title 29 of the Delaware Code by making deletions as shown by strike through and
28 insertions as shown by underline as follows:

29 § 10404A. Regulatory impact statements [For application of this section, see 80 Del. Laws, c. 112, § 7].

30 (a) Any agency that proposes to adopt or amend any regulation under the Administrative Procedures Act, § 10101
31 et seq. of this title, ~~that is substantially likely to impose additional costs or burdens upon individuals and/or small~~
32 ~~businesses~~ shall submit a regulatory impact statement to be published by the Registrar of Regulations as part of the notice
33 requirements set forth in § 10115 of this title. Each regulatory impact statement shall include:

34 (1) A specific reference to the statutory provision which allows for the adoption or amendment of the rule or
35 regulation and the statutory provisions which address the subject matter of the rule or regulation;

36 (2) A description of the purpose of the regulation;

37 (3) An identification of the individuals ~~and/or~~ small businesses that would be subject to compliance under the
38 regulation;

39 (4) A good-faith estimate by the agency of the potential cost of compliance for individuals ~~and/or~~ small
40 businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs
41 required to comply with the proposed regulation; and

42 (5) A description of any less intrusive or less costly alternative methods of achieving the purpose of the
43 proposed regulation, to the extent such methods are not otherwise described herein.

44 (b) If the regulatory impact statement is not filed, the proposed regulatory change cannot be published.

45 Section 3. Add a new Section to Title 29 of the Delaware Code by making deletions as shown by strike through
46 and insertions as shown by underline as follows:

47 § 10404C. Economic Impact Statement

48 (a) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each
49 agency shall prepare an economic impact statement that includes the following:

50 (1) An identification and estimate of the number of small businesses subject to the proposed regulation;

51 (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the
52 proposed regulation, including the type of professional skills necessary for preparation of the report or records;

53 (3) A statement of the probable effect on impacted small businesses; and

54 (4) A description of any less-intrusive or less-costly alternative methods of achieving the questions of the proposed
55 regulations.

56 Section 4. Amend § 10407, Title 29 of the Delaware Code by making deletions as shown by strikethrough and
57 insertions as shown by underline as follows:

58 § 10407. Review of regulations of executive branch agencies.

59 ~~In accordance with the provisions of this section, each executive branch agency shall conduct a periodic review of~~
60 ~~regulations promulgated by such agency to determine which regulations, if any, should be modified or eliminated. The~~
61 ~~review process hereunder shall commence no later than January 1, 2016, and shall recommence on a recurring basis every 4~~
62 ~~years. Reviews by executive branch agencies hereunder shall be conducted in accordance with the following procedures:~~

63 ~~(1) Each executive branch agency shall be assigned a 3-month regulatory review period by the Office of the~~
64 ~~Governor or any executive branch agency designated thereby. During such regulatory review period, each executive branch~~
65 ~~agency shall solicit public input, and shall conduct its own in-depth internal review, to identify regulations promulgated by~~
66 ~~such agency 4 years ago or more for possible modification or elimination.~~

67 (a) Within 4 years of the enactment of this law, each agency shall review all agency regulations existing at the time of
68 enactment to determine whether such regulations should be readopted, amended, or repealed, consistent with the stated
69 objectives of those statutes, to minimize economic impact of the regulations on small businesses in a manner consistent
70 with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of
71 existing regulations is not feasible by the date established above, the agency shall publish a statement certifying such
72 determination. The agency may extend the completion date for such review by 1 year.

73 (b) Regulations adopted after the enactment of this law shall be reviewed every 5 years after publication of such
74 regulations as the final regulation to ensure that such regulations minimize the economic impact on small businesses in a
75 manner consistent with the stated objectives of applicable statutes.

76 ~~(2)~~ (c) During its regulatory review period, each executive branch agency:

77 a. 1. Shall conduct at least 1 public hearing in each county, notice of which shall be provided in accordance with
78 the Administrative Procedures Act, § 10101 et seq. of this title ("APA");

79 b. 2. Shall accept recommendations and input, in person, by mail, by fax, and via an online submission form; and

80 e. 3. Shall adopt procedures to allow for the submission of anonymous recommendations and input.

81 ~~(3) At the conclusion of its regulatory review period, each executive branch agency shall evaluate the comments,~~
82 ~~proposals, and recommendations received or generated, and shall submit any revisions (i.e., regulations to be eliminated or~~
83 ~~modified) to the Register of Regulations for publication in accordance with the APA.~~

84 ~~(4) No later than 12 months from the commencement of any regulatory review process described herein, the Office~~
85 ~~of the Governor, or any executive branch agency designated thereby, shall submit a report to General Assembly detailing~~
86 ~~the regulations eliminated or modified as a result of such process.~~

87 ~~(5) Notwithstanding the foregoing, each executive branch agency shall be required to consider only those~~
88 ~~regulations adopted pursuant to the APA 4 years ago or more for which it has direct promulgating authority. In connection~~
89 ~~herewith, no executive branch agency shall be required to consider regulations administered by an executive branch agency~~
90 ~~but require adoption or amendment by a board, commission, or other agency, including but not limited to regulations~~
91 ~~administered by the Department of State's Division of Professional Regulation that define standards of conduct or~~
92 ~~qualifications of individuals applying for licensure or as licensed professionals. If an executive branch agency does not~~
93 ~~have any regulations adopted pursuant to the APA 4 years ago or more for which it has direct promulgating authority, it~~
94 ~~shall not be subject to the procedures described in this section.~~

