



SPONSOR: Sen. Huxtable & Rep. Schwartzkopf & Rep. Parker Selby
& Rep. Harris & Rep. Hilovsky
Sens. Hansen, Hocker, Hoffner, Lawson, Sokola,
Townsend; Reps. Baumbach, Heffernan, Phillips, Romer

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 6

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE AND CHAPTER 108, VOLUME 62 OF THE LAWS OF DELAWARE, AS AMENDED BY CHAPTER 99, VOLUME 72 OF THE LAWS OF DELAWARE, RELATING TO CLARIFYING THE WARNER GRANT TRUST AND THE JURISDICTION OF THE COURT OF CHANCERY AS ARBITER OF DISPUTES REGARDING THE WARNER GRANT TRUST LAND.

1 Section 1. Amend Chapter 108, Volume 62 of the Laws of Delaware, as amended by Chapter 99, Volume 72 of
2 the Laws of Delaware, by making deletions as shown by strike through and insertions as shown by underline as follows:

3 WHEREAS, in 1682/3 the Court established by the Penn family in Lewes, Delaware, made a grant to Edmund
4 Warner (recorded in the Office of the Recorder of Deeds for Sussex County in Deed Record Book A-1, page 14 et seq.) of
5 the land described as follows:

6 "the land of the Cap Commonly called "Cape Henlopen, Lying on the North East side of the Creek formerly
7 called the Whorekill to make a Coney Warrin on and Liberty to Build a House and seat a Warriner upon..."; and

8 WHEREAS, the purpose for the use of the land set forth in the grant was as follows:

9 "the Timber and feed of said land, and marshes thereunto Belonging be and forever hereafter Lye in Common
10 for the use of the Inhabitants of the Town of Lewes and County of Sussex, as also free liberty for any and all of the
11 Inhabitants of the said County to fish get and take of their oyster & cockel shells and gather plums, crambereys and
12 Huckleburies on the said land as they shall think fitt always..."; and

13 WHEREAS, the City of Lewes had been made the Trustee of this trust by an act of the General Assembly in 1857,
14 found at 11 Del. Laws, C. 486, and continued through 57 Del. Laws, C. 170.

15 WHEREAS, in 1972, the Attorney General sought instructions as to the proper uses of the Warner Grant lands;
16 and

17 WHEREAS, the City of Lewes and numerous individuals have been made parties to extensive litigation as to the
18 Warner Grant lands; and

19 WHEREAS, there is no agreement among the parties as to the exact boundaries of the Warner Grant lands in
20 1682; and

21 WHEREAS, natural monuments have moved and been redirected over the past three hundred years; and

22 WHEREAS, it is advantageous to the State and all parties concerned to once and for all time establish the
23 boundaries of the Warner Grant lands and the uses to which they can be ~~put~~ put; and

24 WHEREAS, the contingency in Section 9 of this Act was fulfilled on September 8, 1982, when the Court of
25 Chancery dismissed the Warner Grant litigation, see *In the Matter of Certain Lands in the Vicinity of Cape Henlopen Etc v.*
26 *Stango*, 1982 Del. Ch. LEXIS *546 (Del. Ch. 1982); and

27 WHEREAS, in 2022 the Department of Natural Resources and Environmental Control (“DNREC”) proposed uses
28 for the Warner Grant lands that many residents of this State found to be inconsistent with the purposes set forth in the
29 Warner Grant Trust; and

30 WHEREAS, the 152nd General Assembly desires for DNREC and the public to have a clear understanding of the
31 intent behind the Warner Grant Trust and DNREC’s role in preserving the Warner Grant lands for the public benefit; and

32 WHEREAS, it is advantageous to clarify the permitted uses of land now remaining in the State’s control within the
33 boundaries of the Warner Grant, known as the “Warner Grant Trust Lands”, and to establish that DNREC has a duty to act
34 as Trustee on behalf of the public interest in preserving and protecting the Warner Grant Trust Lands with the Court of
35 Chancery having exclusive original jurisdiction over any disputes regarding such uses; and

36 WHEREAS, the 152nd General Assembly declares that as to the Warner Grant Trust Lands, the first priority and
37 concern of all those holding the Warner Grant Trust Lands in trust must be, now and in perpetuity, the preservation and
38 protection of the natural and historical resources encompassed by the Warner Grant Trust Lands, which are a most precious
39 resource of this State and its citizens.

