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STATE OF DELAWARE

JOINT SUNSET COMMITTEE

May 16, 2013
United State Senate
Committee on the Budget
Task Force on Government Performance
Testimony RE: Delaware Joint Sunset Committee

Good morning. Thank you for the opportunity to be here today to discuss the sunset review process in Delaware. My name is Nicole Poore and I am the state senator from the 12th Senatorial District and Chair of the Joint Sunset Committee.

The comments I will be making today address how the Joint Sunset Committee was established in Delaware. I will also provide an overview of the sunset review process and some of our recent accomplishments. Finally, I will discuss how Delaware's Joint Sunset Committee compares to the sunset committees in other states.

Establishment of the Joint Sunset Committee in Delaware

The Delaware General Assembly passed legislation establishing the Sunset Law in 1979. The intent of the enabling legislation was to provide a system of periodic legislative review of the state's agencies, boards, and commissions. The underlying purpose of this legislative review process was to determine the following:

- 1) Is there a genuine public need for the entity under review?
- 2) If the answer is yes, is that entity effectively and efficiently performing to meet that need?

The Joint Sunset Committee is a bipartisan committee comprised of ten legislators. Five senators are appointed to serve on the Committee by the Senate President Pro Tempore and five representatives are appointed to serve by the Speaker of the House. Of the five appointed from each chamber, three Committee members are appointed from the majority caucus, and two are appointed from the minority caucus. The Chair and Vice Chair are chosen by the Senate President Pro Tempore and the Speaker of the House respectively, and alternate serving as the Joint Sunset Committee's Chairperson each year. Additionally, the Joint Sunset Committee is consistently reinvigorated with new members each General Assembly, who accept the challenge of leading in an environment that requires making complex and difficult decisions.

Sunset Review Process

The Joint Sunset Committee is tasked with guiding the sunset review process. The Committee's governing statute mandates that entities can be reviewed every six years, unless a significant and substantiated reason is provided. Sunset reviews are generally conducted over a ten to twelve month period, commencing on or before May 30th when entities are selected to be reviewed by the Joint Sunset Committee for the following legislative year.

An entity is notified of their selection in June and generally receives the first of several questionnaires in July. The questionnaires are designed by Committee staff for the purposes of conducting a comprehensive performance evaluation. The initial request for information may include, but not be limited to, diagrams showcasing the governing structure for the agency, board or commission, goal, objectives, duties, responsibilities, authority, fiscal information and education- to name a few. Responses submitted in the questionnaire(s), as well as information obtained from researching entities in Delaware and those in other states with similar missions, are organized into a draft report.

The preliminary or draft report is provided to Committee members for their review and use during the public hearing process, which is statutorily mandated to begin on or before February 7th each year. Public hearings are scheduled in the evening to allow for greater participation by the public. Public hearings serve as a critical component of the sunset review process, as they provide an opportunity for Joint Sunset Committee members to hear from those who are impacted the most to best determine if the agency, board or commission is protecting the public's health, safety and welfare.

To that end, the Joint Sunset Committee accepts any and all public comment received from the date an entity is selected up for sunset review until the Committee meets to consider that entity's final recommendations. Recommended changes for an entity under review can be submitted through written correspondence, as well as through testimony given at the public hearing. Ultimately, both the Joint Sunset Committee and the sunset review process function at their best when the various stakeholders and the public take an active and vested interest in the Committee's reviews.

At the conclusion of the Joint Sunset Committee's public hearings, additional meetings are scheduled for the purposes of considering recommendations submitted by the entity under review, the Joint Sunset Committee members, various other stakeholders, the public at large, as well as those offered by Committee staff.

Joint Sunset Committee members consider each recommendation individually and recommendations are often adopted unanimously, which speaks to the nonpartisan nature that has typically governed the way members conduct the business before the Joint Sunset Committee. By always keeping in mind the principle goal of the sunset review process, Committee members often come to the same or very similar suppositions.

At the conclusion of a sunset review, the Joint Sunset Committee may recommend the continuance, consolidation, reorganization, transfer, or termination of an agency, board, or

commission. The Committee is mandated by statute to publish a final report on or before May 30th each year, which shall include, but not be limited to, any official action taken by the Committee, adopted recommendations for the entities under review, and a schedule of the sunset reviews selected for the following year.