95 ~~(6) In connection herewith, the Office of the Governor, or any executive branch agency designated thereby, may~~
96 ~~promulgate guidelines to assist executive branch agencies in implementing the requirements of this section. Such guidelines~~
97 ~~shall be subject to the APA, and may include but shall not be limited to:~~

98 ~~a. Coordinating the regulatory review period of each executive branch agency to maximize public input, and to~~
99 ~~minimize the administrative burden imposed upon such agency and the Register of Regulations to the extent possible;~~

100 ~~b. Requirements relating to the timing and content of any notice to be published by each executive branch agency~~
101 ~~in connection with its regulatory review period; and~~

102 ~~c. A description of procedures to allow for the submission of anonymous recommendations and input.~~

103 ~~(d) In reviewing regulations to minimize the economic impact of the regulations on small businesses, the agency~~
104 ~~must consider the following factors:~~

105 ~~(1) The continued need for the regulation;~~

106 ~~(2) The nature of complaints or comments received from the public concerning the regulation;~~

107 ~~(3) The complexity of the regulation;~~

108 ~~(4) The extent to which the regulation overlaps, duplicates, or conflicts with other Federal, State, or local~~
109 ~~governmental regulations; and~~

110 ~~(5) The length of time since the regulation has been evaluated and the degree to which technology,~~
111 ~~economic conditions, or other factors that have changed in the area affected by the regulation.~~

112 ~~(e) Any review of the regulations must include a new Economic Impact Statement. If the Economic Impact~~
113 ~~Statement is not filed with the regulation, the regulation cannot be published and shall expire.~~

114 (f) Such review and readoption, amendment, or repeal done pursuant to this section must be preceded by
115 publication pursuant to Chapter 101 of Title 29.

116 (g) The Registrar of Regulations must develop a system that provides sufficient notice to the promulgating agency
117 of the expiration of the period of review referenced in this section.

118 Section 5. Amend § 10409, Title 29 of the Delaware Code by making deletions as shown by strikethrough and
119 insertions as shown by underline as follows:

120 § 10409. Guidelines [For application of this section, see 80 Del. Laws, c. 112, § 7; and 80 Del. Laws, c. 113, § 8]

121 (a) No later than November 15, 2015, the Registrar of Regulations, the Office of Management and Budget (OMB),
122 and the Department of State, in consultation with such regulatory agencies, boards, and commissions as may be necessary
123 or desirable, shall submit for final publication guidelines to assist state agencies in preparing the agency regulatory
124 statements required pursuant to this chapter. The adoption of such guidelines shall be subject to the Administrative
125 Procedures Act, § 10101 et seq. of this title, with the OMB serving as the adopting agency.

126 (b) The guidelines ~~shall~~ must include ~~, but are not limited to~~ :

127 (1) Determining when, and under what circumstances, a proposed regulation is substantially likely to impose
128 additional costs or burdens on individuals and/or small businesses;

129 (2) Identifying and evaluating alternative methods of achieving the purpose of a proposed regulation;

130 (3) Determining the potential cost of complying with a proposed regulation, including projected reporting,
131 recordkeeping, and other administrative costs; ~~and~~

132 (4) Evaluating and adopting such additional exemptions from the requirements applicable to agency regulatory
133 statements as may be necessary or desirable ;

134 (5) Identifying whether the proposed regulation is exempt from the requirements of this chapter due to a legislative
135 or federal mandate or previous compliance with the Federal Regulatory Flexibility Act; and

136 (6) Identifying whether the proposed regulation is exempt from the requirements of this chapter on the basis of the
137 regulation impacting employment or labor law, defining standards of conduct or qualifications of individuals applying for
138 licensure or as licensed professionals.

139 Section 6. Add a new Section to Title 29 of the Delaware Code by making deletions as shown by strikethrough and
140 insertions as shown by underline as follows:

141 § 10410. Notice.

142 At the time an agency is required to provide notice of a proposed regulation under § 10115 of the Administrative
143 Procedure Act, the agency shall publish the regulatory flexibility analysis and the economic impact statement created
144 pursuant to § 10411 of this chapter.

145 Section 6. Add a new Section to Title 29 of the Delaware Code by making deletions as shown by strikethrough and
146 insertions as shown by underline as follows:

147 § 10411. Guidelines.

148 (a) The Registrar of Regulations, the Department of State, and the Office of Management and Budget, in
149 consultation with State regulatory agencies, boards, and commissions, shall prepare and publish guidelines to assist state
150 agencies in preparing the regulatory flexibility analysis and the economic impact statement. The guidelines must include:

151 (1) determining a proposed regulation's potential adverse economic effects on small businesses;

152 (2) identifying and evaluating alternative methods of achieving the purpose of a proposed regulation.

SYNOPSIS

This bill amends the notice provision of the Administrative Procedures Act to include copies of the regulatory flexibility analysis and the economic impact statement.

It also creates the requirement of an Economic Impact Statement and what it will contain.

Further, the timeline for review of regulations is spelled out with an emphasis on minimizing the economic impact caused by regulations.