40 NOW, THEREFORE:

41 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

42 Section 1. There is hereby created the Warner Grant Trust Lands.

43 Section 2. The Warner Grant Trust Lands include property located in two parcels generally described as follows:

44 PARCEL NO. 1 All that certain tract, piece or parcel of land situate partly within the Corporate limits of the
45 City of Lewes and partly without the Corporate limits of the City of Lewes, and also being situate in Lewes and
46 Rehoboth Hundred, Sussex County and State of Delaware, and being bounded as follows:

47 On the North by Cape Henlopen Drive (County Road No. 19), the Barcroft Company, the Delaware Bay
48 and the Delaware, Maryland and Virginia Railroad Co., on the East by the Atlantic Ocean, on the South by North
49 Shores, on the Southwest in part by the Lewes and Rehoboth Canal, on the West by the Freeman Highway
50 (County Road No. 23), and being more particularly described as follows:

51 Beginning at a point at the intersection of County Road No. 23, known as Freeman Highway and
52 County Road No. 19, known as Cape Henlopen Drive, thence along County Road No. 19 in an Easterly
53 direction, 2700 feet more or less to a point, thence in a Southerly direction 1000 feet more or less to a point,
54 thence in an Easterly direction 3500 feet more or less to a point, thence in a Northerly direction 2,648 feet
55 more or less to a point at the low water mark of the Delaware Bay, thence along and with the low water mark
56 of the Delaware Bay in a Northerly direction and continuing Easterly and Southerly around the Point known
57 as Cape Henlopen and continuing along the low water mark of the Atlantic Ocean to a point at the northeast
58 corner of a 15.44 acre tract of land now or formerly of the United States of America, for use by the
59 Department of Navy, thence continuing along the low water mark of the Atlantic Ocean in a Southerly
60 direction 18,750 feet more or less to a point, thence leaving the low water mark of the Atlantic Ocean in a
61 Southwesterly direction 1100 feet more or less to a point, thence in a Northwesterly direction 264 feet more or
62 less to a point, thence in a Southwesterly direction 165 feet more or less to a point, thence in a Northwesterly
63 direction 1171 feet more or less to a point, thence in a Southwesterly direction 616 feet more or less to a point
64 at the low water mark of the Lewes and Rehoboth Canal, thence with same in a Northwesterly direction 2222
65 feet more or less to a point, thence in a Northwesterly direction 664 feet more or less to a point, thence leaving
66 the Lewes and Rehoboth Canal in a Northwesterly direction 1253 feet more or less to a point, thence along the
67 original Course of the Lewes Creek in a Northwesterly direction 6000 feet more or less to a point at the low
68 water mark of the Lewes and Rehoboth Canal, thence with same in a Northwesterly direction 9500 feet more
69 or less to a point at County Road No. 23, thence with same in a Northwesterly direction 3000 feet more or less
70 to the point of Beginning.

71 Containing 3200 acres more or less of land (by scale);

72 EXCLUDING THEREFROM those certain parcels of real property, depicted upon Sussex County Tax
73 Map 3-35-9, Parcels 13 and 13.01 (owned by and assessed to Hazell M. Smith) and that certain parcel of real
74 property depicted upon Sussex County Tax Map 3-35-9, Parcel 13.02 (owned by and assessed to Gills Neck Realty
75 Co.), the said parcels also being depicted upon a certain plat entitled "Plat of the Lands of Fish Products Co." dated
76 November 20, 1948 and recorded in the Office of Recorder of Deeds, in and for Sussex County, at Georgetown,
77 Delaware in Plot Book 1, Page 63, said lands being depicted thereon on the South side of Old Lewes Creek, and
78 on the North side of the Lewes-Rehoboth Canal.

79 and

80 PARCEL NO. 2 All that certain tract, piece or parcel of land situate in the Corporate limits of the City of Lewes,
81 and also being situate in Lewes and Rehoboth Hundred, Sussex County, and State of Delaware, and being bounded on the
82 North by the low water mark of the Delaware Bay, on the East by Roosevelt Inlet, on the South by the low water mark, on
83 the Northerly side of the Broadkill River, on the West by the line of the Corporate limits of the City of Lewes.

84 Containing 190 acres more or less of land (by scale).

85 The above parcels are to be surveyed to determine the bearings and distances of the above parcels and permanent
86 markers are to be placed at the corners.

87 The above description is based on a compilation of various deeds and plots as well as general preliminary surveys.

88 The deeds and plots are as follows:

89 1. Lease to Barcroft Company, of record in the Office for Recording of Deeds of Sussex County at Deed Book
90 630, Pages 620, et sequi, and a plot found at Deed Book 630, Page 625.

91 2. Agreement between the City of Lewes and the State of Delaware, of record in the Office for the Recording
92 of Deeds of Sussex County at Deed Book 774, Page 61.