The Joint Sunset Committee has sunset or terminated a very limited number of active state entities since the first reviews in 1980; however, the more common approach has been to work with the agency, board or commission under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity's overall performance and accountability.

The Joint Sunset Committee's governing statute clearly states that the Committee's purpose is not to terminate an agency, board or commission which is sufficiently meeting a recognized need and has been accountable and responsive to the interests of the public. In those instances, the Joint Sunset Committee ultimately strives to strengthen and support these statutorily created entities through the sunset review process.

The majority of the recommendations that the Joint Sunset Committee considers and ultimately adopts require amendments to a state entity's governing statute. A bill is then drafted to include these legislative amendments for introduction in the chamber where the current Committee Chairperson serves as a member. Historically, the vast majority of the bills sponsored by the Joint Sunset Committee have received broad bipartisan support in both chambers of the Delaware legislature. Other legislators appreciate the effort that the review process requires and recognize that the issues have been thoroughly vetted by Committee members prior to the introduction of legislation.

Accomplishments

Since its inception, Delaware's Joint Sunset Committee has performed 241 sunset reviews, evaluating and analyzing approximately 120 state agencies, boards, or commissions.

One of the most significant sunset reviews in recent years successfully reorganized a 35 year old board originally created to provide a method of meeting the hardships imposed upon the innocent victims of certain crimes by compensating them financially for losses sustained as a result of those crimes.

In 2009, the Joint Sunset Committee adopted recommendations and subsequently sponsored legislation renaming the board the Victim's Compensation Assistance Program, transferring its duties and employees to the Delaware Department of Justice, and provided for the staff and executive director to award benefit compensation to victims based on existing criteria. These changes effectively streamlined the compensation process, ensuring victims receive the compensation they deserve in a timely manner.

In 2008, Joint Sunset Committee staff worked with the boards and commission staff in the governor's office to identify inactive gubernatorial appointed boards, councils and commissions to be submitted for sunset review. As a result of these efforts, to date, the Joint Sunset

Committee has terminated 19 inactive entities by sponsoring legislation which upon enactment successfully eliminated them from the applicable governing statutes.

Delaware's Joint Sunset Committee vs. Sunset Committees in Other States

Approximately half of the states have established entities with a similar purpose and function as Delaware's Joint Sunset Committee; however the Texas Sunset Advisory Commission is often used as the benchmark by which all other sunset committees across the country are measured.

In a number of ways, the processes in place in both Delaware and Texas are almost identical. Both states employ specific review criteria, engage in similar sunset review processes, encourage greater participation from the public in the review process, and work to ensure basic recommendations are included for consideration, when applicable.

Two examples of a basic or standard recommendation which Delaware and Texas both utilize include requiring state entities to establish conflict of interest policies, as well as including language to disqualify and remove gubernatorial appointed board members from their positions when specific criteria is met.

There are also some significant and fundamental differences between Delaware's Joint Sunset Committee and the Texas Sunset Advisory Commission, which have greatly impacted how both legislative committees operate today. For example, in Delaware, the number of state entities eligible for sunset review totals more than 300, as the definition for an "eligible agency" is written broadly.

In Texas, approximately 130 state entities are eligible for sunset review, and each of the eligible entity's enabling legislation includes both the periodic sunset review requirement and a date that the entity could be abolished if legislative action is not taken.

With regard to the sunset review schedule, Delaware is prohibited from conducting a sunset review within six years of a prior review. Entities are selected by the Committee members and as such, attention can be diverted to those with developing or ongoing issues that the legislature has not had the opportunity to address.

In Texas, sunset reviews are conducted approximately once every 12 years; however there is some flexibility with changing their regimented schedule should emergencies or other unexpected issues arise.

With regard to action taken or required by each sunset committee, the Delaware Joint Sunset Committee can continue a state entity without enacting any additional legislation. In Texas, a state agency is abolished by the Sunset Advisory Commission unless the Texas Legislature passes a bill to reauthorize the agency for 12 additional years.

Finally, Delaware conducts sunset reviews for approximately four to six agencies, boards or commissions each year, as the Committee is staffed with one fulltime employee.

In comparison, Texas conducts approximately 20-30 sunset reviews on eligible entities each year, and employs 28 staffers to assist in this process.

At this time, I will be happy to answer any questions you might have about the Joint Sunset Committee or the sunset review process in Delaware.

Respectfully submitted,

Nicole S. Poore
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Chair, Delaware Joint Sunset Committee