



SPONSOR: Rep. Valihura & Sen. Sokola
Reps. Hudson, Longhurst, Maier, Viola; Sens. Bonini, Bunting,
Connor, McDowell

HOUSE OF REPRESENTATIVES

144th GENERAL ASSEMBLY

HOUSE BILL NO. 89
AS AMENDED BY
SENATE AMENDMENT NO. 1

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

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

Section 1. Amend Chapter 102, Title 29 of the Delaware Code by striking Chapter 102 in its entirety and by substituting in lieu thereof the following:

"CHAPTER 102. DELAWARE SUNSET ACT

§10201. Definitions.

For purposes of this chapter, unless the context otherwise requires:

- (1) 'agency' means any regulatory, administrative, advisory, executive, or legislative body of this State, including, but not limited to, a board, bureau, commission, department, division, committee, council, association, authority, or any other entity established by an Act of the General Assembly of this State which:
 - a. is given authority in the Delaware Code to regulate a business, occupation, or profession;
 - b. is supported in whole or in part by public funds;
 - c. expends or disburses public funds; or
 - d. is specifically charged by a public body to advise or make recommendations;
- (2) 'Committee' or 'Sunset Committee' means the joint legislative committee established by this chapter;
- (3) 'performance evaluation' means an assessment of how well an agency has performed and is performing its functions, and how well the agency has served and is serving the public need.

§10202. Declaration of policy.

(a) It is essential to the maintenance of a healthy state economy and of a government that has the confidence of its citizens that the State establish a system of periodic legislative review of its agencies. This review of agency performance and activities is consistent with other activities and goals of the General Assembly. The primary purpose of this review is to determine whether or not there is a genuine public need for the agency under review, and, if so, to determine whether or not the agency is correctly performing to meet that need.

(b) The purpose of this chapter is to provide an action-forcing mechanism designed to increase the accountability of various agencies through increased legislative scrutiny of agencies and their activities. The intent of the General Assembly is to establish a timetable for the initial review of certain agencies, and ultimately to review all agencies established by or receiving financial assistance from the State. The action-forcing mechanism is to terminate agencies under review on certain dates, unless affirmatively re-established by law.

(c) The purpose of this chapter is not to terminate agencies which are sufficiently meeting a recognized State need and which are accountable to and responsive to the public interests. Rather, the purpose of this chapter is to use the review mechanism to strengthen and support these agencies.

§10203. Sunset Committee composition; chairperson; appointment; quorum; reimbursement; meetings.

(a) The Sunset Committee is composed of 5 members of the Senate appointed by the President Pro Tempore and 5 members of the House of Representatives appointed by the Speaker of the House. Not more than 3 Senate appointees, nor 3 House appointees, may belong to the same political party. The chairperson and vice-chairperson of the Sunset Committee alternate each year between a representative appointed by the Speaker of the House and a senator appointed by the President Pro Tem of the Senate. During odd-numbered years, a senator serves as chairperson and a representative serves as vice-chairperson; during even-numbered years, a representative serves as chairperson and a senator serves as vice-chairperson.

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

(c) A quorum consist of at least 6 Committee members. A quorum must be present in order to transact business. If a quorum is present, a proposition is carried by a majority of the entire Committee, unless a larger number of affirmative votes is required for passage by statute or rule.

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

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

(f) Although all meetings of the Sunset Committee are open to the public, only members of the Committee and persons designated by the chairperson are permitted to speak or otherwise participate.

§10204. Sunset Committee staff; appropriations.

Employees of the Division of Research of Legislative Council and of the Office of the Controller General serve as the permanent staff of the Sunset Committee. The Committee may, by the affirmative vote of at least 6 members, provide for other assistance, equipment, or expenditures that are within the limits of the Committee's budget. The General Assembly shall appropriate funds that it considers necessary to carry out the activities and goals of the Committee.

§10205. Sunset Committee rules and regulations.

The Sunset Committee should adopt Committee rules and regulations necessary to carry out the activities and goals of this chapter.

§10206. Sunset Committee subpoena powers.

