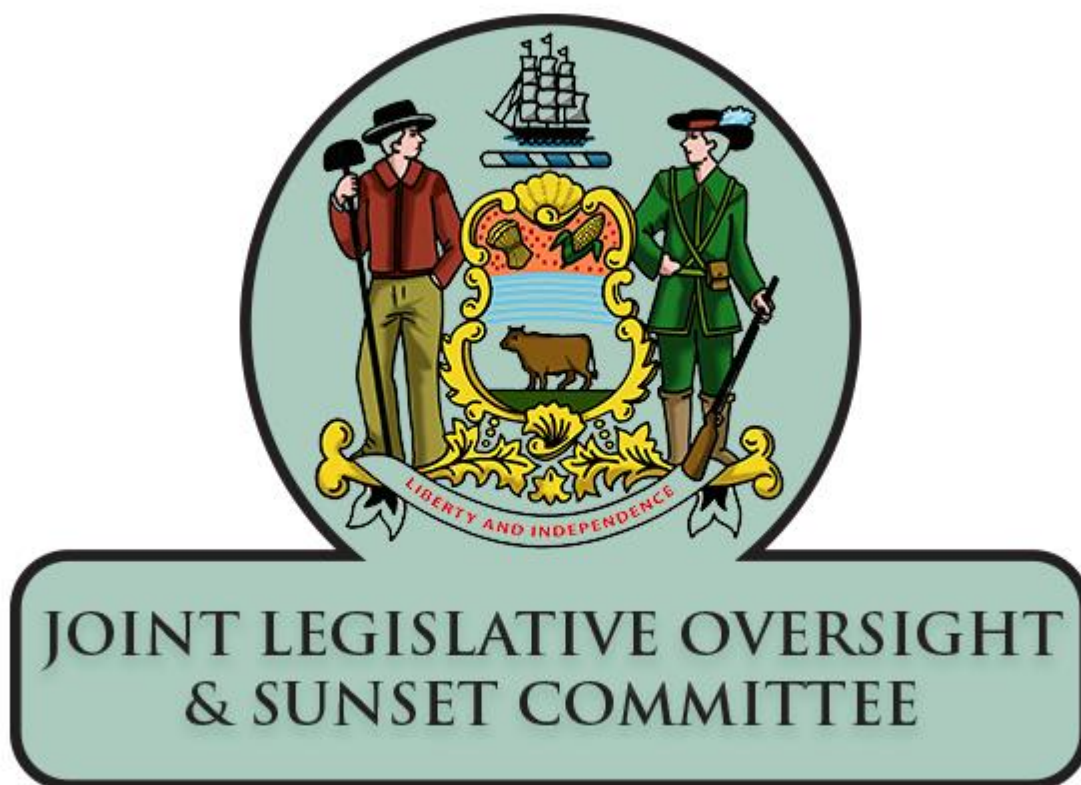


Staff Findings and Recommendations Report Tourism Advisory Board

152nd General Assembly, 1st session



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

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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 the Delaware Tourism Office 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 Tourism Advisory Board. 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 Tourism Advisory Board for review on March 21, 2022. During the review process the Delaware Tourism Office supplied information by completing a self-report which included a performance review questionnaire.¹

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.

¹ 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-report², 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.³

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

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

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

A performance evaluation conducted as required under JLOSC statute and based on the following criteria⁴:

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 Tourism Advisory Board is not a licensing agency, statutory criteria #1 is not applicable to this review.

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 Tourism Advisory Board to serve the Delaware Tourism Office in an advisory capacity to promote and encourage tourism in Delaware as well as other matters as requested by the Governor, Secretary of the Department, or Office Director.⁵ As described in the fieldwork section of this report, this review explored the main duty and responsibility listed in statute and regulations:

1. Serve in advisory capacity and advise on matters relating to the advance of tourism in Delaware.
2. Research and study matters appropriate to best support the Delaware Tourism Office functions.

⁴ 29 Del. C. § 10209.

⁵ 29 Del. C. § 8708A.

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

The Tourism Advisory Board has not recommended statutory changes, statutory criteria #3 is not applicable to this review.

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 JLOSC review of the Tourism Advisory Board, statutory criteria #4 is not applicable to this review.

Fieldwork completed

- Reviewed all information supplied by Board staff.
 - Self-report.
 - Past 26 years of meeting minutes.
 - Current Board membership.
- All available public documents such as annual reports, available news articles, and websites (Division of Small Business, Delaware Tourism Office, Greater Wilmington CVB, Kent County Tourism Corporation (dba Delaware's Quaint Villages), Southern Delaware Tourism).
- Current statute and promulgated regulations.
- Board's overall performance as it relates to current statute.
- Board's compliance with Freedom of Information Act ("FOIA").
 - Public meeting calendar: Board meeting notices, agendas, minutes.
- Board member size, quorum trends, and composition.
- Board member training opportunities.
- Held virtual a meeting with Delaware Tourism Office to discuss review.

Review Background

This is the first review of the Tourism Advisory Board by JLOSC. This review began in April of 2022. Entity's support staff completed and returned a self-report in October of 2022. JLOSC staff conducted research and drafted this findings and recommendations report.

Background Research Synopsis

First formed in 1981, the Board serves in an advisory role to the Delaware Tourism Office, Division of Small Business, and the Delaware Department of State, with the primary purpose of advocating and promoting tourism in Delaware. Main duties of the Board include providing guidance to the Delaware Tourism Office Director on matters of tourism, considering matters referred to it by the Governor, Secretary of State, and the Office Director. Additional duties of the Board include research and studying matters appropriate to best support the Delaware Tourism Office functions.

STAFF FINDINGS

Finding #1

The Tourism Advisory Board (“Board”) is not performing its statutory duties and is not serving a state need. The Board does not provide advice to the Delaware Tourism Office or conduct research. The Board is not involved in any ongoing projects or strategic planning, and there is no mention of the Board on websites or annual reports. The Delaware Tourism Office runs a successful tourism program without the support of the Board.

The Board’s statute broadly states that it serves the Delaware Tourism Office Director in an advisory capacity and considers matters relating to tourism as well as any matters referred by the Governor, Secretary, or Director. The Board is also able to study and research matters related to tourism and provide advice to the Governor, Secretary, or Director.⁶ The Board also has the power to request special reports from the Delaware Tourism Office.⁷

Typically, JLOSC staff review the past 5 years of meeting minutes during the research phase but there was no available data for the Board during this period. The Delaware Tourism Office provided all meeting minutes in their files going back to 1997. JLOSC staff reviewed these meeting minutes to gain a historical perspective on the Board. The review concluded that the Board was once heavily involved in providing advice and support to the Delaware Tourism Office. By 2013, the need for advice and support decreased as the Delaware Tourism Office created a better staffing and funding structure under the newly created Delaware Economic Development Office (“DEDO”).⁸ The last research project the Board did independently also occurred in 2013, completing some surveys regarding transportation.

