

# Staff Findings and Recommendations Report Delaware State Arts Council

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*152<sup>nd</sup> General Assembly, 1<sup>st</sup> session*

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*Respectfully submitted to the  
Joint Legislative Oversight and Sunset Committee  
February 2023*

2023 Joint Legislative Oversight and  
Sunset Members:

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The Joint Legislative Oversight & Sunset Committee (“JLOSC” or “Committee”) is a bipartisan 10-member legislative body which performs periodic legislative review of boards or commissions. The purpose of the oversight and sunset review is to decide genuine public need and if the entity is effectively performing. The Division of Research is a nonpartisan and confidential reference bureau for the General Assembly and supplies many services including staff support for JLOSC.

Special thanks: We appreciate the aid provided by Delaware State Arts Council staff in conducting this review.

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# ABOUT THIS REPORT

This is a staff findings and recommendations report (“staff report”) drafted by Division of Research staff on the sunset and oversight review (“review”) of the Delaware State Arts Council. This report has staff recommendations for JLOSC review and discussion. Recommendations are not final until discussed and adopted by JLOSC with an affirmative vote by 7 members.

The review’s purpose is to find the public need for the entity and whether the entity is effectively performing to meet the need. The goal of the review is to supply strength and support to entities that are supplying a State recognized need.

JLOSC performs its duties with support provided by the Division of Research’s dedicated and nonpartisan staff in the form of two JLOSC research analysts with supplemental assistance from a legislative attorney, legislative fellow, and administrative assistant. JLOSC staff completes a performance evaluation of the entity under review and gives a staff report to JLOSC which includes research, analysis, key findings, and recommendations. During the review process, the following is not assumed:

- There is a genuine public need for the entity under review.
- That the entity is satisfactorily and effectively meeting public need.

Rather, the entity under review has the burden of showing, through the statutory criteria for review included in their self-report and analyst requested supplemental documentation, that there is a genuine public need, and that the entity is meeting that need.

JLOSC selected the Delaware State Arts Council for review on March 21, 2022. During the review process the Delaware State Arts Council supplied information by completing a self-report which included a performance review questionnaire.<sup>1</sup>

Division of Research staff compiled the following findings and recommendations after completion of a performance evaluation which included thorough research and analysis outlined in the Objectives, Scope, and Methodology section of this report. Division of Research staff used national auditing and evaluation standards while conducting the performance evaluation. Those standards require that we plan and perform the evaluation to obtain sufficient evidence to supply a reasonable basis for our findings and conclusions based on our evaluation objectives. We believe that the evidence obtained supplies a reasonable basis for our findings and conclusions based on our evaluation objectives. The Objectives, Scope, and Methodology section discusses the fieldwork procedures used while developing the findings and recommendations presented in this report.

The recommendations contained in this report are not final until adopted by JLOSC by affirmative vote of 7 members. Under §10213(a), Title 29, the Committee must first decide whether there is a genuine public need for an entity under review. To meet this requirement, the Committee may select to continue or terminate the entity under review.

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<sup>1</sup> Self-reports available on the Committee’s website, <https://legis.delaware.gov/Committee/Sunset>

JLOSC meets publicly to review and discuss its staff's findings and recommendations, and the Committee is free to change, reject, or create brand new recommendations.

The JLOSC statute authorizes the Committee to recommend 1 or more of the following:

- Continuation of the entity as is.
- Termination of the entity.
- Termination of any program within the entity.
- Consolidation, merger, or transfer of the entity or the entity's functions to another entity.
- Termination of the entity unless certain conditions are met or modifications are made, by legislation or otherwise within a specified period.
- Budget appropriation limits for the entity.
- Legislation which the Committee considers necessary to carry out its decision to continue or terminate the entity.

The information contained in this report, along with the previously published self-report<sup>2</sup>, which includes background information from the entity under review, help the Committee in conducting a review of the entity and meeting its statutory requirements under Chapter 102, Title 29. The "Staff Findings" section of this report has information to support the following staff recommendations.

### **Next Steps**

After the release of this report, JLOSC will hold a public hearing in early 2023 for each entity under review to present to the Committee and accept public comment on the scope of the review.<sup>3</sup>

The Committee will review all information received, including the findings and recommendations presented in this staff report. Recommendations become completed after review, discussion, and an affirmative vote of 7 JLOSC members. Committee members are not bound by recommendations presented by staff and are free to change, reject, or form new recommendations. Once JLOSC adopts recommendations, the review moves to the implementation phase which may include drafting legislation.

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<sup>2</sup> Self-Report is accessible on the Committee's website, <https://legis.delaware.gov/Committee/Sunset>

<sup>3</sup> Public meeting notices found on the Committee's website and the State of Delaware's Public Meeting Calendar.

# STAFF RECOMMENDATIONS

## **Recommendation #1, Option 1 – Continue the Delaware State Arts Council**

After review and analysis, JLOSC staff recommends option 1, continue the Delaware State Arts Council, subject to any further recommendations that JLOSC adopts.

Continue or Terminate (standard JLOSC recommendation).

Option 1: The Delaware State Arts Council shall continue, subject to any further recommendations that JLOSC adopts.

- OR -

Option 2: The Delaware State Arts Council is terminated, and the Committee will sponsor legislation to implement this recommendation.

## **Recommendation #2 – Statute Revisions**

JLOSC should consider sponsoring a bill to apply technical corrections to the governing statute of the Delaware State Arts Council, Chapter 87, Title 29, and using this review as a guide, applying revisions to sections covering topics such as:

- Update Council composition.<sup>4</sup>
  - Define quorum.
- Update and define subcommittee and grant panel processes.

JLOSC and Delaware State Arts Council administrative staff will work together to develop statutory revisions. JLOSC staff will engage stakeholders as necessary.

## **Recommendation #3 – Release from Review.**

Release the Delaware State Arts Council from review upon enactment of legislation applying technical corrections and changing board composition listed under Recommendations 2.

