



SPONSOR: Sen. McBride & Rep. Longhurst

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE CONCURRENT RESOLUTION NO. 60

CREATING AN ADMINISTRATIVE LAW IMPROVEMENT TASK FORCE FOR THE PURPOSE OF REVIEWING AND IMPROVING THE ADMINISTRATIVE PROCEDURES ACT, PROCESSES FOR JUDICIAL REVIEW OF DECISIONS BY ADMINISTRATIVE TRIBUNALS, AND PROCESSES FOR DISPUTES INVOLVING LAND USE AND REAL PROPERTY, INCLUDING THE LANDLORD TENANT CODE.

1 WHEREAS, in 1976, the State of Delaware first adopted the Administrative Procedures Act (“APA”) as part of an
2 overall effort to modernize and make more efficient and effective its system of government; and

3 WHEREAS, the APA was based in large part on the Model State Administrative Procedures Act as adopted by the
4 Uniform Law Commission; and

5 WHEREAS, there have been several efforts to modernize the Model State Administrative Procedures Act over the
6 last 40 years, but Delaware has not comprehensively reviewed the APA since its original enactment; and

7 WHEREAS, since its enactment in 1976, many State regulatory statutes and bodies have been created and
8 subjected to alternative forms of administrative review outside of or inconsistent with the APA, thereby undermining the
9 efficiency and effectiveness the APA sought to achieve; and

10 WHEREAS, jurisdiction over appeals from State or county level administrative agencies has been allocated to the
11 Judiciary in inefficient ways, resulting in instances of courts having overlapping jurisdiction and jurisdiction otherwise
12 assigned in a manner inconsistent with the traditional areas of practice for the court; and

13 WHEREAS, the proliferation of bespoke regulatory statutes that do not follow the APA and the erratic allocation
14 of administrative law jurisdiction among various courts has resulted in a lack of consistency and reliability in the key area
15 of administrative law; and

16 WHEREAS, the inconsistent approaches have a negative effect on administrative agency performance, leaving
17 agency staff responsible for applying statutes and holding administrative hearings without a consistent body of APA-
18 centered administrative law; and

19 WHEREAS, the complexity, inconsistency, and long timelines for our administrative law system can be frustrating
20 and costly to Delaware businesses, discouraging commercial investment and the expansion of commercial operations, to the
21 detriment of job creation in our State; and

22 WHEREAS, there is currently a lack of consistent expedited processes for critical issues before administrative
23 tribunals or appeals thereof, which creates significant uncertainty to the detriment of Delaware's economy; and

24 WHEREAS, the persistence of these practices is costly in terms of efficiency, as the courts sometimes struggle
25 with a wide variety of regulatory schemes and jurisdictional idiosyncrasies, rather than focusing on the merits of the claims
26 before them; and

27 WHEREAS, the complexity of our administrative law system can lead to citizens, businesses, and community
28 organizations not understanding how to assert their rights, thus diminishing confidence in the rule of law; and

29 WHEREAS, by taking a fresh look at this system, we can better serve the people of Delaware by rationalizing
30 administrative law review: (1) to apply one consistent, backbone approach to administrative review when practicable; (2) to
31 allocate administrative law review in the Judiciary in a clear and efficient manner to avoid overlap, confusion, and waste;
32 and (3) to increase fairness by reducing the extent to which cases are resolved on technicalities or statutory quirks, rather
33 than on substantive merit; and

34 WHEREAS, consistent with this effort, it is also critical to look at the most important stage in the administrative
35 law process, which is the initial agency hearing; and

36 WHEREAS, many of these hearings are presided over by hearing officers with ongoing ties to an agency that is
37 also a litigant in the case, leading to a perception that the hearing officer may not be neutral; and

38 WHEREAS, the current system also strains agency resources, as not all agencies have the resources necessary to
39 handle hearings effectively, and thus administrative law decision quality varies widely; and

40 WHEREAS, at the federal level and in other states, approaches have been taken to ensure that neutral, experienced
41 hearing officers, without dependence on any litigant agency, are employed to improve the quality, neutrality, and
42 consistency of administrative agency determinations; and

43 WHEREAS, Delaware could benefit by examining these approaches and moving toward a system of neutral,
44 expert hearing officers, whose principal function is delivering high-quality administrative law decisions; and

45 WHEREAS, Delaware practitioners and Judiciary members have begun to review the APA, subsequent model
46 acts, and similar provisions in other states in an effort to start the process of modernizing the APA; and

47 WHEREAS, to properly modernize Delaware's administrative law system, including allocating jurisdiction more
48 rationally within the judicial branch, it is important to conduct a comprehensive study of which various administrative
49 agencies hold hearings and, relatedly, the extent to which those hearings result in appeals to the courts; and

50 WHEREAS, because these subjects are critical to Delawareans, they should be examined by a group comprised of
51 administrative law experts and citizens, representing a diverse range of Delawareans whose lives are affected by our

administrative law system, including representatives of environmental, consumer, and community groups, the business community, and legal services organizations; and

WHEREAS, the Administrative Law Improvement Task Force ("Task Force") under Senate Concurrent Resolution No. 33 of the 149th General Assembly reviewed the APA and related processes; and

WHEREAS, the Task Force worked diligently over 2017 and 2018, meeting numerous times, but did not submit its report before its authority to act expired.