(a) The Sunset Committee may issue process to witnesses at any place in this State and compel their attendance, as well as compel the production of books, records, papers, and other objects that may be necessary or proper for the purposes of the Committee's proceedings. The Committee may issue attachments when necessary to obtain compliance with subpoenas or other process. An attachment so issued may be addressed to and served by any peace officer in this State. The chairperson of the Committee shall issue in the name of the Committee any subpoenas requested by the Committee, if the request received the affirmative vote of at least 6 members of the Committee. If the chairperson of the Committee is unavailable, the designee of the chairperson may issue subpoenas or any other lawful process in accord with the provisions of this subsection.

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

§10207. Agency reports to the Sunset Committee.

(a) Each agency under review by the Sunset Committee shall forward to the Committee an annual report containing the following information:

- (1) a chart or diagram showing the greater agency of which it is a part, if any, as well as all agencies over which it has jurisdiction;
- (2) agency goals and objectives, and the statutory authority for the goals and objectives, if any;
- (3) all programs in being at any time for the period of 1 year immediately prior to the date of the annual report;
- (4) the total value of State funds or materials, or both, used by the agency for each of the last 5 fiscal years;
- (5) a listing of all Delaware Code provisions from which the agency derives its rights, duties, and functions.

(b) Each year on or before January 15, each agency under review by the Sunset Committee shall forward to the Committee:

- (1) the last 5 budget reports relating to all program priorities, activities, and accomplishments, if the agency is subject to zero-based budgeting requirements;
- (2) a concise and specific statement setting forth the performance or achievement of the agency relating to the criteria for review set forth in §10211 of this chapter, and addressing no other subject except the criteria for review; and
- (3) any additional information requested by the Committee, including any record, document, or file over which the agency has custody or jurisdiction, if the additional information is available.

(c) Notwithstanding any other law or statute to the contrary, upon notification to an agency that it is under review by the Sunset Committee, the agency shall forward all information set forth in this section to the Committee, and shall update the information and provide additional information that the Committee or its staff may from time to time request.

§10208. [Reserved]

§10209. Sunset Committee responsibilities and duties.

(a) The Committee should try to give 2 weeks' notice to an agency under review of dates scheduled for Committee meetings, public hearings, and other related assemblages; however, lack of notice does not affect the lawfulness of the Committee's activities or decisions.

(b) Each year on or before February 7, the Committee shall:

- (1) conduct a thorough review of all information furnished to the Committee by the agency under review;
- (2) obtain, verify, and review any reports, audits, or actions taken by other State agencies concerning the agency under review;
- (3) conduct a performance evaluation of the agency under review based, at least in part, on the following criteria:
 - a. if the agency is a licensing agency, the extent to which the agency has permitted qualified applicants to be licensed;
 - b. the extent to which the agency has served the public interests;
 - c. the extent to which the agency has recommended statutory changes, and whether those changes directly benefit the public or whether those changes primarily benefit the agency or other entities, and are of only indirect benefit to the public;
- (4) direct staff to prepare a draft report to be used in public hearings. Following review and comment by the Committee, the draft report must be made available to the public. The draft report must contain information that assists the Committee in conducting a review of the agency, including background information on, and an introductory analysis of, the information submitted by the agency under review, together with any preliminary evaluations or recommendations arising from the information in the draft report; and
- (5) review the implementation of recommendations contained in the final reports presented, pursuant to §10213 of this chapter, to the General Assembly and the Governor during previous legislative sessions.

§10210. Public hearings.

- (a) (1) Between February 7 and the second Tuesday of March of each year, the Sunset Committee shall regularly and uniformly convene initial public hearings scheduled by the chairperson, in order to provide an opportunity for the Committee to meet with the agencies under review and to help formalize a timetable for the reviews.
- (2) Following an initial public hearing for an agency, the Committee may, at the call of the chairperson, meet to discuss and consider actions and recommendations relating to the agency, with or without the staff of the agency under review.

(3) The Committee may, at the call of the chairperson, hold a public hearing for an agency prior to February 7, if the draft report of the agency is complete.