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<sup>4</sup> 29 Del. C. § 8728.

# STAFF FINDINGS

## Finding #1

**The Delaware State Arts Council is engaged and involved in promoting and encouraging the arts throughout the state, performing their statutory duties as an advisory body, providing guidance to the Division of the Arts, and serving public interests well.**

The Delaware State Arts Council (“Council”) provides a forum for a diverse composition of community members from each county to consider arts policy reaching all fields of the performing and fine arts. Under current statute, the Council serves in an advisory capacity, providing policy guidance to the Division of the Arts (“Division”) Director and reviewing annual grant funding decisions as a citizen review component with representation statewide.<sup>5</sup> Additionally, the Council can consider other related matters referred by the Governor, Secretary of State, or Director and study, research, plan, and send advisory recommendations to the Governor, Secretary of State, or the General Assembly on issues determined proper to supply and support the arts sector in Delaware.

During the period of review, the Council held 15 meetings.<sup>6</sup> Highlights include:

- Quarterly reports by Council Chair on arts events and organizations statewide.
  - Centralized promotion of upcoming events through Division and Council.
- Quarterly reports by Division Director of policy changes and grant recipients.
- Grant application review and approval:
  - Fiscal Year 2019: 219 grants awarded totaling \$3,260,750.
  - Fiscal Year 2020: 268 grants awarded totaling \$4,049,425.
  - Fiscal Year 2021: 268 grants awarded totaling \$3,747,630.
  - Fiscal Year 2022: 174 grants awarded totaling \$3,976,873.
  - Fiscal Year 2023: 148 grants awarded totaling \$3,037,031.
- Appointed representatives to serve on the Division’s Strategic Planning Working Group.
  - Council approved Strategic Plan, titled [Cultivating Creativity: 2021-2025](#), on June 16, 2021.<sup>7</sup>

## Finding #2

**The Council effectively reviews and approves grant allocations decisions made through the Division and its grant panels.**

The Council reviews and advises the Division on grant allocations decisions based on established grant review [process](#).<sup>8</sup> Artists, schools, community-based organizations, and arts organizations interested in applying for available grants submit an application to the Division. The process is dependent on the type of grant and applicant. The grant award process utilizes grant panels as promulgated through regulation. These impartial panels are composed of private citizens working or living in Delaware and knowledgeable in arts policy. Artists, arts educators, arts organization employees, and other experienced community members may be selected to serve. The use of private citizens on grant panels ensures diverse and expert voices in the public process.

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<sup>5</sup> 29 Del. C. § 8728.

<sup>6</sup> Review period: January 2019 – October 2022.

<sup>7</sup> Cultivating Creativity: 2021-2025 available at: [https://artsfiles.delaware.gov/DDOA\\_2021-2025\\_Strategic\\_Plan.pdf](https://artsfiles.delaware.gov/DDOA_2021-2025_Strategic_Plan.pdf).

<sup>8</sup> Additional grant information available at: <https://arts.delaware.gov/grant-review-process/>.

### Finding #3

#### **This review observed FOIA compliance issues with posting of meeting minutes.**

The Council is a public body as defined by the Freedom of Information Act (“FOIA”).<sup>9</sup> During the course of this review JLOSC staff reviewed meetings held January 2019 through December 2022 and checked for FOIA compliance on meeting notice, agendas, and minutes. Using FOIA open meeting requirements<sup>10</sup> the *FOIA Scorecard* below notes the following FOIA compliance items:

- Every meeting must be open to the public, except for valid exception under FOIA.
  - Executive session closed to the public for FOIA named purposes.
- Public notice of regular meetings posted at least 7 days in advance of the meeting.
  - Includes agenda if determined.
    - Posted within 6 hours in advance of the meeting with reason for posting delay included.
    - Posted in public location accessible to the public, including electronic posting on designated State of Delaware website.<sup>11</sup>
  - Includes date, time, and place of meeting.
    - Indicates intent to hold executive session (if applicable).
- Agenda is subject to change, changes may include:
  - Added items, including executive session.
  - Deletion of items, including executive session.
- Minutes recorded and made available for public inspection and copying as a public record. Minutes must include the following:
  - Record of members present.
  - Record by individual members of each vote taken and action agreed on.
- Final minutes posted within 5 working days of final approval.
  - Draft minutes posted within 20 working days of meeting conclusion for public bodies who meet 4 or fewer times per year.

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<sup>9</sup> 29 Del. C. § 10002.

<sup>10</sup> 29 Del. C. § 10004.

<sup>11</sup> Designated website is the Public Meeting Calendar: <https://publicmeetings.delaware.gov>



FOIA Scorecard for January 2019 – October 2022	
<b>Total Meetings Held and Open to Public</b>	<b>15</b>
Properly Noticed Meetings	15
Properly Posted Agendas	14
Properly Posted Meeting Minutes (draft)	3
Properly Posted Meeting Minutes (final)	1
Missing Agendas	1
Missing Minutes (draft)	2
Missing Minutes (final)	3
Minutes Contain Required Information	yes
Agendas Contain Required Information	yes
Number of Executive Sessions Held	0

No draft or final minutes for 09/17/2019 meeting, cancelled due to no quorum.

Final minutes approved for 06/15/2022 meeting at 09/14/2022 meeting, not posted.

Final minutes not available for 09/14/2022 meeting, December 2022 meeting not yet held.

JLOSC staff reviewed Delaware’s Public Meeting Calendar for all meetings held by the Council during the review period (January 2019 – October 2022). The Public Meeting Calendar keeps a record of all administrative actions for a meeting date including announcement creation date and posting dates for agendas and minutes. During the review period, Council properly noticed 15 out of 15 public meetings held, all meeting announcements supplied 7 days’ notice. All meeting announcements included agendas except for 1 meeting. All agendas posted included the needed FOIA information. Council did not hold executive sessions.