NOW, THEREFORE:

BE IT RESOLVED by the Senate of the 150th General Assembly of the State of Delaware, the House of Representatives concurring therein, that the Administrative Law Improvement Task Force ("Task Force") is created and that:

(1) The Task Force is comprised of the following members:

- a. One member, appointed by the Pro Tempore of the Senate.
- b. One member, appointed by the Minority Leader of the Senate.
- c. One member, appointed by the Speaker of the House of Representatives.
- d. One member, appointed by the Minority Leader of the House of Representatives.
- e. One representative of the Office of the Governor, appointed by the Governor.
- f. One member representing the Judiciary, appointed by the Chief Justice.
- g. One State Commissioner to the Uniform Law Commission, appointed by the Governor.
- h. One member representing the Department of Justice, appointed by the Attorney General.
- i. One member representing the Department of State, appointed by the Secretary of State.
- j. Four members of the public, appointed by the Governor and representing the business community, county and municipal government, the environmental advocacy community, and legal services for the indigent.

(2) The Governor shall appoint the Chairperson and Co-Chairperson of the Task Force from among the Task Force's members.

(3) The Task Force is comprised of the following subcommittees:

- a. The State Regulatory Subcommittee.

1. The State Regulatory Subcommittee shall review and provide any comments or suggestions on modernizing the APA, with a goal of bringing as many agencies as possible under the governance of the APA as modernized and to ensure that a consistent, high quality form of administrative law review applies to all statutes.

82 2. The Subcommittee shall review the allocation of administrative law appeals to the courts, with the
83 goal of reducing overlap, inconsistency, and allocating jurisdiction in the manner that best facilitates the
84 expertise and expeditious resolution of administrative law disputes.

85 3. The Subcommittee shall coordinate with the Chief Justice, the Presiding Judges, the
86 Administrative Office of the Courts, the Executive Branch Agencies, and the Attorney General in conducting
87 targeted case load studies to aid the overall work of the Task Force.

88 4. The Subcommittee shall consider, and if deemed advisable, propose a plan for the creation of a
89 unit comprised of neutral hearing officers to improve the consistency and fairness of administrative agency
90 rulings. In studying this issue, the Subcommittee, using the case load study and other inquiries, shall endeavor
91 to identify what resources are currently devoted to the work of conducting and deciding administrative
92 hearings, and develop an efficient plan based on reallocating resources to the extent practicable, so that scarce
93 tax dollars are used cost-effectively.

94 b. The Land Use and Real Property Subcommittee.

95 1. The Land Use and Real Property Subcommittee shall examine whether it is possible to improve
96 the consistency, efficiency, and fairness of decision-making in the important area of land use and real
97 property.

98 2. The Subcommittee shall endeavor to rationalize the jurisdiction of the various courts in this area,
99 and to ensure that appeals in land use cases are handled in a single court, with the capacity and expertise to
100 handle them effectively.

101 3. The Subcommittee shall also examine jurisdictional and appellate issues relating to civil actions,
102 summary possession hearings, and appeals arising under the landlord tenant code, with a view to making its
103 jurisdiction fit coherently with other bodies of law, and to provide a reliable guide to both tenants and
104 landlords regarding where certain disputes are heard. In particular, the goal should be to have all appeals from
105 the Justice of the Peace Court, and related cases, go to a single court. The Subcommittee shall consider
106 eliminating the use of outdated writs to better ensure that landlord tenant and land use cases are decided on the
107 merits and not based upon technicalities such as non-compliance with outdated technical procedures.

108 (4) The Task Force may include additional representatives of important constituencies in the work of the Task
109 Force, at the discretion of the Chairs. The Chairs may also identify additional members of the Bar to serve as reporters
110 to the Task Force.

111 (5) The Task Force shall report to the General Assembly and the Governor on or before March 2, 2020, on the
112 following:
113 a. Any suggested revisions to modernize the APA.
114 b. Any fiscal or budget implications resulting from the enactment and implementation of legislation to
115 modernize the APA.
116 c. Any additional statutory changes the Administrative Law Task Force recommends to effectuate the
117 recommendations stemming from the efforts outlined in this resolution.

SYNOPSIS

This Concurrent Resolution recreates the Administrative Law Improvement Task Force ("Task Force") to continue the Task Force's work begun during the 149th General Assembly and issue its report by March 2, 2020.

Specifically, the Task Force was charged with reviewing Delaware's Administrative Procedures Act and other related statutes for the purpose of making recommendations to modernize Delaware's administrative tribunal process, including judicial review of administrative tribunal decisions and processes for disputes involving land use and real property, including the Landlord Tenant Code.

Author: Senator McBride