Now under the Division of Small Business, the work completed by the Delaware Tourism Office is captured in the Division’s annual reports however, these annual reports from the last 5 fiscal years, 2018 through 2022, do not mention the Board. Additionally, websites for both the Division of Small Business and Delaware Tourism Office do not mention the Board. The only official online presence for the Board is on Delaware’s Public Meeting Calendar.

Since 2018, the only official action taken by the Board was sending a letter to the General Assembly supporting the inclusion of short-term rentals under the state’s Public Accommodations Tax.⁹ The letter of support came after a suggestion from a public attendee representing Southern Delaware Tourism, however the subject was discussed at the March 13, 2019 meeting. The Board did not take any action or hold a meeting for 3 years. When the Board did hold a meeting on April 27, 2022, the agenda included updates from the Delaware Tourism Office, a review of the Board’s statute, and a discussion on the Board’s next steps and priorities. However, no action plan or next steps were established before the meeting adjourned.

⁶ 29 Del. C. § 8708A.

⁷ 29 Del. C. § 8716A.

⁸ DEDO became the Division of Small Business, Development, and Tourism as of July 1, 2017 and later the Division of Small Business in 2018.

⁹ Commonly referred to as “PAT” for clarity in this report the acronym is not used.

Over the last 10 years the Board has not provided the Delaware Tourism Office with advice or support, conducted research, or been involved with any ongoing projects. The Delaware Tourism Office runs a successful tourism program without the support of the Board. The Office has won prestigious industry awards, launched marketing initiatives, held workshops to support the tourism industry, and released the latest Value of Tourism publication in 2019, all done without the Board’s assistance, advice, or involvement. The Board is no longer meeting its statutory duties or fulfilling a state need.

Finding #2

The Board does not meet frequently, holding just 4 meetings since 2018. The Board did not meet at all in 2020 and 2021 but utilized a conference call line for members to attend meetings prior to 2019. Meetings receive updates from the Delaware Tourism Office and rarely conduct other business.

The Board rarely convened in the past 5 years, holding just 4 meetings since 2018. The Board has not met more than 2 times in a calendar year since 2012, when they held 3 meetings. The chart below shows all meetings held by the Board from 2007 through 2022.

Year	Number of Meetings Held
2007	5
2008	6
2009	3
2010	2
2011	2
2012	3
2013	1
2014	2
2015	1
2016	2
2017	2
2018	1
2019	2
2020	0
2021	0
2022	1

In meetings held prior to 2019, the Board utilized a conference call line for members to attend meetings. It is unclear why the Board did not use virtual meeting equipment, commonly used across the state, and conference call lines to facilitate meetings in 2020 and 2021, during the COVID-19 pandemic. In reviewing older minutes, the Board held meetings to discuss strategies to boost tourism. For example, the December 3, 2008 meeting discussed methods, such as a Free Night Program, to help the tourism industry during the recession. Older meeting minutes also revealed the Board’s shift from discussing tourism industry initiatives to simply receiving updates from the Delaware Tourism Office with other business rarely conducted.

Finding #3

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

The Board is a public body as defined by the Freedom of Information Act (“FOIA”).¹⁰ During the course of this review JLOSC staff reviewed meetings held January 2018 through January 2023 and checked for FOIA compliance on meeting notice, agendas, and minutes. Using FOIA open meeting requirements¹¹ 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.¹²
 - 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.

FOIA Scorecard for January 2018 – January 2023	
Total Meetings Held and Open to Public	4
Properly Noticed Meetings	3
Properly Posted Agendas	3
Properly Posted Meeting Minutes	1
Missing Agendas	0
Missing Minutes	2
Minutes Contain Required Information	no
Agendas Contain Required Information	yes
Number of Executive Sessions Held	0

JLOSC staff reviewed Delaware’s Public Meeting Calendar for all meetings held by the Board during the review period (January 2018 – January 2023). 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

¹⁰ 29 Del. C. § 10002.

¹¹ 29 Del. C. § 10004.

¹² Designated website is the Public Meeting Calendar: <https://publicmeetings.delaware.gov>

review period, the Board properly noticed 3 out of 4 public meetings held. The meeting held on August 27, 2019 did not supply 7 days' notice. All meeting announcements included agendas. All agendas posted included the needed FOIA information. The Board did not hold executive sessions.

Since the Board meets 4 or fewer times per year, draft meeting minutes should be posted within 20 working days of a meeting.¹³ The Board did not post draft meeting minutes but posted final meeting minutes. Only 1 meeting held during the review period properly posted meeting minutes, 1 meeting posted meeting minutes late, and 2 meetings held are missing minutes. Posted minutes do not include require FOIA information because voting information is not included.

Finding #4

The Governor's office appoints all members to the Board, up to 7 members. Currently, there are no vacancies. A majority of current members have served 3 or more terms.

According to statute, the Board is composed of no more than 7 members:¹⁴

- Delaware residents engaged in the tourism industry or provide direct service to tourists, and at least 2 members appointed from each of the 3 counties in the state.
- Appointed to 3-year terms, no maximum number of terms.
- Chairperson elected by appointed members for 1-year term, can be reelected.¹⁵

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¹³ 29 Del. C. § 10004.

¹⁴ 29 Del. C. § 8728.

¹⁵ Last election occurred during August 27, 2019 meeting.

The following is a chart of current appointments from the Governor's office.

Current Board Membership:

Name	Occupation	Original Appointment Date	Reappointment Date	Appointment Expiration Date	Number of Terms Served
Mike Rasmussen	Co-Owner, Painted Stave Distilling	8/6/2015	9/18/2019	9/18/2022	3
Heath Gehrke	Director of Ferry Operations, Delaware River and Bay Authority, Cape May Lewes Ferry	9/9/2009	9/18/2019	9/18/2022	4
Matt Robinson	University of Delaware, Deputy Director Community Engagement, Slam Dunk to the Beach	10/22/2013	9/18/2019	9/18/2022	3
Jennifer Zerby	Director of Marketing, Boardwalk Plaza Hotel	9/9/2012	9/18/2019	9/18/2022	3
Drew Boyce	Senior Vice President, Century Engineering, Inc.	10/7/2019	n/a	10/7/2022	1
Molly Giordano	Executive Director, Delaware Art Museum	12/7/2021	n/a	12/7/2024	1
Lori Ewald	Marketing Manager, High 5 Hospitality	12/7/2021	n/a	12/7/2024	1

Out of the 7 members currently appointed, 4 members have served 3 or more terms, the longest serving since 2009. The 2019 annual report for the Division of Small Business includes a long list of boards and commissions in the state that employees regularly engage with, including the Greater Wilmington Convention & Visitors Bureau, Kent County Tourism Corporation, and Southern Delaware Tourism. These 3 organizations are not represented on the Board but often attend Board meetings as members of the public.