Since the Council meets 4 or fewer times per year and draft meeting minutes should be posted within 20 working days of a meeting.<sup>12</sup> Only 3 meetings held during the review period properly posted draft meeting minutes and 2 meetings held are missing draft minutes. One meeting announcement included properly posted final meeting minutes, 9 sets posted late (2.7 months late on average after the meeting date), and 3 sets are missing. All posted minutes included the FOIA required information.

In addition to Council meetings, JLOSC staff reviewed public meetings held by grant review panels but did not include the information in the FOIA scorecard since a majority of Council members did not serve on the panels. JLOSC staff observed the following 4 grant review panels on the Public Meeting Calendar:

- Arts Stabilization
- Education Resource
- General Operating Support
- Project Support (included Start Up for FY2020)

All 4 grant types annually hold meetings in May. JLOSC staff reviewed the Public Meeting Calendar and collected posting data during the review period covering the 2020-2023

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<sup>12</sup> 29 Del. C. § 10004.

fiscal years.<sup>13</sup> All grant types posted meeting announcements and agendas to the Public Meeting Calendar on time with the following 2 exceptions.

- The Arts Stabilization Grant Review Panel did not post its meeting held in May of 2021 for the 2022 fiscal year.
- All 4 grant types posted their meeting announcements and agendas almost 2 weeks after holding May 2022 meetings for the 2023 fiscal year.

All 4 grant types posted meeting minutes on time with the following 2 exceptions:

- The Arts Stabilization Grant Review Panel did not post meeting information or minutes for its meeting held in May of 2021 for the 2022 fiscal year.
- 3 grant types posted their meeting minutes 1 year after holding May 2021 meetings for the 2022 fiscal year.

The Council started holding virtual meetings in June of 2020.<sup>14</sup> Virtual meetings allow for more flexibility for meeting attendance. JLOSC analysts do not anticipate FOIA compliance issues to be an ongoing concern and feel this review will supply the necessary reminders for ongoing compliance.

## **Finding #4**

**The Governor's office appoints all members to the Council, up to 15 members. Currently, there are no vacancies.**

According to statute, the Council is composed of no more than 15 members:<sup>15</sup>

- Broadly representative of all fields of the performing and fine arts with interest and experience, appointed by the Governor based on the recommendation of the Secretary of State and the Director of the Division.
  - Statute outlines terms are staggered to ensure no more than one-third of the terms expire in a calendar year.
- Chairperson chosen by the Governor and serves at the pleasure of the Governor.

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<sup>13</sup> Meetings held May 6, 2019 – May 11, 2022.

<sup>14</sup> Grant review panels started virtual meetings in May of 2020.

<sup>15</sup> 29 Del. C. § 8728.

In reviewing all available materials including meeting minutes and member spreadsheets from Council and the Governor's office, the following is a chart of appointments from the Governor's office:

### Council Membership: Last 5 Years

Note: Grey indicates no longer on Council as of June 30, 2022.

Member's Name	Original Appointment Date	Appointment Expiration Date	Number of Terms Served
Joseph Wathen (Chair)	2/2/2016	no expiration date	serves at Gov pleasure
Jacalyn Beam	1/2/2022	1/2/2023	1
Suzanne Burton	6/11/2021	6/11/2024	1
David Fleming	12/20/2016	1/2/2023	2
Janis Julian	12/20/2016	1/2/2023	2
Catharine Lyons	6/11/2021	6/11/2024	1
Keith Mosher	6/11/2021	6/11/2024	1
John Muller	12/8/2017	3/3/2024	2
Joseph Nestlerode	10/28/2021	10/28/2024	1
Rosetta Roach	12/8/2017	4/21/2024	2
Dan Shelton	10/27/2017	3/30/2024	2
Leslie Sysko	10/28/2021	10/28/2024	1
Hilary Welliver, Ed.D	10/28/2021	10/28/2024	1
Gregory Watkins	5/4/2022	5/4/2025	1
Beverly Zimmermann	6/11/2021	6/11/2024	1
Michael Kalmbach	12/20/2016	5/4/2022	2
Madeleine Bayard	7/20/2015	10/21/2021	2
Donna Blakey	7/20/2015	1/21/2021	2
Michael Quattrociochi	7/20/2015	4/3/2019	1
Robert Connelly	7/20/2015	7/20/2018	1
Mary Ann Miller	7/20/2015	10/21/2021	2
Christopher Moore	1/2/2020	8/10/2021	1
Heather Morrisey	12/20/2013	12/20/2019	2
Robert Fitzgerald	12/20/2013	12/20/2019	2
Cheyrlle Pringle	10/27/2014	6/10/2021	2
Andrew Horgan	12/8/2017	12/8/2020	1
Tina Betz	6/1/2015	6/1/2021	2

In review of the past 3 years of meeting minutes, JLOSC staff noted the following observations:

- The Council maintained full membership of 15 appointed members apart from the meetings in March, June, and September 2021, where one vacancy was noted. This indicates a successful process of rotating new members onto the Council when terms expire.

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## **Finding #5**

**Council members have a high attendance rate (74% or higher), chronic quorum issues not seen.**

During the January 2019 – October 2022 review period, the Council held 15 meetings in total and met at least 4 times per year, except for the 2019 calendar year. The Council only met 3 times in 2019 due to a September 17, 2019 meeting cancellation due to lack of quorum, which is the only observance of a quorum issue. We calculated meeting attendance for the 15 meetings held between March of 2019 and October of 2022. Members attended 75% or more of held meetings. We calculated an attendance average of 83% for the 5 out of the 25 members appointed for all 14 meetings held during this period.

While quorum issues were not observed, JLOSC staff recommends adding a definition of quorum to statute. The Council's self-report indicates two-thirds being required for a quorum, an outlier of other similar advisory bodies. Staff has language used for other reviews to define quorum as 51% of appointed members so that any vacancies do not negatively affect quorum and a super-majority is not needed to conduct business. Membership and quorum changes will positively change the Council by reflecting longstanding Council operations and preventing future any issues.

