

Senate Legislative Oversight and Sunset Committee

151st General Assembly
Tuesday, May 18th, 2021
10:00am – 10:30am
Virtual Meeting

Meeting Attendance:

Committee Members Present:

Senator Kyle Evans Gay
Senator Bryant L. Richardson
Senator Brian Pettyjohn
Senator Marie Pinkney

Committee Members Absent:

Senator Stephanie Hansen

Staff:

Mary Grace Colonna
Taylor Hawk
Read Scott

Attendees:

Mary Kate McLaughlin, Faegre Drinker LLP
Donna Polk, DIAA
Keri Rapa, Delaware General Assembly
Amanda McAtee, Division of Research
Nicole Polite, Office of the Controller General
Michael Soyka VI, DE Senate
Shauna Slaughter, Division of Professional Regulation
John Sebastian, Department of Correction
Matthew Donovan, Appoquinimink School District
Richard Senato, Council on Corrections
Bradley Layfield, DIAA
Sara Poore, Delaware State Senate
Sean Greene, WDEL
Edwin Perez
Corinne Armann
Jason Smith, Delaware General Assembly
Victoria Brennan, CGO
David Reinhold, Delaware Board of Geologists
Holly Vaughn Wagner, Division of Research
Laura Makransky
Jenna Ahner, State Board of Education
Mark Brainard Jr., Joint Legislative Oversight and Sunset Committee
Debbie Hamilton, Hamilton Goodman Partners
Carrie Cole
Anna Shields, Senate

Agenda:

I. Introduction

Senator Gay commenced the meeting by reviewing the committee's authorization and meeting logistics, including the logistics of public participation.

Senator Gay conducted attendance. Four members were present.

Mary Grace Colonna, Senate Staff, reviewed protocol and procedure for virtual participation.

II. Senate Bill 128 (Gay): AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE DELAWARE HEALTH INFORMATION NETWORK CHAPTER.

Synopsis: This Act is the result of the 2019 report of the Joint Legislative Oversight and Sunset Committee's ("JLSOC") task force under Senate Resolution No. 9 of the 150th General Assembly, which recommended amending the Delaware Health Information Network's ("DHIN") chapter to conform existing law with the standards of the Delaware Legislative Drafting Manual. This Act makes technical corrections to the DHIN chapter, including the following: - Using active voice where possible. - Using the singular where appropriate since, under § 304 of Title 1, "words used in the singular include the plural." - Converting block paragraphs into lists where possible, without changing the substance of the existing law, to enhance clarity and readability. - Replacing "party" with "person" for consistency since, under § 302 of Title 1, "person" is defined as including "corporations, companies, associations, firms, partnerships, societies and joint-stock companies, as well as individuals." This Act makes one substantive change to DHIN's chapter, in clarifying the circumstances under which the Governor may suspend or remove a member or otherwise consider a member as having resigned from the DHIN Board of Directors. Under this Act, the provision relating to suspension, removal, or resignation of a DHIN Board member is updated to be consistent with similar provisions for other boards. Section 8 of this Act does not take effect if Senate Bill No. 88 of the 151st General Assembly is enacted into law before January 1, 2023, and § 10312(3), Title 16 of Section 11 of this Act does not take effect if Senate Bill No. 119 of the 151st General Assembly is enacted before January 1, 2023. Both SB 88 and SB 119 are also the result of JLOSC's review of DHIN, and both address substantive matters. The enactment of SB 88 or SB 119 override the technical corrections made in this Act, and the effective date clauses in Sections 15 and 16 of this Act reflect that policy. This Act takes effective the January 1 after its enactment, to accommodate the enactment of the other bills currently pending before the 151st General Assembly relating to JLOSC's review of DHIN.

Senator Gay introduced the legislation by title. Senator Gay stated that the bill had a substantial synopsis and had been heard in the Joint Legislative Oversight and Sunset Committee.

There were no comments or questions from the committee members.

There was no public comment.

