SPONSOR: Rep. Osienski & Rep. Heffernan & Rep. Gray &
Sen. Townsend & Sen. Pettyjohn
Reps. Briggs King, Collins, Dukes, Hudson, Kenton, Miro, Outten, Postles, Potter, B. Short, D. Short, Spiegelman, Wilson, Yearick

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 190

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE COASTAL ZONE ACT.

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

Section 1. Amend § 7001, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7001. Purpose.

It is hereby determined that the coastal areas of Delaware are the most critical areas for the future of the State in terms of the quality of life in the State. It is, therefore, the declared public policy of the State to control the location, extent and type of industrial development in Delaware's coastal areas. In so doing, the State can better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism. Specifically, this chapter seeks to prohibit ~~entirely~~ the construction of new heavy industry in its coastal areas ~~, which industry~~ <u>beyond the heavy industry use sites defined in this chapter. The expansion of heavy industry beyond those sites</u> is determined to be incompatible with the protection of that natural environment in those areas. While it is the declared public policy of the State to encourage the introduction of new industry into Delaware, the protection of the environment, natural beauty and recreation potential of the State is also of great concern. In order to strike the correct balance between these 2 policies, careful planning based on a thorough understanding of Delaware's potential and the State's needs is required. Therefore, control of industrial development ~~other than that of heavy industry~~ in the coastal zone of Delaware through a permit system at the state level is called for. It is further determined that offshore bulk product transfer facilities represent a significant danger of pollution to the coastal zone ~~and generate pressure for the construction of industrial plants in the coastal zone, which construction is declared to be against public policy. For these reasons, prohibition against bulk product transfer facilities in the coastal zone is deemed imperative~~, <u>therefore bulk product transfer facilities are prohibited in the coastal zone, unless approved through a conversion permit at a heavy industry use site that had a docking facility or pier for a single industrial or manufacturing facility on or before June 28, 1971</u>.

Section 2. Amend § 7002, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and redesignating accordingly:

§ 7002. Definitions.

(b) "Bulk product transfer facility" means any port or dock facility, whether an artificial island or attached to shore by any means, for the transfer of bulk quantities of any substance from vessel to onshore facility or vice versa. Not included in this definition is a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use. Likewise, docking facilities for the Port of Wilmington are not included in this definition.

(g) "Heavy industry use site" means those 14 sites depicted in Appendix B of the Regulations Governing Delaware's Coastal Zone, § 101, Title 7 of the Delaware Administrative Code in effect on [the effective date of this Act], including those sites which have been abandoned in fact or have been the subject of an abandonment proceeding.

Section 3. Amend § 7003, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7003. Uses absolutely prohibited in the coastal zone.

~~Heavy~~ Except as provided by § 7014 of this title, heavy industry uses of any kind not in operation on June 28, 1971, are prohibited in the coastal zone and no permits may be issued therefor. In addition, offshore gas, liquid or solid bulk product transfer facilities which are not in operation on June 28, 1971, are prohibited in the coastal zone, and no permit may be issued therefor, except as provided in § 7014. ~~Provided, that~~ The prohibitions in this section shall not apply to public sewage treatment or recycling plants. ~~A basic steel manufacturing plant in operation on June 28, 1971, may continue as a heavy industry use in the coastal zone notwithstanding any temporary discontinuance of operations after said date, provided that said discontinuance does not exceed 2 years.~~ An incinerator is neither "public sewage treatment" nor a "recycling plant" for the purpose of this chapter.

Section 4. Amend § 7004, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7004. Uses allowed by permit only; nonconforming uses.

(a) Except for heavy industry uses, as defined in § 7002 of this title, manufacturing uses not in existence and in active use on June 28, 1971, are allowed in the coastal zone by permit only, as provided for under this section. Any nonconforming use in existence and in active use on June 28, 1971, shall not be prohibited by this chapter and all expansion or extension of nonconforming uses, as defined herein, and all expansion or extension of uses for which a permit is issued pursuant to this chapter, are likewise allowed only by permit. Expansions or extensions shall be subject to the permit

requirements outlined in this section and the process outlined in § 7005 of this title. The conversion of a heavy industry use site to an alternative or additional heavy industry use is allowed only by a conversion permit issued pursuant to § 7014 of this title. The conversion of a heavy industry use site to a bulk product transfer facility is allowed only through a conversion permit issued under § 7014 of this title. Provided, that no permit may be granted under this chapter unless the county or municipality having jurisdiction has first approved the use in question by zoning procedures provided by law.

