



SPONSOR: Sen. Townsend & Rep. Romer & Rep. Gray
Rep. Berry

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 346
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO APPEALS TO THE ENVIRONMENTAL APPEALS BOARD.

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

Section 1. Amend § 6007, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 6007. Establishment of Environmental Appeals Board.

(c)(1) A simple majority of the Board ~~shall constitute~~ constitutes a quorum. A simple majority of those members of the Board present ~~shall be~~ is required to override the decision of the Secretary.

(2)a. The Board shall schedule, but not necessarily conduct, a hearing on the merits of an appeal within 30 days following the receipt of the appeal. ~~In any event, the~~

b. The Board shall ~~conduct, but not necessarily complete,~~ complete the hearing on the merits of the appeal within ~~180~~ 120 days following the receipt of the appeal unless the ~~parties agree otherwise.~~ Chairperson tolls this period under paragraph (c)(5) of this section.

(3)a. The Board may verbally announce the decision at the conclusion of the hearing.

b. A written decision ~~shall~~ must be mailed to the parties by certified mail within ~~90~~ 60 days after the completion of the hearing.

(4)a. If the Board fails to ~~conduct~~ complete the hearing ~~or~~ within the time period required under paragraph (c)(2)b. of this section, the decision of the Secretary is a final decision for all purposes, including an appeal under § 6009 of this title, 121 days after the date of receipt of the appeal.

b. If the Board fails to issue the written opinion as required, within the time period required under paragraph (c)(3)b. of this section, the decision of the Secretary ~~shall be~~ is a final decision for ~~the purposes of~~ all purposes, including an appeal under § 6009 of this title, 61 days after completion of the hearing.

(5) Upon the written request of both parties, the Chairperson may toll the running of the 120-day period under paragraph (c)(2)b. of this section by a letter that states the number of days the period is tolled.

Section 2. Amend § 6008, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 6008. Appeals to Board.

(a) ~~Any~~ (1)a. Except as provided under subsection (e) of this section, any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board within 20 days after receipt of the Secretary's decision or publication of the decision.

b. The grant of a permit on subaqueous lands may be appealed by any person whose interest is substantially affected.

(2) The Board shall conduct a public hearing for all appeals in accordance with Chapter 101 of Title 29. Deliberations of the Board may be conducted in executive session. Each member who votes shall indicate the nature of ~~his or her~~ their vote in the written decision.

(b)(1) Whenever a final decision of the Secretary concerning any case decision, including ~~but not limited to~~ any permit or enforcement ~~action~~ action, is appealed, the Board shall hold a public hearing in accordance with Chapter 101 of Title 29. The record before the Board ~~shall~~ must include the entire record ~~before presented to the Secretary.~~ Secretary, as follows:

a. If all or part of the record was transmitted to the Secretary by e-mail, that email may be a part of the record.

b. Except for public comments submitted by e-mail, e-mail communication that does not involve the Secretary is not part of the record and is not required to be produced for any appeal.

(2) All parties to the appeal may appear personally or by counsel at the hearing and may produce any competent evidence in their behalf. The Board may exclude any evidence which is plainly irrelevant, immaterial, insubstantial, cumulative or unduly repetitive, and may limit unduly repetitive proof, rebuttal and cross-examination. The burden of proof is upon the appellant to show that the Secretary's decision is not supported by the evidence on the record before the Board. The Board may affirm, reverse or remand with instructions any appeal of a case decision of the Secretary.

(c) There ~~shall be~~ is no appeal of a decision by the Secretary regarding any of the following:

(1) Consistency with the federal Coastal Zone Management Act. ~~to deny~~

(2) The denial of a permit on any matter involving state-owned ~~land~~ land, including subaqueous lands, except ~~an appeal shall lie on~~ if the sole ground of the appeal is that the decision was discriminatory in that the applicant, whose circumstances are like and similar to those of other applicants, was not afforded like and similar treatment.