(4) To encourage participation by the general public, hearings and meetings convened pursuant to this subsection must be held occasionally in the early evening hours.

(b) The highest administrative officer of an agency under review must be present at each public hearing or meeting relating to the agency and convened pursuant to this chapter, unless excused by the chairperson, and at any Committee meeting where the officer's attendance is requested. The officer must be prepared to answer questions from members of the Committee and members of the general public.

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

(1) Testimony and written materials that are offered by members of the general public may not be unreasonably refused, and must be retained and considered by the Committee during its evaluation of an agency.

(2) Testimony and written materials that are offered by an agency or by witnesses on behalf of the agency, including officers and others having a direct interest in the continued existence of the agency, must be accepted, but the testimony and written materials are not considered to have been offered by 'members of the general public.'

§10211. Criteria for review.

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

(b) The criteria for review required by the provisions of subsection (a) of this section are:

(1) the purpose of the Act establishing the agency and the manner of operation of the agency designed to achieve the purpose;

(2) whether or not it can be independently established, apart from information supplied by the agency or by persons having a direct interest in the continued existence of the agency, that the termination

of the agency would be detrimental to the public health, safety, or welfare; and whether or not a possibility exists that the termination would be beneficial to the public health, safety, or welfare;

- (3) an assessment of less restrictive or other methods of achieving the stated objectives of the Act establishing the agency, and if those other methods provide as much protection to the public;
- (4) whether or not statute establishes a clear mandate to the agency, and whether or not the agency has complied with the mandate, if any, in the best interests of the general public;
- (5) whether or not other programs, activities, or agencies of the State government have the same or similar objectives, and, if so, a comparison of the costs and effectiveness of those programs, activities, or agencies, and the identification of any duplicate programs, activities, or agencies with those of the agency under review;
- (6) whether or not in the past 3 years the agency has recommended to the General Assembly only those statutory changes of primary benefit to the public, or if those changes were primarily of benefit to the agency or to the occupation, business, or institution which it serves or regulates;
- (7) the efficiency with which the agency meets its statutory objectives;
- (8) whether or not applications and formal public complaints filed with the agency have been processed effectively and fairly;
- (9) whether or not the agency has issued professional or occupational licenses only to qualified applicants, and whether or not the agency has unfairly restricted access to any person wishing to engage in a regulated business, occupation, or profession;
- (10) the extent to which the agency has encouraged participation by the public in making agency rules, regulations, and decisions, as opposed to participation solely by those it regulates; and the extent to which public participation has resulted in rules, regulations, and decisions compatible with the objectives of the agency;
- (11) whether or not the agency has operated in an open and accountable manner with public access to records and meetings, and whether there are safeguards against possible conflicts of interest;
- (12) whether 'ethical conduct' provisions or rules of an agency, if any, are in fact limited to ethical or moral conduct, or if the provisions or rules contain primarily commercial prohibitions and restrictions relating to profits, advertising, and other business topics;

- (13) the extent to which the agency has been complying with Chapter 58, Chapter 100, and Chapter 101 of this title; §§6506, 6512, and 6519 of this title; and §8, article XV of the Delaware Constitution, or with the requirements of any laws which are direct successors to those listed in this paragraph;
- (14) any claimed impact as a result of federal intervention or loss of federal funds if the agency is terminated, the impact of which must be fully substantiated; and
- (15) any additional criteria designated by the Committee as applicable to the particular agency under review.

§10212. Agency 'rules review.'

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

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

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

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

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

§10213. Final report.

(a) On or before May 30 of the calendar year in which an agency under review is automatically terminated in accordance with the provisions of this chapter, the Committee shall present its final report to the General Assembly and to the Governor. The final report must contain a complete description of the agency and its objectives, including all sub-agencies or programs within the agency; a review of all material obtained pursuant to §§10207-10211 of this chapter; a determination of whether or not there is genuine public need for the agency, and whether or not the agency is satisfactorily meeting that need; recommendations of the Committee; and other matters or information that the Committee may wish to include.