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Finding #5

Each county has a Convention & Visitors Bureau (“CVB”) board, which were the only regular public attendees of the Board’s meetings. The Delaware Tourism Office regularly communicates with each CVB board and the Delaware Tourism Office Director is a member of each CVB board, regularly attending meetings. The Division of Finance distributes Public Accommodations Tax reports to all fund recipients, which include CVBs. The updates shared at Tourism Advisory Board meetings by the Delaware Tourism Office is duplicative. Over the last 20 years, regular public attendees of Board meetings consisted of CVB staff. At the last Board meeting held on April 27, 2022, only the Executive Directors for the Greater Wilmington CVB and Southern Delaware Tourism attended. The 3 CVBs in Delaware, which also receive Public Accommodations Tax funds are:¹⁶

- Greater Wilmington CVB.
- Kent County Tourism Corporation (dba Delaware’s Quaint Villages).
- Southern Delaware Tourism.

All 3 CVBs are self-governing, private, not-for-profit corporations with a Board of Directors. Each CVB’s Board of Directors differ in membership but all have at least 20 members, including the Director of the Delaware Tourism Office. Each CVB board holds their own meetings and often form subcommittees to complete the necessary work. Current members of the Tourism Advisory Board are involved in the industries and regions served by these CVB boards and at least 1 current Board member also serves on a CVB board.

The only information shared at Tourism Advisory Board meeting are updates from the Delaware Tourism Office and the Public Accommodations Tax reports. The Delaware Tourism Office and the Division of Finance already provide this information directly to the CVB boards. The Delaware Tourism Office is in frequent contact with all 3 CVB boards and provides information and updates. Additionally, the Director of the Delaware Tourism Office serves on all 3 CVB boards and regularly attends their meetings. The Division of Finance provides the Public Accommodations Tax information and reports directly to all 3 CVB boards. The Delaware Tourism Office provides staff support for the Tourism Advisory Board and duplicates these reports that are already directly shared with the CVB boards.

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¹⁶ 30 Del. C. § 6121.

STAFF RECOMMENDATIONS

Recommendation #1, Option 2 – Sunset the Tourism Advisory Board

Review and analysis by JLOSC staff conclude the Delaware Tourism Office oversees a functioning and award-winning tourism program without support from the Tourism Advisory Board. Since January 1, 2018, the Tourism Advisory Board held only 4 meetings and did not meet at all during 2020 and 2021. The Board has not conducted independent research, been involved with any ongoing projects, or offered advice to the Delaware Tourism Office in at least a decade.

JLOSC staff recommends Option 2: Sunset the Tourism Advisory Board with JLOSC sponsoring legislation to implement this recommendation.

Continue or Terminate (standard JLOSC recommendation).

Option 1: The Tourism Advisory Board shall continue, subject to any further recommendations that JLOSC adopts.

- OR -

Option 2: The Tourism Advisory Board is terminated, and the Committee will sponsor legislation to implement this recommendation.

Recommendation #2 – Release from Review.

Release the Tourism Advisory Board from review upon enactment of sunset legislation.

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February 16, 2023

Joint Legislative Oversight and Sunset Committee
152nd General Assembly, First Session

To the Chair, Vice-Chair, and Honorable Members of the Committee:

The Delaware Tourism Office is writing to you to endorse the February 2023 JLOSC Staff Findings and Recommendations Report regarding the Delaware Tourism Advisory Board. In particular, we are recommending that the Committee sunset the Tourism Advisory Board for the below reasons outlined in the report:

- The Delaware Tourism Office oversees a functioning and award-winning tourism program without support from the Tourism Advisory Board;
- The Tourism Advisory Board has only held 4 meetings since January 1, 2018 and did not meet at all during 2020 and 2021; and
- The Tourism Advisory Board has not conducted independent research, been involved with any ongoing projects, or offered advice to the Delaware Tourism Office in at least a decade.

We would like to encourage the Committee to sponsor legislation consistent with the Staff Findings and Recommendations Report concerning the termination of the Tourism Advisory Board. We also encourage the Committee to implement Recommendation #2 in the Report releasing the Tourism Advisory Board from review upon enactment of sunset legislation.

While the Delaware Tourism Office values the efforts made by the Tourism Advisory Board in the past, the role of the Board has evolved in the last decade and the Board is no longer an advisor to the Delaware Tourism Office.

As noted in the Report and demonstrated in the below list of accomplishments, the Delaware Tourism Office is self-sustaining and successful without insight from the Tourism Advisory Board. In recent years, the Delaware Tourism Office accomplished the following:

- Generated more than \$22 million in economic impact in Sports, Group Tour, and Leisure markets in FY22.
- Secured large sports tourism events including the BMW Championship (Delaware's first PGA Tour event), A-10 Women's Basketball Championship, and USA Lacrosse Men's and Women's National Teams Championship.
- Launched the Destination Development Program in FY22 to provide marketing resources for tourism businesses and destinations.
- Launched a revamp of the Delaware History Trail in May 2022.
- Completed several successful marketing campaigns including online video and display ads in both FY22 and FY23, as well as ads with TripAdvisor, Southern Living, Good Housekeeping, and Atlas Obscura.
- Attended several travel shows in both FY22 and FY23 to encourage Group Tour, Sports, and Leisure travel to the state, including shows in Boston, Chicago, New York, Detroit, Ontario, Georgia, and Oklahoma.

- Distributed more than 100,000 travel guides and saw at least 1 million visits to our website in FY22. To date, the office has distributed more than 114,000 travel guides this fiscal year.
- Increased our social media followers to more than 120,700 in FY22.

We thank the current chair of the Tourism Advisory Board and other members for their willingness to serve but do feel that recommending the Committee sunset the Tourism Advisory Board is the right decision at this time.

Thank you for considering our recommendations.

