



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
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**MEMORANDUM**

DATE: May 30, 2012

TO: All Members of the Delaware State House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson  
*DMP/KH*  
State Council for Persons with Disabilities

RE: S.B. 178 [Agency Public Hearings]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 178 which holds agencies to the time frame announced for public hearings and requires a 15 day window for written comments on a proposed regulation following the conclusion of any public hearings on the regulation. As background, the State Administrative Procedures Act (APA) contains standards for public hearings conducted by agencies in connection with proposed regulations. As noted above, S.B. 178 is intended to address two (2) aspects of this process. SCPD has the following observations.

First, if a hearing notice identifies a specific starting time and ending time for a hearing, the agency would be required to hold the hearing open until the advertised ending time. In practice, many public hearings draw no or few presenters. Therefore, agency personnel may be inclined to close a hearing if either no one appears at the beginning of the hearing or presentations by all participants have been made. It is possible that the public could be misled if a hearing notice provides a starting and ending time and a hearing adjourns early. For example, a presenter could appear at 7:30 for a hearing scheduled for 6:30-8:30 only to discover that the hearing adjourned. If this legislation is enacted, SCPD suspects agencies will simply adopt a hearing notice which includes a starting time and recites that the hearing will conclude the earlier of a specific ending time or conclusion of presentations by all persons in attendance. The public would then at least be on notice that appearance at the advertised time of hearing onset would be prudent.

Second, the APA currently requires a minimum 30-day public comment period. The bill would supplement this standard by requiring the comment period to extend to at least 15 days after the last public hearing. SCPD believes this change has merit. For example, if an agency convened a hearing on the 29<sup>th</sup> or 30<sup>th</sup> day of a comment period, and presentations identified issues or concerns prompting either further research or analysis, there would be scant time to present

comments by the 30-day deadline. Moreover, as a practical matter, many agencies cannot submit comments without a vote from their board or executive committee. This process may require a few days after a hearing to complete. At first glance, it appeared that the burden on the agency would be minimal since it could schedule the hearing(s) during the first 15 days of the comment period with no effect on the overall 30-day public comment period. However, there is a “glitch”. Title 29 Del.C. §10115 imposes a 20-day prior notice for any public hearing. Thus, if an agency contemporaneously published a proposed regulation and hearing notice on May 1, the hearing could not occur until May 21, and the comment period would extend to June 4. The sponsors of S.B. 178 could consider a few options:

A. If the 20-day prior notice period were shortened to a 14-day notice period, a public hearing could occur on May 15 or 16 with no effect on the 30-day comment period.

B. If the proposed “15-day after final hearing” comment period were shortened to a 7-day period, a hearing could be convened on May 21-24 with no effect on the 30-day comment period.

C. If the 20-day notice period were shortened to a 15-day notice period AND the proposed “post-hearing” comment period were shortened from 15 days to 10 days, the hearing could be convened on May 16 -21 with no effect on the 30-day comment period.

Since some agencies convene a hearing in each county on separate dates, Options B and C may provide the best balance of agency flexibility and adequate time for public comment.

Given the above observations, SCPD endorses the concept of the legislation subject to consideration of potential amendments.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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