Section 5. Amend § 7005, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7005. Administration of this chapter.

(a) The Department of Natural Resources and Environmental Control shall administer this chapter. All requests for conversion permits under § 7014 of this title for a heavy industry use site seeking an alternative or additional heavy industry use or for a bulk product transfer facility, and all requests for permits for manufacturing land uses and for the expansion or extension of nonconforming uses ~~as herein defined~~ under § 7004 of this title in the coastal zone shall be directed to the Secretary of the Department of Natural Resources and Environmental Control. Such requests must be in writing and must include:

(1)a. Evidence of approval by the appropriate county or municipal zoning authorities;

b. A detailed description of the proposed construction and operation of the use; and

c. An environmental impact statement.

(2) The Secretary of the Department of Natural Resources and Environmental Control shall hold a public hearing and may request further information of the applicant. The Secretary of the Department of Natural Resources and Environmental Control shall first determine whether the proposed use is, according to this chapter and regulations issued pursuant thereto:

a. A heavy industry use or bulk product transfer facility prohibited under § 7003 of this title;

b. A use allowable only by permit under § 7004 of this title; ~~or~~

c. A use requiring no action under this ~~chapter.~~ chapter; or

d. A heavy industry use or bulk product transfer facility allowable by conversion permit under § 7014 of this title.

The Secretary of the Department of Natural Resources and Environmental Control shall then, if he or she determines that § 7004 or § 7014 of this title applies, reply to the request for a permit within 90 days of receipt ~~of the said request for permit~~ of an administratively complete permit, either granting the request, denying same, or granting the request but requiring modifications; the Secretary shall state the reasons for his or her decision.

(b) The Secretary of the Department of Natural Resources and Environmental Control may issue regulations including, but not limited to, regulations governing disposition of permit requests, and setting forth procedures for hearings before himself or herself and the Board. Provided, that all such regulations shall be subject to approval by the Board.

(c) The Secretary of the Department of Natural Resources and Environmental Control shall develop and propose a comprehensive plan and guidelines for the State Coastal Zone Industrial Control Board concerning types of manufacturing uses deemed acceptable in the coastal zone and regulations for the further elaboration of the definition of "heavy industry" and for further elaboration of conversion permits under § 7014 of this title in a manner consistent with the purposes and provisions of this chapter. Such plan and guidelines shall become binding regulations upon adoption by the Board after public hearing. The Board may alter said regulations at any time after a public hearing. Provided, that any such regulations shall be consistent with §§ 7003 ~~and 7004~~ , 7004, and 7014 of this title.

Section 6. Amend § 7007, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7007. Appeals to State Coastal Zone Industrial Control Board.

(a) The State Coastal Zone Industrial Control Board shall have the power to hear appeals from decisions of the Secretary of the Department of Natural Resources and Environmental Control made under ~~§ 7005~~ §§ 7005 and 7014 of this title. The Board may affirm or reverse the decision of the Secretary of the Department of Natural Resources and Environmental Control with respect to applicability of any provisions of this chapter to a proposed use; it may modify any permit granted by the Secretary of the Department of Natural Resources and Environmental Control, grant a permit denied by the Secretary, deny a permit or confirm the Secretary's grant of a permit. Provided, however, that the Board may grant no permit for uses prohibited in § 7003 herein.

(b) Any person aggrieved by a final decision of the Secretary of the Department of Natural Resources and Environmental Control under § 7005(a) or § 7014 of this title may appeal same under this section. Appellants must file notice of appeal with the State Coastal Zone Industrial Control Board within 14 days following announcement by the Secretary of the Department of Natural Resources and Environmental Control of his or her decision. The State Coastal Zone Industrial Control Board must hold a hearing and render its decision in the form of a final order within 60 days following receipt of the appeal notification.

Section 7. Amend Chapter 70, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7014. Conversion permit.

(a) An owner, operator, or prospective purchaser of a heavy industry use site, including a site that has been abandoned in fact or has been the subject of an abandonment proceeding, may submit an application to the Secretary of the Department of Natural Resources and Environmental Control for a conversion permit under this section for an alternative heavy industry use or an additional heavy industry use that will operate simultaneously with any existing use on that heavy industry use site.