Sincerely,



Jessica Welch
Director
Delaware Tourism Office

Part VIII
Departments of Government
Chapter 87A
Economic Development
Subchapter I
General Provisions

§ 8701A. Legislative findings.

(a) The General Assembly finds and declares that the good order of the State depends upon the steady employment in useful occupations of the citizens of the State. Such steady and useful employment can be made available by encouraging the economic development of the State through the inducement of a full range of commercial, industrial, agricultural and other enterprises to locate, remain and expand in the State. Uncontrolled industrialization and expansion, however, may contribute to possible dangers to the public health and welfare through the pollution of the air, water and soil of the State. The reduction, abatement and prevention of the pollution of the State's environment and the protection of its natural resources are important concerns to be considered in the process of encouraging the economic development of the State.

(b) The General Assembly further finds that promotion of the State as a destination for tourists and other travelers will help to enhance the State's economy and provide employment and recreational opportunities for citizens of the State.

(c) The General Assembly further finds that promotion and assistance to small and minority-owned businesses is vital to the overall balance between large and small firms, and that it is in the State's interest to insure a strong and diversified business community.

(d) The General Assembly further finds and declares that the creation of a Public/Private Partnership to attract large employers, innovative enterprises and international business opportunities while transferring duties formerly performed by the Delaware Economic Development Office to a division within the Department of State is in the best interest of the State to foster development in an increasingly competitive economy.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8702A. Definitions.

As used in this chapter:

(1) "Board" means the Tourism Advisory Board created by § 8708A of this title.

(2) "Council" means the Council on Development Finance created by § 8707A of this title.

(3) "Director" means the Director of the Division of Small Business.

(4) "Division" means the Division of Small Business.

(5) "Plan" means the Comprehensive State Plan for Economic Development created by § 8705A of this title.

(6) "Public/Private Partnership" means a nonprofit corporation not established by the General Assembly consisting of business and community leaders and public officials formed to enhance the State's ability to attract, grow and retain businesses; facilitate the development of a stronger entrepreneurial and innovative economic system within the State; coordinate with the Division of Small Business; and, support private employers within the State in identifying, recruiting and developing talent for the operation of their business within the State.

(7) "Secretary" means the Secretary of State.

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

(63 Del. Laws, c. 189, § 2; 69 Del. Laws, c. 458, § 1; 80 Del. Laws, c. 93, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 1.)

§ 8703A. Division of Small Business — Created; purposes.

(a) There is hereby created a division of economic development which shall be known as the Division of Small Business within the Department of State.

(b) The Division shall be responsible to the Secretary.

(c) The Division shall serve the Secretary in all general and economic development matters, and it shall function, as required, as an advisory, coordinating and implementing agency:

(1) To harmonize its activities with similar activities of other departments, boards, commissions, agencies or instrumentalities of federal, state, county or municipal government;

(2) To render, as necessary, assistance to all units of government and to private enterprise;

(3) To stimulate public interest and participation in the orderly growth and development of the State; and

(4) To insure that all private and public development activities are carried out in conformity with state law.

(63 Del. Laws, c. 189, § 2; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 2.)

§ 8704A. Division of Small Business — Appointment, qualifications and compensation of Director; Acting Director.

(a) The Division shall be headed by the Director. The Director shall be appointed by the Secretary, and shall serve at the pleasure of the Secretary. The Director shall be qualified by training and experience to perform the duties of the position, and preference shall be given to a resident of this State, provided the resident is acceptable and equally qualified. The Director shall be paid an annual salary established by the Secretary within the limitation of the funds appropriated therefor.

(b) In the event of the death, resignation, temporary incapacity or removal of the Director, and prior to the appointment of a successor, the Secretary may appoint any qualified employee of the Division or any of its subdivisions to serve as Acting Director. The Director may, during an absence from the State, appoint any qualified employee of the Division or any of its subdivisions to serve as Acting Director during such absence. In either case, the Acting Director shall have all the powers and shall perform all the duties and functions of the Director during the Director's absence or incapacity or until a successor is duly appointed and qualified.

(63 Del. Laws, c. 189, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 3.)

§ 8705A. Division of Small Business — Powers, duties, and functions of Director.

The Director shall have the following powers, duties, and functions:

(1) To supervise, direct and account for the administration and operation of the Division, its subdivisions, offices, functions and employees.

(2) To serve as Chairperson of the Delaware Economic Development Authority and to supervise the administration of the Authority and to perform all duties heretofore vested in the Director of the Delaware Economic Development Office and the Secretary of the Department of Community Affairs and Economic Development as shall be related to the Authority.

(3) To appoint and remove the staff of the Division in accordance with this chapter and such other limitations as may be imposed by law.

(4) To advise the Secretary and other officials of the state government on all matters of economic development and to consult with them on matters of economic development affecting the duties and responsibilities of their offices.

(5) To have access (or to designate staff members who shall have access) to information, reports and data which relate to economic development which are in the possession of departments, boards, commissions, agencies or instrumentalities of the State or in the possession of county, municipal or other local agencies and instrumentalities.

(6) To hold hearings on matters of general economic development or such other matters as may be required by law after notice thereof to interested parties.

(7) To attend and participate in meetings of federal, county or municipal economic development bodies, interstate agencies and other entities, whether public or private. The Director may cooperate with such instrumentalities in matters affecting the duties and responsibilities of the Division.

(8) To establish, consolidate or abolish such subdivisions within the Division or transfer or combine the powers, duties and functions of the subdivisions within the Division as the Director may deem necessary, and subject to the approval of the Secretary, provided that all powers, duties and functions required by law shall be provided for and maintained.

(9) To make and enter into any and all contracts, agreements or stipulations, to retain, employ and contract for the services of private and public consultants, professional, research and technical personnel, including the temporary exchange of personnel from all public or private entities, and to procure by contract consulting, research, professional, technical and other services, whenever they shall be deemed by the Director, subject to the approval of the Secretary, necessary or desirable in the performance of the functions of the Division and whenever funds shall be available for such purpose. Legal services shall be procured pursuant to Chapter 25 of this title.

(10) To delegate any of the Director's powers, duties or functions to a member of the staff authorized by this subchapter, except the power to remove employees of the Division or to fix their compensation.

(11) To establish and promulgate such rules and regulations governing the administration and operation of the Division as may be deemed necessary by the Director and which are not inconsistent with the laws of this State.

(12) To occupy and/or maintain such facilities as may be required for the effective and efficient operation of the Division.

(13) To adopt an official seal or seals for the Division, subject to the approval of the Secretary.