## **Finding #6**

**The Division and Council supply access to multiple training opportunities, engaged on a national level.**

Council members and staff have access to multiple training opportunities, which include professional development and training sessions at national conferences hosted by the National Assembly of State Arts Agencies<sup>16</sup> and Americans for the Arts.<sup>17</sup> New members attend an introductory onboarding orientation and are provided with a Council handbook for ongoing reference.

## **Finding #7**

**Aware of their challenges, the Council works with the Division towards solutions.**

In the completed self-report for this review, the Council listed the following challenges:<sup>18</sup>

- Increasing funding for the arts in Delaware.
- Ensuring equity in distribution of funds for the arts.
- Diversity of Council members and statewide representation.

The Council regularly receives marketing, funding, and program updates from the Division. JLOSC staff discussed with Council and Division staff ways to address these challenges that would be consistent with the increased awareness strategies the Council discussed in the self-report. In the self-report, the Council discussed increasing awareness of the Council and their membership through marketing channels and personal contacts with the goal of increasing diversity in their membership. JLOSC staff suggested that the Division advertise Council meetings through their social media, mailing lists, and calendars, which were listed under the public information section of the self-report.

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<sup>16</sup> <https://nasaa-arts.org/events-seminars/>.

<sup>17</sup> <https://www.americansforthearts.org/events>.

<sup>18</sup> Self-report available on the Committee's website, <https://legis.delaware.gov/Committee/Sunset>

# OBJECTIVE, SCOPE, AND METHODOLOGY

## Objective

A performance evaluation conducted as required under JLOSC statute and based on the following criteria<sup>19</sup>:

1. If the agency is a licensing agency, the extent to which the agency has permitted qualified applicants to be licensed.
2. The extent to which the agency has served the public interests.
3. 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. Review the implementation of recommendations contained in the final reports presented to the General Assembly and the Governor during previous legislative sessions.

## Scope

This review covers a 5-year performance period except where noted.

## JLOSC Statutory Criteria #1

If the agency is a licensing agency, the extent to which the agency has allowed qualified applicants to be licensed.

## Methodology for JLOSC Statutory Criteria #1

The Council is not a licensing agency but does receive, review, and make recommendations about arts grant applications. This review looked at the overall process and decisions the Council made over the past 5 years.

## JLOSC Statutory Criteria #2

The extent to which the agency has served the public interests.

## Methodology for JLOSC Statutory Criteria #2

The State of Delaware established the Council to serve the Division of the Arts in an advisory capacity to promote and encourage the arts in Delaware as well as other matters as requested by the Governor, Secretary of the Department, the Division Director, or the General Assembly. As described in the fieldwork section of this report, this review explored the 2 main duties and responsibilities listed in statute and regulations<sup>20</sup>:

1. Serve in advisory capacity and advise on matters relating to the advance of the arts and arts policy in Delaware.
2. Conduct a public review of grant applications and make corresponding funding recommendations to the Division Director.

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<sup>19</sup> 29 Del. C. § 10209.

<sup>20</sup> 29 Del. C. § 8732.

### **JLOSC Statutory Criteria #3**

The extent to which the agency has recommended statutory changes, and whether those changes directly benefit the public or primarily benefit the agency or other entities and are of only indirect benefit to the public.

### **Methodology for JLOSC Statutory Criteria #3**

This review took a closer look at recommendations provided by the Council in its completed self-report. JLOSC staff explored information relevant to these recommendations as described in the fieldwork listed in this section. For quick reference, the Council recommended exploring a more robust membership recruitment process to attract a more diverse representation of the Delaware arts communities.

These recommendations do not require statutory changes.

### **JLOSC Statutory Criteria #4**

Review the implementation of recommendations contained in the final reports presented to the General Assembly and the Governor during earlier legislative sessions.

### **Methodology for JLOSC Statutory Criteria #4**

This is the first standalone JLOSC review of the Council. In 2008, the Joint Sunset Committee reviewed the Division along with the Council and recommended the following:

1. The Division and Council will promulgate rules and regulations pursuant to the Administrative Procedures Act statute.

**Implemented March 1, 2010.**<sup>21</sup>

2. The Division and Council make grant applications and submission of the application available on the Division's website.

**Implemented. The Division website contains information related to the grant process and the smARTDE system to submit applications.**<sup>22</sup>

3. The Division and Council continue to be an advocate for the importance of arts in the education process.

**Implemented. The Division offers a variety of grants for Delaware Pre-K through 12 public, charter, private, and parochial schools that offer arts activities and programming.**<sup>23</sup>

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<sup>21</sup> Title 1 Authorities, Boards and Commissions: 1000 Division of the Arts:  
<https://regulations.delaware.gov/AdminCode/title1/1000/1001.htm>.

<sup>22</sup> <https://arts.delaware.gov/grant-overview/>.

<sup>23</sup> <https://arts.delaware.gov/grants-schools/>.

## Fieldwork completed

- Reviewed all information supplied by Council staff.
  - Self-report.
  - Past 3 years of meeting minutes and agendas.
  - Past 5 years of Council membership.
- All available public documents such as annual reports, grant panel reviews, recommendations, and applications, Council’s website, grant recipient updates, and available news articles.
- Current statute and promulgated regulations.
- Council’s overall performance as it relates to current statute.
- Council’s compliance with Freedom of Information Act (“FOIA”).
  - Public meeting calendar: Council meeting notices, agendas, minutes.
- Council member size, quorum trends, and composition.
- Council member training opportunities.
- Held a virtual meeting with Council members and Division staff to discuss review.

## Review Background

This is the first standalone review of the Council by JLOSC. This review began in April of 2022. Entity’s support staff completed and returned a self-report in June of 2022. JLOSC staff conducted research and drafted this findings and recommendations report.

## Background Research Synopsis

First formed in 1969, the Council serves in an advisory role to the Division and the Delaware Department of State, with the primary purpose of advocating and promoting the arts in Delaware as a vital part of the cultural heritage of the state. Main duties of the Council include providing guidance to the Division Director on matters of arts policy, considering matters referred to it by the Governor, Secretary of State, and the Division Director, and providing oversight of the annual grant funding approval decisions.<sup>24</sup> Additional duties of the Council include helping to ensure funding is maintained and advising the Division on financial and administrative decisions.