(b) An owner, operator, or prospective purchaser of a heavy industry use site that had a docking facility or pier for a single industrial or manufacturing facility on or before June 28, 1971, including a site that has been abandoned in fact or has been the subject of an abandonment proceeding, may submit an application to the Secretary of the Department of Natural Resources and Environmental Control for a conversion permit to operate a bulk product transfer facility that may be operated simultaneously with other heavy industry uses, industrial uses or manufacturing uses. Provided, however, that a conversion permit may be issued only for the transfer of products that are produced or will be used within the coastal zone, unless the product is a grain, as that term is defined in § 1601 of Title 3, in which case it may be transferred without regard to origin or destination. A conversion permit may not be issued for bulk transfer of liquefied natural gas.

(c) An application for a conversion permit made under subsection (a) or (b) of this section must be in writing on a form approved by the Secretary and must include the items listed in § 7004(b) and § 7005(a)(1) of this title, the items required by regulation promulgated under this chapter, and all of the following items to be considered in assessing a conversion permit application:

(1) The environmental impact and economic effect of the existing or previous use. If the application is for a subsequent conversion permit, the Secretary of the Department of Natural Resources and Environmental Control has the discretion to direct the applicant to provide information on the environmental impact and economic effect of any of the previous uses at the site.

(2) The environmental impact and economic effect of the alternative or additional heavy industry use or bulk product transfer activity.

(3) The net environmental improvement or economic improvement, or both, inherent in the alternative or additional heavy industry use or bulk product transfer activity as compared to the most recent heavy industry use engaged in at that site.

(4) Evidence that the owner, prospective owner, or applicant for the conversion permit under this section has complied with, and will continue to comply with, the requirements of the Delaware Hazardous Substance Cleanup Act, Chapter 91 of this title, and any other relevant state or federal environmental statutes.

(5) A plan to prepare the site for potential impacts of sea-level rise and coastal storms.

140 (6) An offset proposal that meets the requirements established by and includes the contents specified in
141 regulations promulgated under this chapter and more than offsets the facility's negative environmental impacts on an
142 annual basis. Such proposal shall favor offsets that directly benefit Delaware.
143 (7) A timeframe for the conversion to an additional or alternative heavy industry use or bulk product transfer
144 facility.
145 (8) Evidence of financial assurances in sufficient form and amount necessary to ensure that, upon the event of
146 an incident resulting in environmental contamination, or upon termination, abandonment, or liquidation of all activities
147 at the site of any heavy industry use, all means will be taken to minimize environmental damage and stabilize and
148 secure the heavy industry use site.
149 a. Evidence under paragraph (c)(8) of this section must be in accordance with any regulations
150 promulgated by the Secretary of the Department of Natural Resources and Environmental Control under Chapter
151 92 of this title and any regulations promulgated under this chapter.
152 b. If, on the date of an application filed under this section, the Secretary has not promulgated regulations
153 under Chapter 92 of this title or under this chapter, the Secretary shall assess the evidence presented by the
154 applicant under paragraph (c)(8) of this section as follows:
155 1. By taking into consideration the size of the site of the heavy industry use and the quantities of
156 chemicals maintained and generated as wastes on the site of the heavy industry use.
157 2. By taking into consideration, and giving due credit for, financial assurances established through
158 other programs operated by the Department of Natural Resources and Environmental Control.
159 3. By allowing evidence of financial assurance to include insurance, guarantee, surety bond, letter of
160 credit, proof of assets, qualification as a self-insurer, or other agreements acceptable to the Secretary.
161 (d) For purposes of paragraphs (c)(1) and (c)(2) of this section, "environmental impact" and "economic effect"
162 have the same meanings as in § 7004(b) of this title.
163 (e) In making a decision on a conversion permit application under this section, the Secretary of the Department of
164 Natural Resources and Environmental Control, in the first instance, and the State Coastal Zone Industrial Board, on appeal,
165 shall consider all of the following:
166 (1) The factors listed in § 7004(b) of this title.
167 (2) The items listed in paragraphs (c)(1) through (c)(8) of this section.
168 (3) Compliance with any regulations promulgated under § 7005(b) and § 7005(c) of this title.

