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HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 147

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE PERIODIC REVIEW OF REGULATIONS ADOPTED BY EXECUTIVE BRANCH AGENCIES.

1 WHEREAS, although State agency regulations are often necessary for the effective functioning of State
2 government and the protection of public health, safety and the environment, we must strive to ensure that such regulations
3 do not impose unnecessary burdens upon our residents, businesses and other organizations; and

4 WHEREAS, establishing a mechanism for the periodic review of executive branch agency regulations will help
5 ensure that such regulations continue to serve the original purpose for which they were adopted, and will provide a process
6 by which improvements can be made to Delaware's regulatory framework; and

7 WHEREAS, citizens are often in the best position to identify outdated, duplicative or overly burdensome
8 regulations, and any review of State agency regulations must include a meaningful opportunity for public input from
9 residents, business owners, employees, and other concerned citizens; and

10 WHEREAS, in order to be efficient with taxpayer dollars, the process for periodic review should be focused on
11 and targeted at those regulations that have not been subject to review for at least 4 years for which substantive concerns
12 exist; and

13 WHEREAS, it is appropriate for such a review to focus on older, well-established regulations because (1) such
14 regulations are more likely to be outdated or otherwise no longer justified by present realities; and (2) a focus on such
15 regulations will allow state agencies to consider the real-world effects of regulations in light of economic, technological and
16 other changes; and

17 WHEREAS, to reduce impediments to economic growth and improve the efficiency of state government, it is
18 appropriate for executive branch agencies to conduct a periodic, focused and targeted review of areas in which existing
19 regulations may be reduced or streamlined.

20 NOW THEREFORE:

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

22 Section 1. Amend Title 29, § 10403 of the Delaware Code by inserting the following language as subsection (2)
23 thereof as shown in underlining and renumbering the remaining subsections accordingly:

24 (2) “Executive branch agency” means, for purposes of this chapter only, the Department of Agriculture,
25 Department of Correction, Delaware Economic Development Office, Delaware State Housing Authority, Delaware
26 National Guard, Delaware State Housing Authority, Department of Education, Department of Finance, Department of
27 Health and Social Services, Department of Labor, Office of Management and Budget, Department of Natural Resources
28 and Environmental Control, Department of Safety and Homeland Security, Department of Services for Children, Youth and
29 Their Families, Department of State, Department of Technology and Information, and Department of Transportation.

30 Section 2. Amend Title 29, § 10407 of the Delaware Code by making deletions as shown by strike through and
31 insertions as shown by underline as follows:

32 § 10407 Review of ~~preexisting rules and~~ regulations of executive branch agencies.

33 ~~Each agency shall, during the 5 year period beginning with July 1, 1983, review agency rules which were~~
34 ~~published for comment, issued or in effect prior to such date and consider exemptions permitted by this chapter.~~

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

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

43 (b) During its regulatory review period, each executive branch agency:

44 (1) Shall conduct at least 1 public hearing in each county, notice of which shall be provided in accordance
45 with the Administrative Procedures Act, 29 Del.C. § 10101 et seq. (“APA”);

46 (2) Shall accept recommendations and input, in person, by mail, by fax, and via an online submission
47 form; and

48 (3) Shall adopt procedures to allow for the submission of anonymous recommendations and input.

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

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

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

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

66 (1) Coordinating the regulatory review period of each executive branch agency to maximize public input,
67 and to minimize the administrative burden imposed upon such agency and the Register of Regulations to
68 the extent possible;

69 (2) Requirements relating to the timing and content of any notice to be published by each executive
70 branch agency in connection with its regulatory review period; and

71 (3) A description of procedures to allow for the submission of anonymous recommendations and input.

SYNOPSIS

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36 ("EO 36") to help reduce impediments to economic growth and to improve the efficiency of state government. EO 36 requires each Executive Branch agency to periodically review the regulations on its books for possible modification or elimination. Following a robust public outreach period and in-depth reviews by each agency, the EO 36 resulted in the modification or elimination of more than 100 regulations.

The EO 36 process is valuable and should be codified. To that end, this bill would require each executive branch agency to conduct an in-depth examination of the regulations on its books every 4 years—and to solicit public input in doing so. At the end of each regulatory review, the Office of the Governor (or an executive branch agency designated thereby) must submit a report to General Assembly detailing the regulations eliminated or modified during this process.

In connection with this process, executive branch agencies are only required to review those regulations (1) that were adopted by the agency 4 years ago or more, (2) pursuant to the Administrative Procedures Act, (3) for which the agency

has direct promulgating authority. The bill also provides that the Office of the Governor (or an executive branch agency designated thereby) may promulgate guidelines to assist executive branch agencies in implementing the provisions of this bill.