(14) To exercise all other powers necessary and proper for the discharge of the Director's duties and such other powers as may be delegated by the Secretary, not inconsistent with state law.

(15) [Repealed.]

(16) To develop a 5-year Comprehensive State Plan for Economic Development.

a. The Plan shall include all of the following:

1. Description of the Division's vision, goals, objectives, and strategies.

2. Identification of business sectors, including those sectors which have potential growth in this State's economy and global business image.

3. Strategies to encourage the creation and expansion of businesses in this State and the relocation of businesses to this State.
4. Potential partners for the implementation of the strategy required in paragraph (16)a.3. of this section, including federal and local governments, local and regional organizations for economic development growth, chambers of commerce, private businesses and investors, and nonprofit entities.
5. Strategies for talent development necessary to encourage economic development growth in this State, taking into consideration factors such as this State's education and training opportunities and available workforce.
6. Strategies to engage women, veterans, and minorities in developing businesses.
7. Strategies to improve and develop tourism.
8. An analysis of current and projected economic indicators, which shall be completed through the Division's coordination with the appropriate state agencies and shall include:
 - A. Unemployment rate.
 - B. Average annual wage.
 - C. Gross domestic product.
 - D. Number of jobs created.
 - E. Number of jobs retained.
9. An analysis of the return on investment produced through the Strategic Fund.

b. At least 2 months prior to submitting the Plan as required in this chapter, the Division shall hold a public meeting to allow public input regarding the Plan. The meeting shall be held in all 3 counties in this State. The Division may hold separate meetings in each county or hold 1 meeting and, through the use of technology, provide the public with access to attend and participate in the meeting simultaneously from each of the 3 counties.

c. The Plan shall be submitted every 5 years to the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, the Secretary, and, for public distribution, to the Director of the Division of Research of Legislative Council and the Director of Public Archives. The Division shall also publish the Plan on the Division's public website. The initial Plan is due December 1, 2020.

(63 Del. Laws, c. 189, § 2; 66 Del. Laws, c. 190, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 357, § 2; 80 Del. Laws, c. 93, § 2; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 4.)

§ 8706A. Responsibilities of the Public/Private Partnership and the Division.

(a) The Public/Private Partnership shall be governed by a board of directors comprised of no less than 15 members, and shall be composed of the following:

(1) The Governor, who shall serve as co-chair.

(2) One member of the majority party and 1 member of the minority party of the Senate appointed by the President Pro Tempore.

(3) One member of the majority party and 1 member of the minority party of the House of Representatives appointed by the Speaker of the House.

(4) At least 10 additional members appointed by the Governor. Such members shall collectively represent expertise on various economic development topics, including land use planning, finance, entrepreneurial investment and incubation, workforce development, labor, higher education, and regulatory compliance. Six of these 10 members shall be chosen from a list of recommended candidates provided by the Delaware State Chamber of Commerce and the Delaware Business Roundtable. One of the 6 individuals chosen from this list of recommendations shall be appointed by the Governor to serve as co-chair. The Governor may appoint additional members as necessary.

(b) No financial contribution to the Public/Private Partnership shall be required as a condition of or in connection with an appointment to the board of directors.

(c) The Public/Private Partnership formed pursuant to § 8702A(6) of this title shall have the following responsibilities:

(1) Work with the Division to assist early stage technology enterprises and entrepreneurs to apply for grants, loans, bonds or other financial incentives.

(2) Develop the workforce and establish recruiting processes to fill talent gaps in a changing market and continually supply trained workers for an innovative, technology-based economy.

(3) Recruit innovative and high-technology employers.

(4) Expand international business opportunities.

(5) Develop marketing strategies for long term growth.

(6) Provide guidance to start-up businesses and early stage ventures, focusing on high-growth firms and industries.

(7) Conduct research on trends in industry and opportunities that may impact Delaware's economy.

(8) Coordinate such other activities to encourage the economic development of the State through commercial, industrial, agricultural and other enterprises to locate, remain and expand in the State.

(d) The Public/Private Partnership shall submit the following annual reports, which shall be subject to Chapter 100 of this title, to the Governor and the General Assembly on or before June 30 each year:

- (1) Internal Revenue Service Form 990 tax returns.
- (2) Audited financial reports.
- (3) The organization's conflict, audit and expense policies.

(e) The Public/Private Partnership shall make available for inspection corporate documents and meeting minutes upon request by the Governor or the General Assembly.

(f) Any director of the Public/Private Partnership who is not a "public officer" as defined by § 5812(n)(1) of this title shall submit, on or before June 30 each year, to the General Assembly and the Governor the financial information listed in 5813(a)(1)-(5) of this title in a form substantially similar to that used by public officers to disclose financial information to the Public Integrity Commission; provided however, that any financial information submitted by such directors shall not constitute public records subject to Chapter 100 of this title.

(g) The conflict of interest policy for the Public/Private Partnership shall include the following provisions:

(1) All members, directors, officers, or members of any committee with powers delegated to it by the board of directors of the Public/Private Partnership shall have a duty to disclose any actual or possible conflict of interest or financial interest related to any proposed transaction, contract, or arrangement under consideration by the Public/Private Partnership.

(2) Procedures for addressing a conflict of interest, including consideration of alternatives to the proposed transaction, contract, or arrangement that do not present a conflict of interest.

(3) Procedures to determine whether a violation of the conflict of interest policy has occurred.

(4) A clear statement that any person found to have violated the conflict of interest policy shall be removed from that person's position.

(5) Provision for periodic review of the operations of the Public/Private Partnership to ensure compliance with the conflict of interest policy and that compensation arrangements and benefits are reasonable and the result of arm's length bargaining.

(h) The Division shall:

(1) Be responsible for attracting new investors and businesses to the State, promoting the expansion of existing industry, assisting small and minority-owned businesses, promoting and developing tourism and creating new and improved employment opportunities for all citizens of the State at every economic level, provided that such development is carried out with a view to preserving existing agriculture, commercial, industrial and recreational opportunities to be had within the State and conserving the natural resources and wildlife of the State.

(2) Act as the Governor's principal staff agency in economic development matters; make studies and investigations, insofar as they may be relevant to the State's economy, of the resources of the State and of existing and emerging problems of agriculture, industry, commerce, transportation and other matters affecting the development of the State and, in making such studies, seek the cooperation and collaboration of the appropriate departments, boards, commissions, agencies and instrumentalities of federal, state and local government, educational institutions and research organizations, whether public or private, and of civic groups and private persons and organizations; render advice and act as the Governor's designated agency in the execution of such matters relating to its powers as the Governor may request.