169 (f) The Secretary of the Department of Natural Resources and Environmental Control may not grant a conversion
170 permit under this section for any of the following heavy industry uses that were not in existence on June 28, 1971:
171 (1) An oil refinery.
172 (2) A basic cellulosic pulp paper mill.
173 (3) An incinerator.
174 (4) A basic steel manufacturing plant.
175 (5) A liquefied natural gas terminal.
176 (g) The Secretary of the Department of Natural Resources and Environmental Control must hold a public hearing
177 prior to issuing a conversion permit under this section. All public hearings must be noticed as required by this chapter,
178 regulations promulgated under this chapter, or applicable law.
179 (h) Notwithstanding the 90 day response time for a decision by the Secretary of the Department of Natural
180 Resources and Environmental Control on a permit application under § 7005(a) of this title, the Secretary and an applicant
181 under this section may, by mutual agreement, extend such time for a decision.
182 (i) The Secretary of the Department of Natural Resources and Environmental Control shall publish, on the
183 Department of Natural Resources and Environmental Control's website, all decisions made under this section including the
184 reasons therefor.
185 Section 8. When regulations governing the Coastal Zone Act are updated in accordance with this Act, the
186 provisions governing abandoned uses and abandonment decisions by the Secretary as they pertain to heavy industry and
187 bulk product transfer shall be removed.
188 Section 9. The Department of Natural Resources and Environmental Control is encouraged to start the public
189 workshop process to promulgate revised regulations consistent with this bill no later than November 1, 2017 and work
190 towards final promulgation of the revised regulations by November 1, 2019. Prior to promulgation of final revised
191 regulations, conversion permits may be issued following the existing regulatory framework.
192 Section 10. This Act shall be known as the Coastal Zone Conversion Permit Act.

SYNOPSIS

This Act, which shall be known as the Coastal Zone Conversion Permit Act, makes changes to the Coastal Zone Act ("CZA"), which has not been significantly updated since its enactment almost a half century ago. The CZA, enacted in 1971, has enabled Delaware to preserve and protect our coastline, one of Delaware's greatest natural resources. However, the CZA has also allowed property that has been in use by heavy industry for nearly 50 years, most suitable for similar industrial uses, to go unused unless the owner is willing to engage in the same heavy industry use or to use the property for manufacturing.

This Act establishes a procedure to allow for the responsible, productive reuse of the 14 existing sites of heavy industry use within the coastal zone. Specifically, this Act provides that the Secretary of the Department of Natural Resources and Environmental Control ("Secretary") may issue a conversion permit entitling the owner, operator, or

prospective purchaser of an existing heavy industry use site operate an alternative or additional heavy industry use at a heavy industry use site.

A conversion permit may also be sought for a heavy industry use site that had a docking facility or pier for a single industrial or manufacturing facility at the time the original CZA was passed in 1971, to engage in the bulk transfer of products produced in or used by a facility in the coastal zone. Agricultural products in bulk may also be transferred without regard to origin or destination pursuant to a conversion permit. Liquefied natural gas terminals or transfers are not allowed under this provision. The CZA already contains an exception from the definition of "bulk product transfer facility" for "a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use," and that exception is maintained in this Act.

A person applying for a conversion permit must submit a written application including all of the information currently required for a permit under the CZA in addition to the following: (1) the environmental impact and economic effect of the existing or previous heavy industry use or uses, (2) the environmental impact and economic effect of the alternative or additional heavy industry use or bulk product transfer activity, (3) the net environmental improvement, economic improvement, or both, inherent in the additional or alternative heavy industry use or bulk product transfer activity as compared to the most recent heavy industry use, (4) evidence of compliance with the Delaware Hazardous Substance Cleanup Act ("HSCA") and other environmental laws, (5) a sea-level rise plan, (6) an offset proposal required to more than offset the negative environmental impacts of an activity, consistent with regulations, (7) a timetable for the conversion from the existing heavy industry use to the alternative or additional heavy industry use or bulk product transfer activity, and (8) evidence of financial assurances.

Together, these additional requirements will ensure the coastal zone is protected while providing more flexibility for viable economic use to these 14 existing sites of heavy industry use.

This Act specifies that the Secretary may not grant a conversion permit to operate any oil refinery, basic cellulose pulp paper mill, incinerator, basic steel manufacturing plant, or liquefied natural gas terminal not in existence on June 28, 1971.

All conversion permit applications under this Act are subject to a public hearing. The Secretary must respond to an application for a conversion permit within 90 days of receiving an application.