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<sup>24</sup> 29 Del. C. § 8728.



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DEPARTMENT OF STATE

**DIVISION OF THE ARTS**

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**MEMORANDUM**

To: Joint Legislative Oversight and Sunset Committee Staff and Members

From: Mack Wathen, Chair, Delaware State Arts Council

Date: February 23, 2023

Re: JLOSC Staff Findings and Recommendations Report

**DSAC Response to JLOSC Staff Findings and Recommendations Report**

The Delaware State Arts Council (DSAC) appreciates the work of the Joint Legislative Oversight and Sunset Committee (JLOSC) Staff and concurs with their findings and recommendations, specifically:

- Continuation of the DSAC
- Legislation to apply technical correction to the governing statute by defining a quorum and to update and define subcommittee and grant panel processes
- Release from review upon enactment of legislation applying technical corrections and changing board composition, as recommended

The DSAC also appreciates the JLOSC Staff recognition that the DSAC is actively working to increase diversity in their membership. The DSAC concurs with the JLOSC Staff suggestion to increase awareness of the Council and its membership through marketing channels and advertisement of Council meetings through the Division's social media, mailing lists, and calendars and through personal contacts with the goal of increasing diversity in their membership.

The DSAC recognizes that they typically post meeting minutes for quarterly meetings after they have been voted on and approved by Council in the subsequent quarterly meeting. The DSAC will consider moving meeting minute approval to a digital format so that meeting minutes can be publicly posted within 20 days of a quarterly DSAC meeting.



### § 8722. Delaware Commission of Veterans' Affairs — Authority.

The Commission is hereby authorized to develop and promulgate bylaws, rules and regulations not inconsistent with the law, which are necessary for the enforcement and implementation of §§ 8720, 8721, 8722, 8723, 8724 and 8725 of this title and all applicable federal rules and regulations.

(65 Del. Laws, c. 232, § 1.)

### § 8723. Delaware Commission of Veterans' Affairs — Organization and operation.

(a) Any veterans' organization as defined in § 8720(b) of this title may petition the Governor to remove from the Commission a member which said organization recommended, provided the reasons for said removal are clearly stated in said petition.

(b) In the event any Commissioner fails to attend 3 successive scheduled meetings without just cause such failure shall be sufficient grounds for the representative of the particular veterans' organization to be removed by the Governor.

(c) Prospective members of the Commission shall be recommended by the respective veterans' organizations and appointed by the Governor as vacancies occur.

(d) The names of prospective members of the Commission shall be submitted to the Governor by letter from the senior official of each respective statewide veterans' organization.

(e) The members of the Commission shall elect 1 of their members to serve as Chairperson and 1 as Vice-Chairperson who shall not serve more than 2 consecutive terms. Such elections shall be held annually in September.

(f) The Chairperson and Vice-Chairperson shall serve as voting members of the Commission.

(g) The Executive Director shall attend all meetings of the Commission, keep a full and true record of its proceedings, preserve at its general office all its books, documents and papers, and perform such other duties as the Commission may prescribe.

(h) The Commission shall hold monthly meetings at such time and location as prescribed by the Chairperson. Special meetings may be called by the Chair or a majority of the Commission membership.

(i) A quorum shall consist of a simple majority of the Commission members.

(j) Members of the Commission shall serve without compensation except that they may be reimbursed for reasonable and necessary travel expenses incident to their duties as members of the Commission to the extent that funds are available and in accordance with state law.

(k) The Commission's executive offices shall be located in Dover, Delaware.

(65 Del. Laws, c. 232, § 1; 69 Del. Laws, c. 225, § 2; 71 Del. Laws, c. 188, § 1.)

### § 8724. Delaware Commission of Veterans' Affairs — Funding.

Annually, the Commission shall submit a proposed budget to the Department of State for review and approval by that Department. The Department of State shall then recommend to the General Assembly that the Commission's budget be included as a line item within said Department's funding.

(65 Del. Laws, c. 232, § 1.)

### § 8725. Delaware Commission of Veterans' Affairs — Relationship to other state agencies.

(a) Unless otherwise indicated, the duties, responsibilities and authority set forth in §§ 8721 and 8723 of this title are reserved specifically to the Commission.

(b) The Commission may request the advice, opinion or assistance of other appropriate state agencies as necessary to properly discharge its duties and responsibilities.

(c) The Department of State shall provide reasonable office and meeting facilities and other logistic support as requested by the Commission.

(d) The Department of State shall maintain an overview of the Commission's operation in order to insure proper use of, and accountability for, state funds appropriated for that purpose.

(e) The General Assembly hereby directs the Delaware Commission on Veterans Affairs to return/replace all memorials and plaques purchased/donated by veteran's family members to their original location within the cemetery or to a site agreeable to the veteran's family members. The General Assembly further directs that, after July 1, 2003, no plaque or memorial will be removed or relocated for any purpose without the approval of the Co-chairs of the Joint Legislative Committee on the Capital Improvement Program. Existing memorial works are historical, cultural and aesthetic resources.

(65 Del. Laws, c. 232, § 1; 75 Del. Laws, c. 98, § 56.)

### § 8726. Division of the Arts; definitions.

(a) "Council" means the Delaware State Arts Council created by this chapter.

(b) "Director" means the Director of the Division of the Arts.

(c) "Division" means the Division of the Arts.

(d) "State" means the State of Delaware.

(67 Del. Laws, c. 128, § 2.)