(3) Provide information to, and cooperate with, the General Assembly or any of its committees in connection with studies relevant to the overall development of the State's economy.

(4) Cooperate with, and within the limitations of its appropriations, provide requested assistance to county or local governments in the State, or any of their instrumentalities; and cooperate with and assist departments and other agencies or instrumentalities of federal, state and local government, as well as regional, metropolitan, county, municipal or other local or private agencies in the execution of their functions with a view to harmonizing their development activities with the overall development plans and policies of the State. Whenever cooperation or assistance under this subdivision includes the rendering of technical services, such services may be rendered free or in accordance with an agreement for reimbursement.

(5) Provide information to officials of departments, boards, commissions, agencies and instrumentalities of state and local government, to civic and other groups, and to the public at large in order to foster public awareness and understanding of the objectives of a strong state economy and to stimulate public interest and participation in the orderly and integrated development of the State.

(6) Accept and receive, in furtherance of its function, funds, grants and services from the federal government or its agencies, from departments, agencies and instrumentalities of state or local government or from private and civic sources.

(7) Collect, compile and audit the information and data necessary to discharge its principal functions. Where such data cannot be secured from federal, state or local agencies or private organizations, the Division may engage in the required research. Before publishing any historical information, the information shall be reviewed and approved by the Department of State of the State.

(8) Perform and be responsible for the performance of all powers, duties and functions heretofore vested in the Delaware Office of Economic Development immediately prior to July 1, 2017, and the powers, duties and functions heretofore vested in the Division of Economic Development of the Department of Community Affairs and Economic Development immediately prior to November 1, 1981.

(9) Exercise all other powers necessary and proper for the discharge of its duties.

(i) The Public/Private Partnership and the Division will coordinate on proposed economic development projects for consideration by the Council, as necessary.

(63 Del. Laws, c. 189, § 2; 69 Del. Laws, c. 10, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8707A. Council on Development Finance.

(a) The Council on Development Finance is hereby established and shall serve in an advisory capacity to the Director and shall consider matters relating to the financing and modernization of agricultural, industrial, commercial, emerging technologies and other facilities in the State and such other matters as may be referred to it by the Governor, or by the Director. The Council may study research, plan and advise the Director and the Governor on matters relating to economic development and strategic opportunities. The Council may consider projects and initiatives proposed by a Public/Private Partnership and make recommendations to the Division.

(b) (1) The Office of Management and Budget and the Office of the Controller General shall appoint 1 designee from each of their respective offices to support the staff of the Council. Upon request of the Council, the designees shall assist the Council by providing relevant analysis and research. The designees must be available to attend all Council meetings.

(2) The Chair of the Council, with prior notice to the Controller General, may engage professional contractual services when necessary to provide analysis and research for specific applications recommended to the Council by the Division of Small Business. The Office of the Controller General shall administer contracts for such services.

(c) The Council shall be composed of 9 members who are Delaware residents. The Governor shall appoint 7 members: 2 members from New Castle County, 1 member from Kent County, 1 member from Sussex County and 3 at-large members. The President Pro Tempore of the state Senate shall appoint 1 member of the Senate and the Speaker of the state House of Representatives shall appoint 1 member of the House of Representatives. Council members shall serve for 3-year terms and may be reappointed. Council members appointed after July 1, 2018, may be reappointed for only 1 additional 3-year term.

(d) At least 3, but no more than 4 members of the Council shall be affiliated with 1 of the major political parties and at least 2, but no more than 3 of the members shall be affiliated with the other major political party; provided however, that there shall be more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce a political affiliation shall also be eligible for appointment as a member of the Council.

(e) In making appointments to the Council, the Governor shall appoint professionals possessing 1 or more of the following designations: a member of the Bar of the Supreme Court of the State, an officer of a bank or trust company located in the State, an expert in private equity or a venture capital expert.

(f) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident of their duties as members in accordance with state law.

(g) Chairperson of the Council shall be appointed by the Governor. Such Chairperson shall serve at the pleasure of the Governor.

(h) Any appointment, pursuant to this section, to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term. However, a person who is appointed to fill such a vacancy may be reappointed. Any person appointed to fill such a vacancy after July 1, 2018, may be reappointed for only 2, 3-year terms.

(i) The Council shall conduct its business only when a quorum is present. A quorum shall consist of 5 of the 9 members being present in person, by telephone, or by videoconference. The consent of a majority of the quorum is required for approval on any vote. Upon written request from the Council, the Governor may declare a vacancy for any member who is absent from 4 consecutive Council meetings. The Council Chair should schedule meetings so that they are centrally located and geographically balanced in number.

(63 Del. Laws, c. 189, § 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 308, § 37; 76 Del. Laws, c. 79, § 56; 76 Del. Laws, c. 361, § 1, 2; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 5.)

§ 8708A. Tourism Advisory Board.

(a) The Tourism Advisory Board is hereby established and shall serve in an advisory capacity to the Director and shall consider matters relating to the promotion of the State as a destination for tourists and other travelers and such other matters as may be referred to it, by the Governor, the Secretary, or by the Director. The Board 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 Tourism Advisory Board shall be composed of 7 members who shall be appointed by the Governor and serve for a term of 3 years.

(c) Members of the Board shall be residents of the State who are engaged in the tourist industry or who provide direct service to tourists and other travelers. At least 2 members shall be appointed from each of the 3 counties of the State. For purposes of this section, a member's residence shall be considered the member's principal place of business. At least 3, but no more than 4, members of the Board shall be affiliated with 1 of the major political parties and at least 2, but not more than 3, of the members shall be affiliated with the other major political party; provided, however, that there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce a political affiliation shall also be eligible for appointment as a member of the Board.

(d) The Director, or such person designated by the Director, shall serve as Secretary to the Board, and shall maintain minutes of all meetings and such other records as are deemed necessary by the Director.

(e) Members of the Board shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members in accordance with state law.

(f) A Chairperson of the Board shall be chosen by the members of the Board from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.

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

(63 Del. Laws, c. 189, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8709A. Division of Small Business — Staff.

The Director and all employees of the Division shall be exempt from Chapter 59 of this title.

(63 Del. Laws, c. 189, § 2; 65 Del. Laws, c. 225, § 1; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 6.)

§ 8710A. Division of Small Business — Collection and distribution of information; sale of publications.

(a) The Division may collect and disseminate any data or other information including, but not limited to, the population, demographics and economy of the State. The Division shall take such steps as the Director deems appropriate to emphasize the investment, business, employment and recreational opportunities and advantages of the State, and the potential for future development within the State.