93 3. Agreement between the Commissioners of Lewes and the State of Delaware, of record in the Office for the
94 Recording of Deeds of Sussex County at Deed Book 586, Page 286.

95 4. Quitclaim Deed between the United States of America and the State of Delaware, of record in the Office for
96 the Recording of Deeds of Sussex County at Deed Book 581, Page 426.

97 5. A plot title "Perimeter Survey, U. S. Naval Facility, Fort Miles, prepared by Edward H. Richardson
98 Associates, Inc. of record in the Office for the Recording of Deeds of Sussex County at Deed Book 698, Page 612.

99 6. A plot of the Cordons Pond area prepared by the Delaware State Highway Department. (Ruyter survey of
100 1955)

101 Section 3. The Warner Grant Trust Lands further shall include any land, parcel or piece of lands now within the
102 boundaries described in Section 2, supra, which is now owned by the Government of the United States of America, its
103 agencies or departments, which lands are hereafter reverted to, escheated to or in any other way conveyed to the State of
104 Delaware.

105 Section 4. All other lands not included within the description contained in Section 2 hereof presently owned by the
106 State of Delaware, which it has been claimed, argued, contested, alleged or implied to be within the so-called Warner
107 Grant, are specifically excluded from the Warner Grant Trust Lands as delineated herein and are not subject to the Warner
108 Grant Trust as established herein but shall hereafter and forever be lands of the State of Delaware; and those said lands
109 lying in the area of the City of Lewes or adjacent thereto shall be administered by the City of Lewes according to the terms

110 of its charter, 57 Del. Laws, Ch. 170. Title to lands which has previously been established to be held in fee shall remain
111 undisturbed and held as heretofore.

112 Section 5.

113 (1) The Warner Grant Trust Lands shall be forever administered by the Department of Natural Resources and
114 Environmental Control for the benefit of the people of Lewes, Sussex County and State of Delaware.

115 (2) Said lands ~~The Warner Grant Trust Lands~~ must be administered for the public benefit as areas of public
116 recreation, conservation and/or nature education and may not be used for private benefit to the detriment of such public
117 benefit, subject, however, to use for railroad purposes existing at the time of this Act. and in accordance with the
118 following 3 governing priorities, which must coexist harmoniously:

119 a. Conservation. The Department of Natural Resources and Environmental Control shall have, as its
120 preeminent goal, the conservation and preservation of the Warner Grant Trust Lands and shall plan, develop, and
121 maintain the Warner Grant Trust Lands to preserve in every reasonable degree the scenic, historic, scientific,
122 prehistoric, and wildlife values of the Warner Grant Trust Lands.

123 b. Nature education. The Department of Natural Resources and Environmental Control shall provide
124 displays, tours, and interpretive programs that focus on the unique flora, fauna, and ecosystems found in the
125 Warner Grant Trust Lands, to increase the public's knowledge and awareness of the environment and
126 environmental challenges.

127 c. Public recreation.

128 1. Except as provided under paragraph (2)c.2. of this Section, the Department of Natural Resources
129 and Environmental Control shall provide for outdoor, nature-based recreational activities, including athletic or
130 other outdoor recreational activities, camping, housing provided in facilities dedicated to educational
131 programs, and services offered by vendors supporting outdoor, nature-based recreational activities.

132 2. The Department of Natural Resources and Environmental Control may not develop hospitality
133 amenities such as a restaurant, hotel, hostelry, or entertainment center.

134 (3) The Department of Natural Resources and Environmental Control shall administer the Warner Grant Trust
135 Lands so that a private benefit or financial gain to a for-profit enterprise or a public-private partnership is not
136 detrimental to the public benefit set forth in this Act.

137 Section 6. Any modification of the laws governing the Warner Grant Trust Lands shall require action by the
138 ~~General Assembly of the State of Delaware and approval of the Court of Chancery of the State of Delaware. Any such~~
139 ~~modification shall be without prejudice to any parties affected by the same to litigate any issues pertinent to such~~

140 ~~modification.~~ Assembly. The Court of Chancery has original jurisdiction over disputes regarding the Warner Grant Trust
141 Lands. The Attorney General shall represent Delawareans in enforcement of the Trust in the Court of Chancery for
142 enforcement of Section 5 of this Act. If the Attorney General declines to pursue an action in the Court of Chancery for
143 enforcement of Section 5 of this Act, any resident of Sussex County, original beneficiaries of the Trust, may bring an action
144 in the Court of Chancery and are to be awarded attorney's fees if the Court of Chancery finds that the Department of
145 Natural Resources and Environmental Control has violated its duties under Section 5, or if justice so requires.