### **§ 8727. Division of the Arts — Establishment; powers and duties.**

The Division of the Arts is established and it shall function, as required, as an advisory, coordinating or implementing agency:

(1) To promote and encourage public interest in the cultural heritage of our State and to expand the State's cultural resources, and to promote public education in all fields of artistic and cultural activities, including but not limited to, music, theater, dance, painting, sculpture, architecture and allied arts and crafts;

(2) To encourage and assist freedom of artistic expression;

(3) To encourage, promote and provide technical and professional assistance to arts programs of individuals, organizations and institutions in the State;

(4) To make such surveys as may be deemed advisable of public and private institutions engaged in artistic and cultural activities, and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the needs and aspirations of persons in all parts of the State; and

(5) To cooperate with and assist public and private institutions and organizations with a view toward mutual promotion and improvement of the performing and fine arts.

(67 Del. Laws, c. 128, § 2.)

### **§ 8728. Division of the Arts — The Delaware State Arts Council.**

(a) The Delaware State Arts Council is hereby established for the purpose of promotion and encouragement of the arts and shall provide guidance to the Director on matters of arts policy and shall consider such other matters as may be referred to it by the Governor, by the Secretary of the Department or by the Director. The Council may study, research, plan and advise the Director, the Secretary and the Governor on matters it deems appropriate to enable the Division to function in the best possible manner.

(b) The Delaware State Arts Council shall be composed of Delaware citizens broadly representative of all fields of the performing and fine arts known for their interest in these areas appointed by the Governor. Each such citizen shall serve as a member of the Delaware State Arts Council for the period of the unexpired term unless the member vacates the position by resignation, death or incapacity. The Council shall be composed of not more than 15 members. When the number of members has been reduced to less than 15 by reason of the expiration of terms, resignation, death or incapacity, the Governor shall appoint new members. The terms of newly appointed members will be staggered so that no more than  $\frac{1}{3}$  will expire annually. All new appointees shall serve for a term of 3 years and no member shall serve more than 2 consecutive terms.

(c) The Governor may appoint members for terms of less than 3 years to ensure that the Board members' terms expire on a staggered basis.

(d) Members of the Council and Chairperson shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties related to the Council.

(e) A Chairperson of the Council shall be designated in addition to the members of the Council by the Governor and shall serve in that capacity at the pleasure of the Governor.

(f) Any appointment, pursuant to this section, to replace a member whose position becomes vacant prior to the expiration of a member's term shall be filled only for the remainder of that term.

(67 Del. Laws, c. 128, § 2; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 258, §§ 1, 2.)

### **§ 8729. Division of the Arts — Assistance for the development of the Arts.**

(a) The Director is hereby authorized and directed to establish a special fund of the State to encourage instrumentalities, agencies and political subdivisions of the State and private and public nonprofit associations in the development of the arts in the State and to enhance the appreciation of artistic expressions by citizens of the State.

(b) The Director may contract with any instrumentality, agency or political subdivision of the State, and with any private or public nonprofit association, to accomplish any work authorized by this chapter.

(c) The Director and the Council shall establish such rules and regulations as are necessary to determine the eligibility of any instrumentality, or agency or political subdivision, private or public nonprofit association for participation in contracts authorized by this section. A private or public nonprofit association shall submit a letter of exemption from the Internal Revenue Service as proof of nonprofit status.

(d) The Director shall be responsible for fiscal matters and auditing of funds appropriated under this section. Expenditures from this special fund shall be in accordance with state law and shall be limited to appropriations provided therefor. Moneys on deposit in this special fund which are unexpended or unencumbered shall not revert at the end of each fiscal year.

(67 Del. Laws, c. 128, § 2.)

## § 8730. Division of the Arts — Exemption from Bid Law.

The Division shall be exempt from Chapter 69 of this title.

(67 Del. Laws, c. 128, § 2.)

## § 8731. Division of Libraries.

(a) In addition to any other power granted or duties imposed under this title, the Division of Libraries shall exercise general direction and control over the furnishing of library services within this State. The Director of the Division shall be the State Librarian, who shall be a graduate of a school accredited by the American Library Association. The Division of Libraries shall have the following functions and duties:

(1) To provide information, resource materials and library services to state agencies, state and local governmental units and their subdivisions and, in the Department's discretion, to organizations in need of library services;

(2) To coordinate library services statewide in order to assure to every Delaware citizen free and equal access to services, resources and guidance in the use of such for lifelong learning, continuing self-educational, political, cultural, economic, recreational and intellectual enrichment;

(3) To receive, accept, administer and expend any money, materials or other aid granted, appropriated or otherwise provided by local, state or federal governments, or by any source, public or private, in accordance with the terms thereof, and for the purposes provided hereinafter;

(4) To foster the recruitment, development and maximum utilization of library personnel throughout the State;

(5) To encourage broad community participation in library development, program planning and the implementation of such plans;

(6) To establish and promote cooperation among all types of libraries (including but not limited to public, academic, school, and special) at all service levels;

(7) To ensure the State's compatibility to and reciprocity within an international information resources network;

(8) To administer the Statewide Delaware Library Network and the Statewide Delaware Library Consortium;

(9) To provide online access at each public library in state government to local, state, and federal documents and resources;

(10) To coordinate the provision of accessible library and information services for individuals with disabilities and to serve as the Delaware Regional Library for the Library of Congress Network of Libraries for the Blind and Physically Handicapped;

(11) To stimulate every Delaware library patron to fully utilize the State's cultural resource materials and technologies, and to maintain the individual's privacy, acceptable use, and right of access to those materials, and technologies;

(12) To offer resources which supplement and reinforce local libraries;

(13) To collect, compile, research, publish and disseminate information, including statistics, affecting the efficient operation of the State's library system;

(14) To recommend legislation to achieve meaningful statewide library development and use;

(15) To establish, interpret and administer standards of effective library services;

(16) To enter into contracts and agreements to provide or to obtain library services and materials; and

(17) To perform all other activities pertinent to the organizational function of library services.

(b) Every state agency shall provide the Department with access to electronic copies of all publications issued by such agencies for the purpose of making accessible to Delaware and other citizens resource materials published at the expense of the State.