III. Senate Bill 129 (Gay): AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE COUNCIL ON CORRECTION.

Synopsis: This Act a result of the Joint Legislative Oversight and Sunset Committee's ("JLOSC") review of the Council on Correction ("Council"), and revamps Council's governing statute based on discussions throughout the review. In addition to making several technical changes to conform existing law to the standards of the Delaware Legislative Drafting Manual, this Act also does the following: - Provides administrative support through the Criminal Justice Council as a pilot partnership program with a 5-year sunset provision. This partnership is intended to provide Council with needed staff support and training opportunities, both which the Criminal Justice Council is able to provide. - Clarifies Council's advisory role. - Adds provisions regarding quorum and member removal. - Requires the Council to hold public meetings in all 3 counties. - Enables the Council to adopt bylaws or other procedural rules. - Requires the Council to submit an annual report.

Senator Gay introduced the legislation and stated that it had been considered in the joint committee.

There were no comments or questions from the committee members.

Senator Gay opened the floor to public comment.

Richard Senato, Council on Corrections, stated that he was present to participate and witness the legislative hearing. Mr. Senato stated that he had been on the council for a number of years and believed that the council had done great things in the past.

There was no further public comment.

IV. Senate Bill 130 (Gay): AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO OUT-OF-SEASON COACHING OF STUDENT ATHLETES.

Synopsis: This Act is the result of the Joint Legislative Oversight and Sunset Committee’s review of the Delaware Interscholastic Athletic Association (“DIAA”) and addresses out-of-season coaching for student athletes. The State Public Integrity Commission (“PIC”) has issued advisory opinions stating that a public school coach violates the State Employees’, Officers and Officials’ Code of Conduct (Chapter 58, Title 29) (“Code of Conduct”) if the coach provides out-of-season instruction for pay for returning members of the varsity or sub-varsity teams of the school where the coach works as a coach. See Commission Op. No. 02-02 and Commission Op. No. 02-60. The 149th General Assembly passed Senate Concurrent Resolution 79 (“SCR 79”), directing the Department of Education (“DOE”), with the assistance of DIAA, to promulgate regulations that permit coaches to coach student athletes out of season, with or without pay, with restrictions to safeguard the health of student athletes and minimize the risk of unethical behavior. SCR 79 directed the DOE to publish proposed regulations by October 1, 2018. In April 2021, as a result of DIAA’s ongoing work, the DIAA published proposed regulations addressing most of the criteria listed in SCR 79. One of the remaining hurdles to completing the proposed regulations has been the limitations imposed by the PIC advisory opinions. The purpose of this Act is to codify the General Assembly’s recognition that Delaware athletes are at a disadvantage when competing against youth from other states because Delaware coaches cannot coach their students out of season. Under this Act, out-of-season coaching does not violate the Code of Conduct if the coach and the organization providing the sport meet certain criteria that provide restrictions to minimize the risk of unethical activity. This Act recognizes that DIAA does not have the authority – or desire – to regulate non-DIAA organizations or coaches’ actions outside of DIAA programs. Rather, this Act tasks DIAA with setting the parameters that establish whether a specific instance of out-of-season coaching violates the Code of Conduct. Under this Act, the DIAA Board must submit proposed regulations to the Registrar of Regulations by August 15, 2021, to address any of the criteria under § 313(b) of Title 14 of this Act that are not already addressed in proposed or enacted regulations.

Senator Gay introduced the legislation. Senator Gay invited questions or comments from the committee.

There were no comments or questions from members of the committee.

Senator Gay welcomed the drafting attorney, Holly Vaughn Wagner, and asked about the language of the bill’s impact on the oversight of non-DIAA organizations. Senator Gay asked Ms. Wagner to provide the same information that she had provided the joint committee. Senator Gay stated that her understanding of the attorney’s explanation was that the bill did not give DIAA the ability regulate non DIAA entities.

Holly Vaughn Wagner, Division of Research, stated that the bill would not give DIAA the obligation or authority to regulate non-DIAA agencies or people. Ms. Wagner stated that it provided the trigger to allow a coach to coach out of season without violating the code of conduct. Ms. Wagner stated that DIAA’s role was to establish the standards to set the trigger. Ms. Wagner stated that the DIAA would not monitor individuals’ behavior but would set forth criteria for coaches coaching out of season. Ms. Wagner stated that line 19 gave DIAA the ability to monitor organizations, so that they could speak to a coach if there was a problem. Ms. Wagner stated that they did not have the authority to discipline or an obligation to investigate. Ms. Wagner stated that the intention was to allow DIAA to see what was going on, not to create an ethical responsibility.