(b) The Division may elect to publish any information on its own or to use any of the accepted advertising media to carry out the purposes of this chapter. The Division may also distribute information and materials donated to, or purchased by, the Division, from private or public agencies, organizations, corporations or individuals.

(c) The Director may offer such publications and other materials described in this chapter for sale if deemed by the Director to be in the best interests of the State, provided that the price so charged for the sale of said publications and materials shall not exceed their original cost with the addition of a charge for postage and handling, if applicable.

(d) Such moneys as received by the Division from the sale of publications and materials shall be deposited with the Treasurer of the State in a special fund of the State upon which the Director may draw to replace such publications and materials offered for sale. Unexpended funds remaining in the special fund at the close of the fiscal year, and not previously expended or encumbered, shall not revert but shall remain on deposit in such special fund for future use pursuant to this section.

(63 Del. Laws, c. 189, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 7.)

§ 8711A. Site Readiness Fund.

(a) The Site Readiness Fund ("Fund") is established to provide economic assistance for renovation, construction, or other improvements to infrastructure to attract new businesses to this State, or expand existing businesses in this State, when such an economic development opportunity would create a significant number of direct, quality, full-time jobs within the State.

(b) The purpose of the Fund is to cultivate a resource of commercial, industrial sites that are readily available to new businesses, established businesses that are considering moving to the State, or existing businesses within the State that need additional sites to remain or expand within the State. To expand and sustain economic growth within the State, it is critical to consistently maintain readily available commercial, industrial sites to attract new business, or expand existing businesses. Without a stable inventory of sites that are ready or able to be developed in a timely manner for business use, the delay in converting undeveloped sites capable of conducting business in compliance with applicable regulations and ordinances may cause the State to lose significant business opportunities that would benefit the economic well-being of its citizens.

(c) The applicant must meet all of the following criteria for projects to be eligible for funding under this section:

(1) Be sponsored by at least 1 public entity. For purposes of this section, a public entity is either a county or a municipality. The sponsoring public entity must identify any regulations, zoning requirements, or local ordinances that apply to the project.

(2) Establish that the proposed improvement will create a significant number of direct, quality, full-time jobs.

(3) Demonstrate financial stability.

(4) Serve a public purpose.

(d) In addition to the criteria established in subsection (c) of this section, an applicant to the Fund must establish all of the following business organizational requirements:

(1) Validly exist as a corporation, public entity, limited liability company, or other regulated entity.

(2) Be in good standing under the laws of this State, duly qualified to do business.

(3) Be in good standing in each other jurisdiction in which its conduct of business requires such qualification.

(4) Possess any business and professional licenses required under Titles 24 and 30.

(e) Applications to the Fund shall be administered by the Division of Small Business within the Department of State in accordance with 1 Del. Admin. Code § 402 that governs the administration of projects under the Delaware Strategic Fund.

(f) The Council on Development Finance shall review projects and make recommendations to the Director of the Division of Small Business, as chairperson of the Delaware Economic Development Authority, pursuant to § 8707A of this title.

(g) The Director may consider recommendations of the Council made under subsection (f) of this section. The Director is authorized to determine whether the applicant and the improvements are eligible under the requirements of this section.

(h) The Director is further authorized to approve projects and make grants, loans, or other economic assistance from the Fund to qualified applicants.

(i) The administration of funding approved under this section shall be administered pursuant to the requirements of this chapter and 1 Del. Admin. Code § 402.

(j) To ensure that Fund assets are expended in the public interest, the Director may require recapture provisions in any contract agreements for grants, loans, or other economic assistance from the Fund to recover for any substantial or complete cessation of operations by the applicant, or failure to reach any employment or other project benchmarks. The Director may impose the recapture provisions for the number of years necessary to realize the purpose of the Fund.

(k) The Director may require the applicant to report financial statements, progress reports on the status of the project, including, the number of direct, quality, full-time jobs created or saved as a result of the project, any economic impact of the funding, and any other information required to assess the project. The reporting period for each project is within the discretion of the Director to determine that the purpose of the Fund is realized.

(83 Del. Laws, c. 86, § 1.)

§ 8712A. Assistance for tourism and business promotion.

(a) The Director is hereby authorized and directed to establish a special fund of the State to encourage instrumentalities and political subdivisions of the State and private and public nonprofit associations to attract new investors and businesses to the State, and to promote the State as a destination for tourists and other travelers.

(b) The Director may contract with any instrumentality or political subdivision of the State, and with any private or public nonprofit association, to accomplish any work authorized by this chapter, provided that the said instrumentality or political subdivision of the State, private or public nonprofit association, contributes an equal share to the cost of the project.

(c) The Director shall establish such rules and regulations as are necessary to determine the eligibility of any instrumentality 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 may, if the Director deems it necessary, limit the amount of money granted to any single project funded 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.

(63 Del. Laws, c. 189, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8713A. Assumption of powers of Division.

The Division shall have the power to perform and shall be responsible for the performance of all powers, duties and functions heretofore vested by law in the Division of Economic Development of the Department of Community Affairs and Economic Development immediately prior to November 1, 1981, and the Delaware Economic Development Office prior to July 1, 2017, and which are not otherwise specifically transferred by this chapter.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8714A. Rights of appeals continued.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions transferred by this chapter to the Division, to any subdivision thereof or to any council or board created by this chapter shall continue to exist with respect to such act or acts as hereafter performed by the Division, by the subdivision, by the council or by the board to which such function is transferred by this chapter, and each such appeal shall be perfected in the manner heretofore provided by law.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8715A. Transition provisions.

(a) All property, including all books, records, papers, maps, charts, plans, equipment and other materials owned by or in the possession of any agency of the State and used in connection with a function transferred by law to the Delaware Economic Development Office on November 1, 1981, and all property, including all books, records, papers, maps, charts, plans, equipment and other materials owned by or in the possession of any agency of the State and used in connection with a function transferred by this chapter to the Division on July 1, 2017, shall be delivered into the custody of the Division. All investigations, petitions, hearings and legal proceedings pending before, or instituted by, any agency from which functions are transferred by this chapter and which are not concluded prior to June 30,

2017, shall continue unabated and remain in full force and effect, notwithstanding the passage of this chapter and, where necessary, may be completed before, by or in the name of the Division. All orders, rules and regulations made by any agency from which functions are transferred by this chapter and which govern such functions, and which are in effect upon June 30, 2017, shall remain in full force and effect until revoked or modified in accordance with law by the Division. All contracts and obligations of any agency made or undertaken in the performance of a function transferred by law to the Delaware Economic Development Office and being in force on November 1, 1981, and all contracts and obligations of any agency made or undertaken in the performance of a function transferred by this chapter to the Division, and being in force on June 30, 2017, shall, notwithstanding this chapter, remain in full force and effect and be performed by the Division. All real estate owned by any agency from whom functions are transferred by this chapter to the Division, shall become property of the Division as of July 1, 2017.