(29 Del. C. 1953, § 8610; 57 Del. Laws, c. 583, § 1; 59 Del. Laws, c. 480, § 4; 65 Del. Laws, c. 290, § 1; 68 Del. Laws, c. 149, § 6; 69 Del. Laws, c. 346, § 1; 81 Del. Laws, c. 81, § 1.)

## § 8732. Council on Libraries.

(a) There is hereby established the Council on Libraries.

(b) The Council on Libraries shall serve in an advisory capacity to the Department and shall consider matters relating to libraries and library standards throughout the State and such other matters as may be referred to it by the Governor, the Secretary of the Department or the General Assembly. The Council on Libraries may study, research, plan and make advisory recommendations to the Governor, the Secretary of the Department or the General Assembly on matters it deems appropriate to provide the best possible library service in Delaware.

(c) The Council on Libraries shall be composed of 2 members who shall be elected annually by each County Library Advisory Board and who shall serve at its pleasure and 7 members appointed by the Governor. Of the 7 members appointed by the Governor, 3 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 2 years and 2 members shall be appointed for a term of 3 years; at no time shall there be more than a bare majority representation of 1 major political party, but any person who declines to state a political affiliation shall be considered eligible for appointment as a member; and after the initial appointments, all terms shall be for 3 years. No member shall be appointed for more than 2 consecutive terms. The Chairperson of the Council shall be chosen by the members of the Council from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.



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## DEPARTMENT OF STATE DELAWARE ADMINISTRATIVE CODE

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### Division of the Arts

#### 1001 Assistance for the Development of the Arts Regulations

##### 1.0 Introduction

These regulations are authorized pursuant to 29 **Del.C.** §8729(c) which established a special fund of the State of Delaware to encourage instrumentalities, agencies and political subdivisions of the State and private and public nonprofit associations in the development of the arts in the State and to enhance the appreciation of artistic expressions by citizens of the State. Arts Funding is dictated by the availability of State, Federal, and other funds, and necessarily changes on a year to year basis. Current available funding may be found at <http://www.artsdel.org/grants>.

##### 2.0 Grantee Categories

###### 2.1 Delaware Artists

To be eligible for funding as a Delaware artist, the applicant must:

- 2.1.1 Be at least 18 years of age.
- 2.1.2 Be a resident of Delaware for at least one year at the time of application. Individual artists shall submit a valid Delaware Driver's License or Delaware Motor Vehicle Identification Card as proof of residency.
- 2.1.3 Recipients must remain Delaware residents during the grant period.
- 2.1.4 Not be enrolled in degree or certificate-granting educational programs at the time of application or for the duration of the grant period.
- 2.1.5 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants>.

###### 2.2 Delaware Arts Organizations

To be eligible for funding as an arts organization, the applicant must:

- 2.2.1 Identify in their charter, incorporation papers, bylaws, and IRS nonprofit determination letter at least one of the following as a primary purpose of the organization: the promotion, presentation, production, or teaching of the arts. The Division of the Arts shall make all final determinations as to the primary purpose of the organization.
- 2.2.2 Certify that the organization is based and chartered in Delaware as a nonprofit organization; exempt from federal income tax under Section 501(c)(3) or 501(c)(4) or 509(a) of the Internal Revenue Code; and eligible to receive donations allowable as charitable contributions under Section 170(c) of the Internal Revenue Code of 1954.
- 2.2.3 Have a stable, functioning board of directors that meets at least quarterly.
- 2.2.4 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants>.

###### 2.3 Delaware Community Based Organizations

To be eligible for funding as a community-based organization, the applicant must:

- 2.3.1 Identify in their charter, incorporation papers, bylaws, and IRS nonprofit determination letter a primary purpose of the organization other than the promotion, presentation, production, or teaching of the arts. The Division of the Arts shall make all final determinations as to the primary purpose of the organization. Such purpose may be, but is not limited to, libraries, civic groups, community/senior centers, festivals, parks/recreation programs, and universities and colleges.
- 2.3.2 Be based and chartered in Delaware as a nonprofit organization; exempt from federal income tax under Section 501(c)(3) or 501(c)(4) or 509(a) of the Internal Revenue Code; and eligible to receive donations allowable as charitable contributions under Section 170(c) of the Internal Revenue Code of 1954. Organizations that have not received

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- Delaware incorporation or IRS nonprofit designation are not eligible to apply for Project Support, and
- 2.3.3 Have a stable, functioning board of directors that meets at least quarterly, or
  - 2.3.4 Be an established unit of municipal, county, or state government within Delaware.
  - 2.3.5 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants>.
- 2.4 Delaware Arts Education Providers
- To be eligible for arts education funding, the applicant must be:
- 2.4.1 Delaware public, private, or parochial school with an established arts curriculum and staff, pre-K through 12, or
  - 2.4.2 Delaware public school district and/or consortia of public schools, or
  - 2.4.3 Delaware arts organization with a demonstrated commitment to arts learning, that also meets the eligibility requirements for arts organization funding, or
  - 2.4.4 Professional arts service or arts education organization based and chartered in Delaware.
  - 2.4.5 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants>.
- 2.5 Regional/National Nonprofit Organizations
- To be eligible for funding, the applicant must:
- 2.5.1 Be chartered as a nonprofit organization; exempt from federal income tax under Section 501(c)(3) or 501(c)(4) or 509(a) of the Internal Revenue Code; and eligible to receive donations allowable as charitable contributions under Section 170(c) of the Internal Revenue Code of 1954.
  - 2.5.2 Provide the program(s) or service(s) funded by the grant directly to the Delaware Division of the Arts or to its constituents, on behalf of the Division, under written agreement with the Division of the Arts.
  - 2.5.3 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants>.
- 3.0 Grant Award Process**
- 3.1 Organizational Grants. Organizational grants reviewed on an annual basis or for multi-year approval are reviewed by impartial peer review panels, (hereinafter "Grant Panels.") The decision to use private citizens on grant review Grant Panels reflects the importance of having diverse public and expert participation in the grant-making process.
- 3.1.1 Grant panels: Composition:

Individuals who work or live in Delaware are eligible to serve on Grant Panels. Grant Panels are composed of artists, arts educators, arts and nonprofit organization administrators, corporate and fund raising managers, knowledgeable arts specialists, and interested community members. Panelists are chosen for their professional experience, expertise in an artistic discipline, knowledge of the community, and ability to objectively review grant materials. The Division convenes Grant Panels, mindful of Delaware's demographic and geographic diversity. Additional out-of-state panelists may be selected in order to incorporate regional or national perspective, to provide additional expertise and diversity, or to mitigate the potential for conflicts of interest.
  - 3.1.2 Conflicts of Interests

Grant Panelists are screened for conflicts of interest, and where they exist, panelists are recused from discussion of the grant application or assigned to an alternate panel where a conflict does not exist. Such conflicts are determined by review of statements and/or applications filed by Arts Council members, Division Staff, panelists, and Grantees
  - 3.1.3 Nominations

Grant Panelist nominations are accepted and processed by the Division of the Arts year round.

3.1.4 Grant Review Panel Meetings

Grant Panel meetings are public, posted and held in accordance with 29 **Del.C.** Ch. 100. Meetings are chaired by a member of the State Arts Council or Division of the Arts staff.

3.1.5 Grant Review Process

Grant Panelists evaluate and rank applications according to grant specific criteria identified by Division staff, and published at <http://www.artsdel.org/grants> Grant Panel comments and rankness are incorporated into the funding recommendation process, and made available to applicants upon notification of the funding decision. At the conclusion of their review, the Grant Panel makes a recommendation to the State Arts Council.

3.1.6 Grant Award

The State Arts Council, at a meeting open to the public consistent with 29 **Del.C.** Ch. 100, reviews the Grant Panel recommendations and rankings of applicants, to match them with available grant funds. At the conclusion of this review, the State Arts Council makes funding recommendations to the Division Director, who is responsible for all final funding decisions. The Division announces grant awards after the approval of the State's fiscal year budget.

3.2 Artist Fellowship Grants

Delaware's arts community is very close-knit, and individual artists tend to be very familiar with the work of other Delaware artists. The nature of artists' work is that it is inextricably linked to them as individuals. Because of that, it is difficult to find impartial judges to adjudicate Fellowship applications for individual artists. Consequently, the Division of the Arts contracts with an out-of-state organization to facilitate the review of Artist Fellowship applications. Grant specific criteria are published at <http://www.artsdel.org/grants>.

3.2.1 Grant panels: Composition:

The facilitating organization presents a list of potential judges to Division staff, who selects the judges whose expertise most clearly aligns with the applications submitted each year. Out-of-state judges are chosen for their professional experience, expertise in an artistic discipline, and ability to objectively review grant materials.

3.2.2 Grant Review Process

Applications are submitted to the Division of the Arts. Upon review for completeness and accuracy, all materials are forwarded directly to the facilitating organization, which is responsible for distribution of the applications to the judges. Judges review the applications individually and submit their scores and comments to the facilitating organization. Scores and judges' comments are then forwarded to the Division staff. Division staff members present a list of funding recommendations, based on scores and available funds, to the State Arts Council for review at a public meeting.

3.2.3 Grant Award

The State Arts Council conducts a public review of the recommendations from Division staff in accordance with 29 **Del.C.** Ch. 100. At the conclusion of the public review, the State Arts Council makes its funding recommendations to the Division Director, who is responsible for all final funding decisions. Fellowship awards are announced after public approval by the State Arts Council and Division Director.

3.3 Short-term grants and Special Projects, and Interagency Partnerships

3.3.1 Grant Panelist Selection-

Short-term (non-annual) grant applications, special project grant applications, and interagency partnership agreements are assigned by the Division Director to the program specialist whose purview includes the arts discipline or project category.

3.3.2 Grant review process

Division staff review and evaluate short-term, special project grant applications according to criteria developed by Division staff and published with the grant guidelines. Staff recommendations are submitted to the Division Director for review.

3.3.3 Grant Award

The Division Director reviews staff recommendations and makes final funding decisions. Notification letters are sent out within six weeks of the application submission deadline. Funding decisions are presented to the State Arts Council at their quarterly meetings.

**4.0 Appeals**

4.1 Applicants may appeal funding decisions only on the basis of procedural error or impropriety. Dissatisfaction with the amount of an award, or a decision not to fund a project, is not sufficient reason for appeal.

4.2 Standard of Review:

Grant determinations may be reconsidered if the Division Director determines that the application was reviewed on the basis of criteria other than those appearing in the published guidelines for that grant category; that Grant Panelists or Council members were influenced by Council members who failed to disclose conflicts of interest, or that erroneous information was provided by staff, panelists, or Council members at the time of the application's review, and such erroneous information was relied upon by the Grant Panel, Council, or Division Director in making the grant determination.

4.3 Procedure for Appeal

4.3.1 Consultation

Prior to submitting an appeal, applicants should first consult with the staff member assigned to the application to review the panel comments and considerations.

4.3.2 Written Request for Appeal

After consulting with the assigned staff member, if the applicant wishes to pursue an appeal, the appeal must be sent in writing to the Division Director within 30 days of the date notifying the applicant of the funding decision. The letter should contain evidence to support one or more of the grounds for appeal noted in 4.1.

4.3.3 Review

The Director will notify the Chair of the State Arts Council of the appeal. The Director and Chair will review the appeal and, at their discretion, will make a ruling or submit the appeal to the full Council for review and recommendation.

4.3.4 Notification

The Director will notify the applicant in writing of the ruling on the appeal.

4.3.5 Arts Council Review

After reviewing the appeal letter determination, the applicant may request a public hearing with the Council, pursuant to 29 **Del.C.** Ch. 100. At the conclusion of the public hearing, the Council will reconsider the appeal and make a final ruling. A simple majority vote of the Council will determine the appeal outcome.

**13 DE Reg. 1222 (03/01/10)**