Senator Gay sought confirmation that there was no direct mechanism for regulating non DIAA organizations, instead allowing monitoring of public employee participation in those organizations.

Ms. Wagner confirmed.

Senator Gay stated this discussion had been had in the joint committee and had come up again since. Senator Gay stated that it was an important conversation, as they did not want to mandate DIAA to do something they did not have the authority to do. Senator Gay stated that they should work with stakeholders to make sure everyone was on the same page with the intent of the legislation. Senator Gay stated that they may receive public comment on the issue.

Senator Gay opened the floor to public comment.

There was no public comment.

Senator Pettyjohn observed that the bills being considered had been discussed at length in the joint committee and participants likely were satisfied with discussions that had already taken place.

Senator Gay agreed and stated that she hoped the clarification on intent had been helpful.

V. **Senate Bill 135 (Gay): AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO GEOLOGY.**

Synopsis: The purpose of this Act is to eliminate the overly broad licensure exemption applicable to persons engaged in the practice of well drilling and persons engaged in the practice of engineering as registered professional engineers. There are many overlapping areas of practice between geologists and well-drillers and registered professional engineers. However, the exemption included in 24 Del. C. § 3602 leads to the conclusion that a licensed well driller or registered professional engineer is qualified to perform any act within the practice of geology regardless of level of competence or expertise. It is each governing body's responsibility to ensure competent practice within the respective professions, including any areas of overlap. However, the inclusion of the very broad exemption for well-drillers and registered professional engineers is misleading and does not serve the interests of public protection.

Senator Gay introduced the legislation and stated that it had originated from the Division of Professional Regulation. Senator Gay invited David Reinhold from the Board of Geologists and Shauna Slaughter from the Division of Professional Regulation to speak on the bill.

David Reinhold, Delaware Board of Geologists, stated that he was present mostly to answer questions. Mr. Reinhold stated that he was also a member of DAPE, Delaware's Professional Engineering Licensing Board, and was registered as a geologist and an engineer. Mr. Reinhold stated that he had also served on ethnics committees and was aware of the background of the bill's origin. Mr. Reinhold stated that they were asking for one line to be removed from the definition section of the law which said that nothing in the law applied to well drillers or registered professional engineers. Mr. Reinhold stated there was concern among regulatory agencies that take submissions from geologists and engineers to show competence due to the fact that some of what was submitted was not of the best quality. Mr. Reinhold stated that some registered professional engineers were claiming to be exempt from the law and certain requirements on competence. Mr. Reinhold stated that this did not serve the public. Mr. Reinhold stated that there was overlap between engineering and geology and this was not affected by the bill. Mr. Reinhold stated that individuals were still able to practice both in the overlap area if it was in their competency. Mr. Reinhold stated that both boards were able to regulate their members' competence and negligence. Mr. Reinhold stated that if a geologist were to do work in the area of engineering and do it poorly, it would be the job of the geology board to address the issue. Mr. Reinhold stated that if an engineer was practicing geology and something was wrong, it would be the task of the engineering board to address the issue. Mr. Reinhold stated that there was agreement between the two boards. Mr. Reinhold stated that he did not believe the original law's intent was to exempt engineers from geology law, because they did not put the line in the exception section. Mr. Reinhold stated that three years prior, the president of the Board of Geologists had written a letter on the issue to the president of DAPE. Mr. Reinhold stated that DAPE's counsel had debated it and found there was no reason to oppose the change. Mr. Reinhold stated that the matter appeared straightforward and would assist public safety.

Senator Gay thanked Mr. Reinhold and Shauna Slaughter from the Division of Professional Regulation for their work on the issue.

There were no comments or questions from members of the committee.

There was no public comment.

VI. Conclusion

Senator Gay thanked participants. Senator Gay stated that the members would receive an email on the legislation for their favorable, unfavorable, and on its merit responses.

Senator Gay adjourned the meeting at 10:24am.