146 Section 7. The Department of Transportation shall commence within three months of the effective date of this
147 action a survey which shall develop a metes and bounds description of the lands generally defined in Section 2, supra,
148 which description shall be recorded by the Attorney General in the Office for the Recording of Deeds in and for Sussex
149 County upon its completion and its approval by the Court of Chancery of the State of Delaware. The Department of
150 Transportation shall place suitable monuments to memorialize the boundaries of the Warner Grant Trust Lands.

151 Section 8. A sum of \$15,000 is appropriated to the Department of Transportation from funds not otherwise
152 appropriated for the purpose of conducting this survey. Any funds not spent by June 30,1981, shall revert to the General
153 Fund of the State of Delaware.

154 Section 9. This Act shall take effect ten days after the Court of Chancery of the State of Delaware enters orders
155 dismissing the Warner Grant litigation, being case numbers C.A. No. 439, 1972, and C.A. No. 518, 1974, Sussex County.

156 Section 10. This Act is intended to completely define, delineate and interpret the Warner Grant recorded in the
157 Office of the Recorder of Deeds of Sussex County and State of Delaware in Deed Record Book A-1, Page 14, et sequi.

158 Section 2. Amend Chapter 45, Title 7 of the Delaware Code by making deletions as shown by strike through and
159 insertions as shown by underline as follows:

160 § 4523. Warner Grant Trust Lands.

161 (a) For purposes of this section, "Warner Grant Trust Lands" means as established under Chapter 108 of Volume
162 62 of the Laws of Delaware, as amended by Chapter 99 of Volume 72 of the Laws of Delaware and [the Chapter and
163 Volume number of the Laws of Delaware for this Act].

164 (b) The Department of Natural Resources and Environmental Control shall administer the Warner Grant Trust
165 Lands as required under Chapter 108 of Volume 62 of the Laws of Delaware, as amended by Chapter 99 of Volume 72 of
166 the Laws of Delaware and [the Chapter and Volume number of the Laws of Delaware for this Act].

167 (c) Section 4517(a) of this title does not apply to this section.

SYNOPSIS

In 1682 or 1683, the Sussex County Court, created by William Penn, created the land grant that is the subject of this Act ("Warner Grant"). As this Act describes, the Warner Grant consists of land in and adjacent to the City of Lewes

largely consisting of what is now Cape Henlopen State Park. As the United States District Court for Delaware would later find, the Warner Grant created a “right of common” held in trust for the benefit the people of Lewes and Sussex County. See *United States v. 1,010.8 Acres Situate in Sussex County*, 56 F. Supp. 120 (D. Del. 1944).

In the early 1970s, nearly 300 years after the Warner Grant was created, a dispute arose over the meaning of the Warner Grant and who had authority to enforce the right of common under the Warner Grant when the City of Lewes leased land in the Warner Grant to a real estate company for the purpose of constructing a housing development. Lawsuits were filed by members of the public and the Attorney General. Eventually, the 130th General Assembly settled that dispute by enacting Chapter 108 of Volume 62 of the Laws of Delaware to establish the Warner Grant Trust (“Trust”) and set the boundaries of the lands in the Trust, known as the Warner Grant Trust Lands (“Lands”).

In light of recent proposals for the use of the Lands, the 152nd General Assembly finds that clarification is necessary as to the permitted uses of the Lands and as to how future disputes are to be litigated. To that end, this Act does all of the following:

(1) Makes clear that the Department of Natural Resources and Environmental Control (“Department”), as trustee of the Warner Grant Trust Lands, must administer the Lands for the public benefit and adhering to 3 governing priorities: (1) conservation, (2) nature education, and (3) public recreation.

(2) Makes clear that the Department must administer the Lands so that a private benefit or financial gain to a for-profit enterprise or public-private partnership is not detrimental to the public benefit.

(3) Provides that the Court of Chancery has original jurisdiction over disputes regarding the Lands.

(4) Provides that the Attorney General must represent Delawareans in the enforcement of the Trust and, if the Attorney General declines to do so, any resident of Sussex County may sue to enforce the Trust and the Court of Chancery must award attorney’s fees to the plaintiffs who prevail in enforcing the Trust.

(5) Includes a provision in the Delaware Code, § 4523 of Title 7, referencing the Department’s duties under this Act to preserve memory of this Act for future generations.

Section 1 of this Act amends Chapter 108, Volume 62 of the Laws of Delaware, as amended by Chapter 99, Volume 72 of the Laws of Delaware, which contains 10 sections labelled Section 1 through Section 10. Section 2 of this Act amends the Delaware Code to create a new § 4523 of Title 7.

Author: Senator Huxtable