(b) The final report required by subsection (a) of this section must contain the Committee's review schedule of those agencies recommended for review during the year following the final report. The review schedule for that year must contain no less than 4 agencies and should take into consideration the following:

- (1) any agency whose review is being continued to the following year;
- (2) any agency automatically scheduled for review;
- (3) any agency added by the General Assembly; and
- (4) any agency added by the Sunset Committee by 6 affirmative votes.

(c) The Committee may, by 6 affirmative votes, add agencies to, remove agencies from, or replace agencies on the Committee's review schedule.

§10214. Committee recommendations.

In its final report concerning an agency, the Sunset Committee may recommend one or more of the following:

- (1) the continuance of the agency, as is; termination of the agency; termination of any program within the agency; the consolidation, merger, or transfer of the agency or of functions of the agency to another agency; or the termination of the agency unless certain conditions are met or modifications are made, by legislation or otherwise, within a specified period of time;
- (2) budget appropriation limits for an agency; and
- (3) in general or specific terms, legislation which the Committee considers necessary to carry out its decision as to whether or not an agency should be continued or terminated.

§10215. Review schedules.

(a) An agency that has successfully completed a review under this chapter or that has been re-established is not subject to another review until the 6th year following its last review, unless the Committee believes that a sooner review is reasonable and necessary. The termination date in a review schedule does not apply to an agency recommended for continuance.

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

§10216. Termination of an agency; re-establishment.

(a) If the Sunset Committee recommends the termination of an agency and the agency is not re-established by an Act of the General Assembly, the agency is automatically terminated at the end of June 30 immediately following the date of the Committee's final report.

(b) When an agency is terminated pursuant to this chapter, each lesser-included agency of the terminated agency is also terminated at the same time and under the same conditions, unless the lesser-included agency is specifically exempted from termination by the Committee or by law enacted before the end of June 30 immediately following the date of the Committee's final report.

(c) If the Committee recommends the reorganization of an agency under review or a merging of the agency with another agency, the agency under review must be terminated on the June 30 following the final report, unless prior to June 30 a bill is introduced setting forth a proposed reorganization or merger. If the bill is not enacted into law within 7 months from the date of its introduction, the agency is automatically terminated.

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

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

§10217. Concluding year for terminated agencies.

(a) Notwithstanding the termination of an agency, it may continue in temporary existence until the end of the next succeeding calendar year in order to properly conclude its business. Unless otherwise provided by law, termination does not reduce or otherwise limit the power and authority of a terminated agency during its concluding year. Upon the expiration of the concluding year, all rights, powers, and functions of the agency cease. Any unobligated or unexpended appropriations of an agency terminated under this chapter lapse at the end of the concluding year.

(b) At the end of a terminated agency's concluding year, money in a dedicated fund of a State agency must be immediately transferred to the General Fund of the State treasury, unless otherwise provided for by law. Any law or portion of a law which dedicates money to a specific fund of a terminated State agency is automatically repealed at the end of the agency's concluding year.

(c) If a terminated agency is funded in the Budget Appropriation Act for each year of the General Assembly, the agency has no authority to spend or obligate any of the funds after December 31 of the concluding year, unless specifically provided for by law.

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

(e) If a terminated agency has any outstanding bonded indebtedness remaining at the end of its concluding year, the responsibility for the management of the repayment of the bonded indebtedness through the continuation of the agency's functions, limited merely to the repayment function, is vested in the State Treasurer. Any claims by the agency and any claims against the agency continue and may not be terminated with the agency.

(f) All Delaware Code references to a terminated agency are invalid upon the expiration of the agency's concluding year, unless specifically retained.

§10218. Merit System employees.

If the termination of an agency or of an agency's programs or activities results in unemployment for a person employed under the Merit System of Personnel Administration, the unemployed person is entitled to first preference in all other State employment opportunities which arise thereafter for which the unemployed person is qualified. The unemployed person has the right of first refusal for State employment opportunities until the person obtains permanent employment.

§10219. Monitoring of recommendations.

During each legislative session, the staff of the Sunset Committee shall monitor legislation affecting agencies that have undergone review by the Committee and shall periodically report to the members of the Committee any proposed changes which might modify prior recommendations of the Committee."