



SPONSOR: Rep. Baumbach & Sen. Sokola  
Rep. Osienski; Sens. Ennis, Hansen, Walsh

HOUSE OF REPRESENTATIVES  
149th GENERAL ASSEMBLY

HOUSE BILL NO. 177

AN ACT TO AMEND TITLE 22 OF THE DELAWARE CODE RELATED TO MUNICIPAL BOARDS OF  
ADJUSTMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members  
elected to each house thereof concurring therein):

1           Section 1. Amend §322, Title 22 of the Delaware Code by making deletions as shown by strike through and  
2           insertions as shown by underline as follows and redesignating accordingly:

3           § 322 Composition; terms of office.

4           (a) In cities or incorporated towns not having heretofore adopted a home rule charter pursuant to Chapter 8 of this  
5           title, the board of adjustment shall consist of the following members or their authorized agents:

6                   (1) The chief engineer of the street and sewer department or the public works commissioner;

7                   (2) The city solicitor; and

8                   (3) The mayor.

9           If the city or incorporated town has no city engineer or public works commissioner, or city solicitor, then the  
10          mayor or chief executive of such city or town shall appoint 2 members, each to be appointed for a term of 3 years and  
11          removable for cause by the appointing authority upon written charges and after public hearing, who, with the presiding  
12          officer of the zoning commission, shall constitute the board of adjustment for such city or town. Vacancies shall be filled  
13          for the unexpired term of any member whose term becomes vacant.

14          (b) In cities or incorporated towns having heretofore or hereafter adopted a home rule charter pursuant to Chapter  
15          8 of this title, the legislative body thereof may establish a board of adjustment consisting of 5 members who shall be  
16          residents of the city or incorporated town and who shall have knowledge of and experience in the problems of ~~urban and~~  
17          ~~rural~~ urban or suburban or rural development, and who, at the time of appointment, shall not be candidates-elect for or  
18          incumbents of an elective public office. The mayor or chief executive officer of such city or incorporated town, with  
19          consent of the legislative body thereof, shall appoint 4 members for terms of 4 years, provided that the terms of the original  
20          members shall be established in a manner that 1 shall expire each year. The mayor or chief executive officer of such city or  
21          incorporated town, with the consent of the legislative body thereof, shall appoint 1 member who shall be chairperson and

22 who shall serve at the pleasure of that appointing official. The members shall be entitled to compensation as determined by  
23 the city or incorporated town.

24 (c) In the event that a city or incorporated town qualifying under subsection (b) of this section fails to establish a  
25 board of adjustment as permitted in subsection (b) of this section, the board of adjustment shall consist of those persons  
26 designated in subsection (a) of this section.

27 (d)(1) Anything heretofore in this section to the contrary notwithstanding, any city or town, by its legislative  
28 body, may establish a board of adjustment consisting of not less than 3 nor more than 5 members who shall be residents of  
29 the city or town and who shall have knowledge of the problems of ~~urban and rural~~ urban or suburban or rural development  
30 and who, at the time of appointment and throughout the term of office, shall not be candidates nor members of the  
31 legislative body nor employees of the city or town. The mayor or chief executive officer of such city or town shall appoint  
32 such members of the board of adjustment, and all such appointments shall be confirmed by a majority vote of the elected  
33 members of the legislative body.

34 (2) All appointments shall be for a period of 3 years, provided that the terms of the original members shall be  
35 established in such a manner that the term of at least 1 member shall expire each year and the successor shall be  
36 appointed for a term of 3 years. The board of adjustment so selected shall elect from among their own number a  
37 chairperson and a secretary.

38 (3) Any member of the board of adjustment may be removed from office by the legislative body for cause  
39 after a hearing by a majority vote of all the elected members of the legislative body of such city or town. A vacancy  
40 occurring otherwise than by the expiration of term shall be filled for the remainder of the unexpired term in the same  
41 manner as an original appointment.

#### SYNOPSIS

This bill broadens the eligibility requirement for an appointment to a board of adjustment in jurisdictions which have adopted a home rule charter.