

CHAPTER 211
FORMERLY
HOUSE BILL NO. 241

AN ACT TO AMEND TITLE 22 OF THE DELAWARE CODE RELATING TO THE COMPOSITION OF MUNICIPAL ZONING 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):

WHEREAS, Title 22, Section 322 of the Delaware Code sets forth the composition and terms of office of zoning boards of adjustment of cities and towns of the State of Delaware; and

WHEREAS, the Supreme Court of Delaware in *Friends of H. Fletcher Brown Mansion v. The City of Wilmington* held that the City of Wilmington's Zoning Board of Adjustment ("ZBA") was not properly constituted because Section 322(a) does not permit the Chief Engineer and City Solicitor to delegate their duties regarding the ZBA to their authorized agents as it does for the Mayor;

NOW, THEREFORE:

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

Section 1. Amend §322(a), Title 22 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§322. Composition; terms of office.

- (a) In cities or incorporated towns not having heretofore adopted a home rule charter pursuant to Chapter 8 of this title, the board of adjustment shall consist of the following members or their authorized agents: (1) the chief engineer of the street and sewer department or the public works commissioner, (2) the city solicitor, and (3) the mayor or an authorized agent of the mayor. If the city or incorporated town has no city engineer or public works commissioner, or city solicitor, then the mayor or chief executive of such city or town shall appoint 2 members, each to be appointed for a term of 3 years and removable for cause by the appointing authority upon written charges and after public hearing, who, with the presiding officer of the zoning commission, shall constitute the board of adjustment for such city or town. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

Section 2. This Act shall take effect immediately upon its enactment into law.

Approved February 06, 2012