(b) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred by this chapter to the Division or to any subdivision thereof or to any council or board created by this chapter, be construed as referring and relating to the Division, to the appropriate subdivision thereof or to the council or board as created and established by this chapter.

(c) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred by this chapter to the Division or to any subdivision thereof or to any council or board created by this chapter, be construed as referring to or relating to the equivalent person or persons and their powers, duties and functions as established and created in this chapter.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8716A. Reports.

(a) The Division shall submit 1 annual report on or before December 1 of each year that includes all of the following information:

(1) The status of the Division's efforts to meet the vision, goals, objectives, strategies, and economic indicators included in its comprehensive economic development planning.

(2) A summary of the work of the Council on Development Finance.

(3) The uses of the Delaware Strategic Fund for the previous year. The Director shall notify the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program on the remaining Strategic Fund balance available for commitment.

(4) The status of assistance for small business, including the Small Business Technology Transfer Program and the Small Business Innovative Research Program.

(5) The programs and funding under the Delaware Economic Development Training Act authorized by subchapter VIII of this chapter, including an evaluation of the performance of each program, a summary of the public moneys expended and an analysis of the participants in the programs, a report on the number of minority and economically disadvantaged individuals included in the programs.

(6) The names of all certified sponsor and new business firms, the total amount of tax credits awarded, and the number of jobs created under the new business certification tax program.

(b) The Division shall notify the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program of its intention to make a commitment of funds from the Strategic Fund before the commitment being made to the intended recipient of the funds.

(c) The Division shall also submit special reports upon the request of the Governor, the General Assembly, the Secretary, the Council on Development Finance, the Tourism Advisory Board, or at the discretion of the Director of those aspects of the Division's work which may be deemed of current interest. Copies of all reports shall be made available for general distribution or sale and published on the Division's public website.

(d) In preparing any reports on its operations, the Division may seek the advice of outside experts in the fields of tourist and travel promotion or general economic development.

(e) The Division shall submit all reports, when due, to the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, the Secretary, and, for public distribution, to the Director of the Division of Research of Legislative Council and the Director of Public Archives. The Division shall also publish the reports on the Division's public website.

(63 Del. Laws, c. 189, § 2; 80 Del. Laws, c. 93, § 2; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 8.)

§ 8717A. Misnomer of Division in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Division if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Division, the estate or interest therein expressed or described.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8718A. Budget.

The Director shall prepare a proposed budget for the operation of the Division to be submitted along with the proposal for the Department of State for the consideration of the Secretary, Governor and the General Assembly. The budget may be presented in any manner consistent

with guidelines provided by the Director of the Office of Management and Budget; provided, however, that at least 1 budget unit, or successor budgetary component, shall detail the proposed budget for the support of tourism. The Division shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly. Special funds may be used in accordance with approved programs, grants or appropriations.

(63 Del. Laws, c. 189, § 2; 75 Del. Laws, c. 88, § 21(13); 81 Del. Laws, c. 49, § 1.)

§ 8719A. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are hereby repealed, superseded, modified or amended so far as necessary to conform to, and give full force and effect to, this chapter.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

Subchapter II

Delaware Strategic Fund

§ 8727A. Findings and purpose; creation of the Fund.

(a) The General Assembly finds that Delaware's development finance programs are necessary to compete for new and existing businesses. Furthermore, the General Assembly finds the number and limited previous funding of finance programs of the Delaware Economic Development Office do not maximize efficiency of administration by the State or the business community. It is the intent of the General Assembly to solve this problem by consolidating the existing development finance programs of the Delaware Economic Development Office into a Delaware Strategic Fund.

(b) A special fund to be known as the "Delaware Strategic Fund" ("Fund") shall be created.

(1) The Fund shall initially consist of \$2,250,000 as authorized in 69 Del. Laws, c. 77 to the Delaware Economic Development Office on behalf of the Delaware Economic Development Authority ("Authority") and funds subsequently appropriated to the Authority or the Division. Funds appropriated pursuant to this or subsequent acts are to be used for Fund activities as defined in the following paragraphs. The Fund shall also consist of present balances and future payments of moneys transferred from discontinued programs.

(2) The Fund shall be invested by the State Treasurer in securities consistent with the policies established by the Cash Management Policy Board. All moneys generated by the Fund shall be deposited in the Fund.

(69 Del. Laws, c. 386, § 26; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8728A. Fund purposes.

(a) Moneys appropriated to the Fund may be loaned, granted or used in other financing mechanisms by the Authority within the State. The Fund may be used for the following purposes:

(1) Retention and expansion of existing firms;

(2) Recruitment of new firms;

(3) Formation of new businesses; and

(4) To the extent provided in subsection (c) of this section, and for 1 or more of the purposes set forth in paragraphs (a)(1) through (3) of this section, environmental assessment and remediation of certified brownfields and subchapter III of this chapter regarding the Delaware Technical Innovative Program.

For purposes other than stated above, the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program, Director of the Office of Management and Budget and Controller General shall be informed prior to any action by the Division.

(b) Moneys appropriated to the Fund may be used for the following activities:

(1) Working capital;

(2) Renovation, construction or any other type of improvements to roads, utilities and related infrastructure and public facilities;

(3) Assistance for equipment, machinery, land and building acquisition and development;

(4) Assistance with relocation expenses;

(5) Loans or loan guarantees;

(6) Assistance for the development of startup strategies such as seed capital and incubator programs;

(7) Assistance for the development of re-use strategies and implementation plans for sites located in the State and targeted for development by the Division;

(8) Assistance for the development and implementation of modernization strategies for existing manufacturing firms to strengthen their competitive position in regional, national and international markets; and

(9) To develop and implement strategies to maintain or enhance important economic sectors in the State.

(c) During any fiscal year of the State, up to \$1,000,000, in aggregate, of the moneys appropriated to the Fund may be used to provide matching grants for the costs of environmental assessment and remediation at certified brownfields. The amount of a matching grant with respect to a certified brownfield shall not exceed the lesser of \$100,000 or 50 percent of environmental assessment and remediation costs